

Submission to the CRPD Committee from Inclusion International:
Draft General Comment on Article 27

Plain Language Summary of Submission to the Draft General Comment

Inclusion International is concerned that:

- The draft General Comment excludes people with intellectual disabilities. People with intellectual disabilities have more barriers to getting a job than other people with disabilities, but the General Comment does not say that some groups have more barriers than others. This means that people with intellectual disabilities will be left behind if governments do what the General Comment says.
- The draft General Comment does not include families of people with disabilities. Families also may be discriminated against at work because they are caregivers. The General Comment needs to also protect families.
- The draft General Comment was not accessible. Draft General Comments and other information from the CRPD Committee should be in accessible formats like plain language or Easy Read.

These are some of the important issues that should be changed in the draft:

- The advice on sheltered workshops is confusing. Governments that read it might think that if they make small changes to sheltered workshops like paying people more, that means they do not have to close sheltered workshops.
- It should be clearer that the money governments are spending on job training or helping people with disabilities to get jobs should be spent on programmes that are inclusive.
- The document recommends quotas, which are rules about how many people with disabilities a company must hire. These usually do not work for people with intellectual disabilities.
- Other important parts of employment for people with intellectual disabilities like employment support agencies (which help people get jobs) and good public transport systems are not mentioned in the document.

I. Introduction

Inclusion International welcomes the initiative of the Committee on the Rights of Persons with Disabilities to call for submissions for the General Comment 8 on Article 27 (Work and Employment) and appreciates the opportunity to respond to the Draft General Comment.

Inclusion International is the global network of people with intellectual disabilities and their families. This submission is informed by the work and expertise of our member organizations and reflects the global voice of people with intellectual disabilities and their families. Inclusion International members may also submit additional comments addressing key issues that are important to jobseekers and employees with intellectual disabilities and their families in their unique national contexts.

Inclusion International is concerned that the Draft General Comment fails to acknowledge that barriers to employment are amplified for marginalized groups within the disability community. Among people with disabilities, people with intellectual disabilities are the least likely to be included in employment and face more significant barriers to labour market inclusion¹. For people with intellectual disabilities who have higher support needs, these barriers are even further amplified. Without specific acknowledgement of the unique barriers faced by people with intellectual disabilities when accessing employment, as identified in [Inclusion International's previous submission](#), the General Comment's silence on these issues creates a risk that people with intellectual disabilities will be left behind in their government's implementation of Article 27.

In line with this reflection, Inclusion International has identified a series of recommended amendments. Suggested text additions for each relevant paragraph are identified in **yellow**, and suggested removals are indicated in **red**.

In addition to the substantive issues in the draft General Comment addressed below, Inclusion International is also concerned about the inaccessibility of the process of developing the General Comment. The draft General Comment was made available in a technical format with no alternative formats available, which meant that people with intellectual disabilities were not able to meaningfully engage in the process of reviewing and commenting the draft. Similarly, the prescribed format for responses to the draft does not afford enough flexibility for people who may be better able to articulate their feedback in other formats. The Committee has a responsibility to ensure an accessible process that allows *all* people with disabilities to participate and contribute, and future consultative materials should be made available in a variety of accessible formats.

II. Inclusion International's Recommendations on the Draft General Comment

Section I – Introduction

Paragraph 4

The Draft General Comment fails to mention the disproportionate impact of barriers to employment and employment discrimination for marginalized groups within the disability

¹ Ju, S., Roberts, E., & Zhang, D. (2013). "Employer Attitudes Toward Workers with Disabilities: A Review of Research in the Past Decade." *Journal of Vocational Rehabilitation*, vol. 38, no. 2, 113-123;
Zwicker, J., Zaresani, A., & Emery, J.C.H. (2017). Describing heterogeneity of unmet needs among adults with a developmental disability: An examination of the 2012 Canadian Survey on Disability. *Research in Developmental Disabilities*, 65, 1 – 11.

community. People with intellectual disabilities are among the most marginalized, face more significant barriers to accessing the labour market, and are among the least represented in formal sector employment among other people with disabilities. Without explicit mention of the groups who are most marginalized by employment and the unique barriers they face, the General Comment risks proposing employment solutions that exclude people with intellectual disabilities or increase the barriers they face.

Proposed Amended Text

The 2019 Disability and Development Report noted that persons with disabilities employed in the formal sector are more likely to earn lower wages and be more likely to be in part-time work, and that persons with disabilities are more likely to be self-employed, work in the informal economy or work in vulnerable employment. Data and evidence indicate that these differences are particularly impact persons with disabilities on the grounds of age, gender, sex, ethnicity, place of residence and other grounds. **The experience of these barriers is also more significant for marginalized groups *within* the disability community. People with intellectual disabilities, for example, face among the highest unemployment rates, are among the most likely to be subject to unfair wages, are among the least likely to access job progression when in formal employment, and are the most likely to be excluded from the labour market in favour of sheltered workshops or other segregated spaces.**

Paragraph 6

Access to education is a key factor that influences access to employment as an adult – Article 24 and the right to inclusive education should be listed among the interrelated articles.

Proposed Amended Text

...the interrelationship of the right to work and employment with other provisions in the Convention such as accessibility (art. 9), equal recognition before the law (art. 12), access to justice (art. 13), freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15), **education (art. 24)**, habilitation and rehabilitation (art. 26) and an adequate standard of living and social protection (art. 28)

Section III – Normative Content

Paragraph 22

Families of persons with disabilities also face barriers to accessing work as a result of their caregiving and support roles for their family member with a disability. Barriers to accessing employment and instances of employment discrimination are particularly significant for family members of people who face more significant barriers to inclusion (including those with high support needs) and female family members. Under the concept of “reasonable accommodation by association,” reasonable accommodation must be afforded to family members by employers where flexibility is required to provide support or care for a family member with a disability. As reflected in previous CRPD Committee jurisprudence, reasonable accommodation by association to secure the right to employment for family

members of persons with disabilities is a component for the fulfilment of Article 5 of the Convention², and this protection must be explicitly noted in General Comment 8.

Proposed Amended Text

....Reasonable accommodation needs to be negotiated with the individual, and applies to both persons with disabilities and family members of persons with disabilities who may require accommodations to fully participate in employment as a result of their role as a carer or primary supporter of their family member. The duty to provide reasonable accommodation is applicable from the moment a request for accommodation is received.³

Paragraphs 31 & 34

Inclusion International appreciates the clearly defined elements of a sheltered workshop in Paragraph 17 and the Committee's recognition in Paragraph 16 that sheltered workshops are incompatible with the CRPD and the ICESCR. However, the inclusion of directives on sheltered workshops in other sections of the text, such as the suggestion that State Parties require the payment of minimum wage in sheltered workshops (Paragraph 31) or that trade unions represent people in sheltered workshops (Paragraph 34), does not clearly reflect the impetus to close sheltered workshops and may lead States parties to the understanding that introducing employment protections in sheltered workshops is sufficient action and is a substitute to closure. Paragraph 18 indicates that sheltered workshops are not to be considered as a measure of progressive realization, which the statements in Paragraph 31 and 34 undermine. We recommend the removal of these lines from Paragraph 31 and 34, which can be replaced with a clearer statement in the primary section about sheltered workshops (Paragraph 18) which reflects that all rights must be respected during the transition away from sheltered workshops, including ensuring that the payment of at least minimum wage and the right to organize are fulfilled during the closure process.

Proposed Amended Text (Paragraph 31)

Further, their remuneration should also be equal even when their work is completely different but nonetheless of equal value. The value of work is assessed by objective criteria. States Parties should ensure that segregated workplaces in the process of transitioning are not exempt from paying the minimum wage and ensure they are not paying below the minimum wage.

Proposed Amended Text (Paragraph 34)

Trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work. Trade unions play an important role in defending the right to work for persons with disabilities and extend to persons with disabilities working in segregated employment.

Proposed Amended Text (Paragraph 18)

Sheltered workshops for persons with disabilities are not to be considered as a measure of progressive realization of the right to work, which is only evidenced in employment in an open and inclusive labour market. States parties must ensure that

² Committee on the Rights of Persons with Disabilities. (2015) Concluding Observations on the initial report of the European Union. CRPD/C/EU/CO/1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/226/55/PDF/G1522655.pdf?OpenElement>

³ CRPD General Comment No. 6 (2018), para 24(b).

the process of closing sheltered workshops and supporting the transition of their users into the open labour market is consistent with the fulfilment of all labour rights, including ensuring users of sheltered workshops are not exempt from earning minimum wage and retain their right to unionize during the process of transition from and closure of sheltered workshops.

Paragraph 38

In addition to mainstream placement services, specialist employment agencies play a significant role in connecting people with disabilities to the labour market, particularly for people with intellectual disabilities and other marginalized groups for whom stigma from employers can be a major barrier to employment. In these cases, agencies play a key role by building relationships with employers and creating connections with people with intellectual disabilities, which creates a direct path to employment facilitated by a source that is trusted by employers. For people with intellectual disabilities in particular, many employment agencies use a model which emphasizes vocational training over connections, which does not create a direct path to employment, and which rarely results in real jobs for people with intellectual disabilities. The General Comment does not address the role of these services, and few States regulate their services. States parties must ensure that where specialist employment agencies exist, they are using holistic service delivery models that create direct paths to employment, that they initiate job placements based on the will and preferences of the individual, that they limit job placements to inclusive workplaces, and that they ensure the availability of reasonable accommodation and other accessibility measures within their partnered workplaces.

Proposed Addition – Additional Paragraph following Paragraph 38

Where employment agencies that specialize in job placements solely for persons with disabilities exist, States parties must ensure that service delivery models are only used to facilitate access to inclusive workplaces and that equipping employers with the knowledge to promote inclusion and deliver reasonable accommodation in their workplace forms part of their model.

Paragraph 41

For people with intellectual disabilities, self-employment is often presented as the only viable livelihood due to the inaccessibility of the formal sector, resulting in people with intellectual disabilities choosing this path without free and equal choice. While Inclusion International encourages the right to self-employment being protected, the General Comment should reflect that increased self-employment opportunities are not a substitute for ensuring that formal sector employment is open, inclusive, and accessible.

Proposed Amended Text

States parties should take targeted measures to protect and support persons with disabilities in the informal economy, to promote and accelerate their transition to the formal economy, and to prevent work in the formal economy from becoming informal. State Parties must also ensure that self-employment is genuinely freely chosen, not identified as a solution for people with disabilities due to continued barriers to accessing the formal sector labour market.

Paragraph 44

The recommendation that State Parties identify targeted funding to promote the employment of persons with disabilities and vocational programmes is vague and could benefit from

additional detail. Additional guidance on who should manage that funding is also essential - many State parties continue to house their employment programming for people with disabilities outside of their Ministry of Labour (or equivalent), instead housing these programmes in the Ministry of Welfare (or equivalent), which can result in the framing of the employment of people with disabilities within a welfare framework or charity model and is likely to result in the jurisdiction's broader employment policy failing to be disability inclusive. When disability-specific programming is also housed outside of the Ministry of Labour, this may also prevent people with disabilities from accessing mainstream employment programming. The General Comment should recommend that these programmes be housed within the Ministry of Labour and that the Ministry of Labour take full responsibility for ensuring equal access to the labour market.

Proposed Amended Text

The Committee has recommended to States Parties that in an effort to increase employment of persons with disabilities in the public sector, they develop and implement affirmative action measures, targeted funding to promote the employment of persons with disabilities and inclusive vocational programmes. Examples may include targeted funding to ensure people with intellectual disabilities are able to access employment programmes on an equal basis with others or to improve accessibility within mainstream vocational training institutes. Responsibility for these initiatives on the inclusion of people with disabilities in the labour market should be housed within the government's equivalent to the Ministry of Labour to ensure that policy for employment of people with disabilities aligns with the jurisdiction's mainstream employment policies.

Paragraph 46

The Draft General Comment presents quotas as one example of an affirmative action measure that may increase the employment of persons with disabilities in the private sector. While drawbacks to quotas are identified in the text, it is important to note that people with intellectual disabilities and other marginalized groups rarely benefit from cross-disability quota systems, which generally only create a path to employment for people with physical and sensory disabilities. Quotas also increase the risk of tokenism in hiring, and tend to eliminate the intentionality in diverse hiring practices, which increases the risk of a person with a disability entering a workplace that is inaccessible and unprepared to provide reasonable accommodation. The General Comment must reflect these challenges and risks and encourage intentionality in the development of these policies to ensure they do not continue to exclude the most marginalized.

Proposed Amended Text

Specific affirmative action measures such as quotas to increase the employment of persons with disabilities in the private sector may be required. At the same time, quotas alone are insufficient to promote the employment of persons with disabilities and can be resisted by persons with disabilities if the system focuses on impairment rather than ability. Quotas also raise issues of confidentiality. Where States parties do introduce quotas, they must be intentionally designed to ensure that the most marginalized, including people with intellectual disabilities and those with the most significant barriers to employment, are also benefiting from the systems. For quota systems to be successful, there must be clear buy-in from employers to ensure that people with disabilities are not being hired tokenistically without the appropriate accommodations in their workplace.

Paragraph 49

States parties and employers often have a limited view of reasonable accommodation that focuses on the type of reasonable accommodation that a person with a physical or sensory disability may need, such as a ramp or a sign language interpreter. In order to help State parties conceptualize the diversity of forms that reasonable accommodation may take, the General Comment should provide concrete examples of reasonable accommodation that may be used to support marginalized groups, such as people with intellectual disabilities, people with psychosocial disabilities, or people with deafblindness. This includes increased references to supported employment.

Proposed Amended Text

Reasonable accommodation duties are different from the duty to provide accessibility. Reasonable accommodation involves the provision of individualised supports to enable individuals with disabilities to perform the inherent requirements of their work on an equal basis with others. **Examples of reasonable accommodation may include the provision of an interpreter or support person, job coaches and other supported employment mechanisms, flexibility with schedules and work hours, and adjustments to modes of communication between colleagues, among others.**

Section V – Relationship with other specific articles of the Convention

Paragraph 89

The right to personal mobility and its connection to employment is closely linked with the accessibility of community transportation systems more broadly. Inaccessible community transportation systems are a significant barrier for people with intellectual disabilities, as public transport is often the only option to accessing work. Lack of clear orientation and guidance, non-availability of public transportation, additional costs required by individualized transport, and absence of support and personal assistance using public transportation systems are among the main barriers that persons with intellectual disabilities may face trying to access employment outside of their immediate community. The General Comment should explicitly note the obligation of States parties to ensure the accessibility of public transportation system to ensure access to work.

Proposed Amended Text

Article 20 on personal mobility—requires States parties to take measures to ensure personal mobility with the greatest possible independence for persons with disabilities. They should be provided for use in work, or for mobility related to work, including travel to and from work. **This requires efforts to ensure that people with disabilities have full access to available, affordable, and accessible public transport systems that facilitate their access to their place of employment.**

Paragraph 91

While the General Comment addresses the need to ensure that people with disabilities transition from schools to employment smoothly, it is also important to ensure that people with disabilities who were denied access to an inclusive education are not discriminated against when entering the workforce. Lack of access to inclusive education is a key barrier to

employment, as educational barriers impact access to secondary school certificates and other documentation that employers consider to be prerequisites for readiness to be competitive in the labour market. In many countries, degrees, diplomas, and certificates are treated as mandatory requirements for employment, even in jobs that do not require competencies developed through higher education. Ensuring the labour market is not only open to people with disabilities who have been included in education or who have participated in high education is essential.

Proposed Amended Text

Quality inclusive education must prepare persons with disabilities for work life through the acquisition of the knowledge, skills and confidence necessary for participation in the open labour market. The transition from school, secondary or tertiary education to work needs particular attention to realize the right to work. It is important to ensure that persons with disabilities do not pass into segregated settings of work. It is also essential for State parties to ensure that the labour market remains open and accessible to all, including people with disabilities who may have been denied access to education or who were educated in segregated settings that do not produce certificates.

Paragraph 93

The design of social protection systems must support both the needs of people with disabilities and the needs of their families. The family members of people with disabilities, and of people with intellectual disabilities in particular, may be forced out of the workforce as a result of inflexibility in employment or the denial of reasonable accommodation for their caring responsibilities. Social protection systems should accommodate for family members who choose to voluntarily leave the workforce in favour of a full-time caregiving or support role.

Proposed Amended Text

Social protection should compensate for the lack of work-related income and complements labour rights. These systems must also compensate for the lack of work-related income of family members of persons with disabilities, who may be forced out of or voluntarily leave the workforce to fulfil caregiving responsibilities.

Paragraph 96

The recognition of the role that Article 32 on international cooperation plays in the promotion of Article 27 is significant. While development, humanitarian, and other international programmes must safeguard and promotion the rights of persons with disabilities to work, many international cooperation programme methodologies remain in violation of the CRPD. A recent analysis of ODA funding by Inclusion International identified that among projects that included people with intellectual disabilities, 38% of employment and livelihoods projects in 2018 used methodologies that violated Article 27⁴, promoting segregation and other human rights violations. Paragraph 96 could benefit from being more prescriptive about the requirements for consistency with the Convention, with clear examples of common non-compliant methodologies.

⁴ Inclusion International, 2020. Excluded from the Excluded: People with Intellectual Disabilities in (and out of) Official Development Assistance. <https://inclusion-international.org/wp-content/uploads/2020/10/Excluded-from-the-Excluded.pdf>

Proposed Amended Text

International agreements, or international programmes, including development and humanitarian programmes, should all include measures to safeguard and promote the right of persons with disabilities to work, including through developing the capacity of international and national actors on this issue. Examples include State parties ensuring that their international programming is focused on supporting the closure of sheltered workshops, supporting employment programming that offers fair wages, and ensuring their programme does not push people with disabilities into self-employment without free choice, in line with the Convention.

Cross-cutting issues

The following elements are not reflected in the Draft General Comment and require a series of amendments throughout the document.

Families

The families of people with intellectual disabilities are key stakeholders in their employment, and families must be consulted in the development of policy and legislation on employment measures. This requirement is in line with the inclusion of families as organizations of persons with disabilities (OPD) outlined in General Comment 7.

Proposed Amended Text – Paragraphs 8, 48, 73, 97(g)ii

Where the text references the consultation of people with disabilities and their representative organizations, this should reflect the requirement to consult with people with disabilities **and their families**, through their representative organizations.

Contact

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