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**Comments of the Center for the Human Rights of Users and Survivors of Psychiatry on the draft CRPD General Comment No. 8 on Article 27**

Overall consideration to ensure full inclusion

1. The General Comment should establish the scope of its coverage and remind states parties of the sub-groups of persons with disabilities who may be marginalized in disability-related initiatives, including persons with actual or perceived psychosocial disabilities.

Notably helpful provisions

1. Paragraphs 17 and 18 describing the characteristics of sheltered employment, and paragraph 93 on obligations in connection with the linkage to Article 28 are especially well done in their specificity in relation to the lives of persons with disabilities. Similarly paragraphs 46-47 and 52 are welcome in their specificity. Paragraph 94 is also well done in its reminder of the right to rest and leisure which pertains to persons with disabilities equally as others.

Further suggestions for change

1. The discussion of Article 27(1) chapeau in paragraphs 13 et seq should address ‘*the existence of discriminatory legislation that limits the eligibility of persons with disabilities, based on an actual or perceived impairment, for professional or occupational licenses or employment,[[1]](#footnote-1) which States are obligated to repeal so as to guarantee equal opportunity to gain a living by work that is freely chosen or accepted*.’
2. Paragraphs 19 et seq on Article 27(1)(a) should address the distinct phases of employment mentioned in that provision – ‘*conditions of recruitment, hiring and employment, continuance of employment, career advancement’*. The content of these guarantees must be elaborated along with the forms of discrimination (which could be shortened) and should not be left vague. Among the forms of discrimination in the hiring process should be mentioned ‘*asking questions as to whether the applicant has an impairment or has been subjected to institutionalization or guardianship based on impairment (direct discrimination) and requiring an applicant to account for all places of residence and all periods of adult life spent without employment, which unfairly lead to discrimination against those who have spent time in institutions (indirect discrimination)*.’
3. Paragraph 25(a) combines the issues faced by women and gender nonconforming persons with disabilities. These should be disaggregated and recognized as intersectional with each other. Women face systematic disadvantages and exclusions in employment that are different from those faced by persons of both sexes because of their gender nonconformity, and female gender nonconforming persons face intersectional discrimination linked to nonconformity with the subordination prescribed for the female sex.[[2]](#footnote-2) Similarly paragraph 25(b) should disaggregate and specify the issues faced by youth with disabilities and older persons with disabilities, as they are very different despite both being based on age (though in this case youth and age are not intersectional with each other).
4. Paragraph 32 on a safe and healthy work environment should include the point that ‘*this guarantee includes the obligation on states to not subject persons with disabilities to risk assessment based on any actual or perceived impairment*.’
5. Paragraph 47 will be clearer if the word ‘by’ before ‘inter alia’ is replaced by ‘*so long as they*’.
6. Paragraph 49, final sentence, is incorrect as stated. Reasonable accommodation is not the same as provision of individualized supports, which in the CRPD context is usually understood to mean ongoing interactions tailored to the person’s needs and in accordance with his or her will and preferences. Reasonable accommodation should be defined as ‘*making adjustments and modifications in the employment context that are needed by a particular individual in light of her or his disability, which can include, inter alia, working from home, adjustment of schedule, and the provision of individualized supports, to enable individuals with disabilities to perform the inherent requirements of their work on an equal basis with others.*’
7. Paragraph 50 should include after the first sentence, ‘*Any adjustments, modifications or supports imposed on a person with a disability to which she or he does not consent, cannot be a reasonable accommodation and constitute disability-based discrimination*.’
8. Paragraph 57 should mention persons with disabilities generally and not only persons with intellectual disabilities as being vulnerable to abduction for forced labor. It should also mention ‘*forced labor imposed on persons in psychiatric institutions that may be characterized as “work therapy”*’ (see parallel report by KAMI for the 13th session of the Committee, INT/CRPD/NGO/KOR/18072/E, section 2, paragraph 4). This is not merely a question of vulnerability in ‘relations of dependency and care’ addressed in paragraph 58(b). Institutionalization in psychiatric is always either involuntary or capable of being involuntary. It is not a ‘care’ situation and forced labor in that context should be recognized for what it is.
9. Paragraph 58 subparagraphs (a) and (b) are problematic. They are too vague to provide useful guidance to states or DPOs. The obligation in 58(a) should be stated affirmatively, to ‘*ensure that persons with disabilities are not required to work in conditions that they experience as harmful to their health or well-being for reasons related to their disability, due to a denial of reasonable accommodation or denial of social protection measures*.’
10. Paragraph 58(b) risks infringing on the legal capacity of persons with disabilities to undertake employment contracts. I do not understand to which contexts it is meant to refer, and it is too broad as written. It could be stated alternatively, ‘*Given the economic vulnerability of persons with disabilities and their situation of marginalization in society, they are at greater risk for economic exploitation that can amount to slavery, servitude and trafficking. All measures designed to safeguard against slavery, servitude and trafficking must take account of disability among other intersectional factors that increase the risk of these serious human rights violations.*’
11. Paragraph 59 does not mention that non-discrimination with respect to the right to work is immediately applicable and not subject to progressive realization. (See CESCR General Comment No. 3, paragraph 1, and CESCR General Comment No. 20 in full.) The nature of immediate obligations stemming from non-discrimination, and the scope of their applicability in the context of the CRPD and the interaction of this immediate applicability with CRPD paragraph 4.2 should be analyzed and explained. See below also comments on Paragraphs 69 et seq.
12. Paragraph 60 should indicate from where the framework setting out obligations to ‘respect, protect and fulfill’ rights is drawn, as this language does not appear in Article 4 or Article 1 of the Convention. Since that framework is then linked to the establishment of benchmarks in paragraph 73, it is especially important for all obligations under Article 27 to be set out in this context with precision. That is not done here and the Committee should redraft or reconsider how to ensure that national action plans can be effectively implemented and monitored.
13. Furthermore, paragraphs 1(a) and (b) of Article 4 are omitted from discussion and should be mentioned, as they require proactive legislative and other measures to ‘implement’ the rights guaranteed and to modify or abolish existing discriminatory legislation and practices. These obligations are relevant to ground the subsequent discussion of legislative measures to be taken. As an example of obligations under Article 4.1(b), ‘*States must repeal legislative provisions that limit eligibility for any professional or occupational license or employment based on an actual or perceived impairment*.’
14. Paragraph 63 is vague with respect to the actual content of non-discrimination legislation in the employment context and emphasizes intersectional discrimination and procedural guarantees. The content should be fleshed out – e.g. how it is determined which actions constitute discrimination, that non-discrimination applies at all phases including hiring practices, etc. – and should also mention that ‘*such legislation must be developed with a view to being equally relevant to all persons with disabilities irrespective of the type of actual or perceived impairment*.’
15. Paragraph 67 should insert ‘*freely chosen or accepted’* before ‘work’ in the second sentence, so as to be consistent with the aims of paragraph 58.
16. Paragraphs 69 et seq combine core obligations with those that are of immediate effect, in particular the obligation of non-discrimination. The question of resource constraints addressed in paragraph 70 is not relevant to the non-discrimination obligation, if CESCR General Comment No. 3 is followed. The placement of that paragraph between 69 and 71 which do deal with non-discrimination is confusing and misleading. There should be a separate mention of the obligation to ‘take steps’ (as per CESCR GC3) and how that relates with economic and social rights in a non-discrimination treaty such as CRPD.
17. Paragraph 72 is confusing. While linked to Article 5 in principle, it emphasizes only two aspects of non-discrimination that entail positive measures – reasonable accommodation and measures to achieve or accelerate de facto equality. It is not clear how the obligations set out here are of particularly immediate effect, and moreover they duplicate the totality of measures needed for national obligation set out in paragraph 97, but with less specificity. The following changes should be made to paragraph 72 to provide greater clarity:
    1. The first sentence of the chapeau should reverse the order of ‘ensure non-discrimination’ and ‘achieve de facto equality’. The second sentence should insert ‘*abolish discriminatory legislation and practices*,’ before ‘ensure the provision of reasonable accommodation’.
    2. The ordering of obligations is confusing and seems arbitrary. The reason for structuring them based on the concepts of ‘facilitate, recognize,’ etc. is not apparent and it is not clear what measures states need to take to achieve the aims stated in the subparagraphs.
    3. Subparagraph (a)(i) should specify the content of labor rights, including ‘*equal remuneration and the application of minimum/prevailing wage standards’*.
    4. Subparagraph (a)(ii) should specify that regulations ‘*do not impose risk assessment based on an actual or perceived impairment*’
    5. Subparagraph (b) should insert before current (i), ‘*the equal right of all persons irrespective of actual or perceived impairment to gain a living by freely chosen or accepted employment*’.
    6. Subparagraph (c)(i) introduces the concept of supported employment incorrectly. The measures addressed are simply ‘*positive measures to promote equal access to employment by persons with disabilities*’ and should be renamed as such. The final clause on equal right to freely chosen employment appears out of place there.
    7. Subparagraph (d)(i) should include ‘*prevailing wage’* where such standards exist.
    8. Subparagraph (d)(ii) is poorly stated. It should include ‘*the elimination of direct and indirect discrimination in recruitment and hiring processes and with respect to voluntary or involuntary termination of employment*’, instead of ‘proper transition… in a non-discriminatory manner’.
    9. Subparagraph (d)(iii) should qualify the specificity of ‘through regular assessment meetings with their managers’ by prefacing with ‘*inter alia’*.
18. Paragraph 83 should include the exercise of legal capacity by agreeing to employment in the absence of a formal contract. Few work situations entail formal signed contracts but any agreement to work for pay is an exercise of legal capacity. This could be stated as ‘*formal contract or any other agreement to perform work for remuneration*’.
19. Paragraph 90 should say that ‘*the right to privacy protects the right of persons with disabilities to refrain from disclosing an actual or perceived impairment to a prospective or current employer or licensing authority. Instead, qualifications for employment that are legitimately related to the nature of the work to be performed must be addressed in a non-discriminatory manner such as tests open to all prospective or current employees.*’

The Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP) aims to provide strategic leadership in human rights advocacy, implementation and monitoring relevant to people experiencing or labeled with madness, mental health problems or trauma.

In particular, CHRUSP works for full legal capacity for all, an end to forced drugging, forced electroshock and psychiatric incarceration, and for support that respects individual integrity and free will.

CHRUSP is a user/survivor-run DPO and human rights organization, with Special Consultative Status to UN ECOSOC. See [www.chrusp.org](http://www.chrusp.org) for more information.

1. See parallel report of KAMI to Committee’s 13th session, INT/CRPD/NGO/KOR/18072/E, section 5 paragraph 2. [↑](#footnote-ref-1)
2. As shown by the fact pattern in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), which established that the use of sex stereotypes in making employment decisions is a form of sex discrimination. [↑](#footnote-ref-2)