



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

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## This presentation

- Principles of the UNCRPD
- Definition of disability
- Specific provisions relating to employment
- Implications for states approach to employment of persons with disabilities
- Implications for judges

## UNCRPD – key principles

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- 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;
- Equality between men and women;

- Covers civil and political rights and economic,
- social and cultural rights

# Definition of Disability

UNCRPD purpose clause (Article 1):

"Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

Social model approach to disability

Compare and contrast with medical model

## Employment Rights under Article 27

- 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 labour 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, to, inter alia:

## Employment Rights under Article 27

- Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

## Employment Rights under Article 27

- Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;



## Employment Rights under Article 27

- Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- 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;

## Employment Rights under Article 27

- Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- Promote the acquisition by persons with disabilities of work experience in the open labour market;
- Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

## New approach to disability

- Respect – no interference with the enjoyment of rights
- Protect – ensure that employers do not discriminate
- Fulfil – facilitate e.g. promote employment, and organise rehabilitation

# Reasonable accommodation

## UNCRPD Article 2:

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms

## Article 9

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (b) Information, communications and other services, including electronic services and emergency services

## Barriers to employment of disabled people

- Education/skills
- Attitudinal barriers
- Access/support in the workplace
- Income protection
- Importance of social care support in the home/environment

# Monitoring Compliance with the UNCRPD

“Thus monitors should be asking what society has done or not done which is obstructing the full enjoyment of ...[person’s 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)

# Monitoring Compliance with the UNCRPD

- Does the general employment law protect persons with disabilities from discrimination?
- Are there forms of employment targeted at people with disabilities (such as sheltered or supported employment) that are exempt from labor standards, resulting in inferior protection and exploitation? – dignity, autonomy, full and effective participation and inclusion
- Do programs exist for transitioning persons with disabilities currently in sheltered employment to work in the open labor market?
- Are mainstream vocational training and employment services accessible to persons with disabilities?
- Are support services for self employment and social economy accessible to persons with disabilities?



# Monitoring Compliance with the UNCRPD

- Does the State provide technical guidance and financial support for the provision of reasonable accommodations?
- Are there measures in place to ensure that persons with disabilities who acquire a disability can stay in the labor market during their period of rehabilitation, if they so wish?
- Does the State take positive action to employ persons with disabilities?
- Does the State promote employment of persons with disabilities in the private sector through incentives and other measures?
- Are persons with disabilities protected from all forms of forced labor?

- Compliance in theory vrs compliance in practice
  - Compliance in practice in Court/Tribunal – Article 13
  - Question for a Judge:
    - Code of Practice?
    - Policy over disabled people?
    - Training?
    - Monitoring/Auditing?
    - Inferences