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# THE GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

SUBMISSION TO THE  
COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES ON THE  
DRAFT General Comment on Equality  
and Non- discrimination (Article 5)

DECEMBER 2017

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## 1. Introduction

The Global Alliance of National Human Rights Institutions (GANHRI) commends the Committee on the Rights of Persons with Disabilities (the Committee) on its Draft General Comment on Equality and Non-Discrimination under Article 5 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

The rights in Article 5 are instrumental. Respect for equality and freedom from discrimination is essential to safeguard all the other rights enshrined in the CRPD. It is, as a result, appropriate that the Committee has chosen to provide detailed advice to State Parties on their obligations under Article 5.

GANHRI notes with appreciation the efforts the Committee has made to involve all interested parties, including National Human Rights Institutions (NHRIs), in all its activities. This constructive engagement follows on the precedent-setting collaboration between Disabled Persons Organization, NHRIs, State Parties, and other in the drafting of the Convention.

It is in this spirit of collaboration that GANHRI submits these comments and recommendations on the Draft General Comment.

## 2. The Global Alliance of National Human Rights Institutions

The **Global Alliance of National Human Rights Institutions (GANHRI)** is the international association for national human rights institutions from all parts of the globe. Established in 1993 as International Coordinating Committee of National Human Rights Institutions (ICC), GANHRI promotes and strengthens national human rights institutions (NHRIs) to be in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights.

GANHRI coordinates at an international level the activities of NHRIs established in conformity with the Paris Principles and promotes the establishment and strengthening of NHRIs in conformity with the Paris Principles in order to strengthen human rights domestically. It undertakes accreditation of NHRIs under the auspices of the Office of the United Nations High Commissioner for Human Rights, and holds an annual meeting and international conferences to strengthen cooperation and share good practice between NHRIs. A number of GANHRI members have been designated national monitoring mechanisms pursuant to Article 33 (2) CRPD or form part of such monitoring mechanisms.

The current GANHRI Chairperson is Professor Dr Beate Rudolf, Director of the German Institute for Human Rights. The current GANHRI Secretary is Montserrat Solani Carboni, Defensora, Defensoria de los Habitantes de Costa Rica.

This submission also includes the input from **the European Network of NHRIs' (ENNHRI) CRPD Working Group**.

ENNHRI has convened a Working Group on the UNCRPD, chaired by the Great British NHRI, the Equality and Human Rights Commission.

Given that not all article 33.2 CRPD national monitoring mechanisms (NMM) are NHRIs, the ENNHRI CRPD Working Group has granted observer status to and works collaboratively with a number of partners including from the EU Agency for Fundamental Rights (FRA), Equinet – the European Network of National Equality Bodies, the European Ombudsman, the European Disability Forum and also the European Regional Office of the UN Office of the High Commissioner for Human Rights.

### **3. General recommendations**

GANHRI highlights a concern raised by some Disabled People's Organisations (DPO) that States Parties may view the contents of the draft GC as providing an exhaustive interpretation of article 5.

This could allow the State Party, for example, to seek to argue that some instances of discrimination fall outside the material scope of article 5, if such instance is not explicitly mentioned in the GC.

To counteract such a strategy, it is recommended that the GC includes an explicit statement that its normative content is 'open-ended' and that non-discrimination is an evolving concept.

**GENERAL RECOMMENDATION:** The draft General Comment (and General Comments in general) should make direct reference to the Committee's concluding observations and its decisions under the communication and inquiry procedure of the Optional Protocol. The Committee's concluding observations and its jurisprudence under the Optional Protocol should more consistently feed into and thereby reinforce the substantive content of General Comments.

#### 4. Art. 5 (1) - Being equal before and under the law (Paragraphs 15-17)

Many States Parties to the CRPD have significant domestic legal protections in place to protect the rights of persons with disabilities.

In Canada, for example, section 15(1) of the *Canadian Charter of Rights and Freedoms* provides for equality before and under the law, as well as the right to equal protection and equal benefit of the law without discrimination based on a mental or physical disability. There also exists quasi-constitutional human rights legislation at both the federal and provincial level. However, during its review of Canada, the Committee noted in its *Concluding Observations*<sup>1</sup> that, despite the existence of strong legal protections there continue to be “persisting gaps in the exercise and enjoyment of rights by persons with disabilities”.

This points to the need to have a comprehensive system to coordinate and monitor implementation of the CRPD pursuant to, and consistent with, Article 4.1 (general obligations) and Article 33 (national implementation and monitoring).<sup>2</sup>

In the Philippines, Sec. 1, Art. III of the Constitution provides that “no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” It also acknowledges that all human rights instruments ratified by the country benefit persons with disabilities. It is understood that unless a clearly expressed limitation is stated, all rights in the Constitution apply to everyone, including persons with disabilities

Further, the Constitution of the Philippines, by virtue of Section 1 and 2 of Article 13<sup>3</sup>, forbids discrimination on the bases of belief, gender, physical conditions and others. This provision applies to persons with disabilities.

Aside from the Constitution of the Philippines, there are also several legislation enacted to safeguard the rights of persons with disabilities such as the Magna Carta for Disabled Persons or

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<sup>1</sup> *Concluding Observations on Canada's Initial Report*, Committee on the Rights of Persons with Disabilities, CRPC/C/CAN/CO/1, May 8, 2017

<sup>2</sup> A number of countries have developed national disability action plans to implement their obligations under the Convention. NHRIs, such as the Australian Human Rights Commission, have participated in the development of these plans. In other countries, the rights of persons with disabilities have been addressed as part of national human rights plans, the development of which is sometimes led by NHRIs as it is the case in Scotland. Some NHRIs have developed action plans concerning specific issues, such as the Britain's Equality Human Rights Commission. See *Human Rights and Disability. A Manual for National Human Rights Institutions*, Asia Pacific Forum, March 2017, p.115.

<sup>3</sup> “The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments; and the promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.”

Republic Act No. 9442; Republic Act No. 10070 or 'An Act Establishing an Institutional Mechanism to Ensure the Implementation of Program and Services for Persons with Disabilities in every Province, City and Municipality'; and Republic Act No. 1179 or 'An Act to provide the promotion of vocational rehabilitation of the blind and other handicapped persons and their return to civil employment.'

Despite the above-mentioned legislative enactments, the challenge lies in its implementation due to several factors such as "lack of funds", lack of government support and prioritization, lapses in data collection, and inefficient monitoring among others.

**RECOMMENDATION 1:** The General Comment should be strengthened by adding to paragraph 17 a recommendation that State Parties adopt national action plans for implementing the Convention in collaboration with all levels of government and persons with disabilities. Particular attention should be paid to involving women, children, ethnic minorities and Indigenous peoples in the development of action plans. State Parties should ensure that such an action plan includes provisions for benchmarking, reporting, and monitoring, as well as a time frame for implementation. Also, such provisions could also envisage the need to review provisions/clauses in national legislation relating to people with disabilities in all laws and legislation belonging to States Parties

#### **5. Art. 5 (2) - Prohibition of discrimination and equal and effective legal protection (Paragraphs 19-23)**

This section of the General Comment outlines the need to ensure effective measures to identify disability-related discrimination and provide for appropriate redress through legal mechanisms such as the courts and quasi-judicial processes available through the NHRI.

GANHRI proposes that each of the main forms of discrimination discussed at paras 20 – 30 of the General Comment are explained, and distinguished from each other, with concrete examples.

GANHRI also recommends a more detailed explanation, including concrete examples, of the practical application of i) reasonable accommodation in the provision of goods and services and ii) the prohibition of discrimination in the provision of goods and services in the private sector.

Regarding paragraph 20 a), GANHRI suggests that the example of '*disability-based violence in all its appearances, such as rape, abuse and exploitation, hate-crime, and beatings*' is re-positioned, setting out that States Parties should ensure that national policy and legislative frameworks, including sentencing guidelines, recognise disability-hostility as an aggravating factor when recording, investigating, prosecuting and sentencing such crimes.

Paragraphs 20 and 76 d) should include 'instruction to discriminate'.

The section could further be strengthened by highlighting that, in addition to legal protections, States Parties should take measures to prevent and remove barriers to equality before they result in discrimination.

The duty of accommodation short of undue hardship is a fundamental requirement in ensuring substantive equality. However, by definition, "accommodation" refers to the need to adjust or alter something after the fact. This type of accommodation, while necessary to address individual circumstances, reinforces the medical-charitable model of disability in which persons with disabilities are seen as objects that need to be fixed rather than as rights holders.

Canadian courts, for example, have emphasised the need to reconceptualise accommodation by, whenever possible, putting it at the beginning of the process. In the *Meiorin* and *Grismer* cases,<sup>4</sup> the Supreme Court of Canada directed obligation-holders to no longer simply rely on individualized accommodation in response to requests from employees who face barriers in the workplace. As a result, employers and service providers must make sure that they build accommodation into their policies and practices at the design stage. This approach to accommodation is in line with the principles of universal design (included in Article 2) that emphasizes the need to design policies, programs, and facilities in such a way as to be usable by as broad a spectrum of people as possible. It is also consistent with the principles of inclusion, autonomy and independence that are fundamental to the CRPD.

The development and enforcement of strong accessibility standards, as referenced in Articles 6 and 9, is also critical to preventing and removing discriminatory barriers to persons with disabilities before they result in discrimination.<sup>5</sup> Legal procedures, while important, have, in many jurisdictions, not resulted in the broad systemic change that is required under the CRPD. Achieving equality by replacing stairs with ramps, one staircase at a time, will never be effective.

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<sup>4</sup> *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, [1999] 3 S.C.R. 3, 35 C.H.R.R. D/257 [*Meiorin*].

*British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868, 36 C.H.R.R. D/129 [*Grismer*]

<sup>5</sup> A number of NHRIs have undertaken work to promote accessibility and universal design, through carrying out national accessibility audits, assessments or studies to identify how the right to accessibility is respected or barriers exist within their respective countries. These include the National Commission for Human Rights of Rwanda, the National Human Rights Commission of Mexico and the Danish Institute for Human Rights, among others. See *Human Rights and Disability. A Manual for National Human Rights Institutions*, Asia Pacific Forum, March 2017, p.122.

**RECOMMENDATION 2:** The General Comment should include reference to:

1. the requirement that achievement of equality before and under the law requires States Parties to implement positive measures to identify and remove barriers before they result in discrimination;
2. the need to incorporate the principles of reasonable accommodation and universal design into the development and revision of all laws, policies and procedures so as to ensure equality for all;
3. the need to create, implement, and enforce strong accessibility standards, including monitoring, evaluating and planning to rectify those entities in need of renovation;
4. the need for reasonable accommodation in relation to information communication technology (ICT) including the need to have products in accessible formats; and 5. the need for training and capacity building of relevant authorities.

Each of the main forms of discrimination should be further explained, and distinguished from each other, with concrete examples. The General Comment should also give a more detailed explanation, including concrete examples, of the practical application of i) reasonable accommodation in the provision of goods and services and ii) the prohibition of discrimination in the provision of goods and services in the private sector.

The example of 'disability-based violence in all its appearances, such as rape, abuse and exploitation, hate-crime, and beatings' should be re-positioned setting out that States Parties should ensure that national policy and legislative frameworks, including sentencing guidelines, recognise disability-hostility as an aggravating factor when recording, investigating, prosecuting and sentencing such crimes.

Paragraphs 20 and 76 d) should include 'instruction to discriminate'.

#### 6. Art. 5 (3) - Reasonable Accommodation (Paragraphs 24-28)

GANHRI cautions the Committee from taking too rigid an approach in making the distinction between accommodation duties and accessibility duties. While the dichotomy outlined in para 25 is generally correct, the Canadian courts, for example, have taken a broader approach, seeing the duty to accommodate and the requirement of accessibility as part of a comprehensive approach to advancing substantive and transformative equality.

Accommodation of individual circumstances will always be necessary, but the adoption of universal design principles and strong accessibility standards should, over time, reduce the need for individual accommodation, provided that measures to this end are visible and barrier-removal

of the various obstacles has been achieved. In this context, the distinction between *ex ante* and *ex nunc* duties is less distinct.<sup>6</sup>

**RECOMMENDATION 3:** The General Comment should note that, while the accommodation duty and the accessibility duty are distinct, they should be used in harmony with each other in order to achieve the overall objective of removing barriers to the full equality of people with disabilities.

Paragraphs 24-28 on reasonable accommodation should include a clear statement that the cost of reasonable accommodation cannot be onto the person with disabilities, support workers or family members.

The Committee may wish to draw from particular legal contexts in framing its discussion of disproportionate or undue burden.<sup>7</sup>

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<sup>6</sup> The New Zealand Human Rights Commission and the Office of the Ombudsman in New Zealand published a guide on reasonable accommodation in 2015, as well as a variety of information materials for the private sector and persons with disabilities. See *Human Rights and Disability. A Manual for National Human Rights Institutions*, Asia Pacific Forum, March 2017, p.120.

<sup>7</sup> For example, the following points, gathered from Canadian legislation and jurisprudence, may be of use to the Committee:

- Section 15(2) of the *Canadian Human Rights Act* limits the consideration of what constitutes “undue hardship” to factors relating to “health, safety and cost”. Other matters – such as the preference of employees or customers, employee morale, and business inconvenience – are not valid considerations.
- The courts have set a high threshold on determining what is “undue”. The Supreme Court of Canada has said that, “one must be wary of putting too low a value on accommodating the disabled. It is all too easy to cite increased cost as a reason for refusing to accord the disabled equal treatment”.<sup>7</sup>
- Generally, the burden of an accommodation will be considered too high if it affects the survival of the organization or it threatens to change its essential nature.
- The determination of what is “undue” is contextual, depending on considerations such as the size and nature of an obligation-holder and the particular needs of the accommodation seeker.
- Evidence that an accommodation is “undue” must be objective, substantive, and quantifiable. Speculation about the potential long-term consequences of an accommodation should not be considered.
- Even when a particular accommodation can be shown to pose an “undue hardship”, a duty holder must consider less burdensome alternative accommodations.
- Despite the high threshold for “undue hardship”, an employer is not required to change the essential nature of a job in order to accommodate an individual in the workplace. However, temporary accommodation, including changes in job requirements or reassignment to another job, may be required.
- In order to fulfill the duty of accommodation, the duty holder has both substantive and procedural obligations. Even if a particular accommodation is found to pose an “undue hardship”, the duty holder must be able to show that this determination was arrived at through a process of considering alternatives and consulting with the accommodation-seeker and other experts.

**RECOMMENDATION 4:**

A definition in relation to accessible formats as a form of reasonable accommodation could be added.

**7. General obligations of States parties to non-discrimination and equality (Paragraphs 34 and 36)**

The Committee may wish to emphasize the requirement that the mechanisms established by States Parties to enforce the right of non-discrimination for persons with disabilities must include bodies that function independently of government.

In this regard the *Paris Principles*<sup>8</sup>, which are referred to in Article 33.2 of the Convention, provide useful guidance. As noted by the OHCHR:

*NHRIs must comply with the Principles which identify their human rights objectives and provide for their independence, broad human rights mandate, adequate funding, and an inclusive and transparent selection and appointment process. The Principles are broadly accepted as the test of an institution's legitimacy and credibility*<sup>9</sup>.

GANHRI is mandated to accredit and periodically re-accredit NHRIs under the auspices of OHCHR to evaluate their compliance with the Paris Principles.

**RECOMMENDATION 5:** The General Comment may wish to note the fundamental role played by NHRIs in promoting and protecting the rights of persons with disabilities as equal under the law.<sup>10</sup> The Committee may wish to encourage State Parties that have not yet done so to establish NHRIs compliant with the Paris Principles, or, if other bodies are established, to ensure that they are established in line with the requirements of the Principles.

Access to effective enforcement of the right to equality is a fundamental part of access to justice as provided for in Article 13. However, according to the experience of NHRIs in many countries, many persons with disabilities find the procedural requirements imposed by available legal

<sup>8</sup> Adopted by General Assembly resolution 48/134 on 20 December 1993

<sup>9</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/ParisPrinciples20yearsguidingtheworkofNHRI.aspx>

<sup>10</sup> NHRIs play a critical role in promoting and protecting the rights of persons with disabilities as equal citizens under the law through assessing the compliance of existing or proposed national policies, legislation, regulation and practices. The National Human Rights Commission of Mexico has also used its legal powers to challenge the constitutional compliance of policies adversely affecting the rights of persons with disabilities. See *Human Rights and Disability. A Manual for National Human Rights Institutions*, Asia Pacific Forum, March 2017.

processes daunting. They may also encounter additional barriers in accessing justice, such as physical inaccessibility of premises, stigma, the inaccessibility of information and communications, unavailability of interpretation services, and others.

As a result, they often do not seek enforcement of their rights.

In the Philippines, for example, all persons, including those with disabilities, are allowed to participate in every phase of the judicial process and to seek for appropriate remedies.

Rule 130 of the Rules of Admissibility<sup>11</sup> provides that persons with disabilities, even those with sensory impairments, may testify as witnesses, provided they can “perceive and make known their perception to others.” For example, visually impaired persons can hear, smell and taste and deaf persons can see and “make known their perceptions” through sign language interpreters.

Recognizing that there are “parties or witnesses who, to be fully understood and to prevent possible miscarriage of justice, may require a sign language interpreter,”<sup>5</sup> The Supreme Court of the Philippines authorized trial court judges, through the Office of the Court Administrator (OCA), to engage the services of sign language interpreters. However, to date, the implementation of this policy remains problematic due to “lack of funds”.

Further, despite existence of legal provisions allowing persons with disabilities to validly testify in court proceedings, the problem lies with the appreciation or the weight of the litigant’s testimony. It may be inferred that physical or mental disabilities largely affects the “probative value of the person’s testimony. This situation becomes all the more problematic if aggravated by the lack of training of judges in handling cases involving persons with disabilities. Such case may result to misappreciation of circumstances leading to eventual miscarriage of justice as the case may be.

These barriers, among others, prevent persons with disabilities in the Philippines from seeking legal redress.

**RECOMMENDATION 6:** The General Comment should emphasise the need to ensure that enforcement activities are carried out in accordance with the same consideration as in paragraphs 59 – 63 of the draft General Comment which deal with access to justice (Article 13).

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<sup>11</sup> Sec. 20. Witnesses; their qualifications. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make their known perception to others, may be witnesses. Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be ground for disqualification. (Revised Rules of Evidence)

## 8. Article 9 – Accessibility (Paragraph 47)

As noted above, GANHRI cautions against applying too rigid a distinction between the duty to accommodate and the right to accessibility. While the two concepts are distinct, they are interconnected and interdependent

For example, in the Canadian province of Ontario, a person can file a complaint of discrimination against a transportation provider even if that provider has complied with a regulatory accessibility standard. In considering whether the transport company has met its obligation of accommodation, the Ontario Human Rights Tribunal would apply the judicially-defined test for accommodation. A finding of failure to accommodate could result in a change to the overall standard as well as accommodation of the individual complainant. In this way, the duty to accommodate and the duty of accessibility work together.

**RECOMMENDATION 7:** The General Comment should note that, while the duties related to accessibility and accommodation are distinct, they are inter-related and interdependent.

Taking into account this inter-related and interdependent nature, the General comment could comment on the concepts 'undue hardship' and 'undue accommodation' and further comment on the concepts 'duty of accommodation' and 'duty of accessibility'.

## 9. Articles 14, 15, 16, and 17 - Liberty and security; freedom from torture, exploitation, violence and abuse; integrity of the person

In the discussion of these articles the Committee may wish to make reference to the situation of persons deprived of their liberty.

In many jurisdictions, prisoners suffer disproportionately from mental illness. Their condition may be exacerbated by practices such as solitary confinement that in some circumstances may constitute torture. Mental health services are often lacking in prisons. This may result in undue suffering of prisoners and hampers the rehabilitation of prisoners back into society.

The Commission on Human Rights of the Philippines (CHRP) for example, monitors the report from the Philippines National Police (PNP) and from the Armed Forces of the Philippines (AFP) all detainees and detention facilities and assist in filing complaints. The CHRP shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment.<sup>12</sup>

<sup>12</sup> Section 11, Anti-Torture Act of 2009.

Specific to mental health, the Philippines Congress, through the Senate of the Philippines approved on third and final reading a bill creating a national mental health policy<sup>13</sup> the first of its kind in the country. The Senate bill seeks to integrate mental health services and programs in the public health system. It also mandates the government to provide basic mental health services at the community level and psychiatric, psychosocial and neurologic services in all regional, provincial and tertiary hospitals. As soon as this is enacted into law, it will provide a comprehensive mental health interventions to ensure that the rights of all persons with mental health needs are protected and secured.

**RECOMMENDATION 8:** The General Comment should make reference to the special needs and accessibility of person deprived of their liberty, including those with intellectual disabilities.

#### 10. Article 29 - Participation in political and public life (paragraph 74)

The definition of “electoral processes” should include all aspects of elections, including political campaigns, and not just the formal voting process.<sup>14</sup>

**RECOMMENDATION 9:** The General Comment should indicate that all aspects of political campaigns, including the locations of campaign offices and rallies, the publications of party platforms and other campaign documents, and the use of electronic media, should be accessible for persons with disabilities.

#### 11. Implementation at the national level (paragraph 76)

Paragraph 76 of the draft General Comment sets out the steps States Parties should take to ‘ensure the full implementation of article 5 of the Convention’.

GANHRI recommends that paragraph 76 l) be re-formulated.

Section 76 l) reads as follows “Ensure that national monitoring mechanisms in alignment with article 33 of the Convention are adequately resourced to being able to address disability-based and multiple/intersectional discrimination against persons with disabilities in their work. In this regard, *ensure that the national monitoring mechanisms closely work together with national equality mechanisms.*” (Italics added)

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<sup>13</sup> Senate Bill No. 1354, Philippine Mental Health Bill

<sup>14</sup> NHRIs have conducted monitoring of the rights of persons with disabilities during elections, including the National Human Rights Commission of Sierra Leone and the National Commission for Human Rights of Rwanda. See *Human Rights and Disability. A Manual for National Human Rights Institutions*, Asia Pacific Forum, March 2017, p.129.

The second sentence should be amended to take account of the independent mandate of NHRIs and other national monitoring mechanisms designated under article 33(2). Since the state party has no power to direct the activities of the national monitoring mechanisms, the wording should be amended.

**RECOMMENDATION 10: GANHRI recommends that paragraph 76 l) is re-formulated. In the sentence “ensure that the national monitoring mechanisms closely work together with national equality mechanisms”, ‘ensure’ could be replaced by ‘encourage’.**

## 12. Indigenous Peoples

Paragraph (p) of the Preamble to the CRPD acknowledges the specific circumstances of indigenous persons with disabilities.

NHRIs from states with indigenous peoples report that the percentage of indigenous persons with disabilities is dramatically higher than that in the general population. In addition, they face systemic racism, come into conflict with the law, and are imprisoned at much higher levels than the general population.<sup>15</sup>The compound effect of multiple and intersecting forms of discrimination faced by indigenous persons with disabilities often results in an inability to appropriately access justice, including human rights justice.

The Philippine law, “recognizes and promotes the rights of indigenous cultural communities with the framework of national unity and development”.<sup>16</sup> The Constitutional provisions prohibiting discrimination on the bases of belief, gender, physical conditions and others apply to persons with disabilities. Section 1 and Section 2 of Article 13 stated that “1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments; and 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.” These provisions for persons with disabilities are looked at as allowances for affirmative action aimed to level the playing fields for the sector. It comes short however to the explicit provision of the CRPD which mentions not only the enjoyment of the sector of all human rights but “Enjoyment on an equal basis with the rest” of the population.

Thereby, enabling laws are available to ensure the full enjoyment and protection of their rights. Specifically, on access to human rights justice, the Indigenous Peoples shall have the right to use

<sup>15</sup> This has been reported for instance by the NHRIs of Canada and the Philippines.

<sup>16</sup> Article II, Sec. 22, 1987 Philippine Constitution.

their own commonly accepted justice systems, conflict resolution institutions, peace building, processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.<sup>17</sup>

In addition, indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons<sup>18</sup>. Accordingly, the State shall guarantee the right of indigenous peoples to government's basic services.

**RECOMMENDATION 11:** The General Comment should note the specific circumstances of Indigenous persons with disabilities and highlight the need to ensure that they have effective access to justice.

### 13. Public procurement services

GANHRI notes that the draft General Comment makes no mention of public procurement of services. It is increasingly common practice that States Parties/public authorities put out to public tender many services related to disabled persons' daily lives.

**RECOMMENDATION 12:** The General Comment should make explicit reference to State Parties' obligation to ensure that tendering processes and the delivery of "contracted out" public services take into account the normative content of article 5 and the CRPD in general.

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<sup>17</sup> Section 15, Republic Act No. 8371, The Indigenous Peoples Rights Act of 1997

<sup>18</sup> Ibid