The Norwegian Government welcomes this opportunity to submit observations on the Committee on the Rights of Persons with Disabilities’ Draft General Comment on Article 27 on the right of persons with disabilities to work and employment.

Norway ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2013, and the Government would first like to underline the importance it attaches to the Convention and confirm its commitment to fully comply with Norway’s treaty obligations.

Norway would like to provide the following feedback to the draft general comment:

Para 20 and 21 define direct and indirect *discrimination*:

20. ***Direct discrimination*** occurs when, in a similar situation, persons with disabilities are treated less favourably than other persons because of a different personal status in a similar situation for a reason related to a prohibited ground. For example, a public sector employer does not consider a person with disabilities for a job because it is assumed that they will be unable to do the work when compared with a person without disabilities.**13**

21. ***Indirect discrimination*** means that laws, policies or practices appear neutral at face value but have a disproportionate negative impact on a person with a disability. It occurs when an opportunity that appears accessible, but in reality excludes certain persons owing to the fact that their status does not allow them to benefit from the opportunity itself. For example, if the only way to enter a public building for a job interview is by a set of stairs, the situation puts the candidate who uses a wheelchair in an unequal position because they are unable to enter the building.14

The Government of Norway would like to address that not every differential treatment will constitute discrimination. According to other UN human rights treaty bodies, direct or indirect differential treatment will constitute direct or indirect discrimination if it has *no objective and reasonable justification*. For instance, in General Comment No. 18 para. 13 of The Human Rights Committee, the Committee states that:

*"Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant."*

The same principle is enshrined in General Comment No. 20 of The Committee on Economic, Social and Cultural Rights, para. 13.

The Ministry requests the Committee to clarify that this also applies to the interpretation of CRPD, and to address this principle under para. 19-21.

Furthermore, the draft general comment throughout refers to the Committee’s prior general comments as “jurisprudence”. The draft similarly refers to other UN human rights committees’ general comments as their “jurisprudence”. Examples of this usage are found inter alia in paras. 2, 15, 19, 25, and 72. The Norwegian Government does not agree with this terminology, which denotes judicial competence which the Committee and other UN human rights committees do not possess by virtue of the establishing provisions of the treaties. CRPD Article 36(1) sets out the competence of the Committee, from which it may be inferred that the Committee has the power to “make suggestions and general recommendations” on States Parties’ reports. Similarly, Article 5 of the Optional Protocol bestows on the Committee the power to “forward (...) suggestions and recommendations” to the States Parties who have accepted the individual communication procedure. The two treaty provisions do not provide the basis for the Committee to develop “jurisprudence”. Referring to all parts of prior general comments as evidence of “jurisprudence” in any event appears to overlook the fact that these documents contain both statements which express the legally accepted normative content of the treaty provisions and statements of best practice, long term goals, and ideals towards which the States parties should strive. It would therefore also denigrate the concept of “jurisprudence” not to distinguish between various aspects of statements found in the general comments. The term “jurisprudence” should be avoided. The appropriate term is “practice”, which is occasionally used in the draft, see, e.g., para. 19.

In para. 56 the draft states that persons with disabilities “have an increased risk of being in situations of slavery or servitude (…)” The statement appears to be based on the Committee’s Concluding observations on the initial report of Bolivia (see footnote 47). That documents does not, however, provide a basis for this statement.

Para. 60 of the draft states that Article 4(1) of the Convention “sets out the obligations to respect, protect and fulfil the right of all persons with disabilities to work”. This appears not to align with the wording of the provision, which refers to the States Parties’ obligations as obligations to “ensure and promote the full realization” of the rights. While the Government agrees that some obligations of the Convention may be referred to in the term of obligations to “respect”, the statement in para. 60 may be reformulated so that it more appropriately aligns with the treaty text to which it refers. The Government further notes that the concept of “respect” in para. 62 appears to include also aspects of the obligations to “protect and fulfil”.