

## NOTE ON ANTI DISCRIMINATION PROVISIONS CONTAINED IN THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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1. The convention represents a new phase of the fight against discrimination in the case of disabled persons. It takes up the theme of the inherent dignity and worth of persons and their equal and inalienable rights.

2. That discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person (preamble (h)).

3. The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. (article 1).

4. The definition "disability" may need to be revisited in the light of the Convention:

5. 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. (article 1).

6. "Discrimination on the basis of disability" is defined in Article 2:

"Discrimination on the basis of disability" means 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.

"Reasonable accommodation" means 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.

7. Art 3 then states non-discrimination as one of the general principles as well as accessibility. The discrimination measures in article 4 (general obligations) requires states to take into account the protection and promotion of the human rights of persons with disabilities in all policies.

8. Arguably this means that whenever the state's activities are engaged, for example in local government, there will be a legal right to require the protection and promotion of these rights of disabled persons to be taken into account.

9. Article 5 specifically deals with equality and non-discrimination. All persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. The states must shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

10. The states must take all appropriate steps to ensure that reasonable accommodation is provided. Positive action is permitted to achieve the de facto equality of persons with disabilities.

11. Article 6 deals with the position of women and recognises that they may be subject to multiple discrimination. In this field it may be necessary to introduce laws which also capture multiple discrimination.

12. Article 27 deals with work and employment. It makes clear that persons with a disability have a right 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. 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, including through legislation, to, inter alia:

(a) Prohibit 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;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) 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;

(f) Promote opportunities for self-employment, entrepreneurship the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) 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;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

This article has far reaching implications. It would require states, for example, to ensure that disabled persons who are volunteering as a means of re-entry into the labour market are protected against discrimination in respect of that volunteer. This is because without such protection the state cannot ensure employment opportunities for disabled persons without discrimination. Moreover without such protection a person with a disability cannot exercise the right to work on an equal basis with others in accordance with Art 27.1.

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