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## Employment and vocational rehabilitation for workers with disabilities

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## I. Introduction

**640.** Disabilities are complex, multidimensional and diverse in both origin and nature. They may be congenital, physical, mental or emotional. While a disability may involve a specific impairment, such as a mobility impairment requiring the use of a wheelchair, it is also due to a combination of personal and environmental conditions that evolve with time.

**641.** In its 2011 *World report on disability*, the World Health Organization (WHO) estimated that approximately 15 per cent of the world's population, or around 1 billion adults and children, are living with some form of disability, with some 2 to 4 per cent of the population experiencing significant difficulties in functioning.<sup>852</sup> Individuals may be born with a disability or acquire a disability at any time during the course of their lives. Almost everyone will experience a temporary, chronic or permanent impairment, whether partial or severe, on one or more occasions, due to an accident, illness or the ageing process.

**642.** Persons with disabilities experience substantially higher rates of poverty in every region of the world. They encounter discrimination, marginalization and exclusion in many settings, including in employment. Access to rehabilitation services and employment for persons with disabilities is essential to help them escape the cycle of poverty.

**643.** While systematic data on the employment of persons with disabilities is not available in many countries,<sup>853</sup> data from a number of countries shows that employment rates for persons with disabilities are generally well below those of the overall population.

*Argentina* – the Government refers in its report to a national study carried out in 2018,<sup>854</sup> according to which 10.2 per cent of the population aged six or older is living with a disability. The unemployment rate for persons with disabilities over the age of 14 is 10.3 per cent, with only 32.2 per cent of this group being in employment. The employment rate is significantly higher for men with disabilities (at over 40 per cent), than for women (under 26 per cent).

**644.** According to the WHO 2011 *World report on disability*, the employment rate ranges between a low of 30 per cent in *South Africa* and 38 per cent in *Japan* to a high of 81 per cent in *Switzerland* and 92 per cent in *Malawi*.<sup>855</sup> The lower employment rates for women with disabilities are attributable to various factors, which may include stigma and discrimination, productivity differentials and disincentives to employment created by national disability benefit systems.<sup>856</sup>

**645.** In addition, when persons with disabilities secure employment, they are often concentrated in precarious and poorly remunerated jobs, which offer little or no opportunity for advancement or access to benefits.<sup>857</sup> Disabilities also entail economic and social costs, which are difficult to quantify and which may “include direct costs, some borne by people with disabilities and their families and friends and employers, and some by society”.<sup>858</sup>

**646.** People with disabilities and their families often incur additional costs in order to achieve a standard of living equivalent to that of persons without disabilities. The additional spending may go towards healthcare services, assistive devices, costlier transportation options

<sup>852</sup> WHO: *World report on disability*, Geneva, 2011, p. xi.

<sup>853</sup> ILO: *The employment situation of people with disabilities: Towards improved statistical information*, Geneva, 2007.

<sup>854</sup> INDEC: *Estudio nacional sobre el perfil de las personas con discapacidad: Resultados definitivos 2018*, Instituto Nacional de Estadísticas y Censos, Buenos Aires, 2018.

<sup>855</sup> WHO: *World report on disability*, 2011, op. cit., p. 237.

<sup>856</sup> *ibid.*

<sup>857</sup> ILO: *Vocational rehabilitation and employment of disabled persons*, General Survey on the reports on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983, Report III (Part 1B), ILC, 86th Session, Geneva, 1998, (hereinafter, the “1998 General Survey”), para. 103.

<sup>858</sup> WHO: *World report on disability*, 2011, op. cit., pp. 42–43.

(particularly costs involved in travelling to and from work, especially when public transport services are inaccessible), heating, laundry, special diets or personal assistance. Many of these costs arise because of inaccessible environments, including working environments with barriers to accessibility, and therefore to employment. These costs could be reduced by measures to provide inclusive and accessible settings, in public spaces as well as workplaces.

647. In addition to higher costs associated with work, persons with disabilities also often encounter disincentives to employment due to the functioning of disability benefit schemes, under which employment, even volunteer employment, may result in a loss of benefits, including a loss of healthcare coverage. Where the cost of working is higher than remaining on disability benefit, persons with disabilities are likely to refrain from participating in the world of work, often at a significant cost to their sense of self-worth and dignity, and to society at large in terms of lost productivity.

*Finland* – The State Employer’s Office (VTML) reports that the Finnish pensions system provides for partial disability, thus enabling workers with disabilities to continue working, at least on a part-time basis, while continuing to receive a disability pension.

648. The number of persons with disabilities is increasing globally, in part due to the link between disabilities and the ageing process. In a recent report, the United Nations Special Rapporteur on the rights of persons with disabilities emphasized that the world’s population is ageing, with the number of persons 60 years of age or above growing at a rate of some 3 per cent a year. This proportion of the population is expected to grow from 12 per cent in 2015 to 21 per cent by 2050. Moreover, this increase is noted in almost every country in the world, and is not limited to high-income countries.<sup>859</sup> The prevalence of disability is expected to rise due to these demographic changes, as well as to an increase in chronic health conditions,<sup>860</sup> such as diabetes, cancer, cardiovascular disease and mental health conditions, including depression, burn-out and anxiety disorders.<sup>861</sup> Persons with disabilities are also living longer due to medical and scientific advances, combined with improvements in health and rehabilitation.<sup>862</sup>

649. The response to disability has changed significantly over the past 50 years, due largely to the movement led by organizations of persons with disabilities under the slogan “nothing about us without us”. This has led to a shift in the approach to disability as a human rights issue, rather than merely a medical issue.<sup>863</sup> National legislation, policy and practices have moved away from solutions focused on segregating persons with disabilities in sheltered workshops and special institutions, moving towards greater social, economic and community inclusion,<sup>864</sup> particularly in relation to access to education and employment. The notion of disability inclusion refers to promoting and ensuring the participation of persons with disabilities in education, training and employment and all aspects of society and providing the necessary supports and reasonable accommodation to enable them to participate fully.<sup>865</sup>

<sup>859</sup> United Nations: “Rights of persons with disabilities”, General Assembly, New York, A/74/186, 2019, para. 3.

<sup>860</sup> It is estimated that over 46 per cent of older persons globally live with an impairment.

<sup>861</sup> United Nations: “Rights of persons with disabilities”, 2019, op. cit., para. 4.

<sup>862</sup> WHO: *World report on disability*, 2011, op. cit., p. 236.

<sup>863</sup> This paradigm shift is frequently described as the shift from a “medical model” to a “social model” of disability.

<sup>864</sup> As indicated in the reports of the governments of: *Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Democratic Republic of the Congo, Cook Islands, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Lithuania, Mauritius, Mexico, Montenegro, Myanmar, New Zealand, Norway, Oman, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Senegal, Spain, Sri Lanka, Sudan, Seychelles, Sweden, Switzerland, Thailand, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe.*

<sup>865</sup> ILO: *Disability inclusion*, Governing Body, 316th Session, Geneva, November 2012, GB.316/POL/2, para. 21.

**650.** Thus, the focus on medical solutions has been superseded by the recognition that persons are disabled not only due to functional difficulties, but also to external factors, in particular arising out of historically negative perceptions and attitudes of disability held by many policymakers, educators, employers and employment and vocational training services, among others.

### 1. ILO standards on disability

**651.** In accordance with its mandate to promote social justice, employment and decent work, the ILO has been active in promoting the right to work of persons with disabilities since at least 1925, when it adopted the Workmen’s Compensation (Minimum Scale) Recommendation, 1925 (No. 22), which called for the “vocational re-education” of injured workers to be provided by such means as the national laws or regulations deem most suitable.<sup>866</sup> In 1955, the ILO adopted the Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), with the objective of meeting the employment needs of persons with disabilities through a continuous and coordinated process of rehabilitation involving the provision of vocational services, vocational guidance, vocational training and selective placement with a view to enabling persons with disabilities to secure and retain suitable employment.

**652.** The Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), reflects the ILO’s commitment to social justice and the achievement of decent, full, productive and freely chosen employment for all through the promotion of equality for a specific group of workers, namely persons with disabilities. Convention No. 159 reflects the evolution of the ILO’s approach to disabilities in its focus on respecting the principle of equality of opportunity and treatment for persons with disabilities and promoting their access to, retention and advancement in employment, particularly access to employment on the open labour market.

**653.** Convention No. 159 was adopted 25 years after the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Both instruments express the fundamental principles of equality of opportunity and treatment and non-discrimination established in the 1944 Declaration of Philadelphia, annexed to the ILO Constitution. Convention No. 159 reinforces the principles established in Convention No. 111 and sets the foundation for the protection and promotion of the labour rights of workers, including jobseekers, with disabilities. Convention No. 159 is accompanied by the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), which provides detailed guidance for the effective implementation of the provisions of the Convention.

### 2. Other international standards

**654.** National and international initiatives, such as the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993), one of the major outcomes of the United Nations Decade of Disabled Persons (1983–1992), affirm the human rights of persons with disabilities. The Standard Rules were followed in 2006 by the adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Both instruments were adopted unanimously by the United Nations General Assembly and strengthen the international framework for the protection of the rights of persons with disabilities.

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<sup>866</sup> While Recommendation No. 22 is now classified as an outdated instrument, its adoption reflects the ILO’s long-standing concern with the issue of the rehabilitation and employment of persons with disabilities, which was clearly a major concern following the end of the First World War.

**655.** The CRPD affirms the political, social, economic and cultural rights of persons with disabilities. Article 1 of the Convention provides that its objective is to “promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms by all persons with disabilities, and promote respect for their inherent dignity.” In Article 3, the CRPD embraces a series of general principles: respect for inherent dignity, individual autonomy, including the freedom to make one’s own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and for the right of children with disabilities to preserve their identities. The Convention reaffirms a range of human rights to which all persons with disabilities are entitled, including the right to: life (Article 10); equal recognition before the law (Article 12); access to justice (Article 13); liberty and security of the person (Article 14); freedom from torture, or cruel, inhuman or degrading treatment or punishment (Article 15); freedom from exploitation, violence and abuse (Article 16); protection of the integrity of the person (Article 17); freedom of expression and opinion and access to information (Article 21); respect for privacy (Article 22); education (Article 24); health (Article 25); rehabilitation (Article 26); and employment (Article 27).

**656.** A total of 84 ILO member States have currently ratified ILO Convention No. 159,<sup>867</sup> while 180 countries have ratified the CRPD, with 95 countries also having ratified the Optional Protocol to the CRPD. The Committee notes that the 84 ILO member States that have ratified Convention No. 159 have also ratified the CRPD and have undertaken to apply its provisions. Accordingly, the Committee will also consider how the relevant provisions of the CRPD intersect with those of Convention No. 159 and Recommendation No. 168.

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<sup>867</sup> *Viet Nam* is the most recent country to ratify Convention No. 159, on 25 March 2019.

## ▶ II. Principles and objectives of the instruments in relation to vocational rehabilitation and employment

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### 1. The ILO instruments

**657.** In adopting Convention No. 159, the Conference explicitly recognized that significant developments had taken place in the area of disabilities in terms of understanding rehabilitation needs, the scope and organization of rehabilitation services, and the law and practice of many member States. The Conference highlighted the right to full participation and equality of opportunity and treatment for persons with disabilities in all areas of life, including in social and economic life.<sup>868</sup> It considered that these developments warranted the adoption of new international standards on disability to ensure equality for all categories of persons with disabilities in both rural and urban areas, for employment and integration into their communities.

**658.** Convention No. 159 calls on ILO Members to develop, implement and periodically review, with the active engagement of a range of actors, and particularly of persons with disabilities themselves, employers' and workers' organizations, as well as organizations of and for persons with disabilities (Article 5), a national policy on vocational rehabilitation and employment of persons with disabilities (Article 2), based on the principles of equality of opportunity and treatment and non-discrimination (Article 4) that run throughout the Convention. Moreover, the policy shall aim to ensure access to appropriate vocational rehabilitation services for all categories of persons with disabilities and to promote the employment of persons with disabilities in the open labour market (Article 3).

*Vanuatu* – The National Disability Inclusive Development Policy 2018–2025 covers all types of disabilities. The Policy's vision is that, by 2025:

- ▶ All persons with disabilities will have the skills and necessary support to enable their contribution to society and the economy, at all levels of decision-making, and will live safe and happy lives; and
- ▶ All persons with disabilities will be included in all community, provincial and national development efforts and have equal access to their rights, including:
  - Access to services, such as health, education, justice, infrastructure and employment, among others;
  - Promotion of equality: including decision-making and leadership at all levels; and
  - Protection from crime, abuse and disaster.

**659.** Recommendation No. 168 indicates that persons with disabilities should enjoy equality of opportunity and treatment in respect of access to, retention of, and advancement in employment, and envisages the application of the principle of freely chosen employment wherever possible (Paragraph 7). In addition, the Recommendation affirms that the principle of equality of opportunity and treatment between men and women workers should be respected in providing vocational rehabilitation and employment assistance to persons with disabilities (Paragraph 8).

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<sup>868</sup> Convention No. 159, Preamble.

## 2. The United Nations Convention on the Rights of Persons with Disabilities

**660.** The Preamble to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) reflects a significant paradigm shift in the approach to the issue of disability, embracing a human rights-based model of disability and moving away from the medical model under which persons were defined by their impairments. Paragraph (e) of the Preamble recognizes that “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”.

**661.** As the United Nations Committee on the Rights of Persons with Disabilities (the CRPD Committee) observed in its General Comment No. 6:

The human rights model of disability recognizes that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. It acknowledges that disability is one of several layers of identity. Hence, disability laws and policies must take the diversity of persons with disabilities into account. It also recognizes that human rights are interdependent, interrelated and indivisible.<sup>869</sup>

**662.** The CRPD Committee, in General Comment No. 6, observes that equalization of opportunities, set out as a general principle in Article 3, “marks a significant development from a formal model of equality to a substantive model of equality. Formal equality seeks to combat direct discrimination by treating persons in a similar situation similarly.” While it can help to address negative stereotypes and prejudice, it does not offer solutions for the “dilemma of difference”, as it does not consider and embrace differences between human beings. “Substantive equality, by contrast, also seeks to address structural and indirect discrimination and takes into account power relations. It acknowledges that the ‘dilemma of difference’ entails both ignoring and acknowledging differences among human beings in order to achieve equality.” The CRPD is based on a new model of inclusive equality, which embraces this substantive model of equality and extends and elaborates on the content of equality in:

(a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to eliminate stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity.<sup>870</sup>

<sup>869</sup> United Nations Committee on the Rights of Persons with Disabilities: “General Comment No. 6 (2018) on equality and non-discrimination”, CRPD/C/GC/6, 26 April 2018, para. 9.

<sup>870</sup> *ibid.*, paras 10 and 11. See also ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, Geneva, 2016, p. 24.



### III. Definitions and scope

663. The WHO 2011 *World report on disability* indicates that “disability” is an “umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual’s contextual factors (environmental and personal factors)”.<sup>871</sup>

#### 1. Definition of “disability”

664. Convention No. 159 and the CRPD define “disability” in relation to the person, rather than setting out an exhaustive definition of the term “disability” itself. A distinction between the two instruments can be found in the CRPD’s focus on the interaction of disability with the external environment, under the so-called “social model” of disability.<sup>872</sup>

665. In many countries, the term “disability” is defined in the national legislation or regulations. In most cases, physical or mental impairments are included in the definition of disability, as envisaged in Article 1 of Convention No. 159.<sup>873</sup>

*Republic of Korea* – Article 2(1) of the [Anti-Discrimination Act](#): A disability ... means “an impairment or loss of physical or mental functions that substantially limits an individual’s personal or social activities for an extended period.”

*Palau* – the Disabled Person’s Anti-Discrimination Act, section 502, defines disability as “a physical or mental impairment that substantially limits one or more of a person’s major life activities.”

666. The Committee notes that in a number of countries, broader definitions of disability have been adopted which include criteria in addition to physical and mental impairment, such as sensory<sup>874</sup> or intellectual impairments.<sup>875</sup>

667. Some countries have addressed specific needs in relation to disability on the basis of national circumstances, by extending the definition of disability to explicitly include certain criteria, such as: genetic disposition or acquired disorders;<sup>876</sup> permanent or long-term chronic or episodic illnesses<sup>877</sup> or conditions (diabetes, epilepsy);<sup>878</sup> organisms in the body that cause disease or illness,<sup>879</sup> such as HIV; conditions or characteristics, such as size or weight;<sup>880</sup> disturbed behaviour or perceptions of reality stemming from an illness or condition;<sup>881</sup> reliance

<sup>871</sup> WHO: *World report on disability*, 2011, op. cit., p. 4.

<sup>872</sup> While the traditional “medical model” of disability focuses on the individual’s impairments or differences, the “social model” focuses on the manner in which society, or the external environment, interacts with the person with the disability.

<sup>873</sup> For example, *Australia* (Commonwealth, Victoria, Australian Capital Territory), *Austria*, *Belgium*, *Canada* (Alberta, Ontario, Newfoundland and Labrador, Nova Scotia), *Cook Islands*, *Costa Rica*, *Dominican Republic*, *France*, *Gabon*, *Guatemala*, *Honduras*, *Ireland*, *Jamaica*, *Kiribati*, *Republic of Korea*, *Namibia*, *New Zealand*, *Nigeria*, *Palau*, *Panama*, *Philippines*, *Sweden*, *Thailand*, *Trinidad and Tobago*, *United Kingdom* and *the United States*.

<sup>874</sup> For example, *Australia*, *Austria*, *Canada*, *Cook Islands*, *Dominican Republic*, *France*, *Gabon*, *Guatemala*, *Honduras*, *Namibia*, *Nigeria*, *Panama* and *Bolivarian Republic of Venezuela*.

<sup>875</sup> For example, *Australia*, *Canada*, *Cook Islands*, *Costa Rica*, *Gabon*, *Jamaica*, *Kiribati*, *New Zealand*, *Nigeria*, *Panama*, *Sweden*, *Thailand* and *Bolivarian Republic of Venezuela*.

<sup>876</sup> For example, *Australia*, *Guatemala*.

<sup>877</sup> For example, *Australia*, *Canada*, *Cook Islands*, *France*, *Gabon*, *Republic of Korea*, *Lithuania*, *Nicaragua*, *Nigeria*, *Palau*, *Panama*, *Sweden*, *United Kingdom* and *Bolivarian Republic of Venezuela*.

<sup>878</sup> For example, *Canada*.

<sup>879</sup> For example, *Australia* (Australian Capital Territory, Tasmania), *Ireland* and *Thailand*.

<sup>880</sup> The Committee noted with interest the adoption in *Guatemala* of Decree No. 5-2011, of 5 April 2011, amending sections 1 and 3 of Act No. 135-96 on care for persons with disabilities, to extend the definition of disability to include persons with disorders relating to their weight and size. CEACR – *Guatemala*, C.159, direct request, 2017.

<sup>881</sup> For example, *Canada*.

on assistive devices or aids, such as a wheelchair or assistive animal;<sup>882</sup> cognitive difficulties or learning disabilities;<sup>883</sup> brain injury, and psychological<sup>884</sup> or emotional conditions, including anxiety or depression

*Canada* – the [Alberta Human Rights Act](#), section 44(1), provides the following definitions:

...

(h) “‘mental disability’ means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder”

...

(l) “‘physical disability’ means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, service dog, wheelchair or other remedial appliance or device”.

*Ireland* – the Equality Acts (the Employment Equality Act, section 2(1), and the Equal Status Act, section 2(1)) provide that:

“‘disability’ means:

- (a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person’s body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.”

**668.** A number of countries refer to disability in terms of impairments, restrictions or limitations on activities of daily living,<sup>885</sup> while others classify disability in terms of degrees or percentages of loss of function, such as loss of range of motion or the severity of impairment.<sup>886</sup>

*Dominican Republic* – Act No. 5-13, the Basic Act on equality of rights for persons with disabilities, section 4(6), defines “disability” as a: “Generic term that includes deficits, limitations of activity and restrictions on participation. It indicates the negative aspects of the interaction between an individual (with a deficiency) and its contextual factors (environmental and personal factors).

<sup>882</sup> For example, *Australia* (Australian Capital Territory, Tasmania), *Canada* (Alberta, Ontario, Nova Scotia) and *New Zealand*.

<sup>883</sup> For example, *Australia* (Victoria, South Australia, Australian Capital Territory, Tasmania), *Canada* (Alberta, Ontario, Newfoundland and Labrador, Nova Scotia), *Cook Islands*, *Ireland* and *Thailand*.

<sup>884</sup> For example, *Australia* (Victoria, South Australia, Australian Capital Territory), *Austria*, *Canada* (Alberta, Nova Scotia), *Cook Islands*, *France*, *Hungary*, *Kiribati*, *New Zealand*, *Philippines*, *Thailand* and *Trinidad and Tobago*.

<sup>885</sup> For example, *Austria*, *Canada* (Alberta, Ontario, Nova Scotia), *Costa Rica*, *Denmark*, *Dominican Republic*, *France*, *Gabon*, *Germany*, *Honduras*, *Lithuania*, *Namibia*, *Nicaragua*, *Nigeria*, *Norway*, *Turkey* and *Bolivarian Republic of Venezuela*.

<sup>886</sup> For example, *Belgium* and *Latvia*.

669. The Committee observes that in a number of countries disability is defined as including not only current or existing impairments, but also past or future disability, a predisposition to develop a disability, or a perceived disability.<sup>887</sup>

*Australia* (Australian Capital Territory)

For purposes of the Australian Capital Territory Discrimination Act, 1991, section 5AA(2), “disability” includes:

- “(a) behaviour that is a symptom or manifestation of the disability; and
- (b) a disability that a person may have in the future, including because of a genetic disposition to the disability; and
- (c) a disability that it is thought a person may have in the future, whether or not -
  - (i) the person has a genetic disposition to the disability; or
  - (ii) there is anything else to indicate the person may have the disability in the future ...”

“**Note:** *Disability* also includes a disability that the person has or is thought to have, and a disability that the person has had in the past, or is thought to have had in the past”.

*United States* – The ADA Amendments Act of 2008 amended section 3 of the Americans with Disabilities Act of 1990 (42 USC 12102), providing that:

“The term ‘disability’ means, with respect to an individual:

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment”.

The ADAAA further provides that “the definition of ‘disability’ shall be construed in favour of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act”.<sup>888</sup>

## 2. Definition of “persons with disabilities”

### (a) *Convention No. 159*

670. The Convention defines persons with disabilities in relation to the person, rather than the nature of the disability. Article 1(1) provides that a person with a disability “means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment”. The Convention adds that the purpose of vocational rehabilitation is to enable a person with a disability “to secure, retain and advance in suitable employment and thereby to further each person’s integration or reintegration into society” (Article 1(2)).

671. The Convention explicitly applies to all categories of persons with disabilities (Article 1(4)).

<sup>887</sup> For example, *Australia, Canada, Ireland and United States*.

<sup>888</sup> Americans with Disabilities Act of 1990, (42 U.S.C. section 12101 et seq.) and ADA Amendments Act of 2008, Public Law 110-325 (S 3406).

**(b) The CRPD**

672. Article 1 of the CRPD establishes a flexible definition, under which “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

673. The CRPD applies to all persons with disabilities (Article 1(1)). The Committee notes that in the majority of reporting ILO member States, the national legislation contains a definition of persons with disabilities.<sup>889</sup>

*Argentina* – Act No. 22.431 of 1981 on a comprehensive protection system for persons with disabilities, section 2, provides that:

“For the purposes of this Act, any person shall be considered to have a disability if they suffer from a permanent or prolonged change in physical or mental functioning that, in relation to their age and social environment, implies considerable disadvantages in terms of family, social, educational or work integration”.

*Japan* – the Law on the Welfare of Physically Disabled Persons, Article 4, provides that “the physically disabled” means persons aged 18 or older who suffer from disabilities in vision, hearing, etc., physical disabilities, or disease of heart and kidney beyond certain levels, and who are identified as a physically disabled person through the issuance of certificates by prefectural governors.

- ▶ the Law on the Mental Health and Welfare of Persons with Mental Disorders, Article 5, provides that “persons with mental disabilities” include those who suffer from mental illnesses, such as schizophrenia (integration disorder syndrome), acute intoxication or addiction thereof due to psychoactive substances, intellectual disabilities, psychopathy or other mental illness.
- ▶ the Basic Law for Persons with Disabilities, amended in July 2011, defines “persons with a disability” as including “a person with a physical disability, a person with an intellectual disability, a person with a mental disability (including developmental disabilities), and other persons with disabilities affecting the functions of the body or mind, and who are in a state of facing substantial limitations in their continuous daily or social lives because of a disability or a social barrier” (Article 2).

<sup>889</sup> For example, *Afghanistan, Algeria, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina (Republika Srpska), Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Cabo Verde, Central African Republic, Chile, China, Colombia, Democratic Republic of the Congo, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Dominican Republic, Ecuador, Egypt, Estonia, Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guinea-Bissau, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kiribati, Republic of Korea, Lithuania, Mali, Malta, Mauritius, Mexico, Montenegro, Morocco, Myanmar, Namibia, Nepal, Nicaragua, Nigeria, Oman, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Senegal, Seychelles, Slovakia, Spain, Sri Lanka, Sudan, Thailand, Togo, Trinidad and Tobago, Turkey, Turkmenistan, United Arab Emirates, United Kingdom (Northern Ireland), Uruguay, Bolivarian Republic of Venezuela and Zimbabwe.*

674. Many governments report that their national definition of “persons with disabilities” is aligned with that of the CRPD. Accordingly, instead of, or in addition to, definitions of “disability”, which establish criteria based on types of impairments, restrictions and limitations, definitions of “persons with disabilities” have been developed in many countries that tend to focus on the impact that physical, mental or other impairments have on an individual and the manner in which these may interact to impede the person’s full participation in activities of daily living.<sup>890</sup>

*Jamaica* – the Disabilities Act, 2014, section 2, provides that a “person with a disability” includes a person who has a long-term physical, mental, intellectual or sensory impairment which may hinder his full and effective participation in society, on an equal basis with other persons”.

The Disabilities Act, which was developed to protect the rights and dignity of persons with disabilities, also incorporates most of the definitions of the CRPD, including the definition of discrimination, which coincides with the definition contained in the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, and is aligned with the CRPD.

675. In a number of countries, a certification process has been established on a case-by-case basis which entails a medical examination to determine whether or not a person qualifies as having a disability and, if so, the type and severity of the disability.<sup>891</sup>

*Poland* – Disability Assessment Boards issue disability certificates based on:

- (1) the status of the person with a disability;
- (2) the degree of disability; and
- (3) eligibility.

Disabilities are classified as follows:

- ▶ significant degree of disability: persons with an impairment, unable to work or capable of working only in sheltered conditions, and who require the permanent or long-term care and help of others (for a period of more than 12 months) in order to fulfil social roles due to an inability to do so independently;
- ▶ moderate degree of disability: persons with an impairment, unable to work, or able to work only in sheltered conditions, or requiring temporary or partial help from other persons in order to fulfil social roles;
- ▶ minor degree of disability: persons with an impairment causing a substantial reduction of the ability to perform work, in comparison with the capacity demonstrated by persons with similar vocational qualifications with a fully functional mental and physical ability, or having restrictions on the performance of social roles that may be compensated for with orthopaedic devices, supportive or technical measures.

<sup>890</sup> For example, *Belarus, Burkina Faso, Chile, Croatia, Cyprus, Finland, Georgia, Guatemala, Guinea-Bissau, India, Jamaica, Kiribati, Mali, Malta, Mexico, Morocco, Nicaragua, Nigeria, Oman, Panama, Paraguay, Philippines, Senegal and Trinidad and Tobago.*

<sup>891</sup> For example, *Bulgaria, Ecuador, Estonia, Georgia, Hungary, Japan, Mauritius, Nigeria, Poland, Slovakia and Turkey.*

The Bulgarian Industrial Association (BIA) observes that a change of approach is needed to reform medical expertise on the type and severity of disabilities of persons with impaired functionality. The assessment of the overall functionality, type and extent of the disability for a particular person should be based on the modern methodology implemented by leading European Union Member States, in particular the International Classification of Functioning, Disability and Health (ICF) adopted by the WHO in 2001. By adopting this approach, social security abuses and fraud will be restricted, and the conditions that discourage people with disabilities from becoming fully integrated into the labour market will be limited.

676. The Committee notes that in a large number of member States, broad definitions of persons with disabilities have been adopted that include not only physical or mental impairments, but also other criteria, such as sensory<sup>892</sup> or intellectual impairments,<sup>893</sup> psychological disorders,<sup>894</sup> congenital disabilities and emotional disorders.<sup>895</sup>

*Australia* – (South Australia): The definition of a person with a disability is contained in section 3 of the Disability Inclusion Act 2018:

“disability, in relation to a person, includes long-term physical, psycho-social, intellectual, cognitive, neurological or sensory impairment, or a combination of any of these impairments, which in interaction with various barriers may hinder the person’s full and effective participation in society on an equal basis with others”.

677. More detailed definitions have been adopted in some countries of the term “persons with disabilities”, enumerating a range of specific impairments, such as visual, hearing or speech impairments.<sup>896</sup>

*Cambodia* – article 4 of the Law on the Protection and the Promotion of the Rights of Persons with Disabilities provides that the term “persons with disabilities” refers to any persons who lack, lose or damage a physical organ or mental capacity, which results in a disturbance to their daily life or activities, such as physical, visual, hearing, intellectual impairments, mental disorders and any other types of disabilities towards the insurmountable end of the scale.

<sup>892</sup> For example, *Algeria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina (Republika Srpska), Brazil, Bulgaria, Burkina Faso, Canada, Chile, Colombia, Croatia, Cyprus, Dominican Republic, Ecuador, Egypt, Finland, Georgia, Germany, Ghana, Guatemala, India, Indonesia, Ireland, Jamaica, Kiribati, Mali, Malta, Mauritius, Mexico, Montenegro, Morocco, Myanmar, Nicaragua, Nigeria, Oman, Panama, Peru, Philippines, Qatar, Romania, Senegal, Spain, Sudan, Togo, Trinidad and Tobago, Turkey, Turkmenistan, United Arab Emirates, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe.*

<sup>893</sup> For example, *Azerbaijan, Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, China, Colombia, Croatia, Cyprus, Dominican Republic, Ecuador, Egypt, Finland, Georgia, Guatemala, India, Ireland, Israel, Italy, Jamaica, Japan, Kiribati, Mali, Malta, Mexico, Myanmar, Nigeria, Panama, Philippines, Qatar, Senegal, Spain, Trinidad and Tobago, Turkey, Turkmenistan, United Arab Emirates, Uruguay and Bolivarian Republic of Venezuela.*

<sup>894</sup> For example, *Azerbaijan, Belarus, Chile, China, Ecuador, Greece, Hungary, Japan, Morocco, Poland, Qatar, Thailand, United Arab Emirates and Uruguay.*

<sup>895</sup> For example, *Germany and Poland.*

<sup>896</sup> For example, *Algeria, Cambodia, China, Ghana, Hungary, Ireland, Italy, Japan, Mauritius, Myanmar and Zimbabwe.*

**678.** In many ILO member States, a conceptual approach has been adopted that defines persons with disabilities in terms of the complex and dynamic interactions between health conditions and contextual factors, both personal and environmental.<sup>897</sup>

*Bangladesh* – the Rights and Protection of Persons with Disabilities Act, 2013, provides that:

“Persons with disabilities’ include those who have long-term physical, mental, intellectual, under-developed or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

*Trinidad and Tobago* – the definition of “persons with disabilities”, as reflected in the revised draft National Policy on Persons with Disabilities (July 2018), is derived from the CRPD. In the policy, “persons with disabilities” are defined as including “those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

**679.** The definitions of “persons with disabilities” in many countries also address partial or reduced capacity,<sup>898</sup> as well as permanent, long-term or chronic disability.<sup>899</sup>

*Bulgaria* – the People with Disabilities Act (in force since 1 January 2019) provides that:

“People with permanent disabilities” are persons with permanent physical, mental, intellectual and sensory deficiency which, during interaction with their environment, could hinder their full and effective participation in public life, and the medical expertise of whom has established the type and degree of disability at or over 50 per cent.

**680.** The Committee notes that the definitions used in the legislation or regulations in some countries continue to make use of terms in relation to disability and persons with disabilities that are considered to be pejorative and have been superseded in international human rights law. For example, references to disability as “invalidity”, “insufficiency”, “defect”, “deficiency”, “incapacity”, “retard” or “retardation”, or “handicap” perpetuate negative and discriminatory attitudes regarding the abilities of persons with disabilities. Such attitudes frequently have an impact on the fundamental right of persons with disabilities to enjoy full equality of opportunity and treatment, including in terms of access to general and specialized education, vocational rehabilitation and employment placement services, as well as to employment and specific occupations.

<sup>897</sup> For example, *Algeria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Burkina Faso, Chile, Colombia, Croatia, Cyprus, Dominican Republic, Georgia, Germany, Guatemala, India, Indonesia, Mali, Malta, Mauritius, Mexico, Montenegro, Morocco, Nicaragua, Nigeria, Oman, Panama, Philippines, Senegal, Spain, Trinidad and Tobago, Uruguay and Bolivarian Republic of Venezuela.*

<sup>898</sup> For example, *Bahrain, Bangladesh, Belarus, Brazil, Bulgaria, Burkina Faso, Croatia, Cyprus, Egypt, Estonia, Finland, Germany, Greece, Hungary, India, Indonesia, Ireland, Jamaica, Kiribati, Mali, Malta, Mauritius, Morocco, Namibia, Nigeria, Philippines, Poland, Senegal, Spain, Sudan, Trinidad and Tobago, Turkmenistan, United Kingdom (Northern Ireland) and Uruguay.*

<sup>899</sup> For example, *Bahrain, Bangladesh, Belarus, Brazil, Bulgaria, Burkina Faso, Croatia, Cyprus, Egypt, Estonia, Finland, Germany, Greece, Hungary, India, Indonesia, Ireland, Jamaica, Kiribati, Mali, Malta, Mauritius, Morocco, Namibia, Nigeria, Philippines, Poland, Senegal, Spain, Sudan, Trinidad and Tobago, Turkmenistan, United Kingdom (Northern Ireland) and Uruguay.*

681. The CRPD Committee has expressed concern that the laws and policies of certain States still approach disability through charity and/or medical models, and notes that the continued use of such models fails to acknowledge persons with disabilities as full subjects of rights and as rights holders. It also notes that efforts to overcome negative attitudinal barriers to disability have been insufficient, resulting in enduring and humiliating stereotypes, stigma and prejudice against persons with disabilities as being a burden on society.<sup>900</sup> Such perceptions serve only to perpetuate stigma and the persistent discrimination in employment and occupation that Convention No. 159 seeks to eradicate.

**(c) Raising awareness and changing attitudes**

682. Negative attitudes of educators, employers and co-workers with respect to the capacities and potential of persons with disabilities create barriers to the full participation of such persons in education and employment. Where employers perceive persons with disabilities as being *less* than non-disabled persons – less productive, less adaptable or less capable – jobseekers and workers with disabilities will encounter difficulties in entering and remaining in employment. Moreover, workers who come to the workplace with a disability, or acquire a disability during the course of employment, may find themselves marginalized or excluded by co-workers due to stigma, ignorance or misconceptions concerning their disability or disabilities.<sup>901</sup> Moreover, while workplace barriers due to disability may be solved by providing reasonable accommodation, accommodation may give rise to interpersonal tensions where co-workers perceive the accommodation as unfair because they imply more favourable working conditions.<sup>902</sup> Therefore, while many employers and co-workers are supportive of persons with disabilities, it is nevertheless essential for all workplace actors to raise awareness of disability, including of the value and need for reasonable accommodations, and to promote inclusive workplaces that support diversity.

683. The concept of stigma is defined in the HIV and AIDS Recommendation, 2010 (No. 200), as meaning “the social mark that, when associated with a person, usually causes marginalization or presents an obstacle to the full enjoyment of social life by the person” (Paragraph 1(d)). Persons with disabilities may be subject to both stigma and discrimination, particularly in countries or regions where a specific disability or characteristic, such as HIV status or albinism, is stigmatized due to cultural or religious beliefs.

684. In promoting employment and decent work for persons with disabilities on an equal basis with other workers, it is crucial to raise awareness of the capacities of persons with disabilities, and to address and eradicate preconceived notions and negative attitudes in all areas of life, including employment and occupation. For this reason, Paragraph 16 of Recommendation No. 168 calls for public information measures to overcome prejudice, misinformation and attitudes unfavourable to the employment of persons with disabilities and their integration or reintegration into society, while Paragraph 11(i) encourages the dissemination of information on examples of actual and successful instances of the integration of persons with disabilities in employment.

685. Article 8(1) of the CRPD calls on States parties to “adopt immediate, effective and appropriate measures: (a) To raise awareness throughout society ... regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities” and “(c) To promote awareness of the capabilities and contributions of persons with disabilities”. Article 8(2)(a) provides that such measures include “Initiating and maintaining effective public awareness campaigns designed ... (iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market”.

<sup>900</sup> CRPD Committee: “General Comment No. 6 (2018) on equality and non-discrimination”, op. cit., para. 2.

<sup>901</sup> UNAIDS: *People Living with HIV Stigma Index: Asia Pacific Regional Analysis*, 2011, p. 6. See also ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, 2016, op. cit., pp. 39–41.

<sup>902</sup> A. Colella: “Co-worker distributive fairness judgments of the workplace accommodation of employees with disabilities”, in *The Academy of Management Review*, Vol. 26(1), (2001), pp. 100–116.

**686.** The ILO has promoted disability inclusion through a number of initiatives involving the tripartite partners. One such initiative is the ILO Global Business and Disability Network, a public-private partnership that seeks to achieve disability inclusion in the workplace through four main activities: knowledge-sharing; capacity building; development of joint projects and services; and involvement of Members in ILO activities or in those of its partners. Employers of all sizes, including small and medium-size enterprises (SMEs), participate in the Network. The ILO has prepared case studies on trade union activities to promote decent work for persons with disabilities, highlighting the vital role that workers' organizations can play in promoting inclusion and decent work for such persons.<sup>903</sup>

**687.** In some member States, laws or policies have been adopted to eliminate stigma,<sup>904</sup> raise awareness<sup>905</sup> and promote the employment of persons with disabilities by reducing the negative image or perception of people with disabilities in the workplace.<sup>906</sup>

*Brazil* – changing attitudes. According to the Director of the Division of Inspections with a View to the Inclusion of Persons with Disabilities and the Reduction of Discrimination in Employment, contractors often prefer not to make the modifications required for the employment of workers with disabilities: “A change in enterprises’ attitude is needed so that they no longer see only these persons’ disabilities and begin to identify their skills and abilities. Because they see only the disability, some enterprises prefer persons with minor disabilities so that they do not need to make an effort to modify the workplace”.

*Chile* – following the entry into force of Act No. 21.015, the Civil Service, together with SENADIS (the national disability service) and the Ministry of Labour, have carried out training to raise awareness in the public sector concerning the issue of disability and inclusion, with the aim of achieving adequate employment of persons with disabilities.

*Colombia* – the Ministry of Labour carries out information activities to raise awareness in the world of work and provide assistance to businesses on mechanisms for the workplace inclusion of persons with disabilities and employment services. These activities promote labour market inclusion on the basis of the CRPD and the social model of disability and are designed to break down traditional paradigms and perceptions among the different actors involved in the world of work and to promote the right of persons with disabilities to employment on the open labour market, with adjustments that guarantee an inclusive and accessible working environment and non-discrimination in practice.

*Sri Lanka* – the National Policy on Disability, adopted in 2003, calls on employer’s organizations and trade unions to act as advocates among their members to promote employment opportunities for people with disabilities by reducing negative stereotypes of disability among employers and workers and promoting job retention for those who acquire a disability while in employment.

<sup>903</sup> ILO: “Disability inclusion”, 2012, op. cit., paras 14–16.

<sup>904</sup> For example, *Indonesia*.

<sup>905</sup> For example, *Brazil, Burkina Faso, Canada, Cameroon, Chile, Colombia, Dominican Republic, Indonesia, Ireland, Jamaica, Mali, Mauritius, Nicaragua, Panama, Peru, Sri Lanka, Trinidad and Tobago* and *United Arab Emirates*.

<sup>906</sup> For example, *Sri Lanka*.

## ▶ IV. Accessibility and reasonable accommodation

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**688.** Convention No. 159 and Recommendation No. 168 highlight the need for accessibility and for workplace adaptations (also known as reasonable accommodations). In recent years, the Committee has noted the adoption of legislation in member States requiring employers to provide reasonable accommodation in the workplace.

CEACR – In its comments concerning *Italy*, the Committee noted with interest the adoption of Legislative Decree No. 76 of 28 June 2013, converted into Act No. 99 of 9 August 2013, which provides that employers in the public and private sectors are required to take appropriate steps to ensure that reasonable accommodation is provided in the workplace, as defined in the United Nations Convention on the Rights of Persons with Disabilities, to ensure equality of persons with disabilities with other workers.<sup>907</sup>

**689.** The Committee notes that, in its General Comment No. 6, the CRPD Committee emphasizes that accessibility and reasonable accommodation are two distinct concepts in disability law and policy. The CRPD Committee observes that accessibility should be ensured for all groups of persons and may be implemented gradually over time, while reasonable accommodation is an individual right that must be tailored to the needs of the individual and is of immediate application. It notes, however, that the right to reasonable accommodation may be limited in cases of undue hardship or disproportionate burden.<sup>908</sup>

**690.** Reasonable accommodation is therefore distinct from accessibility. Accessibility, through the application of universal design principles or assistive devices, has to be built into systems and processes to ensure access for all persons without regard to the needs of a particular individual. Article 4(3) of the CRPD requires States parties to establish accessibility standards, developed and implemented in consultation with organizations of persons with disabilities, as a systemic, forward-looking activity. In contrast, reasonable accommodation needs to be provided from the moment a specific individual with a disability requires or makes a request for an accommodation. The CRPD Committee has noted that, in contrast with the duty to ensure universal access, the “duty to provide reasonable accommodation is an individualized reactive duty that is applicable from the moment a request for accommodation is received”.<sup>909</sup>

**691.** Both accessibility and reasonable accommodation are essential for the achievement of substantive equality of opportunity and treatment in employment and occupation for persons with disabilities, so that they may effectively exercise their fundamental right to full participation and integration into social and economic life. Recommendation No. 168 indicates that measures to promote employment opportunities for persons with disabilities which conform to the employment and salary standards applicable to workers generally should include the elimination, by stages if necessary, of physical, communication and architectural barriers and obstacles affecting transport and access to and free movement in premises for the training and employment of persons with disabilities; and appropriate standards should be taken into account for new public buildings and facilities (Paragraph 11(g)).

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<sup>907</sup> CEACR, *Italy*, observation 2014, Convention No. 159.

<sup>908</sup> CRPD Committee: “General Comment No. 6 (2018) on equality and non-discrimination”, op. cit., paras 40–43.

<sup>909</sup> *ibid.*, para. 24.

### 1. Accessibility

**692.** Persons with disabilities are frequently excluded from employment, as well as from participation in their communities and society at large due to factors such as lack of accessibility to buildings, public spaces and public transport.<sup>910</sup> If an individual cannot go to and from the workplace, or cannot access the workplace, he or she cannot secure or remain in gainful employment. The principle of accessibility applies equally to all categories of workers with disabilities: those in protected or sheltered employment, those in formal or informal employment, and those who are self-employed entrepreneurs.

**693.** The CRPD Committee has observed that accessibility is both a precondition and a means to achieve de facto equality for all categories of persons with disabilities. To enable persons with disabilities to effectively access their right to inclusion in all areas of activity, including employment, it is necessary for States to ensure accessibility of the built environment, public transport and information and communication services. As it may take time to gradually ensure accessibility, equality of opportunity and treatment for persons with disabilities therefore has to begin with public planning that applies the principles of universal design, or the design of buildings, products or environments to make them both aesthetic and accessible to all persons, regardless of age, disability, status in life, or other factors.<sup>911</sup>

**694.** The Committee notes that a number of governments have provided information on the measures taken to eliminate physical barriers and structural obstacles which prevent or impair the mobility or access of persons with disabilities to facilities, public spaces or public or private workplaces.<sup>912</sup>

*Canada* – Manitoba is one of the first jurisdictions that enacted a law to help individuals with physical disabilities overcome barriers, including barriers to employment. The purpose of the Accessibility for Manitobans Act, adopted in December 2013, is to provide a clear and proactive process for the identification, prevention and removal of barriers that disable people and prevent them from achieving equal opportunities, independence and full economic and social integration. This will be implemented through the development of accessibility standards for customer service, information and communication, transport, employment and the built environment.

Ontario – the Integrated Accessibility Standards Regulation, under the Accessibility for Ontarians with Disabilities Act, 2005, sets out standards outlining accessibility requirements in key areas of daily life, including information and communications, customer service, transport, the design of public spaces and employment. For example, the accessibility employment standard requires employers to follow a baseline of accessibility from job recruitment to career development.

Nova Scotia – Access by Design 2030 is a strategy to meet the goal of an accessible Nova Scotia by 2030. The strategy identifies priorities and commitments to achieve this goal. As part of the strategy, standards will be developed regarding the built environment, education, employment, goods and services, information and communications, and transport.

<sup>910</sup> General Survey of 1998, op. cit., para. 103.

<sup>911</sup> The term “universal design” was coined by the architect Ronald Mace, an advocate for accessibility in building design. See also S. Goldsmith: *Designing for the disabled: The new paradigm*, Routledge, London, 1997. Goldsmith was the creator of the dropped curb or sidewalk ramp, now a standard feature in the built environment to ensure accessibility for wheelchair users and others, such as cyclists.

<sup>912</sup> For example, *Brazil, Burkina Faso, Canada, Chile, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Gabon, Ghana, Israel, Honduras, Hungary, Ireland, Italy, Mali, Mexico, Myanmar, Namibia, Nicaragua, Nigeria, Norway, Palau, Panama, Paraguay, Peru, Philippines, Poland, Spain, United Arab Emirates and Uruguay.*

*Chile* – Act No. 20.422 establishes standards for equality of opportunities and the social inclusion of persons with disabilities. Section 8 of the Act provides that: “With the aim of guaranteeing the right to equality of opportunities for persons with disabilities, the State shall establish measures against discrimination, which shall consist of accessibility requirements, the provision of reasonable accommodation and the prevention of harassment”.

Accessibility requirements are those requirements that must be met by goods, environments, products, services and procedures, as well as conditions of non-discrimination in standards, criteria and practices, in accordance with the principle of universal accessibility.

695. Specific measures have been taken in a few member States to improve the efficiency of accessibility in public transport services for persons with disabilities with a view to facilitating, inter alia, access to vocational education and training and employment.<sup>913</sup>

*Hungary* – to enable persons with disabilities and persons with decreased capacity to work and live outside the capital, the support services, in addition to supplying care for persons with disabilities in their living environment, also provide assistance in accessing public services outside the house. This covers access to assistance and public services to meet basic needs, in accordance with the nature of the disability, through the operation of a special personal transport service.

*Ireland* – significant progress has been made under the National Disability Strategy in developing accessible public transport. For example, the entire Dublin Bus fleet is accessible for wheelchair users, as are Bus Éireann services in major cities, while the Rural Transport Programme has developed a series of door-to-door services in rural areas. The Rural Transport Programme provides services to people whose travel needs are not met by existing bus or train services. Services funded under the Programme complement, rather than compete with, existing public transport services provided by public or private transport operators. As well as providing regular public transport services and demand responsive services, the Programme also funds the provision of “Once Off” trips for individuals and community/voluntary groups to help address rural social exclusion. Under the Local Link Rural Transport Programme Strategic Plan 2018–22, a key objective is to ensure the provision of fully accessible transport on all services with a target of achieving at least 95 per cent fully accessible trips by 2020 within the Rural Transport Programme.

<sup>913</sup> For example, *Bosnia and Herzegovina, Burkina Faso, Canada, Denmark, Ecuador, Hungary, Ireland, Latvia, Lithuania, Nigeria, Switzerland, Turkey and United Kingdom.*

*Switzerland* – the requirements of federal law regarding the accessibility of public transport concern not only the construction of buildings and facilities, but also include requirements relating to the optical and acoustic aspects of information supplied to users. The ordinance on the technical requirements for engineering public transport to meet the needs of people with disabilities provides that those who are in a position to use the public domain autonomously and freely should also have independent access to public transport services. If, for reasons of proportionality, this requirement cannot be met by technical means, public transport companies must provide the necessary assistance through their staff. Furthermore, travellers with disabilities enjoy preferential rates with public transport companies.

696. Article 2 of the CRPD defines “universal design” as meaning “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. ‘Universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.”

*Honduras* – the Act on equity and comprehensive development for persons with disabilities, section 7, provides that:

“Universal accessibility” means “the conditions and facilities that must be met by physical environments, services, products and goods, as well as information and documentation so that it is understandable, usable and practicable for all persons, in conditions of convenience and security.”

*Nicaragua* – Act No. 763 of 2011, section 3, defines “universal accessibility” as:

“the condition that shall be met by environments, goods, processes and services, as well as information, information and communication technologies, objects or instruments, tools and devices, in order to be understandable, usable and3 practicable for all persons under conditions of safety and comfort and in the most autonomous and natural manner possible, in both urban and rural areas.”

#### (a) Accessible technology

*Argentina* – Act No. 26.653 on the accessibility of information on web pages (HTML version) was adopted in 2010.

697. The Committee highlights the importance of addressing the so-called digital divide in the context of persons with disabilities. Digitalization has led to many advances that can greatly improve standards of working and living for persons with disabilities. According to the Information, Technology and Innovation Foundation (ITIF), technology that enhances accessibility for persons with disabilities falls into three general categories:

- ▶ *assistive technology* (technology that is designed specifically to improve the functional capacities of a person with a disability);
- ▶ *adaptive technology* (technology that provides a mechanism that enables persons with disabilities to use technology that would otherwise be inaccessible to them); and

- ▶ *accessible technology* (technology that has many broader applications, but helps to remove barriers and make the world generally more accessible for persons with disabilities).<sup>914</sup>

698. The shift from analogue to digital technology has eliminated many barriers that previously impeded the use of technology by persons with disabilities, including limited availability and excessive cost. Digital information can now be converted into voice, text or even physical forms, such as Braille, permitting the development of many more low-cost and readily available general purpose devices that can be used by everyone, including persons with disabilities.<sup>915</sup>

699. Assistive technology is designed to improve the functional capabilities of persons with disabilities, and includes a range of devices and services, including IT-enabled prosthetics and implants, custom computer interfaces and accessible communication tools. Personal emergency response systems minimize safety risks for persons with disabilities at risk of a stroke or falling and are not costly. Adaptive technology makes information more accessible to persons with visual or auditory impairments. Computer screen readers, such as JAWS (Job Access with Speech) and screen magnifiers, enhance the ability of persons with visual impairments to access information, while tactile displays can convert electronic text on a computer to Braille.<sup>916</sup>

700. While digitalization offers greatly increased levels of access to information and communication for persons with disabilities, many of them do not have access to computers or other information technology due to cost. The digital divide is significant. A 2006 study found that 58 per cent of persons without disabilities used a home computer, compared with only 30 per cent of individuals with a disability.<sup>917</sup> The Committee notes that this disparity is all the more significant as access to Internet technology can enable many persons with disabilities to gain access to telework, as well as telecare. The Committee notes that, according to a 2016 World Bank report, the cost of assistive technology continues to be high, and can be cost-prohibitive for persons with disabilities in the absence of financial assistance schemes. The report indicates that the return on investment of technology accommodations in the workplace overwhelmingly shows that the direct and indirect benefits to employers almost always outweigh the costs of the accommodation.<sup>918</sup> Moreover, the ability to work digitally from home can make the difference between employment and unemployment for persons with disabilities that prevent them from commuting to a workplace. Many persons with disabilities also prefer digital work that provides them with a flexible and accessible work environment.<sup>919</sup>

*Republic of Korea* – the Korea Agency for Digital Opportunity and Promotion (KADO) operates a programme to provide persons with disabilities with free computers and training in information technologies ([Introduction of KADO](#)).

701. Some reporting member States explicitly refer to promoting the use of technology to enhance the accessibility and participation of persons with disabilities in rehabilitation, training and employment.<sup>920</sup>

<sup>914</sup> R. Atkinson and D. Castro: *Digital quality of life: Understanding the personal and social benefits of the information technology revolution*, ITIF, Washington, DC, 2008, p. 50.

<sup>915</sup> *ibid.*

<sup>916</sup> *ibid.*, p. 51.

<sup>917</sup> K. Dobransky and E. Hargittai: "The disability divide in internet access and use," in *Information, Communication & Society*, 9(3), 2006, pp. 313–334.

<sup>918</sup> D. Samant Raja: *Bridging the disability divide through digital technologies*, World Bank Group, Background paper for the 2016 World Development Report: Digital Dividends, pp. 22–23.

<sup>919</sup> R. Atkinson and D. Castro: *Digital quality of life: Understanding the personal and social benefits of the information technology revolution*, 2008, *op. cit.*, p. 52.

<sup>920</sup> For example, *Bahrain, Belarus, Bosnia and Herzegovina, Denmark, Egypt, Ghana, Hungary, Myanmar, New Zealand, Norway, Pakistan, Thailand, Turkey and United Kingdom*.

*Belarus* – with a view to the rehabilitation and further employment of persons with disabilities, organizational technology has been developed for adaptations to enable persons with disabilities to work. Such adaptation is undertaken according to their profession through individual rehabilitation programmes, and may take between six months and one year, depending on the ability of the person with disabilities.

*Egypt* – Law No. 12 of 1996 provides that the State shall ensure the provision of vocational guidance and job training to persons with disabilities according to their requirements, using modern technologies and comprehensive integration methods to achieve maximum independence, while ensuring quality, safety and security, in vocational training institutes, and all means of spatial accessibility and technology.

*Myanmar* – the action plans and programmes adopted by the National Committee and the Ministry of Social Welfare, Relief and Resettlement include training for civil service personnel and volunteers in modern technologies to assist them to provide services for persons with physical, mental and intellectual disabilities, including rehabilitation services.

*Pakistan* – the Government recognizes that assistive technology plays an important role in the rehabilitation of persons with disabilities. Special attention is therefore paid to the development of assistive technology, in consultation with the relevant organizations, particularly in the area of orthotics and prosthetics, for persons with disabilities.

Enterprises employing workers with disabilities are provided with incentives, financial assistance and exclusive contracts or priority production rights, as part of an overall policy to promote the gainful employment of persons with disabilities. Employers are encouraged to adopt measures to promote the use of new technologies and the development and production of assistive devices, tools and equipment, to facilitate the access of persons with disabilities to the open labour market so that they can enter and remain in employment.

## 2. Forms of reasonable accommodation and variations in terminology

**702.** Depending on the nature and extent of a worker's disability, an adaptation at the workplace or to the organization of the work may be necessary to enable the worker to perform the "essential" or "core" duties of the position for which the worker has been recruited or is expected to return. For example, a wheelchair user may require a ramp to be able to access the workplace, while a worker with a visual impairment may require a particular software package to be able to work on electronic documents and correspondence. A worker with a chronic condition may request an adjustment to the organization of the work or authorization to work flexible hours or to work from home, where necessary.

**703.** Such adaptations are also commonly referred to as reasonable adjustments or reasonable accommodation, with the terminology used varying between countries.

(i) *Convention No. 159*

**704.** Part III of Convention No. 159 on action at the national level for the development of vocational rehabilitation and employment services provides that vocational guidance, vocational training, placement, employment and other related services to enable persons with disabilities to secure, retain and advance in employment shall be used with necessary adaptations, wherever possible and appropriate (Article 7).

(ii) *The CRPD*

**705.** Article 27 of the CRPD recognizes the right of persons with disabilities to work, on an equal basis with others, and provides that this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. It calls on States parties to safeguard and promote the realization of the right to work through a series of measures, including by ensuring that reasonable accommodation is provided to persons with disabilities in the workplace. Article 5(3) of the CRPD calls on States parties to take all appropriate steps to ensure that reasonable accommodation is provided, in order to promote equality and eliminate discrimination. The definition of “discrimination”, set out in Article 2 of the CRPD, makes it clear that denial of reasonable accommodation is a form of discrimination.

In the case of *Çam v. Turkey*, (Application No. 51500/08, issued on 23 February 2016) the European Court of Human Rights held unanimously that the denial of a reasonable accommodation constituted discrimination in violation of Article 14 of the European Convention on Human Rights (ECHR). The case concerned the refusal by the Turkish National Music Academy to enrol the petitioner as a student, based on its rules of procedure. The Court found that, while the petitioner was fully qualified for admission, she was refused enrolment because she was blind. The Court held that discrimination on the grounds of disability includes the denial of reasonable accommodation to facilitate the access of persons with disabilities to education. The accommodation was essential for the exercise of her human rights. The Court found that the national authorities had made no attempt to identify the petitioner’s needs and had failed to explain how her blindness would preclude her from attending music lessons. It concluded that, by refusing the petitioner admission without considering the possibility of accommodating her disability, the national authorities had prevented her, without objective and reasonable justification, from benefiting from a musical education, in violation of the ECHR. In reaching its conclusions, the Court observed that the provisions of the ECHR should, in so far as possible, be interpreted in harmony with other provisions of international law of which it forms part, such as the European Social Charter and the CRPD.

(iii) *What is a reasonable accommodation or adaptation*

**706.** The term “reasonable accommodation” has been defined in two international instruments, namely Recommendation No. 200 and the CRPD. Paragraph 1(g) of Recommendation No. 200 defines “reasonable accommodation”, in the context of HIV and AIDS, as: “any modification or adjustment to a job or to the workplace that is reasonably practicable and enables a person living with HIV or AIDS to have access to, or participate or advance in, employment”.

**707.** The CRPD, in Article 2, defines reasonable accommodation as: “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

**708.** Depending on the nature and extent of a worker’s functional impairment, she or he may encounter barriers to accessing, advancing or remaining in employment, or returning to employment after an absence. Reasonable accommodation seeks to remove or reduce these barriers by making existing facilities and information accessible to persons with disabilities, modifying equipment or the working environment, adapting the existing way of doing things, or by removing physical barriers in the workplace where necessary and feasible, such as by replacing a step with a ramp in order to facilitate access to the workplace by wheelchair users.<sup>921</sup>

**709.** The concept of reasonable accommodation encompasses two key elements:

- ▶ identification of the nature and extent of the barriers encountered and the effective measures required to remove or mitigate these barriers; and
- ▶ assessment of whether the accommodation is reasonable, an inquiry which generally turns on two factors:
  - whether the worker is able to perform the “essential functions” of the position in question with the accommodation<sup>922</sup>; and
  - whether the reasonable accommodation would constitute a disproportionate burden or undue hardship on the employer.

**710.** The Committee notes that, in a growing number of countries, employers are required to provide reasonable accommodation in all aspects of employment, including access to pre-employment education and training, vocational guidance, recruitment and selection, terms and conditions of employment and opportunities for advancement.<sup>923</sup> The provision of reasonable accommodation, where needed, is key to promoting diversity and inclusion in the workplace.

*Colombia* – the objective of Statutory Act No. 1618 of 2013 is to guarantee and ensure the effective exercise of the rights of people with disabilities, through the adoption of inclusion measures, affirmative action and reasonable accommodation, and the elimination of all forms of discrimination on the basis of disability.

The Government reports that the Ministry of Labour and the Public Employment Service Unit are implementing a series of measures in employment centres to make them accessible to persons with disabilities. These measures include reasonable accommodation, such as the use of technology (Software Magic and JAWS), the provision of courses in sign language, the use of Braille printers, accessible signage in offices to assist persons with visual disabilities, training for national employment service personnel, as well as an accessible Internet webpage and an application to enable persons with disabilities to access vacancy announcements published on the jobs portal.

*Finland* – the Non-Discrimination Act, section 15, contains provisions requiring authorities, education providers, employers or providers of goods and services to make due and appropriate adjustments that are necessary in each situation for a person with disabilities to be able, equally with others, to deal with the authorities and gain access to education, work and generally available goods and services, as well as to manage their work tasks and advance in their career.

<sup>921</sup> ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, Geneva, 2016, op. cit., p. 16.

<sup>922</sup> *ibid.*, pp. 19–21.

<sup>923</sup> For example, *Australia, Belgium, Denmark, France, Finland, Hungary, Ireland, Japan, New Zealand, Slovakia, Sri Lanka and United Kingdom and United States.*

*Slovakia* – the Anti-Discrimination Act establishes the requirement for employers to provide reasonable accommodation. In particular, it requires them to take appropriate measures to enable a person with a disability to have access to employment, promotion or training and to advancement at work.

711. Employers may not be able to accommodate every request for a change to a job or workplace, and some modifications could be considered too disruptive to the functioning of the workplace.

712. At the same time, the mere fact that an accommodation may be inconvenient for the employer is not sufficient reason for its rejection. For example, if public funding is available to assist in meeting the costs of a modification, expense is not likely to constitute a justification for denying the requested accommodation. Reasonable accommodation makes the workplace more inclusive, while ensuring continued efficient operation of businesses.

713. In many cases, the cost to employers of providing a reasonable accommodation is negligible, or may even be non-existent.<sup>924</sup> In any event, the Committee notes that many reporting member States provide subsidies or have established funds to assist in meeting the costs of reasonable accommodation.<sup>925</sup>

*Armenia* – a one-time compensation payment is available to employers to cover the cost of adjusting the workplace for non-competitive persons with disabilities.

The employer is provided with a lump-sum compensation of up to 500,000 Armenian dram (around US\$1,000) for the purpose of providing working skills to persons with disabilities and adapting the workplace with the special equipment needed for the job that meets the relevant technical and ergonomic requirements.

*Ireland* – the Employment Equality Acts 1998–2015 require employers to take appropriate measures to accommodate the needs of employees and prospective employees with disabilities. Reasonable accommodation can be defined as some modification to the tasks or structure of a job or workplace, which allows the qualified employee with a disability to fully do the job and enjoy equal employment opportunities.

The Irish Human Rights and Equality Commission (IHREC) provides information and guidance for persons with disabilities who consider they may have suffered discrimination in employment. It also provides practical guidelines on reasonable accommodation to assist employers.

The Department of Employment Affairs and Social Protection provides a range of employment supports aimed at helping employees with a disability to obtain and retain employment. The grants available from the Reasonable Accommodation Fund include the Job Interview Interpreter Grant, the Personal Reader Grant, the Employee Retention Grant Scheme and the Workplace Equipment/Adaptation Grant.

<sup>924</sup> ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, 2016, op. cit., pp. 24–25.

<sup>925</sup> For example, *Algeria, Armenia, Belgium, Bulgaria, Canada, Hungary, Ireland, Lithuania and Montenegro*.

## ▶ V. The business case for diversity and inclusion of persons with disabilities

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**714.** There is evidence to suggest that diversity and inclusion improve the performance and competitiveness of a business. An increasing number of companies recognize these benefits. The ILO Global Business and Disability Network brings together a range of employers who have voluntarily undertaken to promote the employment of persons with disabilities. While increased diversity arguably benefits society, the businesses concerned have also concluded that diversity constitutes good business practice.

The ILO guide *Promoting diversity and inclusion through workplace adjustments* highlights a number of factors in favour of diversity and inclusion within enterprises, including:

- ▶ A diverse workforce that is comfortable communicating varying points of view, providing a larger pool of ideas and experiences. This enables a company to be more innovative in planning and problem solving.
- ▶ A diverse collection of skills and experiences (for example languages and cultural understanding) allows a company to provide better service to customers, both locally and globally.
- ▶ Companies with a good reputation for sensitivity, diversity and accommodation can increase their market share with consumers from a wide range of backgrounds.
- ▶ Companies that value diversity and maintain an inclusive workplace culture may improve the retention of workers with diverse backgrounds and enhance their loyalty to the company. In turn, this can reduce the costs associated with employee turnover, provide higher returns on investments in training, and sustain institutional memory.

**715.** Persons with disabilities are found in all types of occupations and can be qualified and productive employees on an equal basis with non-disabled workers. In addition, they often demonstrate strong loyalty to their employers, contributing to low absenteeism and turnover rates. As a result, many enterprises consider that it is both efficient and profitable to hire and retain persons with disabilities.<sup>926</sup>

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<sup>926</sup> WHO: *World report on disability*, 2011, op. cit., p. 236.

## ▶ VI. Confidentiality

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**716.** The Committee observes that, in order to obtain a reasonable accommodation, job applicants or workers are generally required to inform their potential or current employer that they require an accommodation.<sup>927</sup> Workers may be reluctant or afraid to disclose their need for an accommodation, especially in the case of conditions that are perceived negatively or particularly stigmatized, such as a mental health condition or a chronic illness, for example, AIDS. Where employers communicate support for workers who may require an accommodation and explain the procedures available for making a request, including how the employer will ensure the confidentiality of the worker's personal data, this helps to establish an enabling environment that can encourage workers to disclose their requirements.<sup>928</sup>

**717.** The ILO code of practice on the protection of worker's personal data, 1997, indicates that "[m]edical personal data should not be collected except in conformity with national legislation, medical confidentiality and the general principles of occupational health and safety, and only as needed: (a) to determine whether the worker is fit for a particular employment; (b) to fulfil the requirements of occupational health and safety; and (c) to determine entitlement to, and to grant, social benefits" (section 6.7). "Personal data covered by medical confidentiality should be stored only by personnel bound by rules on medical secrecy and should be maintained apart from all other personal data" (section 8.2).

## ▶ VII. Barriers affecting specific groups of persons with disabilities

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### 1. Stigma and discrimination

#### *(a) The ILO instruments*

**718.** Convention No. 159 explicitly provides that it is based on the principle of equality of opportunity and treatment (Article 4). The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), provides in Article 1(1) that the term "discrimination" includes:

- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

**719.** Article 1(3) of Convention No. 111 goes on to clarify that "the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment."

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<sup>927</sup> ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, 2016, op. cit., p. 20.

<sup>928</sup> *ibid.*, pp. 33–36.

**(b) The CRPD**

**720.** Article 2 of the CRPD defines “discrimination on the basis of disability” as:

any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

**2. Men and women with disabilities: The gender dimension**

**721.** In its General Survey of 1998, the Committee noted that, although both men and women with disabilities are subject to discrimination, women with disabilities are doubly disadvantaged by intersectional discrimination based on gender and disability status (paragraph 114). Women with disabilities often experience discrimination in hiring and advancement, in accessing rehabilitation services, vocational or other training, are paid less for work of equal value and receive fewer employment-related benefits, particularly those designed to assist persons with disabilities, such as supplemental security income and disability insurance (paragraphs 115–118).

**3. Mental, emotional or psychological impairments**

**722.** The *World report on disability* observes that different impairments elicit different degrees of prejudice. Mental illness is highly stigmatized and the strongest prejudice is exhibited towards people with mental health conditions and intellectual impairments.<sup>929</sup> A global survey on stigma and discrimination against people with schizophrenia found that 29 per cent experienced discrimination in finding or keeping a job, and 42 per cent felt the need to conceal their condition when applying for employment, education or training.<sup>930</sup>

**723.** Mental illness has an enormous impact, entailing significant costs for workers, employers and society in general.<sup>931</sup> The WHO has estimated that depression alone is the leading cause of disability in the world today.<sup>932</sup>

**724.** The Organisation for Economic Co-operation and Development (OECD) notes that the costs of mental illness for workers, employers and society in general are huge. The ILO has estimated that the cost of mental illness is equivalent to 3–4 per cent of gross domestic product in the Member States of the European Union.<sup>933</sup> In addition to the personal cost to individuals in terms of their diminished sense of autonomy and self-esteem, mental illness is responsible for a very significant loss of potential labour supply, high rates of unemployment, a high incidence of absence due to sickness and reduced productivity at work.

**4. Discrimination on a combination of grounds**

**725.** The Committee wishes to highlight the impact of “intersectional discrimination” or “multiple grounds of discrimination” on women with disabilities. Where a woman with a disability also belongs to one or more disadvantaged or marginalized groups, the discriminatory barriers that she may encounter in entering, remaining or advancing in employment are compounded.

<sup>929</sup> WHO: *World report on disability*, 2011, op. cit., p. 240.

<sup>930</sup> *ibid.*

<sup>931</sup> OECD: *Sick on the job? Myths and realities about mental health and work*, Paris, 2012.

<sup>932</sup> WHO: *Depression and other common mental disorders: Global health estimates*, 2017, p. 5.

<sup>933</sup> P. Gabriel and M-R. Liimatainen: *Mental health in the workplace: Introduction: Executive summaries*, ILO, Geneva, 2000, p. 5.

CEACR – In its remarks commemorating the 50th anniversary of the adoption of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee highlighted the phenomenon of intersectional discrimination, observing that “in many cases, discrimination in employment and occupation is not limited to discrimination on solely one ground. For example, sex-based discrimination frequently interacts with other forms of discrimination or inequality based on race, national extraction or religion or even age, migrant status, disability or health”.<sup>934</sup>

The CRPD Committee, in General Comment No. 3, notes that, due to multiple and intersecting forms of discrimination, women and girls with disabilities face barriers in most areas of life, including with regard to equal access to education and employment opportunities.<sup>935</sup>

In General Comment No. 6, the CRPD Committee notes that “[d]iscrimination can be based on a single characteristic, such as disability or gender, or on multiple and/or intersecting characteristics. ‘Intersectional discrimination’ occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with colour, sex, language, religion, ethnic, gender or other status. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation or harassment. For example, while the denial of access to general health-related information due to inaccessible format affects all persons on the basis of disability, the denial to a blind woman of access to family planning services restricts her rights based on the intersection of her gender and disability. In many cases, it is difficult to separate these grounds. States parties must address multiple and intersectional discrimination against persons with disabilities. ‘Multiple discrimination’, according to the Committee, is a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated. Intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and thereby expose relevant individuals to unique types of disadvantage and discrimination.”<sup>936</sup>

### ***Discrimination on the basis of disability***

**726.** The CRPD Committee observes that discrimination “on the basis of disability” in Article 5 encompasses:

persons who have a disability at present, who have had a disability in the past, who have a disposition to a disability that lies in the future, who are presumed to have a disability, as well as those who are associated with a person with a disability. The latter is known as ‘discrimination by association’. The reason for the broad scope of article 5 is to address and eliminate all discriminatory situations and/or discriminatory conducts that are linked to disability.<sup>937</sup>

<sup>934</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A)*, ILC, 98th Session, Geneva, 2009, para. 108.

<sup>935</sup> CRPD Committee: “General Comment No. 3 (2016) on women and girls with disabilities”, UN/CRPD/C/GC/3, 2016, paras 2–3.

<sup>936</sup> CRPD Committee: “General Comment No. 6 (2018) on equality and non-discrimination”, op. cit., para. 19.

<sup>937</sup> *ibid.*, para. 20.

727. The Committee notes that, in a number of countries, the labour legislation prohibits discrimination on the basis of disability. In others, anti-discrimination clauses on grounds of disability are included in the Constitution.<sup>938</sup>

*Bolivarian Republic of Venezuela* – Article 81 of the National Constitution provides that: “Any person with a disability or special needs has the right to the full and independent exercise of her or his capacities, to integration into the family and the community. The State, with the participatory solidarity of families and society, shall guarantee respect for her or his human dignity, equality of opportunity, satisfactory working conditions, and shall promote her or his training, capacity building and employment in accordance with her or his conditions, in accordance with the law.”

728. Non-discrimination provisions in the legislation of a number of countries provide protection not only for persons who have an existing disability, but also for persons with a history of having had a disability, those who are perceived as having a disability, regardless of whether they are actually disabled, and those associated with someone who has a disability.<sup>939</sup>

## ▶ VIII. Vocational rehabilitation and employment services

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729. The ILO takes a two-pronged approach to promoting equality of opportunity and treatment in vocational guidance, vocational education and training and employment for persons with disabilities.

### 1. Vocational rehabilitation measures

730. First, recognizing that disability-specific programmes or protective measures are necessary to address the needs of persons with disabilities who may not be able to compete for employment on the open market, Convention No. 159 and Recommendation No. 168 allow for tailored solutions based on individual needs, which may vary widely and may evolve over time. Second, the instruments seek to ensure that persons with disabilities are mainstreamed in education, vocational training and employment wherever possible, so that they are included in general vocational guidance and skills development programmes and in enterprise- and employment-related vocational rehabilitation and employment services.

731. Reporting member States have, to different levels, established disability-specific programmes and protective measures to ensure the social and economic integration of persons with disabilities. These programmes are designed to address the specific needs of people with disabilities through the provision, for example, of individual rehabilitation programmes,<sup>940</sup> skills development programmes,<sup>941</sup> educational and training programmes,<sup>942</sup> condition management

<sup>938</sup> For example, *Brazil, South Africa and Bolivarian Republic of Venezuela*.

<sup>939</sup> For example, *United States*.

<sup>940</sup> For example, *Belarus*.

<sup>941</sup> For example, *Canada and Colombia*.

<sup>942</sup> For example, *Canada, Colombia, Denmark, Ghana, Latvia, Myanmar, Namibia, Peru, Philippines, Portugal, Qatar, Sri Lanka, Switzerland, Thailand, United Kingdom and Bolivarian Republic of Venezuela*.

programmes,<sup>943</sup> community-based rehabilitation programmes,<sup>944</sup> tailored programmes for people with mental or physical disabilities<sup>945</sup> at the national<sup>946</sup> or local<sup>947</sup> levels. Specialized institutions may be established offering customized vocational rehabilitation programmes for people with disabilities<sup>948</sup> using a community-based approach, or local non-governmental organizations may provide rehabilitation services.<sup>949</sup>

*Cook Islands* – Te Vaerua is a non-governmental organization that provides occupational therapy, physiotherapy and support, including assistive equipment and devices (such as wheelchairs, walking frames, commodes, electric beds, reading boards and lifting mats). Te Vaerua employs an administrator, physiotherapists, an occupational therapist, a rehabilitation assistant and an equipment officer to repair and adapt the equipment.

732. The Committee notes that measures have been taken in a majority of member States to provide a range of vocational rehabilitation services for persons with disabilities, including vocational guidance and vocational education and training.<sup>950</sup>

*Austria* – vocational training assistance is provided, within the framework of integrated vocational training, to young persons with disabilities who are subject to other constraints on their recruitment. Vocational training assistants are available to the young people throughout their training, both in the business and at school, to provide long-term training support.

► Job coaching is a particularly intensive programme that is part of the vocational assistance provided. It is intended for people in particular need of financial support as a result of a cognitive impairment, learning disabilities or a physical disability, and is also available in enterprises. The job coaches provide direct tailored support in the workplace to enhance the professional, communication and social skills of the employees concerned. Job coaching is primarily available for people with learning disabilities and can be an important form of support to achieve equality. The goal is for the employees who have received coaching to be in a position in which they are able to meet the demands made on them in the long term and independently.

<sup>943</sup> For example, *United Kingdom*.

<sup>944</sup> For example, *Sri Lanka*.

<sup>945</sup> For example, *Canada, Myanmar and United Arab Emirates*.

<sup>946</sup> For example, *Benin and Senegal*.

<sup>947</sup> For example, *Canada*.

<sup>948</sup> For example, *Bosnia and Herzegovina, Egypt, El Salvador, Estonia, Israel and Zimbabwe*.

<sup>949</sup> For example, *Cook Islands*.

<sup>950</sup> For example, *Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Democratic Republic of the Congo, Cook Islands, Costa Rica, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Guatemala, Hungary, India, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Lithuania, Mauritius, Mexico, Montenegro, Myanmar, Namibia, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Senegal, Seychelles, Slovakia, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe*.

*Austria (cont.)*

- ▶ Personal assistance in the workplace. Despite their professional skills, it is often difficult for people with a severe functional impairment to gain access to paid work without tailored support. Such people often rely on assistance payments to remain in employment. Based on the premise of needs-based, self-determined, self-organized and equal participation in working life, the recipients of assistance receive the personal support that they need to carry out their professional work or to complete a training course.
- ▶ Employment and qualifications initiatives and increased demands in the labour market mean that persons with disabilities need targeted qualifications and employment initiatives that match their individual career prospects. The possibility of temporary employment can offer some stability and prepare them for work in the open labour market.

Within the framework of the fit2work project, the Ministry of Social Affairs takes responsibility for the coordination and organization of these programmes. Within this framework, the Ministry of Social Affairs and the Public Employment Service, together with other institutions, work closely together for the professional rehabilitation of persons with disabilities.

*Azerbaijan* – one of the objectives of the Strategic Road Map for the Development of Vocational Education and Training is the provision of support for the social integration of persons with disabilities to create the conditions for their entry into the labour market.

The European Union Twinning Project, launched in September 2017, contains a module entitled Support to the Azerbaijan Ministry of Labour and Social Protection in modernizing state employment services aimed at the creation of new services to promote the employment of people belonging to vulnerable population groups, and particularly persons with disabilities.

The Vocational Rehabilitation Centre for young people with health limitations is run by the Ministry of Labour and Social Protection with funding from the State Social Protection Fund.

*Zimbabwe* – women and men with disabilities are provided with vocational training and rehabilitation in three national rehabilitation centres, namely Ruwa, Beatrice and Lowdon Lodge. Lowdon Lodge is exclusively for women with disabilities. The training provided includes vocational training programmes in such occupations as carpentry, welding, horticulture and leather work.

**733.** In addition, legislation or policies have been adopted in some countries that take into account the principle of equality of opportunity and treatment between men and women with disabilities in vocational rehabilitation, while in others there is an explicit requirement for the gender dimension to be taken into account in the design and delivery of rehabilitation services.<sup>951</sup> In a number of countries, measures have been taken targeting specific groups of persons with disabilities, such as young persons.

<sup>951</sup> For example, *Benin* and *Bosnia and Herzegovina*.

## 2. Vocational guidance

734. The Committee recalls that the principle of non-discrimination applies to discrimination in both employment and occupation, as defined in Article 1 of Convention No. 111. Moreover, Article 1 of the Employment Policy Convention, 1964 (No. 122), requires Members to safeguard the right to full, productive and freely chosen employment without discrimination. Convention No. 159 calls for the national policy on vocational rehabilitation and employment of persons with disabilities to promote employment opportunities for such persons in the open labour market (Article 3), while Recommendation No. 168 calls for persons with disabilities to enjoy equality of opportunity and treatment in all aspects of employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment (Paragraph 7).

### (a) *Employment placement services for persons with disabilities*

735. The purpose of establishing specific programmes or protective measures for persons with disabilities is primarily to ensure that they enjoy equality of opportunity and treatment in access to the open labour market. The existence of an efficient public employment service is therefore an essential element of promoting equality of opportunity and treatment in employment and occupation. Well-designed public employment services can make a significant contribution to the social and economic inclusion and sustainable employment of persons with disabilities.

736. In a number of countries, rehabilitation services are administered by or operated under the supervision of the national employment service.<sup>952</sup> In most countries, persons with disabilities have access to the regular employment services to secure their labour market integration.<sup>953</sup> This approach is aligned with the fundamental principle underlying Convention No. 159 of ensuring equal treatment and fostering the integration of persons with disabilities into the regular labour market. In some countries, public employment services promote the labour market inclusion of people with disabilities by prioritizing their applications or offering personalized services and specific programmes for their inclusion in the open labour market.<sup>954</sup>

*Australia* – Getting to Work, the Victorian public sector disability employment action plan 2018–25, provides a framework for action by individual departments in the public sector for the employment of people with disabilities.

In Tasmania, employment assistance services for people with disabilities, including vocational rehabilitation, are provided by community organizations funded by the Commonwealth Government and by the Commonwealth Rehabilitation Service (CRS). The Disability Framework for Action 2018–21 is a government-wide approach in Tasmania to ensure that all people with disabilities have equitable access to mainstream government programmes, services and facilities.

737. In some countries, the provision of employment services for persons with disabilities is entrusted to a separate or specialized institution.<sup>955</sup>

<sup>952</sup> For example, *Australia*.

<sup>953</sup> For example, *Australia*, *Azerbaijan* and *Belarus*.

<sup>954</sup> For example, *Australia*.

<sup>955</sup> For example, *Benin*, *Canada* and *China*.

*China* – the Government has established employment service agencies for persons with disabilities at the provincial, city and county levels. The agencies provide free employment and vocational training services to help all categories of persons with disabilities gain access to employment or start their own business. In comparison with other population groups, services such as job introduction and vocational training for persons with disabilities are more personalized.

**738.** In certain countries, specialized employment services for people with disabilities are outsourced, and in a few countries priority is given to developing and securing partnerships with other organizations or stakeholders to offer tailored employment services for persons with disabilities.<sup>956</sup>

*Canada* – the Manitoba Department of Training and Employment Services concludes contracts with community-based organizations to assist unemployed persons with disabilities to prepare for, secure and retain employment. These services are targeted at individual needs, specific client groups and local communities. The support and services provided by each programme/organization may include: employment plan development, employment counselling, assessment services, information on the labour market and education/training opportunities, resumé and job search assistance, job-finding clubs and job reference/placement.

**(b) Availability of services throughout all areas of the country**

**739.** It is estimated that 80 per cent of all persons with disabilities worldwide live in rural areas in developing countries, and 70 per cent of this total have limited or no access to the services that they need.<sup>957</sup> In recognition of the challenges encountered by persons with disabilities in accessing rehabilitation and employment-related services outside urban areas, Article 8 of Convention No. 159 calls for measures to be taken for the provision of such services in rural areas and remote communities.

**740.** Part IV of Recommendation No. 168 addresses the provision of services in rural areas and calls for the development of services for persons with disabilities in rural areas and remote communities to form an integral part of general rural development policies (Paragraph 20). The measures envisaged by the Recommendation include the establishment of rural services or, alternatively, the use of services in urban areas to train rehabilitation staff for rural areas, and the establishment of mobile vocational rehabilitation units to serve persons with disabilities in rural areas and to act as centres for the dissemination of information on training and employment opportunities for persons with disabilities (Paragraph 21).

**741.** The establishment of programmes or measures to promote the development of vocational guidance, vocational rehabilitation and employment services for women and men with disabilities in rural areas and remote communities is reported in many countries.<sup>958</sup>

<sup>956</sup> For example, *Canada* and *Central African Republic*.

<sup>957</sup> CESCR: “General Comment No. 5: Persons with disabilities”, United Nations Committee on Economic, Social and Cultural Rights, 1994 (E/1995/22), para. 8.

<sup>958</sup> For example, *Afghanistan, Algeria, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Bosnia and Herzegovina, Burkina Faso, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, France, Georgia, Germany, Ghana, Guatemala, Honduras, Hungary, Ireland, Italy, Jamaica, Japan, Republic of Korea, Latvia, Lithuania, Namibia, Nepal, New Zealand, Nicaragua, Norway, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Senegal, Seychelles, Spain, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, United Kingdom, Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe*.

*Bangladesh* – the Disabled Welfare Act, 2001, calls for action to improve opportunities for persons with disabilities by increasing their access to, and privileges and participation in, skills development programmes. A series of activities have been carried out under the National Skills Development Policy with the objective of promoting the establishment and development of vocational guidance, vocational rehabilitation and employment services for women and men with disabilities in rural areas and remote communities. [NB: the Disabled Welfare Act has been superseded by the adoption of the Persons with Disabilities Rights and Protection Act, 2013]

742. Mobile units have been established in a number of countries to provide both vocational rehabilitation and employment placement services for persons with disabilities in rural areas and remote communities.<sup>959</sup>

*Algeria* – the Social Development Agency (SDA) and its local solidarity units participate in action for the inclusion and empowerment of people with disabilities through the implementation of social programmes, schemes and surveys, particularly in rural and remote communities. Outreach cells support people and/or families with disabilities through:

- ▶ the identification of the needs of people with disabilities;
- ▶ psychological support for people with disabilities living in isolated areas;
- ▶ social mediation (the establishment of a handicap card, a financial allowance, professional integration ...);
- ▶ action to combat all forms of marginalization and social exclusion of persons with disabilities through catch-up and social integration programmes; and
- ▶ assistance to support and help people with disabilities search for jobs, particularly in rural and remote areas.

*Ireland* – the Department of Employment Affairs and Social Protection and the Health Service Executive have tested an individual placement and support (IPS) approach to help people with mental health difficulties to remain in or access work in mainstream settings. Three of the four pilot sites for the support model were in rural and remote areas, including West Cork, Cavan/Monaghan and County Galway. Under the IPS approach, individuals are offered opportunities to access competitive employment in the open market based on their skills and interests.

### ***(c) Adequately trained vocational rehabilitation and employment service staff***

743. In order to meet the needs of all categories of clients with disabilities, it is essential to ensure the availability of an adequate number of professionally trained and qualified vocational rehabilitation counsellors and specialists. In addition, the persons who provide vocational guidance, vocational training and employment placement services for workers need to be provided with adequate and appropriate training in the area of disabilities, including on the nature and scope of the support services and assistive aids available to enable persons

<sup>959</sup> For example, *Algeria, Ireland, Latvia and United Kingdom*.

with disabilities to be fully integrated into employment and, to the extent possible, into the occupation of their choice (Recommendation No. 168, Paragraph 23). They should also have appropriate training and experience to identify and handle the motivational issues and difficulties that persons with disabilities may encounter in seeking employment (Paragraph 28).

744. Steps have been taken in many countries to ensure that vocational rehabilitation and employment services personnel are qualified and receive specialist training to enable them to respond effectively to the requirements of persons with disabilities.<sup>960</sup>

*Algeria* – special priority is placed on the training, specialization and redeployment of specialized personnel responsible for teaching, educating, re-educating and providing social assistance in institutions for persons with disabilities. The Government emphasizes that specialized training is one of the essential elements to enable personnel to address in the best possible manner the true vocational guidance needs of persons with disabilities with a view to their labour market inclusion.

*Armenia* – employment professionals receive regular training and participate in courses, organized by both the Government and international organizations, to improve their qualifications.

*Bahrain* – to ensure that personnel are adequately qualified to provide services for persons with disabilities, the Ministry of Labour and Social Development is involved in the training and qualification of personnel to respond to the needs of persons with disabilities and treat them appropriately. The staff participate in in-house training courses and workshops, or in courses and workshops provided by organizations and institutes specialized in working with persons with disabilities.

The on-the-job training provided to trainees focuses on new perspectives for professional practice. Emphasis has recently been given to training psychologists and the provision of specialized programmes and seminars in support of the guidance and mental-health services available to all social categories, and particularly people with disabilities. To keep pace with the use of technology in education, special teachers and trainers have been provided with training in smartboard basics in collaboration with the Ministry of Education.

<sup>960</sup> For example, *Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Côte d'Ivoire, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Guatemala, Honduras, Hungary, Ireland, Israel, Italy, Jamaica, Japan, Kiribati, Republic of Korea, Latvia, Lithuania, Malta, Mauritius, Myanmar, Nepal, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Philippines, Poland, Portugal, Senegal, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, United Arab Emirates, United Kingdom, Uruguay and Bolivarian Republic of Venezuela.*

*Croatia* – the Institute for Disability Certification, Professional Rehabilitation and Employment of Persons with Disabilities is responsible for the development and improvement of vocational rehabilitation. For this purpose, it supervises and coordinates the work of vocational rehabilitation centres and organizes training for specialists in the centres.

With a view to addressing more systematically the problem of the employment of persons with disabilities, the employment service has established a Division for Vocational Rehabilitation and Employment of Persons with Disabilities. Specialized employment counsellors for persons with disabilities are employed in all the employment service regional offices.

To ensure that a sensitive approach is adopted towards persons with disabilities, employment service counsellors regularly attend professional training, seminars and workshops focusing on the adoption of a holistic approach to clients and full care for their individual needs.

### 3. Access to education and employment opportunities

#### (a) *Entitlement to accessible and inclusive education*

**745.** As the Committee recalled in its 1996 Special Survey on equality of opportunity, inequalities in access to education can impair or even nullify equality of opportunity and treatment in all other areas, preventing those concerned from acquiring the specialized training or education needed to work in a specific occupation and to hold jobs that are as productive and freely chosen as possible. The Committee has emphasized that, if parts of the population are prevented from attaining the same level of education as others, this constitutes discrimination within the terms of Convention No. 111, as these differences will be extended into employment opportunities. Similarly, discriminatory practices affecting access to training or the quality of training are perpetuated or aggravated when the persons subjected to these practices compete for places in vocational training systems and, consequently, in employment and occupation. Therefore, access to training and education at the same level for everyone is one of the starting points for a policy to promote equality of opportunity and treatment in employment and occupation.<sup>961</sup> This principle applies equally to persons with disabilities.

**746.** The Human Resources Development Recommendation, 2004 (No. 195), calls on Members, among other objectives, to promote equal opportunities for women and men in education, training and lifelong learning, as well as access to education, training and lifelong learning for people with nationally identified special needs, such as persons with disabilities, young persons, low-skilled persons, migrants, older workers, indigenous people, ethnic minority groups and the socially excluded, as well as workers in SMEs, the informal economy, the rural sector and self-employment (Paragraph 5(g) and (h)). Paragraph 6(1) of Recommendation No. 195 indicates that “Members should establish, maintain and improve a coordinated education and training system within the concept of lifelong learning, taking into account the primary responsibility of government for education and pre-employment training and for training the unemployed, as well as recognizing the role of the social partners in further training, in particular the vital role of employers in providing work experience opportunities.”

**747.** In its General Comment No. 2 on accessibility, the CRPD Committee emphasizes the need for accessibility in education and points out that, without “accessible transport to schools, accessible school buildings and accessible information and communication, persons with disabilities would not be able to exercise their fundamental right to an education” under Article 24 of the CRPD.<sup>962</sup>

<sup>961</sup> ILO: *Equality in employment and occupation*, Special Survey on equality in employment and occupation in respect of Convention No. 111, Report III (Part 4B), ILC, 83rd Session, Geneva, 1996, paras 70 and 71.

<sup>962</sup> CRPD Committee: “General Comment No. 2 (2014): Accessibility”, CRPD/C/GC/2, para. 39.

**748.** Policies on inclusive education for persons with disabilities have been adopted in some member States.<sup>963</sup>

*Mali* – a module on inclusive education is being integrated into the training for students in teacher training institutes.

*United Kingdom* – the reforms introduced by the Children and Families Act 2014 are transforming the special educational needs and disabilities (SEND) system. Tailored support for longer-term aspirations of employment, higher education, independent living and community participation is focused strongly on 0–25 year olds and initiates preparation for adulthood from the earliest years. This includes education, health and care plans for learners with more complex disabilities and special educational needs.

**749.** Measures have been taken in a few countries to enhance primary and secondary education for children with disabilities and/or to provide special programmes for the education of youth with disabilities.<sup>964</sup>

*Cambodia* – the Law on the Protection and Promotion of the Rights of Persons with Disabilities, article 39, provides that: “The State shall give due attention to establishing vocational training institutions for persons with disabilities. The educational, training, technical and vocational establishments of state, private or other organizations shall provide either training to persons with disabilities in accordance with the appropriate set quota, or provide free training to poor persons with disabilities or military veterans with disabilities.”

*Cook Islands* – the Cook Islands Disability Inclusive Development Policy and Action Plan 2014–19 provides, in priority area 3 on education and training, cultural life, leisure, recreation and sports, that:

“Education is a human right and providing education to children with disabilities is an obligation under the CRPD. The Cook Islands [Inclusive Education] IE Policy (2011) is comprehensive and clearly states the responsibilities of the [Ministry of Education], schools, teachers etc. The Policy also notes that Inclusive Education is a process of change: changing the system to meet the needs of children. It will take some time for the process to be fully achieved. Implementation of the IE Policy needs to be sustained and enhanced. [People with disabilities] PWD are frequently excluded and isolated from participation in their communities: church, leisure, recreation, cultural and sporting activities. An inclusive society demands that PWD are included, not merely tolerated, and barriers to their participation be removed.”

<sup>963</sup> For example, *Afghanistan, Australia, Austria, Azerbaijan, Bangladesh, Bosnia and Herzegovina, Burkina Faso, Cambodia, Cook Islands, Côte d'Ivoire, Estonia, Denmark, France, Germany, Ghana, India, Jamaica, Republic of Korea, Mali, Malta, Mauritius, Nepal, New Zealand, Norway, Pakistan, Poland, Trinidad and Tobago, Turkmenistan, United Kingdom and Bolivarian Republic of Venezuela.*

<sup>964</sup> For example, *Bosnia and Herzegovina, Burkina Faso, Cook Islands, Denmark, France, Germany, Ghana, Jamaica, Nepal, Norway, Thailand, Trinidad and Tobago and United Kingdom.*

750. Targeted measures have been adopted in some countries to enhance the access of persons with disabilities to higher education, including graduate programmes.<sup>965</sup>

*Poland* – the “GRADUATE” pilot programme was launched by the Supervisory Board of the State Fund for the Rehabilitation of Persons with Disabilities under Resolution No. 12/2016 of 8 December 2016. The objective of the programme is to enable people with a disability who have completed higher education or are in their last year of higher education to enter the labour market. This objective is to be achieved through provision of comprehensive and individualized support to improve the professional qualifications of programme participants.

*United Kingdom* – local authorities are required to inform young people of the support available to them for higher education and to provide information indicating how to claim this support, which can include a disabled students allowance (DSA). DSAs are available to help students in higher education with extra costs that they may incur on their course because of their disability, which can include ongoing health conditions, mental health conditions or specific learning difficulties, such as dyslexia.

#### ***(b) Equality of opportunity and treatment in employment and occupation***

751. Convention No. 159 calls for the promotion of employment opportunities for persons with disabilities in the open labour market (Article 3) and provides that equality of opportunity and treatment for men and women workers with disabilities shall be respected (Article 4). The Convention provides that “[s]pecial positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers” (Article 4).

752. Article 5(4) of the CRPD, in a provision similar to Article 4 of Convention No. 159, provides that: “Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention”.

#### ***(c) Special measures***

753. Special measures may be required to help historically disadvantaged groups and enable them to compete in the world of work on an equal basis with others. The measures referred to below are tools that can be used by the tripartite partners to meet their shared obligation to promote the participation of persons with disabilities in the world of work. Special pre-employment measures may be helpful to prepare individuals with disabilities for the world of work, and to adapt the workplace for them, where necessary. Additional measures are sometimes required to ensure that persons with disabilities have access to opportunities for quality employment, and may include quota systems, levies and rehabilitation funds.

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<sup>965</sup> For example, *Finland, Poland and United Kingdom*.

**(d) Quotas, levies and rehabilitation funds**

**754.** The Committee notes that quotas and incentives for the employment of persons with disabilities in both the public and private sectors have been established in many countries.<sup>966</sup> While quotas can constitute effective affirmative action measures, they should be accompanied by a comprehensive package of measures, including awareness-raising, targeted employment support and vocational guidance and training.

*Germany* – there is a quota of 5 per cent for the employment of persons with severe disabilities in enterprises employing over 20 people. The German Confederation of Trade Unions (DGB) reports, however, that persons with disabilities continue to be affected by higher rates of unemployment, and that the employment rate for persons with disabilities among private sector employers is 4.1 per cent, compared with 6.6 per cent among public sector employers. The DGB adds that one-quarter of enterprises (41,900) that are legally required to employ persons with severe disabilities do not employ any, and notes that this figure has been high for years. It observes that, alongside targeted support for unemployed persons with severe disabilities, it is important to increase the willingness of enterprises to hire and train persons with disabilities. The DGB notes that the civil service in the Federal Government and the Länder and communes has a responsibility to set an example for the vocational training of persons with disabilities. The DGB welcomes the fact that the civil service has set a target of 5 per cent of persons with disabilities among all trainees and considers that the target should be advertised and implemented more aggressively.

*Bolivarian Republic of Venezuela* – Act No. 38.598 of 2007 on persons with disabilities, section 28, establishes a quota of 5 per cent of persons with disabilities for public and private employers.

The Federal Chamber of Labour (BAK) of *Austria* reports that persons with disabilities are significantly less well integrated into the labour market than persons without disabilities, and unemployment affects persons with disabilities particularly severely. It adds that employers only comply with their duty to employ persons who are registered as having a disability to a very small extent and prefer to pay compensation instead. It observes that, while total unemployment is on the decline, persons with disabilities are only enjoying a below average advantage from the employment surge. The BAK thus welcomes the fact that, since the end of 2017, persons with disabilities have been one of the target groups of Austrian labour market policy, and are therefore eligible for special support. It emphasizes the importance of labour market support programmes and highlights the need for adequate budgetary allocations to enable the public employment service to have specialist advisory units to assist persons with a disability. It also considers that other support measures, such as job coaching, work assistance and pay subsidies should be universally available and adequate.

<sup>966</sup> For example, *Afghanistan, Algeria, Armenia, Australia, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Cabo Verde, Central African Republic, Colombia, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Israel, Italy, Jamaica, Japan, Republic of Korea, Latvia, Lithuania, Mali, Malta, Mexico, Montenegro, Morocco, Myanmar, Namibia, Nepal, Nicaragua, Norway, Oman, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Senegal, Spain, Sweden, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe.*

755. The legislation of many countries establishes levies to be imposed on enterprises that do not meet the quota for employees with disabilities. The resources raised through fines are often used to cover the cost of reasonable accommodation and other initiatives to promote the employment of persons with disabilities.

*China* – enterprises that fail to meet the 1.5 per cent quota pay a fee to the Disabled Persons Employment Security Fund, which supports training and employment placement services for persons with disabilities. In most OECD countries, the success rate in meeting quotas for the employment of workers with disabilities ranges between 50 and 70 per cent.

*Republic of Korea* – public entities and employers with at least 50 employees are required to employ a certain proportion of persons with disabilities (3.1 per cent for private businesses and 3.4 per cent for public entities). Failure to comply gives rise to a levy. If the quota is exceeded, the Government funds 50 per cent of the social contributions of the workers with disabilities who exceed the quota. The Government also runs programmes to raise public awareness of persons with disabilities, support employment retention and improve workplace conditions. The Fifth Master Plan for the Employment Promotion and Vocational Rehabilitation of Persons with Disabilities (2018–22) seeks to create an inclusive labour market for persons with disabilities. Under the Plan, it is intended to strengthen the quota system, apply different levy amounts by business size and provide tailored support, including allowances to cover such expenses as commuting costs for persons with disabilities.

#### *(e) Affirmative action measures*

756. In some countries, special measures have been adopted in the form of affirmative action in employment and other settings. For example, as part of its response to European Union Council Directive 2000/78/EC<sup>967</sup> requiring Member States to introduce policies for the employment of persons with disabilities by 2006, a National Action Plan has been adopted in *Portugal* calling for affirmative action to increase the number of persons with disabilities in employment.

757. The Committee notes that measures have been taken in certain countries to facilitate the access to vocational training and employment of specific groups of persons with disabilities who face particular obstacles to recruitment.

In *Austria*, the BAK reports that the Vocational Training Act offers two options for the training of young persons with disabilities. To improve their integration into work, a training course may be followed either as part of an apprenticeship with an extended teaching period, or as part of a training arrangement with a partial qualification. The training programmes may be undertaken either in enterprises, or as part of cross-company training courses. The BAK notes that both training options represent vocational integration initiatives and are being followed by a rising number of apprentices (extended period of training) and trainees (partial qualification).

<sup>967</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

***(f) Recruitment and selection processes***

**758.** Convention No. 159 and the CRPD are based on the principle of equality of opportunity and treatment for persons with disabilities. In accordance with this principle, the CRPD calls on States parties to recognize the right of persons with disabilities to work, on an equal basis with others. This “includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities” (Article 27(1)). The CRPD requires States parties to promote the realization of the right to work, which includes the right to return to work, including for those who acquire a disability during the course of employment, by taking steps to, inter alia, “[p]rohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions” (Article 27(1)(a)).

**4. Terms and conditions of employment**

***(a) Return to work***

**759.** As noted at the outset of this chapter, disabilities may affect anyone at any stage of life, due to a genetic predisposition to a specific condition or an accident or illness, which may or may not be work related. As persons live longer, many are continuing to work in their 60s and 70s (or longer) and the probability increases that they will acquire an impairment. Following an absence from the workplace, a worker who returns to work with a disability is entitled to all the protections afforded by Convention No. 159: equal access to vocational rehabilitation and employment-related services, the right to equality of opportunity and treatment in relation to all aspects of employment, including selection and recruitment, training and career progression, as well as protection against unfair dismissal and the provision of reasonable accommodation, if needed.

**760.** The CRPD calls on States parties to promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities (Article 27(k)). Moreover, Article 27(e) requires States parties to promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment.

**761.** In planning for the return of workers with disabilities, it may be necessary for such workers to be provided with reasonable accommodation to enable them to perform the essential duties of their position. Where reasonable accommodation is not possible, it may be necessary to redeploy workers to another position more suitable to their abilities. For example, if a driver has sustained a herniated disc that makes it impossible for her or him to drive for eight hours a day, it may be necessary or appropriate to provide the worker with training so that she or he can take another job that does not involve driving or lifting. It may also be necessary for a worker with an acquired disability to receive vocational guidance, education and training so as to be able to return to work.

**762.** ILO Recommendation No. 200 lists a number of measures to be taken in the context of disability, including to facilitate the return to work. Paragraph 13 provides that:

Persons with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so. Measures to redeploy such persons to work reasonably adapted to their abilities, to find other work through training or to facilitate their return to work should be encouraged, taking into consideration the relevant International Labour Organization and United Nations instruments.

**(b) Remuneration of workers with disabilities**

763. The Committee notes that the labour legislation in many countries prohibits discrimination in employment on the basis of disability. In addition, a number of countries provide explicitly for equality of remuneration for workers with disabilities.<sup>968</sup> However, as the Committee observed in its 2014 General Survey, in several countries which have ratified the Minimum Wage Fixing Convention, 1970 (No. 131), workers with disabilities have been excluded from the scope of application of the Convention.<sup>969</sup> In certain countries, the legislation provides for the possibility of reducing the applicable minimum wage for workers with disabilities based on the worker's productivity.

*Japan* – Authorization may be obtained to pay a worker with disabilities a minimum wage reduced by a certain proportion taking into account the worker's capacity.

*Republic of Korea* – An employer may be authorized to make an exception to the scope of minimum wage provisions in cases where a worker's capacity is particularly diminished due to a physical or mental disability.<sup>970</sup>

764. In the Committee's view, the practice of paying workers with disabilities less than the established minimum wage is not in conformity with the principles of equality and non-discrimination that form the basis of Convention No. 159 and Recommendation No. 168. In this context, Paragraph 10 of Recommendation No. 168 indicates that measures should be taken to promote employment opportunities for workers with disabilities which conform to the employment and salary standards applicable to workers generally. However, as the Committee noted in its 2014 General Survey, in certain countries, lower minimum wage rates may be applied to workers with disabilities, although measures have more recently been taken in several countries to prevent any such reduction in minimum wage rates for workers with disabilities.<sup>971</sup>

765. The Committee notes that Article 27 of the CRPD reaffirms the principle of equal remuneration for work of equal value for persons with disabilities and calls on States parties to prohibit discrimination on the basis of disability in relation to employment. Article 27(b) calls on States parties to take steps to "[p]rotect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including ... equal remuneration for work of equal value".

**(c) Supported and sheltered employment**

766. The principal objective of Convention No. 159 and Recommendation No. 168 with regard to the employment of persons with disabilities is to promote their employment in the open labour market. One means of achieving this objective is through supported employment schemes, which seek to integrate such persons into the open labour market by providing a range of services, including job coaching, specialized training, individually tailored supervision, transportation and assistive technology. These programmes have been successful

<sup>968</sup> For example, *Belgium, Cuba, Luxembourg, Nicaragua and Romania*.

<sup>969</sup> ILO: *Minimum wage systems*, General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), Report III (Part 1B), ILC, 103rd Session, Geneva, 2014 (hereinafter the "2014 General Survey"), para. 78, referring to *Chile, Republic of Korea and Netherlands*.

<sup>970</sup> *ibid.*, paras 290–291.

<sup>971</sup> For example, *Argentina, Czech Republic, France, New Zealand and Slovakia*.

in the integration into employment of persons with severe disabilities, such as intellectual impairments, learning disabilities and traumatic brain injuries.<sup>972</sup>

**767.** Recommendation No. 168 also envisages measures to promote sheltered employment for persons considered unable to compete in the open labour market. Sheltered employment consists of the provision of work opportunities for persons with disabilities in separate facilities, either in a separate business or a separate part of an enterprise.

Paragraph 11 of Recommendation No. 168 indicates that measures to promote employment opportunities for persons with disabilities should include:

- “(a) appropriate measures to create job opportunities on the open labour market, including financial incentives to employers to encourage them to provide training and subsequent employment for disabled persons, as well as to make reasonable adaptations to workplaces, job design, tools, machinery and work organisation to facilitate such training and employment;
- (b) appropriate government support for the establishment of various types of sheltered employment for disabled persons for whom access to open employment is not practicable;
- (c) encouragement of co-operation between sheltered and production workshops on organisation and management questions so as to improve the employment situation of their disabled workers and, wherever possible, to help prepare them for employment under normal conditions;
- (d) appropriate government support to vocational training, vocational guidance, sheltered employment and placement services for disabled persons run by non-governmental organisations;
- (e) encouragement of the establishment and development of co-operatives by and for disabled persons and, if appropriate, open to workers generally;
- (f) appropriate government support for the establishment and development of small-scale industry, co-operative and other types of production workshops by and for disabled persons (and, if appropriate, open to workers generally), provided such workshops meet defined minimum standards;
- (g) elimination, by stages if necessary, of physical, communication and architectural barriers and obstacles affecting transport and access to and free movement in premises for the training and employment of disabled persons; appropriate standards should be taken into account for new public buildings and facilities;
- (h) wherever possible and appropriate, facilitation of adequate means of transport to and from the places of rehabilitation and work according to the needs of disabled persons;
- (i) encouragement of the dissemination of information on examples of actual and successful instances of the integration of disabled persons in employment;
- (j) exemption from the levy of internal taxes or other internal charges of any kind, imposed at the time of importation or subsequently on specified articles, training materials and equipment required for rehabilitation centres, workshops, employers and disabled persons, and on specified aids and devices required to assist disabled persons in securing and retaining employment;

<sup>972</sup> WHO: *World report on disability*, 2011, op. cit., p. 242.

- (k) provision of part-time employment and other job arrangements, in accordance with the capabilities of the individual disabled person for whom full-time employment is not immediately, and may not ever be, practicable;
- (l) research and the possible application of its results to various types of disability in order to further the participation of disabled persons in ordinary working life;
- (m) appropriate government support to eliminate the potential for exploitation within the framework of vocational training and sheltered employment and to facilitate transition to the open labour market.”

#### ***(d) Incentives for the employment of persons with disabilities***

**768.** The Committee notes that a range of financial incentives have been established in a majority of countries to promote the employment of persons with disabilities. These may take the form of tax incentives, particularly for SMEs. Reasonable accommodation in the workplace is supported in a number of countries.<sup>973</sup>

*Australia* – The Department of Employment and Workplace Relations runs a workplace modifications scheme which funds up to 10,000 Australian dollars (over US\$6,500) for modifications made for the purpose of accommodating employees with disabilities.

#### ***(e) Self-employment for persons with disabilities***

**769.** Entrepreneurship training and access to funding to start their own business can be a positive alternative for persons with disabilities, particularly for those who may prefer more flexible working arrangements, including the freedom to work from home and at hours of their own choosing.<sup>974</sup> However, many people with disabilities have few assets to secure loans, and may have lived below the poverty line for years. Mainstream microfinance programmes and entrepreneurship training should be made available for persons with disabilities to facilitate their participation in such programmes and to promote inclusive entrepreneurship.

#### ***(f) Persons with disabilities and the platform economy***

**770.** The Committee notes that a steadily increasing number of persons with disabilities are engaged in diverse employment arrangements, such as homework, platform work or gig economy work. While many persons with disabilities may find such work arrangements to be preferable in terms of flexibility, they are often highly precarious and the existence of an employment relationship may be uncertain, with the consequence that the worker may be left unprotected by labour legislation. It is therefore essential that clear criteria be established to determine whether such workers can be considered to be in an employment relationship so that, in that event, they benefit from the protections to which they are entitled under national employment law and policy (see chapter II).

<sup>973</sup> In addition, Article 27(h) of the CRPD provides that States parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps to, inter alia: “Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures”.

<sup>974</sup> D. Vaziri, et al.: *Disabled entrepreneurship and self-employment: The role of technology and policy building*, OECD, Paris, 2014.

**771.** Workers with disabilities may require flexibility in the organization of work, travel to and from work, and in dealing with medical and health issues and attending medical visits, physical or other types of therapy. Contingent work arrangements, such as through the gig economy and digital platform work, which offer flexibility, are attracting increasing numbers of persons with disabilities for whom these non-standard forms of working arrangements can make the difference between unemployed and earning a living. In many cases, however, these types of working arrangements provide lower remuneration, little to no benefits and give rise to income insecurity.<sup>975</sup>

**(g) Consultations**

**772.** Convention No. 159 and Recommendation No. 168 recognize the essential contribution that employers' and workers' organizations can make to the effective protection of the rights of persons with disabilities. The Convention requires Members to consult the representative organizations of employers and workers, as well as the representative organizations of and for persons with disabilities, on the implementation of the national policy on vocational rehabilitation and employment, including the measures to be taken to promote cooperation and coordination between public and private bodies engaged in vocational rehabilitation activities (Article 5). Recommendation No. 168 adds that representatives of the social partners and of organizations of persons with disabilities should be able to contribute to the formulation of policies concerning the organization and development of vocational rehabilitation services (Paragraph 32).

**773.** The CRPD requires States parties to respect the fundamental rights of persons with disabilities to form organizations of their own choosing and to bargain collectively, on an equal basis with all other workers. The principle of consultation and full participation is woven throughout the Convention, beginning with the Preamble, which considers that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them (Paragraph (o)).

*Belarus* – Working meetings are held on a regular basis with the participation of representatives of public associations for persons with disabilities and state administration bodies to discuss a new Bill on the rights of persons with disabilities and their social integration.

*Bosnia and Herzegovina* – Representatives of workers, employers and associations representing the interests of persons with disabilities are directly included in all decision-making processes related to vocational rehabilitation, vocational training and the employment of persons with disabilities. Consultations on all important questions in this regard are conducted on a weekly basis.

*Egypt* – Consultations are held with the social partners to ensure the provision of decent job opportunities and occupational training for persons with disabilities. Representatives of persons with disabilities are consulted on the development of provisions relating to them, and their aspirations and needs are given due consideration in the formulation of such policies.

<sup>975</sup> V. Di Stefano, "The rise of the 'just-in-time workforce': On-demand work, crowdwork and labour protection in the 'gig economy'", ILO 2016, pp. 5 and 11.

*Germany* – Organizations of persons with disabilities have been intensively involved in the implementation of the CRPD from the outset, as illustrated by their various submissions and comments, attendance at congresses and workshops, and participation in committees. In addition, organizations of people with disabilities and other civil society actors, such as employers’ and workers’ organizations, and associations of service providers in the support system for persons with disabilities, actively participate in the implementation of the CRPD, inter alia, through the Committee on the National Action Plan of the Federal Government for the Implementation of the CRPD established at the Federal Ministry of Labour and Social Affairs. The Advisory Council on the Participation of Persons with Disabilities also advises on measures, projects and programmes to promote the occupational inclusion of persons with severe disabilities, using resources from the compensation fund. The Advisory Council consists of 49 members, including representatives of workers, employers and organizations of persons with disabilities.

*Honduras* – The public policy for the exercise of the rights of persons with disability and their inclusion indicates that the policy was the outcome of intensive and fruitful collaboration between the public and private disability sectors, with the active and continuous participation of associations and organizations representative of persons with disabilities.

## ▶ IX. Conclusions

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774. *The Committee considers that the prevention and elimination of employment-related discrimination against persons with disabilities must be based on proactive policies and anti-discrimination legislation that is effectively enforced through labour inspection and accessible mechanisms and procedures for redress. National employment policies should address the many dimensions of disability, taking into account the impact of multiple grounds of discrimination. Legislation and policies should provide for financial or other incentives to encourage employers to recruit and train persons with disabilities and provide reasonable accommodation where necessary, as well as support, including psychosocial support if needed, vocational education and training and social protection, for persons with disabilities who are seeking productive, freely chosen and sustainable employment.*

775. *To enhance the employability of persons with disabilities in a changing labour market, the Committee emphasizes that education and training programmes, as well as employment services, should be accessible to persons with disabilities on an equal basis with other jobseekers, wherever possible, in addition to developing tailored services, where they are needed. Policy measures should also be designed to ensure that social protection schemes include persons with disabilities and are supportive of their return to work, and that any disincentives for persons with disabilities to seek work or return to work are eliminated.*

776. *Recalling the pervasive and persistent nature of historical perceptions that associate disability with inability, the Committee emphasizes that discrimination and health-related stigma in the world of work cannot be eliminated without a profound change in attitudes towards persons with disabilities. As indicated in Paragraph 16(b) of Recommendation No. 168, member States should use carefully planned public information measures to overcome prejudice, misinformation and attitudes unfavourable to the employment of persons with disabilities and their integration and inclusion in their communities and into society. Member States should also take active measures to promote awareness among employers of the incentives and means available to them to facilitate the hiring and retention or return to work of persons with disabilities, including incentives to encourage employers of all sizes to act as models in promoting the employment of persons with disabilities in both the public and private sectors. Good practices could include establishing a disability management programme, developing partnerships with local vocational rehabilitation, vocational training and employment services for the recruitment of skilled workers with disabilities, and undertaking awareness-raising activities for their own workers (including management and human resource personnel). Employers should be encouraged to adopt a disability policy or a simple declaration of non-discrimination, depending on the size and capacity of the enterprise.<sup>976</sup>*

777. *The Committee also considers that, in view of the time that has elapsed since the adoption of the Convention and the Recommendation in 1983, and taking into account developments at the national and international levels in relation to persons with disabilities, particularly the adoption in 2006 of the CRPD, consideration should be given to measures to ensure that Convention No. 159 and Recommendation No. 168 are more closely aligned with current international terminology and objectives in the area of disability, reflect more directly the elements of substantive and inclusive equality, and address the gender dimension of disability, as well as the impact of intersectional discrimination on the vocational rehabilitation and employment situation of persons with disabilities.*

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<sup>976</sup> For examples of such activities and policy models, see ILO: *Promoting diversity and inclusion through workplace adjustments: A practical guide*, 2015, op. cit.