



Unge funksjonshemmede



## Submission by Norwegian DPOs to the CRPD committee on the upcoming General Comment on the right to work

We would like to thank the CRPD Committee for prioritizing article 27 on the right to work and employment, through this inclusive process in drafting a new General Comment. The Norwegian society has for decades called for targeted measures to ensure more persons with disabilities' access to work and employment. Sadly, only 41% of persons with disabilities are currently a part of the Norwegian work force compared to 73% of the general public<sup>1</sup>. These statistics have not been improved the last century, despite a long-standing struggle by Norwegian DPOs. As an example, the Norwegian Association for the Blind and Partially Sighted, originated as an organisation in 1900. One of their first political issue was on the right to work.

Norwegian disability organisations have coordinated our inputs to this important process. We are The Norwegian Federation of Organisations of Disabled People (FFO, an umbrella organisation with 82 member organisations of people with disabilities and chronic diseases<sup>2</sup>, The Norwegian Association of Youth with Disabilities (an umbrella organisation, representing 37 organisations for children and young people with disabilities or chronic disease)<sup>3</sup>, The Norwegian Association of Disabled (NAD)<sup>4</sup>, The Norwegian Association for Persons with Intellectual Disabilities (NFU)<sup>5</sup>, The Norwegian Association for Hard of Hearing (HLF)<sup>6</sup> and The Norwegian Association of the Blind and Partially Sighted<sup>7</sup>. We represent more than 400 000 persons with disability.

We are confident that the CRPD Committee's important work on the upcoming General Comment will include measures for State Parties to:

- 1) Combat discriminatory attitudes of employer
- 2) Ensure equality of all – it should not be more expensive for employers to hire a worker with disability compared to other workers

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<sup>1</sup> <https://www.ssb.no/en/arbeid-og-lonn/statistikker/akutu>

Statistics Norway. Downloaded March 15<sup>th</sup> 2021.

<sup>2</sup> <https://ffo.no/Organisasjonen/About-FFO/>

<sup>3</sup> <https://ungefunksjonshemmede.no/english/>

<sup>4</sup> <https://nhf.no/english/>

<sup>5</sup> <http://www.nfunorge.org/Om-NFU/In-English/>

<sup>6</sup> <https://www.hlf.no/>

<sup>7</sup> <https://www.blindeforbundet.no/om-blindeforbundet/information-in-english>

- 3) Ensure a national employment plan towards universally designed work places as well as specific measures for individual accommodation.

Inspired by the CRPD itself, previous General Comments by the CRPD committee and work of the Committee on Economic, Social and Cultural Rights (CESCR), **we encourage the CRPD Committee to further explore the relationship between universal design, reasonable accommodation, progressive realisation, maximum of available resources and violations.**

The right to work and employment is at the centre of the paradigm shift called for by the CRPD towards societies where persons with disability have rights and are not subjects of charity. Do not pity us – employ us! And when necessary – secure our income with other welfare programmes. Our concern is that a narrow focus on individual accommodation may in fact increase the barriers towards achieving equity and equality for all. To realize the rights of persons with disability we need rights based measures – not merely measures to compensate lack of accessibility.

The chapter on state obligations could include state parties' obligations to respect, protect and fulfil the right to work and employment of persons with disability. The obligation to fulfil should include measures to provide, facilitate and promote the right to work and employment.

The Committee on Economic, Social and Cultural Rights (CESCR) has in their General Comment 18 interpreted article 6, on the right to work, of the Covenant on Economic, Social and Cultural Rights. We find their chapter on violations interesting and **we encourage the CRPD Committee to add an extra chapter on violations in the new General Comment.** Furthermore, the CESCR highlights the importance of national employment strategies, "based on human rights principles aimed at progressively ensuring full employment for all." Additionally, the CRPD stresses that all relevant policy measures, including indicators and timelines, must be developed in close consultations with DPOs.

In our submission we argue the need for state parties to have in place national employment plans for all as already recommended by the CESCR in their GC 18. The CRPD's upcoming General Comment on the right to work and employment must **give clear guidance on how these national employment plans must be developed in close consultations with DPOs.** They must include measures towards universally designed work places as well as measures for individual accommodation. This is further elaborated below under the heading "National Employment Plans".

## **National employment plans**

These national employment plans should specifically address both the immediate and the progressive realisation of the rights of persons with disabilities. They should apply to both public and private sector.

These national employment plans must identify immediate obligations and show how these are safeguarded in national laws. Or, as a minimum, identify steps to be taken within a short timeframe for this necessary legal protection. By including these references, the national employment plans will increase both employers' and the public's awareness of the rights of persons with disability.

The national employment plan must include measures for the progressive realisation of the right to work and employment of persons with disability, with a focus on the obligation of state parties to take measures to the maximum of its available resources, as the right to work and employment is an economic right. The plan must include timelines/benchmarks and indicators with allocated budgets. The plan should state the overall aim of a universally designed society, including work places, and include measures of necessary individual accommodation to ensure necessary assistance and/or assistive technology to workers with physical, intellectual, psychosocial and/or sensory disabilities, as well as persons with chronic illness.

National employment plans must include long-term measures to achieve universal designs of the work places. This includes measures for universal design of physical and digital infrastructure as well as communication at the workplace. As short term measures, the state parties should put in place measures to encourage the transformation towards a universally designed society. State parties should also ensure the possibility to sanction undertakings failing to initiate necessary transformation measures. The test of what is reasonable must be subject to time as well as the state's available resources. The national employment plan should benchmark when reasonable accommodation in fact equals universal design.

Non-discrimination at the work place is only a reality when workers with disability can carry out their work without their employer carrying the burden of extra expenses for their accommodation. This means for instance that additional costs related to trainings on ICT systems with assistive technology and the implementation of necessary individual accommodation should be shouldered by the State party.

## Norwegian example

As an example, the Norwegian government reported in 2015 to the CRPD committee “The Anti-Discrimination and Accessibility Act contains a specific provision regarding universal design of ICT. The Act provides the legal basis for the Regulations for Universal Design of Information and Communication Technology Solutions , which specify who must comply with the statutory requirements, which ICT systems must be universally designed, which requirements must be met, and when the requirements enter into force. These regulations entered into force on 1 July 2013 and required new ICT systems to comply from 1 July 2014. Existing ICT systems must meet the requirements from 2021. (...) Net-based systems must comply with the Web Content Accessibility Guidelines (WCAG) 2.0.<sup>8</sup>.”

This shows that the full applicability of demands on universal design of ICT-system addressing a public audience only entered into force this year, in 2021. This grace period for older ICT-solutions was considered necessary for the transformation to take place. Similar grace periods could be included in national employment plans. This would illustrate the progressive realisation of the CRPD and at the same time clarify when the CRPD committee could consider when state parties in fact violate the rights of workers with disability.

The Act is ground breaking in addressing violations:

### **“Section 12. Breach of the duty to ensure universal design or individual accommodation**

Breach of sections 17 or 18 on universal design or sections 20, 21, 22 or 23 on individual accommodation shall be deemed to constitute discrimination.

Discrimination due to a lack of physical accommodation shall be fully regulated by sections 17 to 23 in respect of the legal persons and areas to which those provisions apply.”

At the same time, the Anti-Discrimination and Accessibility Act sadly also illustrates the lack of legal protection in Norway of the right to work of persons with disability. There are no legal requirements for universal designs at the workplace. The requirements only apply where the public has access. This has been addressed by both the CRPD committee and the Committee on Economic, Social and Cultural Rights in their Concluding Observations to Norway in 2019 and 2020. This omission of measures and legal protection when it comes to work and employment illustrates the overall critique by the CRPD Committee of the slow transformation from the medical paradigm to the CRPD’s social model based on rights of persons with disability.

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<sup>8</sup> <https://lovdata.no/dokument/NLE/lov/2017-06-16-51>

Another shortcoming of the Norwegian Anti-Discrimination and Accessibility Act is Paragraph 17. This states that the duty to universal design “does not apply to design or accommodation that imposes a disproportionate burden on the undertaking.”

The Anti-Discrimination and Accessibility Act in paragraph 22 states “Workers and job seekers with disabilities have a right to suitable individual accommodation in respect of recruitment processes, workplaces and work tasks, to ensure that they have the same opportunities as other persons to secure or sustain employment, benefit from training and other skills development measures, and carry out and have the opportunity to progress in their work. The right applies to accommodation that does not impose a disproportionate burden.”

Again, this calls for the need of the Committee to further clarify reasonable accommodation / disproportionate burden and progressive realisation. Furthermore, it also illustrates a paradox. ICT-solutions that are not universally designed are often incompatible with assistive technologies. The result being that individual accommodation is not possible, unless the undertaking takes costly steps in improving overall ICT-systems. Similarly, an undertaking in the process of hiring new staff will most likely not employ a wheel chair user if the office is on the third floor with no access to an elevator. An employee with a hearing impairment will most likely experience every day challenges working in an open landscape office, possibly resulting in less productivity.

## **Specific recommendations to the CRPD committee’s outline**

### **Interpretation of article 27.1 (a): Discrimination in the workplace, including workplace segregation**

Please include universal access to information and communication under this headline, more broadly. It is important that the demand for universal design applies to the physical and digital infrastructure, as well as the communication need at the work place, such as sign language interpretation and written interpretations.

The committee has underlined the importance of moving away from sheltered and segregated work places in its recommendations to several state parties. We stress the importance of this recommendation. Instead of working progressively to include more persons with intellectual disabilities in the ordinary labour market, the Norwegian government has granted more money in the state budget the past two years, to increase the capacity in segregated work places.

## **Interpretation of article 27 (b): The right to equal remuneration for work of equal value**

Additional main causes for the wage gap seem to be linked to:

- Absentee related to illness, rehabilitation etc may result in lack of opportunities for wage increase.
- Due to more attention by the employer to ensure individual accommodation, many workers with disability find it difficult to also demand wage increase.
- Workers with disability are seen as loyal with less risk of turn over due to their need for individual accommodation. This is a barrier to equal remuneration for work of equal value and makes salary negotiations difficult.

Please also include a paragraph on how to reduce extra costs when employing persons with disability. It is important that workers with disability are supported through state measures which hinders additional expenses of employers hiring workers with disability. This includes costs related to assistive devices, training in using assistive device (including the person with disability's work hours), and training on the joint use of assistive device with the ICT-programs at work.

There should be government schemes so that employers get subsidized wage costs for employees who do not produce 100 percent. In Norway, we have the arrangements for temporary and permanent wage subsidies. In addition, there should be programs for subsidized wages for persons with disability to lower the barriers of persons with disability for entering into the labour market.

The national social security system should be designed so that it is easy and profitable for the employee to combine work and social security.

We agree that sheltered and segregated work places, with low or no wage, are one of the main causes for wage gap between persons with disabilities and persons without disabilities/ others. This is normal practice for persons with intellectual and psychosocial disabilities in Norway. Persons with intellectual disabilities are usually granted disability benefit when they turn 18 years old, without further assessment of the person's possibilities in ordinary work. Approximately 15 % of persons with intellectual disabilities between the age of 18 and 67 work in segregated work places. In addition to disability benefit, which is primary income, they receive a low wage from their employer. According to the collective agreement between the employer organization and the employee organization the minimum wage is NOK 22,50 (approximately 2,15 euro) per hour. Norway has no general laws on minimum wage, but minimum wage is introduced in some industries. For example is minimum wage in

the cleaning industry set to NOK 187,66 (18,05 euro) per hour, and NOK 139,62 (13,43 euro) per hour for employees under the age of 18.

### **Interpretation of article 27 (b) part III: Measures to eliminate discriminatory attitudes and harassment, particularly against women, migrants and refugees with disabilities**

States parties must impose all employers to have systems in place for reporting hate speech and harassment of people with disabilities.

We support the measures identified in CESCR's GC 23 and encourages the Committee to promote national policies to include accessibility of information, of training materials and courses, as well as accessibility of complaint and redress procedures. These trainings should additionally focus on the paradigm change on disability and focus on universally designed processes. As well as reiterate Recommendation 206 of the newly adopted ILO Violence and Harassment Convention (No 190).

### **Interpretation of article 27 (c): Labour and trade union rights on an equal basis with others**

Sadly, the experience of Norwegian DPOs is that labour and trade unions have little or no competence on the rights of persons with disability. Many of the unions have little or no focus in this area. We recommend the Committee to call for:

- Close cooperation between DPOs and labour and trade unions. When possible, in the context of negotiations between labour and trade unions with organisations of employers and state representatives.
- Awareness campaigns targeting labour and trade unions on the rights of persons with disability – specifically their rights under article 27 of CRPD.

### **Interpretation of article 27 (d) and (j): Education and vocational training**

In order to fulfil the right to work, it is imperative that the State party takes measures to provide all people with disabilities access to high quality inclusive education and vocational training. In Norway, the effect of education in order to enter into the labour participation is of double importance for people with disabilities, compared to the general public. We recommend the Committee to call for:

- Ensure that educational and vocational institutions have strategies in place for universal design and that people with disabilities receive necessary accommodation during vocational training and apprenticeships.
- Financial support schemes to encourage employers to give apprenticeships to people with disabilities under vocational training
- Offer sufficient career guidance to pupils and students with disabilities, and ensure that guidance councillors are to promote universal design and measures to meet the needs of people with disabilities on the job market.

**Interpretation of article 27 (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**

Work life is continuously changing. In Norway, the parliament has decided a competence reform for this purpose. If the state establishes such continuing and further education programs to meet a changed working life, it must be ensured that employees with disabilities are included with access to financial support for various qualification measures. It must also be a requirement that company training and external courses must be adapted for all types of disabilities.

We urge the Committee to underline that the State has an obligation to provide assistance in finding employment for individuals receiving disability benefits on an equal footing with others. Disability benefits should only be given based on the will of people with disabilities, and never as an "easy solution" on the side of the labour and welfare services.

Normally, in order to be granted disability benefit in Norway, the person must undergo an assessment of working ability. This requirement does not apply for many persons with disability, including intellectual disability. The result is that persons with intellectual disabilities are granted disability benefit "automatically" when they turn 18 years old. The disability benefit represents an economic security, but also results in less assistance in finding work from the labour and welfare service.

It is imperative that state programs for ensuring necessary individual accommodation at new work places are granted to all workers with disability, independent on whether or not they received assistance in the recruiting process. In Norway, a blind worker is currently struggling to

have access to government accessibility programs because she has found employment through the open labour market.

### **Interpretation of article 27 (i): The obligation to provide reasonable accommodation in the workplace and the denial of reasonable accommodation as a form of disability-discrimination, including in recruitment processes**

The state party must establish a system of assistance in working life, ensuring necessary assistance to all workers with physical, intellectual, psychosocial or sensory disabilities, as well as persons with chronic illness. Persons who need assistance in everyday life, in addition to working life, must be ensured a seamless system of assistance, with the same assistants at work and in everyday activities.

Different types of assistance, such as personal assistance, functional assistance, writing support or sign language interpreters, can be necessary measures to ensure that persons with disabilities are included in the labour market.

Norway has established several different systems of assistance. However the different systems are not sufficient to ensure necessary assistance for all persons with disabilities in working life. Personal assistance is considered to be a health and care service, and is not normally provided in working life. However, IPS (Individual placement and support) is established in working life for people with mental illness, a measure given by both the health sector and the Labour and Welfare Service. This is a good scheme that should be extended to the group with other types of disabled. The scheme for functional assistance is offered in working life, but only for people with physical disabilities. This results in a lack of necessary assistance in working life for several people without physical disabilities.

## **Relationship with other provisions of the CRPD**

### **Article 5 – Equality and non-discrimination**

In conjunction with art. 27 (1) (e), persons with disabilities must receive effective and good quality assistance in finding, obtaining, maintaining and returning to employment, irrespective of type of impairment.

Persons with intellectual disabilities experience little assistance from the labour and welfare service, after being granted disability benefits. Some are assisted in finding work in segregated work places (15 %), but few receive assistance in finding work in ordinary work life.

## **Article 8 – Awareness-raising**

Stereotypes and prejudices towards persons with disabilities are one important reason why the rate of unemployment is higher for persons with disabilities than for the rest of the population. In order to comply with art. 27, it is important to combat stereotypes and prejudices towards persons with disabilities participating in work life.

Youth with disabilities often experience low expectations in school, resulting in less chances to be included in working life.

## **Article 9 – Accessibility**

In order to comply with art. 27, a transformation towards universally designed societies with measures for individual accommodation must take place.

## **Article 19 – Living independently and being included in the society**

In order to comply with art. 27, the state party must ensure that persons with disabilities have the necessary assistance to live independently. Personal assistance may be necessary to be able to travel back and forth to work, help a worker with physical disability with practical tasks or help a worker with intellectual disability with structuring the work. This requires a flexible support system, where the assistance is not only provided at home or together with other persons with a need of assistance.

## **Article 24 – Education**

Education is often a prerequisite for the opportunity to participate in ordinary work life. Many employers require diplomas for completed education. Many persons with disabilities do not receive good, effective and inclusive education. The consequence is that many persons with disabilities do not have the opportunity to obtain a diploma.

In Norway youth with intellectual disabilities, are segregated from peers in mainstream secondary schools, and have little or no opportunity to work with the mainstream learning objectives. The education of persons with intellectual disabilities is mostly arranged to result in competence in practical tasks in the household or work in segregated work places. They also experience low expectations regarding what they are able to achieve. This results in a lack of academic skills, which make them unfit or unattractive in the labour market.