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The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honor to submit herewith the reply from the Federative Republic of Brazil to the **note verbale OHCHR/TESRPRD/DESIB/HRESIS/PH/JS/ST**, issued in 20 November 2020, inviting Governments to provide contributions to the upcoming report of the OHCHR on “The right to work” (mandated by resolution A/HRC/43/7).

The Permanent Mission of Brazil in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



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With regard to note verbale OHCHR/TESRPRD/DESIB/HRESIS/PH/JS/ST, issued on 20 November 2020, with an invitation to Governments to send contributions to the preparation of the upcoming OHCHR report “on the relationship between the realization of the right to work and the enjoyment of all human rights by persons with disabilities” (mandated by resolution A/HRC/43/7, on “the right to work”), the Brazilian government would like to present the following information, based on inputs received from the Ministry for Women, Family and Human Rights, and divided into four chapters: (i) institutional arrangements; (ii) the realization of the right to work and the enjoyment of all human rights by persons with disabilities; (iii) legal framework; and (iv) existing challenges and public policies adopted.

I - INSTITUTIONAL ARRANGEMENTS

(1) At the federal level, the National Secretariat for the Rights of the Persons with Disabilities of the Ministry of Women, Family and Human Rights is responsible for the coordination of public policies to the benefit of persons with disabilities.

(2) The competencies of the National Secretariat are described in art. 33 of Decree no. 10,174 of December 13, 2019 - notably in clauses II, III and IV:

II - to coordinate matters, governmental actions and measures concerning persons with disabilities;

III - to coordinate actions to prevent and eliminate all forms of discrimination against persons with disabilities and provide for their full inclusion in society;

IV - to coordinate, guide, and monitor measures to promote, guarantee, and defend the provisions of the International Convention on the Rights of Persons with Disabilities (ICRPD), enacted by Decree No. 6,949 of August 25, 2009, by means of the development of public policies for the inclusion of persons with disabilities;

(3) By reinforcing the guarantee and defense of the ICRPD, the National Secretariat takes into considerations that the treaty detains a constitutional-level hierarchy, strength and effectiveness and therefore constitutes a parameter for the control of the constitutionality of new laws and infra-constitutional acts. Moreover, in the Brazilian legal system, this Convention was internalized with the same procedure of a constitutional amendment.

(4) All the National Secretariat's activities are also guided by the rules established in Law No. 13,146 of July 6, 2015, also known as the "Statute of the Person with Disability" or the "Brazilian Law on the Inclusion of the Person with Disability".

(5) Additionally, the Federal Government, in compliance with the international commitments of the Brazilian State, maintains a body dedicated exclusively to assess public policies with the objective of including persons with disabilities in the labor market, namely the Secretariat of Labor, of the Ministry of Economy.

(6) The structure of the Secretariat of Labor is defined by Decree no. 9,745 of April 8, 2019, and includes the Undersecretariat of Labor Inspection, whose labor inspectors have the responsibility to monitor the compliance, at the national level, with international treaties and conventions ratified by Brazil.

(7) Linked to the Undersecretariat of Labor Inspection, there is the National School of Labor Inspection (ENIT), a body dedicated to the collection, registration, production and dissemination of knowledge related to labor inspection. Interested parties can follow up the results of the policy of inclusion of the person with disability in the labor market through the Brazilian Panel of Information and Statistics of Labor Inspection, available at <https://sit.trabalho.gov.br/radar/>.

II - THE REALIZATION OF THE RIGHT TO WORK AND THE ENJOYMENT OF ALL HUMAN RIGHTS BY PERSONS WITH DISABILITIES

(8) Sources from the academy indicate that an effective, well-known approach to combat the prejudice against persons with disabilities is to recognize their labor potential by bringing diversity into the business environment. Besides representing the ethical profile of the company, which starts to assimilate this as a value, it brings about several benefits to all those involved in this process, given that the life along with individuals different from the majority can contribute to the development of a healthier work environment, which promotes mutual respect, improving productivity and performance and providing better integration between workers (GIL, 2002; SASSAKI, 2002).

(9) According to this perspective, work and employment are recognized as a right, encompassing the freedom of choice and acceptance in the labor market and excluding any discrimination based on disability, with guarantees of equal access to the processes of appointment, selection and retention in employment, in both public and private sectors.

(10) The vulnerability of citizens with disabilities is disproportionately heightened by the existence of behavioral, institutional, cultural, social, economic and environmental barriers, in addition to the high cost of living related to the condition of a person with disability, which may require greater health support, differentiated nutrition, inputs for continued use, constant treatment with various health professionals or multiprofessional teams and assistive technology. Therefore, the relevance of the work to reduce this vulnerability stands out.

(11) A person with disability who is employed in the private sector or in the public administration possesses a higher probability of achieving the other rights provided by law. Work is a powerful tool to help in the search for quality of life; to provide for financial, emotional and family support; and to lead to the realization of human dignity and the full participation in society.

(12) The coordination of governmental and non-governmental instances and entities in order to implement integrated actions and collect strategic data is essential for the State to effectively intercede in favor of the inclusion of PwD in the labor market, due to the challenges aforementioned.

III - LEGAL FRAMEWORK

(13) In the Brazilian legislation, art. 3, VIII of the Federal Constitution of 1988 constituted a key milestone to foster of the protection of persons with disabilities in the labor market. This provision determined the definition of a percentage of public positions and jobs to be occupied by persons with disabilities, making clear that the segment of the population with disabilities are in need of the adoption of public policies aimed at their professional inclusion.

(14) In addition, art. 7, XXXI prohibits any discrimination with respect to salary and admission criteria for workers with disabilities, confirming the nature of the right to work as a social right.

(15) It also obliges public authorities to offer, by means of the Social Assistance structure, the possibility of qualification and rehabilitation to persons with disabilities, in order to promote their integration into the life in community (art. 203, IV and V).

(16) In the infra-constitutional sphere, article 8 of Law 13,146 of July 6, 2015 (see paragraph 4 above) reinforced the right of persons with disabilities to work as a means to guarantee his/her human dignity. Furthermore, in its Chapter VI, specifically dedicated to this right, there are three sections that broadly reinforce the perspective that, regardless of the degree of disability of the person, work is one of the most efficient and effective means of inclusion in society.

(17) In Law 13,146 the following provisions should be highlighted:

Art. 4 - Every person with a disability has the right to equal opportunities with others and shall not suffer any form of discrimination.

Art. 34 - Every person with a disability has the right to work, in a work of their choice, in an accessible and inclusive environment, with equal access to opportunities as other persons.

(18) A thorough analysis of the aforementioned Chapter VI reveals that legislators paid special attention to the inclusion of persons with disabilities in the workplace, as stated in its article 37:

Art. 37: The inclusion of persons with disabilities in the work encompasses the competitive employment, with equal access to opportunities as the other persons, in accordance with the terms of the labor and social security legislation and with attention to the accessibility rules; the supply of assistive technology resources; and the reasonable adaptation in the work environment.

Sole paragraph: The competitive employment of the person with disability may occur through work with support, observing the following guidelines:

I - priority in the assistance to the person with disability with greater difficulty in joining the work field;

II - provision of individualized support measures that meet the specific needs of the person with disability, including the provision of assistive technology resources, of a facilitating agent and of support in the work environment;

III - respect for the vocational profile and interests of the person with disability receiving the support;

IV - availability of advice and support to employers, with a view to defining strategies for inclusion and overcoming barriers, including behavioral barriers;

V - conduction of periodic evaluations;

VI - intersectoral coordination of public policies;

VII - possibility of participation of civil society organizations.

(19) Likewise, this legal instrument highlights that professional qualification and rehabilitation be perceived as mandatory public policies, so as to include those persons with disabilities who have not yet joined the labor market, or the ones who are currently outside but intend to return, respecting their free choice, vocation and interest.

(20) Even before the enactment of the Brazilian Law for Inclusion of the Person with Disability, the Brazilian State recognized the importance of the issue of inclusion of the persons with disabilities in the labor market. For example, Law No. 8,213 of July 24, 1991 was enacted and its article 93 became a historical and social milestone.

(21) Commonly referred as the "Quotas Law", it created the minimum reserve percentage, in companies with more than 100 (one hundred) employees, from 2% to 5% of the total job vacancies, for persons with disabilities or rehabilitated social beneficiaries. This form of calculation allows for a leveling out of the total number of employees in all facilities of the company with the number of people with disabilities, in order to promote the greatest possible inclusion in the work environment.

(22) Any non-compliance with this legal provision is considered a discriminatory practice, something prohibited by the Federal Constitution. It is the responsibility of the Labor Undersecretariat of the Ministry of Economy to inspect companies, in which context they may receive notifications or a fine, depending on the case.

(23) Finally, the Brazilian criminal law, especially in Law no. 7.853, of October 24, 1989, also provides for punishment for denying or obstructing a person's employment, work or promotion due to his/her disability:

Art. 8 - The following constitutes crimes punishable by imprisonment from 2 (two) to 5 (five) years and a fine:

III - denying or obstructing employment, work or promotion to a person due to his/her disability.

(24) The set of rules mentioned above lead to the conclusion that the Brazilian legal system constantly seeks to strengthen and promote the right to work of the person with disability.

IV - EXISTING CHALLENGES AND PUBLIC POLICIES ADOPTED

(25) Firstly, it should be recalled that the National Secretariat for the Rights of Persons with Disabilities constantly works to ensure the participation of persons with disabilities in any process of elaboration or revision of policies of interest of this part of the population - in crystal clear and strict respect for the motto "Nothing about us, without us!", derived from article 4, item 3 of the ICRPD.

(26) As demonstrated above, one of the main forms of integration and participation of persons with disabilities in society is precisely through employment. The entrance and permanence of people with disabilities in the labor market are essential to the implementations of article 27, paragraph 1, of the International Convention:

States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labor 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 (...)

(27) In fact, there is a clear concern to address the issue of employability of the person with a disability not only in a quantitative manner, but also in a qualitative one. Although the "Quotas Law" provides for the obligation of companies to hire persons with disabilities, the effectiveness of this inclusion through work faces some obstacles.

(28) According to the most recent records of the Brazilian Panel of Information and Statistics of Labor Inspection (through the collection of data from the Annual Social Information Report - RAIS 2019), there are 768,723 vacancies reserved for people with disabilities in the labor market. Out of these vacancies, 389,165 (50.62% of the total) are

occupied, which means that there is a deficit of 379,558 (49.38%) unoccupied vacancies.

(29) The Brazilian State promoted 11,401 inspections, resulting in the inclusion of 46,900 people with disabilities in the labor market and the issuance of 4,669 infraction notices, in addition to 696 Terms of Commitments, agreed with companies that have not complied with the "Quotas Law". These results demonstrate the Federal Government's persistent effort in favor of social inclusion by access to the labor market.

(IV-1) Qualification and rehabilitation

(30) In practice, many companies delay the hiring of persons with disabilities because the candidates do not fulfill the necessary credentials to perform the job, and do not have sufficient technical skills, experience and qualification. Low instruction levels, with a predominance of the completion of elementary or high school, is on the list of reasons pointed out for the difficulty in hiring PwDs. In the search for solutions to this problem and aiming at providing adult persons with disabilities the opportunity to have some qualification, non-governmental organizations, such as educational institutions and NGOs, have offered courses organized in the modality of Professional Education.

(31) In this regard, the constant offer of training and qualification courses enhances the inclusive process of the person with a disability in the labor market, making the worker more suited to the duties of a specific position, more personally motivated and more apt for professional ascension. For this purpose, qualification and rehabilitation services as well as measures for access to work are provided by Social Assistance system and the Social Security subsystem, which are responsible for providing the means for professional adaptation or re-adaptation with a view to ensure participation in the labor market.

(32) At the end of this process, the National Social Security Institute (INSS) issues an individual certificate that should indicate the activities to which a person with disability is considered apt to exercise. The main

challenge related to this constitutional duty is to provide rehabilitation centers in sufficient number to cover as many Brazilian municipalities as possible.

(33) Also, the adoption of qualification and rehabilitation as forms of access to work reinforces the perception that the Brazilian State, with the positive social bias of the Federal Constitution, has sought to remedy the concerns expressed long before, especially those highlighted by the International Labor Organization (ILO) Convention no. 159, of June 1, 1983, which expressed the need to "ensure equality of opportunity and treatment to all categories of disabled persons, in both rural and urban areas, for employment and integration into the community" (fifth preambular paragraph).

(34) Finally, in accordance with art. 3 of Law no. 12,711 of August 29, 2012, the Federal Government reserves places for persons with disabilities to take part in free of cost, tertiary education at the Federal Universities and Federal Training Institutions, contributing to undergraduate and graduate qualification in order to promote social change through public tertiary education.

(IV.2) The novel coronavirus pandemic (COVID-19)

(35) The population with disabilities was severely affected by the pandemic caused by the spread of the novel coronavirus. The Statute of the Person with Disability defines, in its article 10, sole paragraph, that "in situations of risk, emergency or state of public calamity, the person with disability shall be considered vulnerable, and the public authorities shall adopt measures for their protection and safety.

(36) This vulnerability (as explained in paragraph 14 above) implies a serious risk to the dignity of the person and, even more relevant than usual with the enactment of the decree of the state of public calamity (Legislative Decree no. 6, of March 20, 2020), due to the public health emergency resulting from COVID-19.

(37) The main measure to protect the work and employment of citizens with disabilities took place with the publication of Law No. 14,020 of July 6, 2020, concerning the Emergency Program for the Preservation of Employment and Income. Article 17, V prohibits the unjustified dismissal of an employee with a disability for the duration of the public calamity:

Art. 17. During the state of public calamity referred in Art. 1 of this Law:

V - the unjustified dismissal of an employee with a disability will be forbidden.

(38) Thus, the advent of the above-mentioned Law no. 14,020, of 2020 - which made it possible for the State to intervene in favor of workers impacted by the suspension of labor contracts or reduction of working hours due to the COVID-19 pandemic - is related to the abovementioned international norms, since it constitutes an appropriate measure of the Brazilian State to safeguard the right to work.

(IV.3) The biopsychosocial evaluation

(39) The National Secretariat for the Rights of Persons with Disabilities has made efforts to regulate article 2, paragraph 1 of Law No. 13.146 of July 6, 2015, which deals with the biopsychosocial assessment as a tool for proving disability. Once implemented, it will allow more effective access to public policies aimed at persons with disabilities and will serve as support to combat potential irregularities.

(40) The evaluation instrument is based on the ICF - International Classification of Functionality, Disability and Health - and will be named Modified Brazilian Functionality Index (IFBr-M), with the objective of identifying people who have long-term impediments of a physical, mental, intellectual and sensory nature and to qualify how the contextual factors of the environment interact with such impediments, generating the disability - all this in accordance with the concept of disability defined by the ICRPD.

(41) In short, the evaluation instrument: (a) encompassed 7 domains and 38 activities of the ICF, of the World Health Organization (WHO), with a delimitation of the functionality as the central axis of the assessment; and (b) it counted with the follow-up from the civil society, through the participation of and the approval by the National Council of the Rights of the Persons with Disability (CONADE).

(42) It also has the appropriate sensitivity and specificity to specify whether the person assessed has or does not have a disability, and the degree of severity of the disability - mild, moderate or severe.

(43) This assessment will be adopted throughout the country and seeks to reflect all the factors that can influence the lives of Brazilians, following the biopsychosocial model.

(44) As far as labor-related rights are concerned, it will guarantee, for example, the confirmation of disability for entry into public service, professional rehabilitation, retirement under the General Regime of Social Security (RGPS), reservation of positions in public selections, reservation of vacancies in technical and higher education at federal institutions, reservation of positions in private companies, special time for public servants with disability, special time for public servants to accompany his/her spouse, child or other dependent with disability, need for support staff in the displacement in service of a public servant with disability, excluding other public policies established by state, district or municipal laws, not yet considered in this impact.

(IV.4) Studies on work with support as a measure of social inclusion

(45) In partnership with the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Federal Government (National Secretariat for the Rights of the Person with Disability) is preparing for the launching of a specialized consultancy in "work with support" as a form of competitive inclusion of the person with disability in the labor market.

(46) The work with support is provided for by article 37, sole paragraph, of Law No. 13,146 of 2015, and consists of creating a work environment appropriate to the reality of each individual, respecting his/her characteristics and catalyzing the labor potential.

(47) This modality of entry in the labor market takes into account the characteristics of the individual, of the workplace and of employers, the need and availability of assistive technology and the involvement of organizations representing persons with disabilities.

(48) Work with support and “supported employment” are not considered synonyms: while the former is more comprehensive and involves a variety of methodologies, the latter consists of one specific methodology in the field of inclusion of persons with disabilities in the world of work. Supported Employment emerged in the United States in the late 1970s with the aim of address the issue of labor inclusion of persons with intellectual disabilities. Persons with disabilities facing barriers in entering the regular labor market were, at the time, sent to the so-called sheltered workshops, workplaces aimed, for the most part, exclusively at employing persons with disabilities.

(49) However, with the advent of the ICERD, the paradigm of integration of persons with disabilities into society gave way to inclusion on equal terms with other people, making it totally inappropriate to maintain practices similar to those of sheltered workshops, in which a person with disabilities was segregated from social coexistence.

(50) The implementation of work with support should ensure access for persons with disabilities to the world of work, given that it provides their inclusion in a more effective way, by identifying barriers in the workplace and the need for adaptations of accessibility/assisted technology equipment, as well as the need of awareness raising to the work team and changes in organizational culture to include and not discriminate.

(51) In this context, the consultancy to be initiated should provide as one of its results the elaboration of a draft decree to regulate the aforementioned art. 37, along with studies that present a theoretical background on this legal subject, together with comparisons with successful international experiences and suggestions for improving Brazil's public policies of accessibility in the workplace.

(52) At the end of this process, the delivered products will be an input to the National Secretariat for the Rights of the Person with Disability in order to improve the public policies of the Ministry of Women, Family and Human Rights (MMFDH), regarding the access of persons with disabilities in the labor field.
