

# **Disability and Employment: Novelties of the UNCRPD**

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## **Overview of the Presentation**

- The employment rights for persons with disabilities and the correlative duties of the States under the UNCRPD
- The meaning of a human rights based approach to employment policies and practices for persons with disabilities and its practical implications
- A case study of this approach re disability benefits schemes

## The UNCRPD - The Key Principles

- Respect for inherent dignity, individual autonomy and independence
- Non-discrimination
- Full and effective participation and inclusion in society
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- Equality of opportunity
- Accessibility

## The UNCRPD - The Content Areas

- **Civil and political rights** : Right to life, Equal recognition before the law, Equality, Access to justice, Liberty and security of person, Freedom from torture or cruel, inhuman or degrading treatment or punishment, Freedom from exploitation, violence and abuse, Protecting the integrity of the person, Liberty of movement and nationality, Freedom of expression and opinion, and access to information, Respect for privacy, Respect for home and the family, Participation in political and public life.
- **Economic, social and cultural rights** : Living independently and being included in the community, Personal mobility, Education, Health, Habilitation and rehabilitation, Work and employment, Adequate standard of living and social protection, Participation in cultural life, recreation, leisure and sport.

## Employment Rights under article 27 of the CRPD

- States Parties shall safeguard and promote the realization of the right to work by taking appropriate steps, including through legislation, to, inter alia:
  - Prohibit discrimination on the basis of disability
  - Enable persons with disabilities to have effective access to placement services and vocational and continuing training;
  - Promote opportunities for self-employment, entrepreneurship, the development of cooperatives;
  - Employ persons with disabilities in the public sector;
  - Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
  - Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
  - Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

## Typology of duties imposed on the States by Article 27 of the UNCPRD

Respect	Protect	Fulfill	
<p style="text-align: center;">↓</p> <p>Do not interfere in the enjoyment of human rights : <i>e.g. refrain to put obstacles for persons disabilities to earn a living through work that is freely chosen in an open and inclusive work environment</i></p>	<p style="text-align: center;">↓</p> <p>Take steps to ensure that third parties do not interfere in the enjoyment of human rights : <i>e.g. prohibit employers to discriminate persons on basis of disability</i></p>	<p style="text-align: center;">↓</p> <p>To facilitate : <i>e.g. take measures to promote employment of persons with disabilities in the private sector through appropriate policies and measures</i></p>	<p style="text-align: center;">↓</p> <p>To provide : <i>e.g. organize comprehensive rehabilitation services in the areas of employment services</i></p>

## What is really new in the UNCRPD

- The UNCRPD proposes a new framework for understanding disability and human rights.
- The UNCRPD does not only endorse the principle of equality by outlawing disability discrimination but it also demands more than equal treatment for persons with disabilities. It mandates for an holistic and integrate human rights approach to address social and economic inequality faced by persons with disabilities.
- The UNCRPD attach as much importance to the process than as to the outcomes. It requires services, supports, programs, and funding allocations to have participatory, inclusive aims and principles built into their designs.

## A new meaning of disability

	Medical approach to disability	Social approach to disability
Definition of disability	An individual is limited to participate by is/her impairment	An individual with an impairment requires access to participate
Strategy to address the issue	Fix the individual, correct the deficit	Remove barriers, alter the physical and social environment to provide access
Methods to address disability	Provide medical, vocational or psychological rehabilitation segregated services	Provide supports, e.g., assistive technology, personal assistance
Legal Provisions	Specific social welfare benefits, labelling as dependents or unemployable	Antidiscrimination legislation, accessibility standards
Sources of interventions	Specialised professionals, clinicians and other rehabilitation providers	Peers, mainstream public and private services
Role of persons with disabilities	Patients, beneficiaries, incapables, dependents	Citizens, consumers, customers, decision makers

## The meaning of human rights

- To have a particular right is to have a **claim** on other people or institutions that they should help or collaborate in ensuring access to some freedom.
- The mere invoking of laudable goals and reasons for action does not yield specific duties on the part of other people or social institutions to promote the achievement of an specified level of social progress, or of its components.
- With the invoking of rights and duties comes a host of related concerns, such as **accountability, culpability and responsibility**.

## Needs vs Rights

What is required/necessary/specific	What is inherent to every human being
Needs are to be met or satisfied	Human Rights are to be realized
Needs do not necessarily imply duties	Human Rights always imply correlative duties
Needs can be met by charity and benevolence	Charity is seldom mandatory, rights always are
Needs are often associated with non-legal commitment or promises	Rights are always associated with legal obligations
Needs can be ranked a priori in a hierarchy	Rights cannot be ranked in a hierarchy

## Practical implications

- If persons with disabilities are granted a **claim (right) to work** – it implies that others have **duties** (or obligations) to ensure that the right is realized.
- It means much more than that it would be a “good thing” for every person with disabilities to have a job or, even, that every disabled person should have a job.
- In asserting this right we are claiming that if persons with disabilities avoidably lack access to employment, there must be some **culpability somewhere in the social system**.

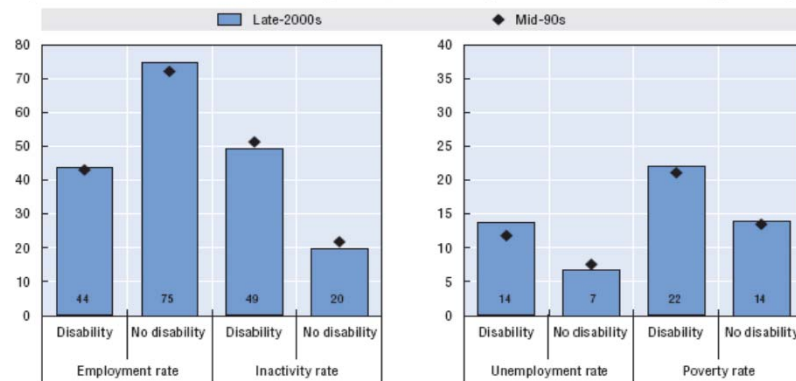
*“Thus, monitors should be asking what society has done or not done which is obstructing the full enjoyment of ...[persons with disabilities’] rights – not how their physical or mental impairment has affected the enjoyment of their rights”.*

Office of the Commissioner for Human Rights (2010)

## Do persons with disabilities enjoy effective employment opportunities?

Figure 1.2. **Social and economic integration of persons with disability is lagging behind**

Key labour market indicators,<sup>a</sup> by disability status, OECD average,<sup>b</sup> late 2000s and mid-1990s, percentages



a) Employment rate: employment as a percentage of working-age population; Inactivity rate: inactive population as a percentage of working-age population; Unemployment rate: unemployed as a percentage of the labour force; Poverty rate: percentage of people with disability in households with less than 60% of the median adjusted disposable income.

b) The OECD average is an unweighted average across 27 OECD countries (excluding Japan, New Zealand and Turkey).

## Key barriers to labour market participation for persons with disabilities

- These key barriers include :
  - low levels of education/skills
  - attitudes/behaviour
  - lack of access
  - lack of workplace supports
  - design of income protection programs
- Although discrimination at the workplace is plainly a major problem for persons with disabilities, many individuals with disabilities face significant barriers to employment that operate well before they are ever in a position to be discriminated against by an employer.

## Reassessing States duties viz right to work under the Convention

- Assessing :
  - The existence of laws, policies and programs to respect, protect and fulfill equal employment opportunities for persons with disabilities
  - The state's efforts (inputs) to meet its obligations / sufficiency in spending
  - The programmes performance (outputs, outcomes) / efficiency in spending
  - The programmes principles and process : do they foster dignity, autonomy and independence, full and effective participation and inclusion in society /adequacy in spending

## A case study

When benefits become barriers



So what you're saying is, that I have to be declared disabled and unable to work before I am allowed to go to work?



## What is the issue around the design of some disability benefits?

- The system acts as a strong work disincentive
  - The vast majority of the schemes requires that a person be out of the workforce entirely and be incapable of performing any work that would provide sufficient income for basic support
  - They force people to make a choice ; either seeking benefits and give up economic independence, either support themselves through work, despite significant risks

## Old assumptions and new paradigms in employment programmes for people with disabilities

- *From* "Disability = inability to work"  
*Towards* "People need support to work"
- *From* "Inability to work is medically determinable"  
*Towards* "It is medically impossible to define a line between those who can work and those who cannot"
- *From* "Work as a burden : the price to pay to get the things that make life enjoyable"  
*Towards* "Work as a social good : the road to personal satisfaction, self-worth, social status, belonging"
- *From* "Income security as a gift"  
*Towards* "Income security as a right"
- *From* "Only full time paid work deserves respect"  
*Towards* "Paid work is not the only way to participate in the community"

## **Conclusion: barriers to human rights in-built into policy design and implementation**

- States should redesign their relevant disability support programs according to the following features :
  - Participation expectations for all
  - Work expectations for many, but not all
  - Access to comprehensive, integrated services that support community participation and employment
  - Operating principles : accessibility, equity, adequacy, portability, responsiveness and consumer control

## **Advancing the application of employment rights under the UNCRPD**

*“Effective Convention implementation must result in a human rights practice that includes law reform or court-based advocacy, but also moves beyond it to include strategies that support deeper domestic internalization of human rights norms”.*

Michael Stein

## About the justiciability of the economic rights

- A large number of conceptual and practical developments originating from international, regional and domestic spheres illustrate a range of possibilities of filing a complaint before a court and to request adequate remedies if a violation of a economic and social right has to be found.
- See in particular the *Grootboom* decision issued by the South African Constitutional Court in 2001 when it assessed the constitutional compatibility of a housing policy implemented by the government.

*“Applying the disability rights approach to public aid does not call for abandonment of welfare interventions, much less disability-specific welfare programs. The approach instead calls for reshaping welfare so as to promote equality, autonomy, and personal dignity, and to permit more successful integration into the working economy where that can be achieved”.*

Mark Weber