

International Disability Alliance (IDA)

Member Organizations:

Disabled Peoples' International, Down Syndrome International,
Inclusion International, International Federation of Hard of Hearing People,
World Blind Union, World Federation of the Deaf,
World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry,
Arab Organization of Disabled People, European Disability Forum,
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con
Discapacidad y sus familias (RIADIS), Pacific Disability Forum

Joint submission on the Philippines by the Philippine Coalition on the CRPD & IDA Human Rights Committee, 106th session (15 October - 2 November 2012)

The Philippines Coalition on the CRPD, comprising more than 15 organisations of persons with disabilities (DPOs) and the International Disability Alliance (IDA), have prepared the following information and proposed recommendations to the State highlighting the civil and political rights of persons with disabilities in the Philippines as it concerns the issues of non-discrimination; freedom from torture, cruel, inhuman or degrading treatment; the right to liberty ; access to justice and the right to participation in public affairs and the right to vote.

PHILIPPINES

The Philippines ratified the Convention on the Rights of Persons with Disabilities on 15 April 2008.

Please find attached:

- Annex I which compiles selected disability references in UPR recommendations & Concluding Observations of treaty bodies with respect to the Philippines (page 7)
- Annex II which includes information on the organisations making this submission (page 10).

Introduction

Persons with disabilities have remained largely invisible due to discrimination and continued marginalization in society. There is a dire lack of documentation for even the most fundamental information about Filipinos with disabilities. According to the 2000 census, there are 942,098 Filipinos with disabilities who make up 1.23% of the population. Half of the sector are female, and children and youth comprise significant proportions and the majority of persons with disabilities are in the rural area. Through the past three decades however, the incidence of disability has been reported variably by different entities leading to serious doubts on overall accuracy. The 1.23% figure of persons with disabilities differs greatly from the latest figures published by the World Bank and WHO in the 2011 World Report on Disability which sets the latest figures on persons with disabilities at 15%. National statistics

have been a longstanding concern as national / local legislation and policy rely heavily on documented numbers of disadvantaged Filipinos to justify appropriations for programs, activities and services. In a developing country where public finances are subject to many limitations, budgets for various vulnerable sectors compete with each other and other national priorities.

Violence against women and girls with disabilities- Articles 3, 7, 23, 24, 26

The findings in the research of the Philippine Deaf Research Center (PDRC) indicate that women with disabilities are more likely than men with disabilities and women without disabilities to be victims of all forms of violence. Available documents and reports of several NGOs and DPOs indicate that violence against women with disabilities is more severe and is committed over an extended period due to impunity and difficulties in accessing justice.

In particular, for deaf women who are victims of violence, degrading treatment, physical and sexual abuse, the non implementation of the national plan for provision of interpreters serves as one of the chief reasons for the denial of fair and just trials. Even right at the stage of submitting complaints and investigations, the lack of support for interpretation leads to the dismissal of these cases.

Other from the findings made by the Philippine Deaf Research Center, there is a dearth of data that could be accessed in the relevant agencies expected to collect and store this information. The National Council on Disability Affairs, the Philippine Commission on Women and the Commission on Human Rights (CHR) have not made available such information since 2008.

Prior this period, the CHR reported fifty seven (57) reported cases of human rights violations against persons with disabilities, and cases of women and girls are in the majority. The outcome of those cases remain unknown to date.

While there are legislation and programs addressing the prevention, rehabilitation and protection against violence against women and girls run by the government and NGOs, there are none which focus on or address women and girls with disabilities.

The resulting barriers identified due to these facts include:

- a. Laws against rape, sexual abuses, violence, sex trafficking of women do not equally benefit women and girls with disabilities;
- b. There is an absence of data, knowledge about the specific forms of exploitation, violence and abuse experienced by women with disabilities, and the inter-relationship between gender and disability and exploitation, violence and abuse;
- c. There is an inadequate link and promotion of services for women with disabilities in the community and even within the sector of disability.
- d. Distance and inaccessibility of service centers and severe inadequacy of accessible information about victim support services for women and girls with disabilities.
- e. Non inclusive service policies, procedures and practices that in effect exclude women and girls with disabilities.
- f. Untrained service staff who are not skilled to communicate much less comprehend and address the particular concerns and needs of persons with disabilities.

Right to liberty – disability-based detention and forced treatment permitted in the law - Articles 2, 7, 9, 16, 26

There is a proliferation of laws, policies and programs against violence, deprivation of liberty and equal recognition before the law in the Philippines. Most of them address women, children, indigenous, vulnerable and marginalized groups. Even with the persistent assertion of the authorities of the inclusive nature of these laws and programs, persons with disabilities remain excluded.

The vulnerability of persons with psychosocial disabilities in mental health institutions has been recognized by the UN Special Rapporteur on Torture.¹ In the Philippines, Rule 101 of the Rules of Court "Hospitalization of Insane Persons",² and the Child and Youth Welfare Code,³ allow for the detention in institutions of persons with psychosocial disabilities without their free and informed consent, and often persons lacking their legal capacity are "voluntarily" detained upon the consent of their guardian without the right to challenge their detention. The National Center for Mental Health (NCMH), and the Sanctuary Center (a public shelter for recovering women with psychosocial disabilities) have double or triple barricades as well as solitary confinement areas.

There are reports of accused persons with psychosocial disabilities, persons with autism and blind or deaf persons who are detained Mental Health Centers. They do not benefit from the presumption of innocence, but instead are dealt with as psychiatric patients and therefore are forcibly hospitalised and detained without trial.

Such practices targeted at persons with psychosocial disabilities are discriminatory and no longer in line with the latest standards of international human rights law. Article 14 of the CRPD and recommendations of the CRPD Committee explicitly set out that disability based detention is violation of the right to liberty. The Special Rapporteur recalls that article 14 of CRPD prohibits unlawful or arbitrary deprivation of liberty and the existence of a disability as a justification for deprivation of liberty".⁴

Access to Justice- Articles 2, 3, 14, 16, 21, 26

For the deaf community, despite a National Plan of Action target in 2007 to establish a system for sign language interpretation, no mandated national policy or system for standards, accreditation, dispatch or code of conduct, exists to date.

The Department of Justice (including the Phil National Police, National Bureau of Investigation and Bureau of Jail Management and Penology) have no policy on sign language interpreting. Deaf persons are charged, arrested, detained, investigated,

¹ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly. A/63/175, 2008

² Rule 101 of the Rules of Court entitled "Hospitalization of Insane Persons"

www.familymatters.org.ph/Procedural%20Laws/Rule%20101%20hospitalization%20of%20insane%20person.htm

³ Child and Youth Welfare Code (PD 603, Art. 141 to 186)

www.chanrobles.com/childandyouthwelfarecodeofthephilippines.htm

⁴ Recommendation of the Special Rapporteur on Torture ([A/63/175](http://www.unhcr.org/refugees/refugees/4)), para 64.

prosecuted, or incarcerated without fully understanding / being fully understood. From 2006-2012, the Philippine Deaf Resource Centre documented 80 cases with deaf persons as respondents. Twenty-six percent of cases with known data involved respondents who are deaf minors. Further, deaf women and girls who are victims of violence, sexual abuses and other degrading dealings are often denied access to justice.

The lack of focused policies and programs addressing the distinct realities of deaf women and other types of women with disabilities contributes to the proliferations of cases that are not attended appropriately thus resulting to impunity. This fact emboldens the perpetrators of these types of violators of rights of persons with disabilities.

Supreme Court policy provides interpreting only if a deaf person needs to be understood.⁵ Of 214 cases involving deaf parties, only 24% were appointed sign language interpreters. Of 63 cases with unschooled deaf parties requiring deaf relay interpreting, only 25% were appointed interpreters. In 16 cases of gender-based violence filed by unschooled deaf complainants requiring deaf relay interpreting, only 13% were appointed interpreters.⁶

In fact, a recent petition communicated to the CEDAW Committee concerns the rape of a deaf girl who was denied access to justice in the Philippines on account of the lack of sign language interpreting in the trial proceedings.

It should be noted that throughout the country there are over 2,000 court interpreters for spoken languages, working as fulltime salaried employees. On the other hand, compensation for sign language interpreters is not even appropriated in the national budget of either the Department of Justice or the Judiciary. Neither is there any provision for accessibility through sign language interpreting in the local governments' Katarungang Pambarangay (village justice system). Likewise, there is no policy for communication accessibility in cases with the National Labour Relations Commission, or the Philippine Mediation Center.

Right to participation in public affairs and the right to vote – Articles 2, 16, 25, 26

The right to vote and participation in elections by persons with disabilities have been hindered by discriminatory provisions in the elections law and widespread accessibility issues such as lack of sign language interpreting; physical inaccessibility, and non-guarantee of privacy / confidentiality at the polling places.

The Synchronised Elections Law 1991 excludes from the right to vote “insane or incompetent persons as declared by competent authority” (section 118(c)) which is in violation of the right to political participation as set out in Article 25, ICCPR and Article 29, CRPD, and confirmed in OHCHR thematic study on participation in political and public life by persons with disabilities which explicitly states that there is no reasonable restriction nor exclusion permitted regarding the right to political participation of persons with disabilities.⁷

⁵ Supreme Court Memorandum 59-2004; Supreme Court Circular 104-2007

⁶ Access to Justice: Case monitoring by the Philippine Deaf Resource Center (2006-2012). www.philideafres.org/pdf/PDRC_Case_Monitoring.pdf

⁷ A/HRC/19/36, 21 December 2011

It is a **worrying situation that the Human Rights Committee General Comment no 25 was recently cited** by the Philippine Mission to the UN in Geneva as the basis to a reservation adopted in March 2012 in the context of the adoption of the Human Rights Council resolution on the right to political participation of persons with disabilities, **asserting that “insane” people must remain deprived of their political rights.**⁸ While the Commission on Election (COMELEC) in partnership with Philippine organisations of persons with disabilities (DPOs) have publicly expressed objection to this reservation as a measure of discrimination and contrary to their obligations under the CRPD. The Department of Foreign Affairs, through the Division of the United Nations and International Organizations (UNIO) maintains its firm position to keep the reservation before the Human Rights Council. This is flagrant violation of Articles 4, 5, 12 & 29 of the UNCRPD.

Recommendations:

- Take steps to accede to the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Articles 3 and 7

- Address the heightened risk for women and girls with disabilities of becoming victims of violence, abuse, and exploitation in the home, community and institutions, and to adopt measures to ensure the accessibility of services and information to victims with disabilities, including training of police and other interlocutors. Ensure that all legal procedures in cases involving crimes of rape and other sexual offenses are impartial and fair, and not affected by prejudices or stereotypical gender notions. (see CEDAW Committee, 2008, [CEDAW/C/46/D/18/2008](#), para 8.9)
- Ensure measures taken to provide holistic and coordinated responses and strategies across different services (domestic violence and sexual assault, disability, mental health service systems) to prevent and combat violence against women and girls with disabilities, including the incorporation of gender, disability and child-friendly perspectives, the collection of such disaggregated data and meaningful consultation with women and girls with disabilities and their representative organisations for effective policy-making.

Article 4

- Expand the legislative protection of discrimination to incorporate discrimination on the basis of disability, perceived disability and association with a person with a disability, and ensure the protection from denial of reasonable accommodation, as a form of discrimination.⁹ Give guidance, awareness-raising and training to ensure a better

⁸ Para 4 of General Comment no 25 : « Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria...For example, **established mental incapacity may be a ground for denying a person the right to vote or to hold office.** »

⁹ CRPD Article 5 - Equality and non-discrimination. 1. States Parties recognize that 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. 2. States Parties 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. 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. 4. 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.

comprehension by all stakeholders, including persons with disabilities, of the concept of reasonable accommodation and prevention of discrimination.¹⁰ (see Concluding Observations of the CRC Committee, 2009, [CRC/C/PHL/CO/3-4](#), paras 29, 30, in Annex below).

Articles 2, 7, 9, 16 and 26

- Adopt measures to ensure that all health care and services provided to children and adults with disabilities, including all mental health care and services, are based on the free and informed consent of the individual concerned, and that involuntary treatment and confinement are not permitted by law.

Articles 2, 3, 14, 16, 21

- Ensure the effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations and support, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, in accordance with Article 13 of the CRPD.
- Implement fully the target for an interpreting system in the National Plan of Action and pass proposed House Bills: No. 4631 “Court Interpreters for Persons with Disabilities Act”; No. 6079 “Filipino Sign Language as the national sign language” (includes sign interpretation in courts, schools, broadcast media).

Articles 2, 16, 25, 26

- **Repeal restrictions in the electoral law (Synchronised Elections Law 1991) that excludes from the right to vote “insane or incompetent persons as declared by competent authority” (section 118(c)) which is violation of Article 25, ICCPR and Article 29, CRPD and contrary to the latest international standards on political participation; and the withdrawal of the reservation emitted by the Philippines before the Human Rights Council which excludes persons with disabilities from their right to political participation.**
- Reform the law in accordance with Article 16, ICCPR and Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) to guarantee the equal recognition before the law of persons with disabilities, including the adoption of measures to ensure that having a disability does not directly or indirectly disqualify any person from exercising his or her legal capacity autonomously, and to ensure that persons with disabilities have access to support that they may need to exercise legal capacity on an equal basis with others, respecting the will and preferences of the person concerned. (See also report of Special Rapporteur on Torture, 28 July 2008, A/63/175, paras 73 and 44)

¹⁰ The Republic Act 7277 was enacted in 1992 and despite amendments to some sections by Republic Act 9442 in 2009, it retains the view of disability which defines “persons with disabilities” as “those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being” (Sect. 4a), which is in conflict with the CRPD’s approach. Under RA 7277, In order to prosecute potential violations, Sec 44 on enforcement states that a “pattern or practice of discrimination” must be evident. This diminishes the significance of single or individual acts of discrimination.

ANNEX- Disability references in Concluding Observations and views with respect to the Philippines

Universal Periodic Review of the Philippines, 12th session, [A/HRC/21/12](#), 2012

129. The recommendations formulated during the interactive dialogue and listed below enjoy the support of the Philippines:

129.7. Fully implement the Magna Carta of Women for promoting gender equality (Republic of Korea); Provide more resources to support the effective implementation of the Magna Carta of Women (Malaysia); Effective implementation of the Magna Carta of Women in all fields, inter alia, labour relations, access to justice and health care, including aspects of sexual and reproductive health; and sexual violence (Spain);

129.10. Maintain the momentum in actively pursuing efforts to further protect the rights of women and children, especially through the enactment of legislation (Brunei Darussalam); Continue to intensify its efforts in addressing all the remaining challenges of human rights, in particular, in the fields of promotion of economic growth, and social protection and equity with special attention given to women's and children's rights through ongoing programs and plans of action (Cambodia);

129.8. Continue promoting the empowerment of women (Nicaragua); Continue its efforts to implement domestic policies to further promote gender equality and strengthen the protection of women against discrimination and violence (Singapore); Intensify efforts to fight violence against women by the public awareness-raising campaigns, by adequately resourcing the relevant initiatives and by training law enforcement personnel (Liechtenstein); Undertake concrete measures to further promote gender equality in employment, gender responsive approach in the judicial system and better maternal care (Thailand)

129.11. Intensify its efforts to protect the rights of other vulnerable groups, especially persons with disability, minorities and indigenous peoples so as to allow them equal access to social, educational, health and other services (Thailand); Continue its work in relation to the promotion of the protection of the rights of specific vulnerable groups in society such as senior citizens, the poor and those affected by natural disasters (Trinidad and Tobago); Study the possibility to develop new measures so that programs to combat poverty include vulnerable people such as seniors and people with disabilities (Argentina);

130. The following recommendations enjoy the support of the Philippines which considers that they are already implemented or in the process of implementation”:

130.6. Adopt inclusive legislation for people with disabilities (Spain);

Concluding Observations of the CRC Committee, 52nd session, 2009, [CRC/C/PHL/CO/3-4](#)

29. While noting efforts by the State party to eliminate discrimination against children, including through the implementation of the Girl Child Plan and a number of programmes targeting indigenous and minority children, the Committee reiterates its concern at discrimination faced by many children, in particular children living in poverty, children with disabilities, indigenous and minority children, including Muslim children living in Mindanao, migrant children, street children and children living in rural areas as well as children living in conflict areas, as regards their access, inter alia, to social and health services and education. The Committee also remains concerned at the de facto discrimination still affecting the girl child and impeding the full enjoyment of her rights, mainly due to societal attitudes toward girls and women. The Committee further expresses its concern at the fact that the State party has not yet addressed the situation of children born out of wedlock, who still face discriminatory practices such as their classification as “illegitimate” and their restricted right to inherit.

30. The Committee urges the State party to increase its efforts to eliminate discrimination against children and in particular to:

(a) Adopt and implement a comprehensive strategy addressing all forms of discrimination, including multiple forms of discrimination against all vulnerable groups of children and aimed at combating discriminatory social attitudes towards girls, children living in poverty, children with disabilities, indigenous and minority children, including Muslim children living in Mindanao, migrant children, street children and children living in rural areas as well as children living in conflict areas;

Children with disabilities

53. While welcoming the State party’s ratification of the Convention on the Rights of Persons with Disabilities in 2008, the Committee expresses its concern at the lack of a comprehensive policy to ensure that children with disabilities have equal access to social, educational, health and other services. The Committee also remains concerned at the high prevalence of disability among Philippine children, due to a number of causes, including malnutrition and unsanitary living conditions as a result of extreme poverty. The Committee is further concerned that those children continue to face de facto discrimination and that they have an invisible role in society.

54. The Committee recommends that the State party strengthen its measures to protect and promote the rights of children with disabilities, inter alia, by:

(a) Developing and implementing a comprehensive policy for the protection and promotion of the rights of children with disabilities and enforcing existing legislation to ensure that children with disabilities have equal access to social, educational, health and other services;

(b) Strengthening the existing database and monitoring system on children with disabilities;

(c) Ensuring participation of children with disabilities and members of their families in the planning, implementation and evaluation of programmes;

(d) Making every effort to provide programmes and services for all children with disabilities, including mental disabilities, and ensure that such services receive adequate human and financial resources;

(e) Carrying out awareness campaigns to sensitize the public about the rights and special needs of children with disabilities and encourage their inclusion in society;

- (f) Providing training for professional staff working with children with disabilities, such as teachers, social workers, medical, paramedical and related personnel;
- (g) Taking into account article 23 of the Convention, the Committee's general comment No. 9 (2006) the rights of children with disabilities as well as the Convention on the Rights of Persons with Disabilities.

Views of the CEDAW Committee on Communication No. 18/2008, *Karen Tayag Vertido v the Philippines*, adopted on 16 July 2010, [CEDAW/C/46/D/18/2008](#)

8.9 Acting under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under article 2 (c) and (f), and article 5 (a) read in conjunction with article 1 of the Convention and general recommendation No. 19 of the Committee, and makes the following recommendations to the State party:

- (a) Concerning the author of the communication
 - Provide appropriate compensation commensurate with the gravity of the violations of her rights
- (b) General
 - Take effective measures to ensure that court proceedings involving rape allegations are pursued without undue delay
 - Ensure that all legal procedures in cases involving crimes of rape and other sexual offenses are impartial and fair, and not affected by prejudices or stereotypical gender notions. To achieve this, a wide range of measures are needed, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women. Concrete measures include:
 - (i) Review of the definition of rape in the legislation so as to place the lack of consent at its centre;
 - (ii) Remove any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimize secondary victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either:
 - requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or
 - requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.”
 - (iii) Appropriate and regular training on the Convention on the Elimination of All Forms of Discrimination against Women, its Optional Protocol and its general recommendations, in particular general recommendation No. 19, for judges, lawyers and law enforcement personnel;
 - (iv) Appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid revictimization of women having reported rape cases and to ensure that personal mores and values do not affect decision-making.

Annex II - Information of the submitting organisations

The **Philippine Coalition on the UNCRPD** is comprised of more than 15 organisations with about 65,000 members with disabilities of all types. While it was primarily established for the purpose of ensuring the implementation of the UNCRPD in the Philippines through monitoring and parallel reporting, it also engages before other human rights mechanisms such as other UN treaty bodies and the Universal Periodic Review.

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The **International Disability Alliance** (IDA) is a unique international network of global and regional organisations of persons with disabilities, of which EDF is a regional member. Established in 1999, each IDA member represents a large number of national disabled persons' organisations (DPOs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world's largest – and most frequently overlooked – minority group. IDA's mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

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