

**For consideration of the Committee on the Rights of Persons with Disabilities**  
**on**  
**"Strengthening the protection of human rights of women and girls with disabilities"**  
(Half-day general discussion on 17 April 2013)

*A Joint Submission from:*  
*Philippine Coalition on the U.N. Convention on the Rights of Persons with Disabilities*  
*Philippine Alliance of Human Rights Advocates*

## **DUTY TO PROTECT**

The duty of the State to protect the rights of women and girls with disabilities is part of its overall mandate to respect, protect and fulfill all its obligations to all persons with disabilities according to the Convention. As duty-bearer, protection of the rights of women and girls with disabilities is defined as the prevention of interference by others or third parties with the exercise or enjoyment of a right, or a deprivation of access by the right-holders of their rights and freedoms. These third parties are non-State actors including individuals, businesses, institutions, private organizations and others.

Thus, the State needs to be able to demonstrate due diligence in preventing the violation of a right, or, responding to the violation of a right. It would also imply State responsibility and activity in the monitoring and regulation of the activities of non-State actors.

## **WOMEN AND GIRLS WITH DISABILITIES IN THE PHILIPPINES**

Women with disabilities comprise a subsector of Filipino women rarely included or even acknowledged. They experience marginalization and discrimination at the intersecting planes of gender and disability. Thus, the societal barriers that isolate them operate through complex multidimensional relationships and social interactions with Filipino men: those of the majority, as well as Filipino men with disabilities.

### **Protection from cruel and inhuman treatment; from violence, exploitation and abuse** Articles 15, 16

#### ***In the home***

In over 168 cases of gender-based violence documented by the Philippine Deaf Resource Center<sup>1</sup>, the most frequent site of violence is in the home of the deaf woman or girl herself. Included here are the numerous cases of incest by male members of the immediate or extended family. With a growing number of households where fathers are left to care for their daughters with disabilities and where young girls are out of school, there has been increasing vulnerability to abuse. This is compounded by typical use of alcohol by fathers. In households where both parents are working specially in informal settler areas, more children with disabilities are locked up or chained<sup>2</sup>.

Findings also include increasing reports of intimate partner or domestic violence between deaf couples.

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<sup>1</sup> Philippine Deaf Resource Center. 2012. Access to justice: Case Monitoring Report by the Philippine Deaf Resource Center (2006-2012). [www.phildeafres.org/pdf/PDRC\\_Case\\_Monitoring.pdf](http://www.phildeafres.org/pdf/PDRC_Case_Monitoring.pdf)

<sup>2</sup> Phil Coalition on the UNCRPD. Communications with disabled peoples organizations.

Notable are a few reports of LBT<sup>3</sup> cases of violence.

Police stations and local government staff lack the awareness or experience to handle such incidents or cases brought to them. That there is no national system of sign language interpreting with standards and mechanisms presents enormous barriers in communication in law enforcement and access to justice. It is a failure of the State Party, particularly of the justice branches and even the NHRI to be unable to provide equal protection and equal benefits of the law to women /girls with disabilities.

### ***In schools***

Gender stereotyping of roles of Filipino women also affect women with disabilities, seriously restricting their opportunities to education, livelihood & employment, and overall self-development and dignity of personhood. Despite very limited state data, the most compelling of this discrimination is revealed in gender / disability – based violence. Frequently this also intersects with age, thus affecting many girls with disabilities.

The need for protection from violence, exploitation and abuse for women and girls with disabilities is essential in different domains of individual and collective life. These range from the intimate domains of family and home, through the various levels of schooling, the community at large, and broadly, in institutions, and in the realm of broadcast media and information and communications technology.

Apart from the public schools and programs for children with disabilities, there are numerous other educational programs, facilities and ministries privately run by nonprofit corporations and faith-based groups. Regulation or monitoring of these private entities by the Department of Education is usually limited only to listing in the roster of the schools in the area, and does not deal with standards of school management or administration.

These privately run residential schools for the deaf, blind and other children with disabilities are very much like their public counterparts in being notorious for gender-based violence, promiscuity, pregnancy and various sexuality-related problems. These are frequently associated with the physical building and design of the residential dormitory and its toilet facilities which do not provide sufficient privacy between boys and girls with disabilities<sup>4</sup>. In addition, these school facilities offer very limited (if any) sexuality education programs, and guidance and counseling support<sup>5</sup>.

From primary to postsecondary levels, accounts of lateral violence to girls with disabilities by male children with disabilities also happens<sup>6</sup>. Specially at secondary and postsecondary level programs, sexual violence toward young deaf girls with disabilities by deaf fraternities has been unabated for years. Schools are aware of this problem yet are virtually powerless in even trying to gather information because of deeply guarded secret codes of conduct in these organizations.

In several occurrences of rape, and other forms of sexual abuse by teachers, school officials or staff, the ensuing action by the Department of Education was just to transfer the perpetrators to other schools or regions. More often than not, the transfers constitute the extent of action, and there are very few sanctions actually pursued and completed against perpetrator teachers, school officials or staff<sup>7</sup>.

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3 Lesbian, Bisexual and Transgender women

4 Phil Coalition on the UNCRPD. In progress. Disability rights budget analysis – Focus group discussion.

5 Phil Coalition on the UNCRPD. Communications with disabled peoples organizations.

6 Phil Coalition on the UNCRPD. Communications with disabled peoples organizations.

7 Philippine Deaf Resource Center. 2012, *op. cit.*

### ***In the community***

In the monitoring of cases by the Philippine Deaf Resource Center from 2006-2012, findings revealed that the most common perpetrator of gender-based violence toward deaf girls and women were neighbors of the complainants. In households where both parents are working, specially in informal settler areas children with disabilities are often left to roam around in the streets on heir own. This makes them vulnerable to abuse. For rape cases of deaf women and girls involving the religious as perpetrators, the response of the Catholic church has only been to transfer the priests to other parishes in other localities or provinces<sup>8</sup>.

In the advocacy experiences on the ground by DPOs such as the Filipino Deaf Women's Health and Crisis Center, and the Support and Empower Abused Deaf Children, several cases of pimping by other deaf individuals as well as their own families have been discovered<sup>9</sup> including those which have actual court cases<sup>10</sup>. In disturbing clusters of cases involving deaf women and girl children, users of trafficking services and the members of the syndicates behind them include other persons with disabilities as well.

In the past few years also, where there has been a marked increase in displacement of families with children with disabilities due to natural calamities, sexual abuse concerns have arisen in evacuation centers<sup>11</sup>.

### ***In institutions***

Of late, electroconvulsive therapy (ECT), overwhelmingly given to women, has come to be viewed as a form of violence against women. It is seen as a patriarchal form of assault and social control, enforcing sex roles, not unlike wife battery<sup>12</sup>. The WHO Assessment Instrument for Mental Health systems verified the practice of ECT in the Philippines where, compared to 27 other Asian countries, is 'generally well accepted' here<sup>13</sup>.

### ***In broadcast media and on the internet***

It is an irony that increased advocacy for persons with disabilities as a whole in the Philippines has brought both greater visibility, as well as incidents of violence. For instance, in some TV documentaries, episodes on gender-based violence of women victims have purposively or inadvertently divulged personal information or even their identity. The exploitation involves not only the individuals but also the DPOs or NGOs who support and advocate for them<sup>14</sup>.

The recent wave of 'reality TV shows' including 'people's court' type of programs have featured domestic / intimate partner violence involving women with disabilities without even providing accessibility such as sign language interpreting. In the guise of being 'popular legal education', such episodes clearly use women with disabilities for entertainment purposes and the increase of broadcast station ratings. The

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8 Philippine Deaf Resource Center. 2012, *op. cit.*

9 Philippine Deaf Resource Center. Communications with Filipino Deaf Women's Health and Crisis Center, Support and Empower Abused Deaf Children.

10 Philippine Deaf Resource Center. 2012, *op. cit.*

11 Phil Coalition on the UNCRPD. 2012. Communications with disabled peoples organizations.

12 Burstow, B. 2006. Electroshock as a form of violence against women. *Violence Against Women* 12(4):372-392.

13 Leiknes, K.A., et al. 2012. Contemporary use and practice of electroconvulsive therapy worldwide

*Brain Behav.* 2012 May; 2(3): 283-344. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3381633/>

WHO-AIMS Report on mental health systems in the Philippines.

[http://www.who.int/mental\\_health/evidence/philippines\\_who\\_aims\\_report.pdf](http://www.who.int/mental_health/evidence/philippines_who_aims_report.pdf)

14 Philippine Deaf Resource Center. 2012-2013. Communications with Filipino Deaf Women's Health and Crisis Center.

Movie and Television Review and Classification Board monitors TV programs for objectionable content and presentation to the viewers, but has reprimanded very few (if any) TV stations or producers for their treatment of women with disabilities.

In technology-based violence, persons with disabilities (both men and women) who promote and support online sale of pornographic images, particularly of women / girls who are deaf or have mobility impairments to foreigners are known within the sector. Despite these, there are very little (if any) investigations or sanctions on such activities.

## Protection before and under the law

### Article 12

The Coalition in its data-gathering notes discriminatory laws and their interpretations, which are evident in legal arguments, practices and jurisprudence for legal proceedings even at the level of Supreme Court. These include non recognition of legal capacity particularly of women/ girls with intellectual disabilities, or psychosocial disabilities. Article 5.1 of the Convention mandates that all persons with disabilities are entitled to equal protection and equal benefit of the law.

Yet, it is an irony that the very legislation that aims to protect women from sexual violence carries contentious issues for different disability constituencies of women as well. Precedence set by this jurisprudence perpetuates discriminatory attitudes and stereotypes among public attorneys, private prosecutors, various lawyers, judges and legal practitioners.

#### 1. Women with intellectual disabilities

Republic Act 8353 or the Anti-Rape Law passed in 1997 states:

Article 266-A. Rape: *When And How Committed.* -

Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) *Through force, threat, or intimidation;*

b) *When the offended party is **deprived of reason** or otherwise unconscious;*

In all the lower courts, as well as the Court of Appeals and the Supreme Court, it is conspicuous in jurisprudence that women with intellectual disabilities are placed in this category of being “deprived of reason”, and thus unable to give consent<sup>15</sup>. Below are excerpts from some cases:

“A mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood. For this reason, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape; without requiring proof that the accused used force or intimidation in committing the act.”

G.R. No. 186411. *People vs. Arturo Paler*<sup>16</sup>

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15 G..R. No. 177295. *People of the Philippines v. Marlon Barsaga Abella*  
<http://sc.judiciary.gov.ph/jurisprudence/2010/january2010/177295.htm>

G.R. 188901. *People of the Philippines v. Gilbert Castro*  
<http://sc.judiciary.gov.ph/jurisprudence/2010/december2010/188901.htm>

G.R. 186533. *People of the Philippines v. Efrén Castilo*  
<http://sc.judiciary.gov.ph/jurisprudence/2010/august2010/186533.htm>  
16 <http://sc.judiciary.gov.ph/jurisprudence/2010/july2010/186411.htm>

“The absence of will determines the existence of the rape. Such lack of will may exist not only when the victim is unconscious or totally deprived of reason, but also when she is suffering some mental deficiency impairing her reason or free will. In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape. Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. Her failure to offer resistance to the act did not mean consent for she was incapable of giving any rational consent.

The deprivation of reason need not be complete. Mental abnormality or deficiency is enough. Cohabitation with a feeble-minded, idiotic woman is rape. Sexual intercourse with an insane woman was considered rape.

“... Carnal knowledge of a mental retardate is rape under paragraph 1 of Article 266-A of the *Revised Penal Code*, as amended by Republic Act No. 8353 because a mental retardate is not capable of giving her consent to a sexual act.”

G.R. No. 168932. *People vs. Charlie Butiong*<sup>17</sup>

“... It upheld the RTC’s reliance on the testimonies of Dr. Marfil and AAA in concluding that AAA is indeed intellectually disabled. The CA pointed out that a woman with a mental age below that of a person less than 12 years of age is effectively “*deprived of reason*” and that sexual intercourse with her constitutes rape under either paragraph (2) or paragraph (3), Article 335 of the Revised Penal Code.

#### THE COURT’S RULING

By law and jurisprudence, sexual intercourse with a mentally retarded woman incapable of giving rational consent constitutes rape.”

G.R. No. 182412. *People vs. Jojo dela Paz*<sup>18</sup>

The spirit of the law appears to lean strongly toward the protection of the woman /girl with disability and thus, the complainant does not need to even show *resistance* to the rape. However, this safeguard may actually be at the expense of denying her legal capacity. This protection might ultimately be even effected as paternalism, and thus, a non-recognition of an ability to give consent. The UNCRPD states that all persons with disabilities enjoy legal capacity equally as all other individuals (Article 12). The State must be then able to uphold both the right of women with intellectual disabilities to legal capacity, as well as their right to be protected from all forms of violence and abuse.

## 2. Women with psychosocial disability

The Anti-Rape Law continues to state that:

"Article 266-A. Rape: *When And How Committed*. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) *Through force, threat, or intimidation;*

b) *When the offended party is deprived of reason or otherwise unconscious;*

c) *By means of fraudulent machination or grave abuse of authority; and*

d) *When the offended party is under twelve (12) years of age or is **demented**, even though none of the circumstances mentioned above be present.”*

The same denial of legal capacity (discussed above for women with intellectual disabilities) is seen again

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17 <http://sc.judiciary.gov.ph/jurisprudence/2011/october2011/168932.htm>

18 <http://sc.judiciary.gov.ph/jurisprudence/2011/november2011/182412.htm>

here with cases of rape of women with psychosocial disability.<sup>19</sup> Thus, the complexity of recognition before the law and safeguards from violence are again evident.

Other questions also arise:

- Shall women with psychosocial disability not have the right to ever exercise their sexuality, even within the context of marriage?
- In a consensual sexual relationship involving a woman with psychosocial disability, can her partner be wrongly charged with rape and even be convicted? At times, it is actually other members of the family of persons with disabilities who object to the woman's sexual activity or relationships.

It should be noted that a proposed amendment of the Anti-Rape Law still carries this provision regarding women with psychosocial disability.

### **Protection of right to Access to Justice**

#### **Article 13**

In the case monitoring efforts of the Philippine Deaf Resource Center, as well as various interactions of the Philippine Coalition on the UNCRPD with DPOs and persons with disabilities, it is a very frequent occurrence in rape and other gender-based violence complaints by women and girls with disabilities that families either opt to back out of complaints or cases, or, instead settle amicably for compensation. This appears to be due to a complexity of factors including poverty, and seemingly lesser importance given to female members of the family who have disabilities, and thus, greater priority given to resources for the other members of the family (who do not have disabilities)<sup>20</sup>.

### **Protection of right to liberty, and right to living independently & be included in the community**

#### **Articles 14, 19**

Many women with disabilities in both urban and rural areas go through their childhood as girls bound by unpaid work, servitude to other family members in their households (including female members who have no disabilities). There is a vicious cycle of very restricted opportunities for education, community involvement, and employment which keep them isolated, powerless and fully dependent on their families<sup>21</sup>.

### **Protection of integrity of person**

#### **Article 17**

Forced medication and electroconvulsive therapy of women with psychosocial disabilities by families, private facilities and physicians, as well as institutions, has been increasingly noted by the Coalition<sup>22</sup>.

### **Protection of right to respect for home and family**

#### **Article 23**

Doctors and families force medication on women with disabilities, and the latter take over child rearing responsibilities virtually shutting these women out of their own families. Frequently they justify these

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19 G.R. No. 144036. *People vs. Victor Ugang*

[http://www.lawphil.net/judjuris/juri2002/may2002/gr\\_144036\\_2002.html](http://www.lawphil.net/judjuris/juri2002/may2002/gr_144036_2002.html)

20 Phil Coalition on the UNCRPD. 2012. Communications with disabled peoples organizations.

21 Phil Coalition on the UNCRPD. 2012. Communications with disabled peoples organizations.

22 Phil Coalition on the UNCRPD. 2012. Communications with disabled peoples organizations.

actions by their view that women with disabilities are unfit, or incapable of raising their own children<sup>23</sup>.

### **Protection of right to education**

#### **Article 24**

In 2011, the Philippine Institute for Development Studies<sup>24</sup>, reports that twice as many women than men with disabilities have not completed any grade (or level of primary education) at all, specially in rural areas.

The MDG core indicator data by the National Statistics Coordination Board and the Department of Education - Special Education statistics do not disaggregate by disability and / or gender<sup>25</sup>. It is uncertain whether there are really no statistics on private schools / programs including those run by NGOs / DPOs, or that the reporting mechanisms have just not been set in place.

### **Protection of right to work**

#### **Article 27**

The Philippine Institute of Development Studies describes Filipino women with disabilities, particularly those in the rural areas as showing strong disparities in type of employment and income, compared to men with disabilities<sup>26</sup>.

The Ateneo de Manila University Center for Organization Research and Development reports that Filipino employers prefer persons with disabilities who are males and have motor disability. The top reason for hiring persons with disabilities is “added business value”, i.e., an enhanced positive company image that decisions to hire persons with disabilities will bring to the company<sup>27</sup>.

Several NGOs, foundations, faith-based organizations and private corporations who hire persons with disabilities are themselves violating the rights of persons with disabilities, including women with disabilities. Violations include undercompensation (compared to peers without disabilities), prolonged temporary employment without contracts or permanency status<sup>28</sup>.

### **Protection of right to participation in cultural life, recreation, leisure and sport**

#### **Article 30**

The Philippine Institute of Development Studies reports that female respondents allot relatively more time to household duties and personal activities (i.e., meals, grooming) both during working as well as non-working days. Male respondents on the other hand, spend more time on work and leisure, even during working days<sup>29</sup>.

Opposition to House of Representatives Bill 6079 (declaring Filipino Sign Language as the national sign

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23 Phil Coalition on the UNCRPD. 2012. Communications with disabled peoples organizations.

24 Philippine Institute for Development Studies. 2011.

25 Poverty reduction, MDGs and education of children with disabilities in the Philippines: Some observations and recommendations. UNESCAP / Leonard Cheshire Disability Conference on Disability-Inclusive Development MDGs and Aid Effectiveness. March 14, 2012, Bangkok.

26 Philippine Institute for Development Studies. 2011., *op. cit.*

27 Ateneo de Manila University Center for Organization Research and Development. 2013. Filipino employers' attitudes toward persons with disabilities. <http://business.inquirer.net/104615/filipino-employers-attitudes-toward-persons-with-disabilities>

28 Phil Coalition on the UNCRPD. 2012. Communications with disabled peoples organizations.

29 Philippine Institute for Development Studies. 2011., *op. cit.*

language) has taken place in Congress Committee deliberations in 2012. These public hearings have been overrun by private schools insisting on the use of artificial sign systems, and the oral approach (prohibiting the use of sign language). This undermines the explicit advocacy of the national Philippine Federation of the Deaf for the cultural and linguistic identity of the Filipino Deaf community and affects the education of girls with disabilities<sup>30</sup>.

## RECOMMENDATIONS

### *Overall*

Though the State duty to respect, protect and fulfill are inextricably linked, definitive legislation, policy and practice must address the needs and problems of human rights violations by the various non-State actors.

The protection of the rights of women and girls with disabilities must begin with the review, amendment, and if needed, abolition of laws and policies discriminatory on the basis of the intersection of disability, gender and age.

Of critical importance to this duty to protect is the integration of reliable, comprehensive mechanisms for statistics and gathering of disability-/ gender- / age- disaggregated data in education, work, access to justice and health as an essential component of protection of all rights and freedoms.

### *Specific*

Programs, activities or projects toward the following ends are to be integrated in the framework and implementation of all Philippine development plans, including the 2013-2022 Decade for Persons with Disabilities. The following are to be sufficiently financed, with mechanisms for efficient implementation, annual evaluations at both the national and local levels of government:

1. Comprehensive, coordinated and sustained awareness raising to change deeply ingrained attitudes, and stereotypes of families and local communities, including faith-based entities, resulting from cultural and traditional societal views of the patriarchy, intersecting with the medical /charity models of disability. This shall include professional practitioners in the areas of the law and justice, health, employment and education;
2. Protection of women and girls with disabilities against gender-based violence through relevant formal and alternative educational interventions in curriculum, student support services, and administration;
3. Effective and efficient activities and programs in law enforcement, investigation and prosecution, directed at individual perpetrators as well as organized syndicates (including lateral violence by male persons with disabilities) at both the national and local levels;
4. Monitoring of private educational facilities and programmes (including those operated by various non-profit and faith-based organizations) to prevent the occurrence of violence and abuse to girls with disabilities;
5. Monitoring of private health facilities and programmes (including those operated by various non-

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30 Minutes / Proceedings of Congress Committee deliberations, 2012.



profit and faith-based organizations) to prevent the occurrence of torture and inhuman treatment to women and girls, particularly with intellectual and psychosocial disabilities;

6. Formulation of guidelines and ethical standards, mechanisms for reporting, sanctions and grievances, as well as coordinated monitoring to address media and internet exploitation of women and girls with disabilities, particularly victims of gender-based violence; and

7. While maintaining respect for individual autonomy and the freedom to make one's own choices, the State should promote the linguistic and cultural identity of persons with disabilities, including Filipino Sign Language, and the Deaf history and culture of the community in the Philippines. These are critical as means toward reasonable accommodation and accessibility for women and girls with disabilities in education, health, work and access to justice.

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#### About the submitting organizations

The *Philippine Coalition on the U.N. Convention on the Rights of Persons with Disabilities* was initially organized in 2010 and formally constituted in February 2011. The core group is currently comprised of twenty-five disabled people's organizations (DPOs) and nongovernment organizations (NGOs), covering nine disability constituencies, and several national federations. The Coalition as a whole represents over 65,000 Filipinos with disabilities.

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#### *PHILIPPINE COALITION ON THE U.N. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES*

Alyansa ng may Kapansanang Pinoy ≠ Autism Society Philippines ≠ CALL Foundation ≠ Deafblind Support Philippines ≠ Government Union for the integration of differently-abled Employees ≠ Katipunan ng mga Maykapansanan sa Pilipinas ≠ Las Piñas Federation of Persons with Disabilities ≠ Leonard Cheshire Disability Philippines ≠ Life Haven ≠ My Refuge ≠ New Vois Association ≠ Nova Foundation ≠ National Organization of Visual Impaired Empowered Ladies ≠ Parents Association of Visually impaired Children ≠ Philippine Alliance of Persons with Chronic Illness ≠ Philippine Association for Children With Developmental and Learning Disabilities ≠ Philippine Chamber for Massage Industry for Visually Impaired ≠ Philippine Deaf Resource Center ≠ Philippine Federation of the Deaf ≠ Punlaka ≠ Quezon City Federation of Persons With Disabilities ≠ Tahanang Walang Hagdanan ≠ Visually Impaired's Brotherhood for Excellent Services ≠ Visionaries ≠ Women with Disabilities Leap To Social and Economic Progress

The *Philippine Alliance of Human Rights Advocates (PAHRA)* is a network of forty human rights and sectoral civil society organizations nationwide and a member of the International Federation of Human Rights Leagues (FIDH) as well as an affiliate network of the World Organization Against Torture (OMCT). It is also a member of regional organization Asian Forum of Human Rights and Development (FORUM-ASIA). The Philippine Coalition on the U.N. Convention on the Rights of Persons with Disabilities collaborates with the PAHRA on various human rights advocacies, including the writing of joint submissions to the U.N. such as the Universal Periodic Review.

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