

# EPR contribution to the call for submissions from the Committee on the Rights of Persons with Disabilities to the Draft General Comment on article 27 on the right of persons with disabilities to work and employment

6th December 2021

EPR is a community of service providers working with people with disabilities committed to high quality service delivery. EPR's mission is to build the capacity of its members to provide sustainable, high quality services through mutual learning and training.

EPR and its members are committed to support competitive employment opportunities for people with disabilities and meaningful inclusion in the mainstream workforce, as set forth in international legal instruments. People with disabilities should enjoy the right to work in a labour market and work environment that is open, inclusive and accessible. Accessing the job market presents additional challenges for people with disabilities, mainly in terms of attitudinal, physical and informational barriers to equal opportunities.

By assisting and working with leading service providers across Europe, EPR promotes the development of quality services to overcome barriers to the employment of people with disabilities. EPR brings together service providers from different countries to share and continuously improve employment services. EPR activities equip members to strengthen partnerships with companies to better match people with disabilities' needs and rights, companies' demands and labour market changes.

This contribution includes analysis and guidance from two joint analyses and statements<sup>1</sup>, as well as proposals for amendments and accompanying comments.

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## Proposals for amendments to the text with comments

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### Paragraph 3

*Ableism is the foundation of social prejudice and leads to inequality and discrimination against persons with disabilities, as it informs legislation and policies, and can lead to segregating practices ~~such as segregated employment, for example 'sheltered workshops'~~, or can result in involuntary participation in the informal economy.*

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<sup>1</sup> Vienna Declaration (2018), ILMA Joint Message to EU policymakers (2020)

Segregating practices can occur in many work settings. The issue here is segregation. As there is not an agreed definition of sheltered workshops it is better to refer to the elements of work practices or models that are seen as not compatible with the UNCRPD, rather than mention certain models that can operate in different ways in different contexts or countries, exhibiting different characteristics or elements.

#### Paragraph 4

*Persons with disabilities face reduced access to quality education and training, high inactivity and unemployment rates, lower wages, instability, lower standards in hiring conditions, lack of accessibility to and in the work environment, and the fact that they are also less likely to access managerial positions when they are formally employed situations that are exacerbated for women with disabilities.*

An inclusive education and training programme that prepares workers with disabilities for an inclusive labour market is essential. There is also a significant number of persons with disabilities who do not have a job and are and remain forcibly inactive, in some situations, in some cases due to work incapacity designations. An inclusive labour market requires a reversal of traditional assumptions that simply equates disability with an inability to work. Indeed, paragraph 62 states that *Additionally, States Parties should take immediate measures to remove barriers in laws, policies and programmes that associate disability as “inability to work”*. Future policy should be based on an assumption that all human beings have a capacity to engage in economic activity with the right kind of personalised supports for the workers and their employer.

#### Paragraph 14

*Despite some progress, access to the open labour market and segregation continue to be among the greatest challenges for persons with disabilities. Denial of reasonable accommodation, inaccessible workplaces, prejudices and harassment pose further obstacles to employment in an open labour market and work environment which can leading to a false choice of employment in a closed workplace on the basis of disability. The notion of freely chosen employment is also contained in ILO Convention No. 122 concerning Employment Policy (1964) and speaks of “full, productive and freely chosen employment”, linking the obligation of States parties to create the conditions for full employment with the obligation to ensure the absence of forced labour.*

Prejudice and stereotyping are significant issues impacting access to the open labour market.

#### Paragraph 17

*Sheltered workshops remain in existence in many places as supposedly a way of addressing unemployment challenges for persons with disabilities. The Committee is concerned that they too often reflect the medical approach to disability, and therefore are incompatible with the Convention.*

1. The Committee observes that sheltered certain models of workshops include a variety of practices and experiences, which are characterized by at least some of the following elements:
  - a. They segregate persons with disabilities, that is, they separate them from the rest of the society and bring them together on their own;
  - b. They are organized around certain specific activities that persons with disabilities are deemed to be able to carry out;

c. They focus and emphasize medical ~~and rehabilitation~~ approaches;

....

*Sheltered workshops for persons with disabilities are not always 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. It is important not to confuse sheltered workshops with cooperatives, or jobs organized or run by persons with disabilities in which labour laws are generally respected.*

See comment on paragraph 3. Given the lack of a common definition and disparity among practices and characteristics among what might be considered sheltered workshops it would be more useful to focus on the elements and not use only refer to “sheltered workshops”.

Article 26 states: *States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services.* It is unclear what a “rehabilitation approach” means in this context and why rehabilitation is referred to here with a negative connotation, so this reference should be deleted.

### Paragraph 18

*Sheltered workshops for persons with disabilities exhibiting the elements in paragraph 17 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. ~~It is important not to confuse sheltered workshops with cooperatives, or jobs organized or run by persons with disabilities in which labour laws are respected.~~*

*Jobs organized or run by persons with disabilities in which labour laws are respected* – it is not clear what this refers to; cooperatives’ practices may not be compatible with the CRPD and they may run “sheltered workshops”. Along the same line as previous comments, what is more important are the elements of any work setting that are incompatible with the CRPD, rather than naming specific models.

### Paragraph 40

*All workers with disabilities have the right to equal opportunity for promotion through fair, merit based and transparent processes, including those which use technologies based on artificial intelligence.*

There is an increasing understanding of the risk of AI bias, which can create discrimination against people with a disability in recruitment processes, for example, if not taken in to account.

### Paragraph 53

*All workers may experience the need to retrain, develop new skills, or change their occupations. Job retention and return-to-work programmes for persons with disabilities are part of wider efforts, including Disability Management programmes, to ensure continual workforce development. States parties need to ensure that persons with disabilities are supported to stay in work or transition to new roles after the acquiring a new impairment or exacerbation of an existing impairment.*

The Disability Management approach has proven to be very effective in supporting return to work and job retention.

### Paragraph 54

*In the provision of rehabilitation, States Parties should ensure that workers with disabilities following an accident or disease and, where relevant, the dependants of those workers, receive adequate compensation, including for costs of treatment, loss of earnings and other costs, in addition to access to early intervention rehabilitation services.*

Early intervention has been proven to increase the efficacy of rehabilitation services supporting people in their pathway to return to work.

### Paragraph 66

*In order to fulfil (facilitate) the right to work and employment for persons with disabilities, States Parties are required to take positive measures to enable and assist persons with disabilities to undertake technical and vocational education and training, as well as develop soft skills, and to **implement technical and vocational education** plans, to facilitate access to employment. States Parties are also obligated to undertake and promote research on and availability of new technologies—information and communication technologies, mobility aids, devices and assistive technologies—and giving priority to technologies at an affordable cost.*

The need to improve soft skills is often identified when developing training to support people to access employment. Soft skills are considered by experts in the future of employment to be the key to sustainable employability over time.

### Paragraph 72

- a. Promote—
  - i. *the right to lifelong supported employment, including to work assistance, job coaching and vocational qualification programmes; protect the rights of workers with disabilities; and ensure the right to freely chosen employment*

This has been identified as an important success factor in long-term labour market inclusion

### Paragraph 91

*Article 24 on education—obligates States parties to recognize the right of persons with disabilities to education, without discrimination and on the basis of equal opportunity in inclusive educational settings at all levels. Inclusive education has a vital role in ensuring persons with disabilities are in a position to be able to exercise their right to work. 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, with access to peer mentors, job coaches and other quality support services to realize the right to work.*

EPR members have identified these actors as key in successful transitions.

- iii. *Disability-related social protection must not be limited to benefits solely based on means-tests, such as disability benefits only available for persons with disabilities in*

- poverty. These create a ~~disincentive to work~~ poverty trap; and in cases where they are tied to health benefits or other essential supports, can make pursuing work inviable.
- iv. Transitional arrangements to ensure income protection for those entering work. These should provide for continuation of benefits without delay in the case that the period in work was not continued.
  - v. Persons with disabilities have equal access to public works programmes. This includes provision of reasonable accommodation and ensuring that public works programmes offer diverse roles.
  - vi. Social protection should compensate for the lack of or low work-related income and complements labour rights.

The situation whereby a person with a disability, for example, starts a part-time job and loses all benefits or ends up with a lower income must be avoided.

### Paragraph 97

- g. Expediently phase out sheltered workshops; which exhibit characteristics identified in paragraph 17 of the General Comment, by adopting concrete action plans, with resources, timeframes and monitoring mechanisms that ensure the expeditious transition ~~from sheltered workshops~~ to inclusion in the labour market. For persons with disabilities who remain in such sheltered workshops, the States parties should:
  - I. Review the laws, policies, approaches and assumptions on which the promotion of sheltered employment workshops have been based;
  - II. Closely consult with and actively involve persons with disabilities, and their representative organizations as a matter of priority, in the design, implementation and monitoring of transition processes;
  - III. Provide alternatives and support to them to transit from ~~these~~ sheltered workshops exhibiting characteristics identified in paragraph 17;

See previous comments about the model vs the elements in paragraph 17.

Thank you in advance for your consideration and we wish you all the best in your important work.