

# Submission on the General Comment on the rights of persons with disabilities to work and employment (Article 27)

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The International Disability and Development Consortium (IDDC) is a grouping of civil society organisations coming together around a common objective: promoting inclusive international development and humanitarian action with a special focus on the full and effective enjoyment of human rights by all persons with disabilities. A broad consortium, our membership includes organisations of persons with disabilites, non-governmental development organisations, national networks, and international member-based networks.

IDDC welcomes the opportunity to provide input to the Committee on the Rights of Persons with Disabilities (Committee) for its General Comment on the rights to work and employment. IDDC shares the Committee’s concerns that multiple barriers exist which impede the full enjoyment of the right to work by persons with disabilities. Globally, persons with disabilities face lower employment rates and lower market participation than their peers, which in turn contributes to perpetuating a cycle of poverty, inequality, and exclusion.

The right to work is a fundamental right and essential for realising many other rights, including ensuring the economic independence of persons with disabilities and their families and allowing them to live in dignity. The inclusion of persons with disabilities in the labour market is crucial to achieve the UN Sustainable Development Goals (SDGs), in particular SDG8 and SDG10.

We welcome the Committee’s initiative to draft the General Comment on Article 27 and its holistic interpretation of the different elements of this article. Based on IDDC members experience in policy, research and programmes, this submission provides suggestions for points that we feel would benefit from further clarification or detail in the Committee’s General Comment.

## Art 27.1.a Protection from discrimination in the workplace

The General Comment plays a critical role in articulating how States Parties should ensure protection from discrimination in the workplace. We recommend that the General Comment:

* Explicitly highlights that States Parties are **responsible for addressing discrimination perpetrated by private actors** and bodies, as well as by public authorities[[1]](#footnote-1).
* Recognises that policies and legislation should **extend to indirect discrimination and discrimination by association**, which may occur when family members or a person who is associated with a person with disability is discriminated at work because of this relationship[[2]](#footnote-2).
* Emphasise that persons with disabilities should **not be required to disclose their disability** to employers or future employers and that when disability is disclosed there should be safeguards in place to ensure that employees or applicants **do not face discrimination.**
* Provides **clear guidance for states on how to make the transition from sheltered employment** and how to ensure that alternatives are provided for workers in sheltered employment. It is critical that while this transition is taking place sheltered workers are recognised as **legal workers, with equal pay and working conditions** in order to protect them from discrimination.

Many States parties have taken steps to adopt non-discrimination policies and legislation which will only be effective if they are implemented. The General Comment should include **clarity to states parties on** **how to ensure non-discrimination policy is effectively implemented**. The General Comment should:

* Emphasise **the importance of raising awareness** of policies and promote ownership of such frameworks[[3]](#footnote-3). States should promote awareness and ownership through communication and engagement with national and local institutions and stakeholders, in line with Article 8 of the CRPD.
* Highlight that states should ensure **non-discrimination policies and legislation are accompanied resources for implementation.**
* Require states to provide **clear guidance on implementation** to avoid ambiguity. The lack of clarity around specific policy aspects or confusion between different bodies about who has responsibility for implementation can lead to weak accountability, duplication, and institutional inertia.[[4]](#footnote-4)
* Emphasise the importance of **accountability mechanisms** to enforce non-discrimination policies and legislation, enabling persons with disabilities to challenge discrimination in the workplace and seek redress when their rights are violated.
* Ensure that State Parties should **provide accessible and equitable access to legal aid** and other measures to enable persons with disabilities to challenge discrimination[[5]](#footnote-5).

## Art 27.1.b Equal opportunities and equal remuneration for work of equal value

We share the Committee’s analysis on the causes for the wage gap for persons with disabilities. It would also be beneficial to recognise that the wage gap is often particularly significant for women with disabilities who experience pay discrimination on the bases of both their gender and their disability[[6]](#footnote-6).

The General Comment should:

* Clarify that persons with disabilities should be **paid the same wage** as anyone without a disability for the same work – building upon the current language around ensuring that persons with disabitlies should be paid the minimum wage.

## Art. 27.b.3 Measures to eliminate discriminatory attitudes and harassment.

The outline highlights some critical elements in relation to eliminating discriminatory attitudes. The General Comment should:

* Provide further emphasis on the issue that persons with disabilites, while being more exposed to harassment, **have lower reporting levels**, due to inaccessible reporting, lack of trust, and discrimination around being believed.
* Emphasise that **all workers should be able to join a trade union**. Because of their informal status, workers in shelter workshop can often not form unions as they are not recognised as workers, the General Comment should highlight the importance of rectifying this at the same time as moving away from sheltered workshops.

## Art 27.1.d and j: Access to inclusive education and inclusive vocational training

Lack of access to quality education has a significant and direct impact on reducing the chances of persons with disabilites securing employment. Persons with disabilities often have much lower income than their peers unless they are highly educated and in employment[[7]](#footnote-7). However, children and youth with disabilities are less likely to attend school and often lack access to formal education and information technology skills[[8]](#footnote-8), which in turn affects their employment prospects.

The General Comment should:

* **Make stronger links to Article 24,** emphasising the importance of inclusive education and the development of foundational skills as critical to enable children to grow into lifelong learners who are able to respond to labour market changes.
* Clarify that **higher education and training institutions need to be inclusive and accessible to persons with disabilities,** including through the provision of reasonable accommodation in line with Article 24.5. Higher education institutions should include admission policies that include diversity as criteria, provide financial support in the form of bursaries and have support units which provide support for learners with disabilities.
* Highlight that TVET programmes should also focus on the **genuine skills needed in the local labour market to maximise the chances of finding employment**.
* Recognise the importance of providing **business training** as part of capacity building schemes, enabling persons with disabilities to better understand and respond to market demands.
* Highlight the importance of **supporting persons with disabilities when transitioning from education to employment,** including through specific outreach as part of higher education services.

## Art 27.1.f: Self-employment, microfinance, business development services

Given the challenges of entering the labour market, a large number of persons with disabilities, particularly women, work in small and medium sized enterprises or rely on the informal market for a living. The lack of access to funds for investment is a major barrier for persons with disabilities to set up their own businesses[[9]](#footnote-9).

The General Comment should:

* Clearly highlight the responsibility of States to create the right **social and economic environment** for the financial inclusion of persons with disabilities.
* Emphasise that **regulatory structures must be free of discrimination and ensure equitable access to loans and financing.**

## Art 27.1.h: Affirmative action programs

Measures to protect persons with disabilities from discrimination in the labour market are essential to encourage persons with disabilities to enter and continue in employment. These measures need to be combined with broader policies and legislation, such as equal access to quality education and social protection schemes, to counter the structural disadvantages faced by persons with disabilities.

* Provide guidance for States in ensuring that affirmative actions **include criteria carefully defined in compliance with CRPD**. For example, framing disability as a positive criterion that would make the work environment more diverse and give people with disabilities equal opportunities for career progression rather than an act of charity.
* **Provides guidance for states on the effective implementation of quotas** and how they can be effectively enforced. For example, the most effective quota systems include the payment of a fee by the non-complying company for not meeting the agreed quotas, which are in turn used to finance measures to promote employment of persons with disabilities[[10]](#footnote-10). The General Comment could also provide guidance for states on ensuring that quota systems do not just incentivize employment of employees with low support needs[[11]](#footnote-11) or into certain roles. The Committee should also clarify for states that quota systems, when used, should be combined with other actions to support the employment of persons with disabilities and should not be seen as the only action. These actions could alleviate some of the concerns around the efficacy of quotas, which we share with the committee.
* Highlight that states can use public procurement to **promote accessible work environments, such as including accessibility and universal design requirements in public procurement contracts**.
* Provide recommendations for states on supporting inclusive employment through the creation of **public-private partnerships** as another key measure for the employment of people with disabilities. Public-private partnerships can focus on groups with barriers to access the open labour market, such as people with disabilities who are particularly marginalised. They can play a role in addressing gaps while enhancing inclusive employment in the long-term. Public-private partnerships may focus on skills development, job coaching, job carving, inclusion in the labour market, or the provision of reasonable accommodations.[[12]](#footnote-12) The Committee should highlight that it is crucial that governments put in place monitoring and accountability measures with specific disability targets, and trainings for officials in charge of the partnerships on disability inclusion. The focus of these partnerships should be to enhance sustainable inclusive employment in the long-term, taking account those that have lower employment rates such as women with disabilities and people with intellectual disabilities.

## Art 27.i: The obligation to provide reasonable accommodation in the workplace and the denial of reasonable accommodation as a form of discrimination.

States have the duty to take all appropriate steps to ensure reasonable accommodation and the failure to do so constitutes discrimination on the basis of disabilities. The Committee has rightly highlighted that it is the responsibility of the State to create conditions for reasonable accommodation to be provided, as reflected in article 5 (3) of the Convention. The General Comment should:

* Articulate that **States Parties should provide a clear** **definition of reasonable accommodation** as this concept is not widely understood and often interpreted in different ways by different actors[[13]](#footnote-13).
* Include the responsibility of the State **to provide accessible information, resources and guidance explaining what can be considered reasonable accommodation and that it must be provided through all phases of employment**. This should include, but not be limited to accessible and inclusive recruitment and selection processes, adapted work environments, flexible work schedules and arrangements, the provision of assistive technologies, support to travel to and from work.
* Highlight the need for States to **provide technical and financial support to employers to facilitate the provision of reasonable accommodation,** including by earmarking appropriate funds for that purpose and training public officials to ensure effective implementation[[14]](#footnote-14).

## Relationship with other provisions of the CRPD

The full realisation of Article 27 is reliant on, and linked to, many other articles of the convention. The General Comment could be strengthened by further articulating the link to these articles.

* **Article 6** – in order to recognise the specific barriers women with disabilities experience in participating in the labour market on an equal basis with others.
* **Article 8** – on the need to raise awareness of the rights of persons with disabilities and combat discrimination, including by ensuring non-discrimination policies and legislation are well understood and effectively implemented.
* **Article 24** – as inclusive education is an essential condition for individual development, and which plays a key role in enabling participation in the labour market as well as the acquisition of lifelong skills and knowledge.
* **Article 28** – as social protection schemes, when well designed, can encourage and facilitate labour market participation and increase the resilience of persons with disabilities to crisis.
* **Article 32** – as international cooperation can play an essential role in promoting and supporting efforts to increase the participation of persons with disabilities in the labour market, through economic empowerment programmes, training, and capacity building of persons with disabilities, as well as financial support and facilitated access to assistive technologies. Donors should be encouraged to take a twin-track approach to international cooperation.

We would like to particularly emphasise the links to Article 28. In this respect, the General Comment should:

* Ensure that social protection systems, whether mainstream schemes or targeted at persons with disabilities, play a key role in enabling persons with disabilities to access and retain employment[[15]](#footnote-15). We welcome the recognition of the importance of not losing disability allowances when in work, but this point could be broadened to **create stronger links to Article 28 and consider the wider implications and importance of comprehensive disability social protection systems**.
* Recognise that persons with disabilities and their families face significant barriers guaranteeing income security, as well as extra costs to access the essential services they require, such as expenses for assistive devices and greater costs for general services such as medical care and transportation. By ensuring their disability-related needs and extra costs are met, social protection systems can encourage the active participation of persons with disabilities in the labour market. Social protection also plays an important role by increasing resilience in case of unemployment or sickness, as well as in reducing vulnerability to shocks such as climate disasters or a pandemic like COVID.
* **Make it clear that States should not tie the eligibility of disability benefits to the inability to work**, which contributes to underemployment, reinforces stereotypes, and may constitute a disincentive to look for employment.
* Highlight that Social protection is also important for persons with disabilities beyond working age, because this is linked to previous exclusion from employment. For older people who have not acquired entitlements to a contributory pension throughout their lives, non-contributory social protection programmes play a critical role in guaranteeing income security throughout the lifecourse.

The General Comment could also recognise further links with other human rights and global frameworks. We welcome the link to Agenda 2030 and the Sustainable Development Goals.

* The General Comment could also make links to the [**UN Global** **Compact**](https://www.unglobalcompact.org/what-is-gc/mission/principles), in particular Principle 6 on the elimination of discrimination.

# Further information

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1. This responsibility is also recognized by Article 26 of the International Covenant on Civil and Political Rights, which prohibits discrimination on any ground and requires States to act against discrimination by public and private agencies in all fields. UNOHCHR, 2000. [CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), para 31](https://www.refworld.org/docid/45139c9b4.html). [↑](#footnote-ref-1)
2. In line with paragraph 17c set out in General Comment 3 [↑](#footnote-ref-2)
3. This is relevant for the implementation of Art. 27 CRPD in its entirely, especially Art. 27(a) CRPD, Art. 27(b) CRPD, Art. 27 (d) CRPD and Art. 27 (g) CRPD. [↑](#footnote-ref-3)
4. Griffiths, A et al, Journal of International Development, Volume32, Issue8, 2020. [How Do Legal and Policy Frameworks Support Employment of People with Disabilities in Uganda? Findings from a Qualitative Policy Analysis Study](https://doi.org/10.1002/jid.3508) [↑](#footnote-ref-4)
5. UN OHCHR, 2016. [Report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities, Catalina Devandas-Aguilar, on disability-inclusive policies](https://undocs.org/en/A/71/314), A/71/314 [↑](#footnote-ref-5)
6. UNOHCHR, 2000. [CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), para 31](https://www.refworld.org/docid/45139c9b4.html). [↑](#footnote-ref-6)
7. OECD, 2009. [Sickness, disability and work: keeping on track in the economic downturn](http://www.oecd.org/employment/emp/42699911.pdf) [↑](#footnote-ref-7)
8. ILO, 2017. [Strategies for skills acquisition and work for people with disabilities in Southern Africa](https://www.ilo.org/wcmsp5/groups/public/%40ed_emp/%40ifp_skills/documents/publication/wcms_107784.pdf) [↑](#footnote-ref-8)
9. World Health Organization, & World Bank, 2011. [World report on disability](https://www.who.int/publications/i/item/9789241564182) [↑](#footnote-ref-9)
10. World Health Organization, & World Bank, 2011. [World report on disability](https://www.who.int/publications/i/item/9789241564182), p. 162 [↑](#footnote-ref-10)
11. Ojok, P., Oryema, J.B. & Were, D. (2019): The Employment Situation of Persons with Disabilities and the Prospect of a Quota Employment Policy in Uganda. Light for the World and the National Union of Disabled Persons of Uganda. <https://wecanwork.ug/download/employment-situation-of-persons-with-disabilities-quota-system-full-report/>. [↑](#footnote-ref-11)
12. ILO. Decent work - An alliance for the future: ILO public-private partnerships in the spotlight, <https://www.ilo.org/pardev/public-private-partnerships/WCMS_409860/lang--de/index.htm> [↑](#footnote-ref-12)
13. UN OHCHR, 2012. Report of the Office of the United Nations High Commissioner for

Human Rights, [Thematic study on the work and employment of persons with disabilities](https://undocs.org/A/HRC/22/25), para 32. A/HRC/22/25 [↑](#footnote-ref-13)
14. UN OHCHR, 2016. [Report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities, Catalina Devandas-Aguilar, on disability-inclusive policies](https://undocs.org/en/A/71/314), A/71/314 [↑](#footnote-ref-14)
15. UN OHCHR, 2015. [Report of the Special Rapporteur on the rights of persons with disabilities to social protection](https://undocs.org/en/A/70/297), [A/70/297](https://undocs.org/en/A/70/297)  [↑](#footnote-ref-15)