



The CRPD Committee and Intellectual Disabilities at Work



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Introduction

The binary between the able and disabled are not the only means through which impairment is turned into disability. It is well established that hostility and conflict exists at times between different impairment identities [1]. Competition over resources and prejudice can lead to ableism within the disability community itself [2]. All else equal, where attitudes about disability cause one impairment group to suffer disadvantage relative to others, then in that situation an impairment hierarchy is created.

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) has swept in a new disability human rights paradigm [3], which has had a transformational impact across several rights, including the right to work [4] and has transformed how States should regulate for persons with intellectual disabilities [5]. The CRPD is the “declaration of ability equality”, [6] which enshrines the notion that socially constructed notions of legitimacy and value should not cause one impairment group to suffer greater disadvantage when compared to others [7]. Unfortunately, a hierarchy of impairments exists which is resulting in persons with intellectual and mental disabilities, often referred to as psychosocial disabilities [8], to experience greater denial of their human rights due to prejudice. To Understand how the hierarchy of impairments is disadvantaging persons with intellectual impairments, this paper will analyse the work of the CRPD treaty monitoring body; the CRPD Committee.

Introducing the CRPD Committee

Similar to other human rights bodies [9], the CRPD Committee is empowered to pursue its agenda by monitoring reports of states parties [10], assessing information and shadow reports provided by DPOs and other interested non-state actors [11], consult with specialized agencies and other United Nations organs [12] and to issue general comments and recommendations, and transmitting a biennial report to the General Assembly [13]. Furthermore, where a State is also a party to the CRPD Optional Protocol, then The CRPD Committee is authorized to accept and deliberate upon individual and group communications regarding alleged

violations of the CRPD [14]. The CRPD grants the CRPD Committee a wide ambit in managing its own affairs. The CRPD empowers the CRPD Committee to establish its own rules of procedure [15] and to decide any guidelines applicable to the content of State reports [16]. The Committee of the CRPD is also empowered to seek additional information from civil society and States and to issuing reports and publishing on their activities, comments and views.

Method

To understand how the Committee is responding to persons with intellectual disabilities right to work, this paper will analyse the relevant general comments and the final observation to State periodic reports [17]. The Cos issued by the CRPD Committee from May 2011 to October 2017 have been gathered and analysed. A total of 61 final observations were issued by the CRPD Committee during the sample. The Concluding Observation on the Republic of Iran was not published in English and has accordingly been excluded from this analysis [18].

The CRPD Committee and understanding the Problem of the Hierarchies of Impairments at Work

The CRPD Committee has observed that persons with disabilities are having their right to work and employment denied to them across the globe, including across Latin America [19], Polynesians States [20], Less developed European States [21] and comparatively wealthy West European States and States from the global north [22]. Some Cos go further than merely observing that there is a problem and instead quantify the extent to which the denial of right to work is being experienced. In Denmark persons with disabilities are 34% more likely to be out of work than people without a disability [23]. In other States the situation is grimmer. Without providing a comparison between people with and without disabilities, the CRPD Committee has observed that persons with disabilities have an unemployment rate of nearly 60% in Peru [24], of 67.75 in Morocco [25], of 76% in Jordan [26] and a staggering 99% in Kenya [27]. Due to the overwhelming barriers to employment, many persons with disabilities work

outside the labour market and in precarious work arrangements [28]. In the Czech Republic, for example, close to one third of persons with disabilities work outside the open labour market [29].

The capacity of persons with disabilities to work depends on a range of factors, including the severity and type of their impairment. When commenting on the exclusion of persons with disabilities from work, the Committee has also observed that particular groups confront particular discrimination. Overwhelmingly persons experiencing psycho-social impairments are observed as experiencing the worst outcomes out of the different impairment categories [30], also of relevance intersecting attributes attract attention [31], gender is the most common intersecting attribute observed as a significant factor in enhancing inequalities at work [32].

States Ignoring Persons with Intellectual Disabilities at Work

The CRPD Committee has identified that certain impairment categories are “ignored” by certain work interventions in Belgium and that such programs have “limited coverage” over certain impairment categories [33] in Mexico [34]. The CRPD Committee has criticised the “lack” of attention and progress on work equality caused by hierarchies of impairments in Latvia and Ukraine [35] and called upon Portugal to “step up efforts” to address this ableism in that State [36]. Across the foregoing Cos the impairment categories that are excluded are described differently. Belgium uses the impairment categories named in article 1 of the CRPD and identifies that persons with intellectual impairments are most excluded from involvement in policy formulation [37], and that government action has focused primarily on persons with physical disabilities and that “few measures have been taken to promote accessibility for persons with hearing, visual, intellectual or psychosocial disabilities [38].” The CO on Latvia noted that those with intellectual impairments are most disadvantaged [39] where the COs on Mexico and Ukraine identified the most disadvantaged categories as people with either intellectual or psychosocial impairments [40]. The CO on Portugal also noted that persons with intellectual impairments where most disadvantaged, but also included person with autism [41]. Despite the different terminology, broadly these Cos demonstrate a presence of a hierarchy of impairments where psychosocial impairments are lower in the hierarchy. While the CRPD Committee’s attention on the presence of a hierarchy of impairments in the Cos on Belgium, Latvia, Mexico and Portugal is positive, the lack of comment in other Cos means it is not possible to draw wider conclusions. Even though it is not possible to draw wider conclusions about the international impact of the hierarchy of impairments from the Cos, or comment on the situation in those States where the CRPD Committee has not commented positively or negatively on this issue, it is possible to state that the CRPD Committee recognises the operation of hierarchies of impairments and is concerned about the damage being caused by this phenomenon.

Conclusion

This paper has introduced the CRPD Committee and analysed how it has responded to the presence of hierarchies of impairment at work. The CRPD Committee has identified that persons with disabilities are experiencing substantial denial of their right to work and that hierarchies of impairment are intensifying the disablement of persons with intellectual impairments. Persons with intellectual disabilities confront enough barriers to work, without erroneous value judgments reducing the support afforded to this group.

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13. *Convention on the Rights of Persons with Disabilities*. article p. 39.
14. *Optional Protocol to the Convention on the Rights of Persons with Disabilities*. Committee on the Rights of Persons with Disabilities, 283, articles 1 and 2.
15. *Convention on the Rights of Persons with Disabilities*. article 34: 10.
16. *Convention on the Rights of Persons with Disabilities*. article 35: 3.
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18. Committee on the Rights of Persons with Disabilities (2017) Concluding Observations on the Initial Report of Iran, UN doc CRPD/C/IRN/CO/1.
19. Committee on the Rights of Persons with Disabilities (2012) Concluding observations on the initial report of Argentina.
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24. Committee on the Rights of Persons with Disabilities (2012) Concluding observations on the initial report of Peru, UN doc CRPD/C/PER/CO/1: 40.
25. Committee on the Rights of Persons with Disabilities (2017) Concluding observations on the initial report of the Kingdom of Morocco, UN doc CRPD/C/MAR/CO/1: 50.
26. Committee on the Rights of Persons with Disabilities (2017) Concluding observations on the initial report of Jordan, UN doc CRPD/C/JOR/CO/1: 49.
27. Committee on the Rights of Persons with Disabilities (2015) Concluding observations on the initial report of Kenya, CRPD/C/KEN/CO/1: 47.
28. Committee on the Rights of Persons with Disabilities (2016) Observaciones finales del Comité sobre los Derechos de las Personas con Discapacidad sobre el informe inicial de Guatemala, UN doc CRPD/C/GTM/CO/1: 63.
29. Committee on the Rights of Persons with Disabilities (2015) Concluding observations on the initial report of the Czech Republic, UN doc CRPD/C/CZE/CO/1: 51.
30. The Committee has singled out psycho-social impairments as experiencing the worst work outcomes in the following concluding observations: the European Union at 65; Guatemala at 15; Honduras at 13; Latvia at 46; Mexico at 51; Uganda at 8; Ukraine at 50; United Kingdom at 56.
31. Indigeneity was singled out in the Concluding Observation on New Zealand at 55; indigeneity and women were both singled out in the Concluding Observation on Honduras at 13; and Gender and sexual identity were singled out in the Concluding Observation on Uganda at 8.
32. The Committee has singled out women as the major intersecting attribute on work outcomes in the following Concluding Observations: Brazil at 48; Czech Republic at 51; El Salvador at 55; European Union at 65; Guatemala at 15; Montenegro at 48; Thailand 53; United Arab Emirates at 49; United Kingdom at 56.
33. Committee on the Rights of Persons with Disabilities (2014) Concluding observations on the initial report of Belgium, UN doc CRPD/C/BEL/CO/1: 5 & 21.
34. Committee on the Rights of Persons with Disabilities (2014) Concluding observations on the initial report of Mexico, UN doc CRPD/C/MEX/CO/1: 51 and 52.
35. Committee on the Rights of Persons with Disabilities (2017) Concluding observations in relation to the initial report of Latvia, UN doc CRPD/C/LVA/CO/1: 46.
36. Committee on the Rights of Persons with Disabilities (2016) Concluding observations on the initial report of Portugal-Advance Unedited Version, UN doc CRPD/C/PRT/CO/1: 51.
37. Belgium, above N, 5.
38. Belgium, above N, at 21.
39. Latvia, above N, 46.
40. Mexico, above N, 51; Ukraine, above N, 50.
41. Portugal, above N, 51.



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