

## CHAPTER 10: THE RIGHT TO WORK

### UN Convention on the Rights of Persons with Disabilities

#### Article 27: Work and employment

1. 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*:
  - (a) 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;
  - (b) 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;
  - (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
  - (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services, and vocational and continuing training;
  - (e) 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;
  - (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
  - (g) Employ persons with disabilities in the public sector;
  - (h) 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;
  - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
  - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
  - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

## OBJECTIVES

The exercises and background information contained in this chapter will enable participants to work towards the following objectives:

- Define the right to work
- Explain the importance of the right to work for people with disabilities
- Understand the interrelation between the right to work and other human rights
- Identify ways in which the rights of people with disabilities to work have been promoted or denied
- Understand the provisions on work and employment in the UN **Convention on the Rights of Persons with Disabilities** (CRPD).

## GETTING STARTED: THINKING ABOUT WORK AND EMPLOYMENT

The phrase “right to work” can be misleading. Just as the “right to health” cannot guarantee that a person will be healthy, the right to work cannot guarantee all people of working age a job. No government can realistically guarantee such a right. Instead, the “right to work” encompasses the right of all people to the *opportunity* to earn a living by freely choosing or accepting work, and to undertake that work in safe and favourable working conditions. The right to work also includes the right to form and join trade unions, through which people can protect their interests and advocate for safe and favourable working conditions.

Unfortunately, people with disabilities have frequently been denied the right to work. Attitudes and assumptions about the capabilities of people with disabilities often lead employers to the false assumption that a person’s disability makes him or her less capable, and so disqualifies him or her from being able to perform work-related tasks. This misconception causes people with disabilities not to be hired, or to be hired only for jobs that do not utilize their knowledge and skills. Similar attitudes lead employers to believe that some employees with disabilities, especially those with psycho-social disabilities, may be “dangerous” to themselves or others in the workplace or that customers will be offended or feel uncomfortable by the presence of persons with disabilities. Employers also often assume that the costs of implementing disability accommodations (such as accessibility features or flexible working schedules) are prohibitively expensive. Some employers use this rationale to pay their employees with disabilities a lower salary than that received by others doing comparable work. In more extreme cases, people with disabilities may find themselves forced into abusive, exploitative, slave-labour, or other unsafe working conditions, perhaps with no pay at all. Alternatively, people with disabilities are denied opportunities to work in mainstream settings, and may have to work in a segregated setting when they might not otherwise choose to do so.

Collectively these attitudes and assumptions result in many people with disabilities being denied the enjoyment of their right to work at any and all stages of the employment cycle, including initial hiring, continuing employment, and career advancement. Furthermore, the subtle and insidious nature of discrimination on the basis of disability in workplace settings can make it extremely difficult for people with disabilities to challenge the violation of their rights. For example, many employers will not openly state that a person’s disability is the reason they have failed to hire a person or have terminated a person’s employment. They might, for example, say that they preferred other applicants. Gathering the evidence needed to challenge such discrimination may prove almost impossible.



Violations of other human rights can create additional barriers to people with disabilities being able to fully enjoy their right to work. For example:

- The lack of accessible transportation may deprive people with disabilities of their ability to access places of employment;
- The lack of access to education and to access vocational and other training opportunities may leave people with disabilities unable to meet specific job qualifications, and may also restrict their earnings potential;
- The lack of opportunity to live independently and in the community may force people with disabilities to live in segregated institutional settings, where access to meaningful work opportunities may be non-existent or greatly restricted;
- The lack of access to health care services may leave people with disabilities in poor health and as a result unable to work; and
- The lack of access to information may make it difficult for people with disabilities to become aware of job postings and other information about potential employment.

Violations of the right to work may also lead to violations of the enjoyment of other human rights by people with disabilities. For example, a disabled person who is unable to work and earn a fair wage may be unable to attain an adequate standard of living. This circumstance, in turn, may force that person to become dependent upon others, restricting choices and curtailing the ability to live independently in the community. In many cases, people with disabilities who are unable to financially support themselves can become trapped in a cycle of poverty, and unable to meet even their most basic needs for food, water, clothing, and shelter, or indeed raise a family as they would wish. In some countries employment provides a means of accessing the health insurance needed to obtain health care services. Where people with disabilities are unable to obtain employment in such countries, their access to health care services may also be restricted.

Perhaps the most far-reaching impact of the denial of the right to work is on a person's sense of dignity and self-worth. In many societies, the ability to work is commonly viewed as one of the most important ways in which people can make their individual contributions to society, and those perceived as unable or unwilling to work may be viewed as less valuable members of that society, especially when their inability to earn a living causes them to become reliant on the support of the government or others. Thus, full enjoyment of the right to work can be of critical importance in the full inclusion of people with disabilities as equal members of the societies in which they live, as well as in the self-image and sense of self-worth that people with disabilities have of themselves.

## The Right to Work for People with Disabilities and the International Labour Organisation

The International Labour Organisation (ILO) is the global body mandated to oversee the development and monitoring of international labour standards that promote enjoyment of decent work. Founded in 1919, it became the first specialized agency of the United Nations in 1946. The ILO is unique amongst UN agencies for its use of a “tripartite” system that brings together representatives of governments, employers, and workers to develop jointly policies and programmes.

Although the ILO works to promote decent work for all people, it also pays specific attention to the enjoyment of the right to work by specific groups of people, such as young persons, women, indigenous peoples, and people with disabilities. In addition to its adoption of Convention 159 (concerning Vocational Rehabilitation and Employment (Disabled Persons)) and its “Vocational Rehabilitation and Employment (Disabled Persons) Recommendation (No. 168),” the ILO also operates the “ILO Disability Programme”:

The ILO Disability Programme promotes decent work for women and men with disabilities and facilitates means to overcome the obstacles preventing people with disabilities from full participation in the labour markets. Working from the Infocus Programme on Skills, Knowledge and Employability, the programme involves the following main activities:

- Improving knowledge on disability-related matters concerning training and employment;
- Advocacy, guidance and policy advice to governments, workers and employers’ organizations on training and organizations of/for people with disabilities;
- Technical advisory services and cooperation activities.<sup>1</sup>

### EXERCISE 10.1: What Does it Mean to Enjoy the Right to Work?

**Objective:** To understand what it means to enjoy the right to work

**Time:** 30 minutes

**Materials:** Chart paper and markers or blackboard and chalk

#### 1. Define:

Divide participants into small groups and ask each group to come up with their own definition of “the right to work.”

#### 2. Report/Discuss:

Ask a spokesperson from each group to give their definition. Record these and discuss the differences and similarities of these definitions. Help the group recognize where their definitions may differ from that used in this chapter.

<sup>1</sup> See <http://www.ilo.org/public/english/employment/skills/disability/iloprog.htm>



### 3. Discuss:

- Do you know people with disabilities in your community who work? Where do they work and what kinds of jobs do they do?
- Do the people with disabilities in your community who work seem to enjoy the right to work according to your definition?
- Do you think that most people with disabilities in your community enjoy the right to work? Who in particular do you think *does* enjoy the right to work? Who does not?
- What can be done to ensure that all people with disabilities in the community can fully enjoy the right to work?
- What can be done to ensure that all people with disabilities in the community can fully enjoy the right to work?

### Examples of Barriers to the Right to Work

- Physical barriers to places of work – in other words, the workplaces themselves are not physically accessible;
- Lack of accessible transportation to places of work;
- Legislation, regulations, policies, or practices that prohibit people with disabilities from working in particular jobs or that do not protect people experiencing disability-based discrimination in employment settings;
- Lack of accessible information about available employment opportunities;
- Lack of accommodations to facilitate communication in employment settings by people with disabilities, especially blind, deaf, deafblind, people with intellectual disabilities, and people with learning disabilities;
- Attitudes about the ability of people with disabilities to work and be qualified and contributing employees.

## EXERCISE 10.2: Understanding Barriers to Enjoyment of the Right to Work

**Objective:** To explore barriers to the right to work

**Time:** 45 minutes

**Materials:** None

### 1. Introduction:

Ask for people to give examples of barriers that prevent some people with disabilities in the community from enjoying the right to work. List these.

Ask if some particular groups of people with disabilities are especially prevented from enjoying the right to work.

### 2. Discuss:

Divide participants into small groups of two or three. Ask each to make up a short fictional but typical biography of a person with disabilities in this community, describing how he or she was denied the right to work.

### 3. Report:

Ask each group to present its “biography.”

### 4. Analyze/Discuss

Discuss with the group what it would take for each of these fictional people to achieve the right to work.

- Consider the various supports and accommodations referenced in Article 27.
- What could be done to obtain these supports and accommodations?

## WHAT DOES HUMAN RIGHTS LAW SAY ABOUT THE RIGHT TO WORK?

The right to work is addressed in a variety of human rights law instruments. For example, the **Universal Declaration of Human Rights** (UDHR) discusses the right to work in Article 23, addressing such issues as freedom of choice in employment, fair pay, equal pay for equal work, and the right to form and join trade unions. The **International Covenant on Civil and Political Rights** (ICCPR) also contains provisions relevant to the right to work in Article 8, which focuses on the right of everyone not to be held in slavery or servitude, as well as to be free from forced or compulsory labor except in certain limited circumstances.

The **International Covenant on Economic, Social and Cultural Rights** (ICESCR) elaborates further on the right to work, with three articles addressing related issues, including:

- **Article 6** – affirming the right to work and calling on governments to achieve its realization through policies and practices that safeguard “fundamental political and economic freedoms to the individual”;
- **Article 7** – addressing the right of everyone to “just and favourable conditions of work,” including safe and healthy working conditions, fair wages, equal opportunity for promotion subject to seniority and competence, and rest and leisure time;
- **Article 8** – addressing the right of everyone to form and join trade unions, and the rights of trade unions to function freely subject only to those restrictions necessary in a democratic society to preserve public order or protect the rights and freedoms of others.<sup>2</sup>

General Comment No. 5 of the **Committee on Economic, Social and Cultural Rights** (the treaty body responsible for monitoring implementation of the ICESCR) addresses some of the barriers faced by people with disabilities in fully enjoying the right to work under the ICESCR, such as the pervasiveness of disability-based discrimination in the employment field, the limited and often substandard employment options available to people with disabilities, and the barriers to work resulting from lack of enjoyment of other human rights, such as access to transportation to get to work. It also notes the need for governments to ensure that people with disabilities can fully enjoy their trade union-related rights, and to regularly consult with organizations of persons with disabilities on employment and other matters.<sup>3</sup>

Article 32 of the **Convention on the Rights of the Child** (CRC) recognizes the right of all children to be free from economic exploitation and any work that might interfere with their education, or that would be harmful to their “health or physical, mental, spiritual, moral or social development.” In addition, it requires States to establish a minimum age (or minimum ages) for employment, to regulate the hours and conditions of employment, and to ensure the use of penalties or other sanctions in order to enforce Article 32.<sup>4</sup>

2 See [http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)

3 See [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

4 See <http://www.unhchr.ch/html/menu3/b/k2crc.htm>



The 1993 **UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities** (Standard Rules) addresses a number of issues that can impact the ability of people with disabilities to enjoy the right to work, including:

- Awareness-raising of the rights, needs, potential and contributions of people with disabilities in society (Rule 1);
- Rehabilitation (Rule 3);
- Support services to promote independence and facilitate the exercise of rights by people with disabilities (Rule 4);
- Physical, informational and communication accessibility (Rule 5);
- Education (Rule 6);
- Employment (Rule 7);
- Personnel training (Rule 19).<sup>5</sup>

The **Convention on the Rights of Persons with Disabilities** (CRPD) expands upon the issues addressed in earlier human rights documents and helps to clarify how States can respect, protect and fulfill the right to work. Because of the **interrelated, interdependent** and **indivisible** nature of human rights, many articles in the CRPD can be considered relevant to the enjoyment of this right. However, Article 27 specifically focuses on the right to work.

Quite a lengthy article, Article 27 contains two subsections. The first and longest of these expressly recognizes the right of persons with disabilities to work on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen or accepted. It further states that the right to work should be enjoyed in a “labour market and work environment that is open, inclusive and accessible to persons with disabilities.” Article 27(1) then goes on to address some of the specific steps that States should take in promoting the realization of the right to work by people with disabilities, including:

- Prohibiting discrimination on the basis of disability regarding all areas and forms of employment;
- Protecting the right to just and favourable conditions of work, including through equal pay for equal work, safe and healthy working conditions, protection from harassment, and resolution of complaints;
- Ensuring that people with disabilities can exercise their labour and trade union rights on an equal basis with others;
- Enabling access to general technical and vocational guidance programmes and other placement and training services;
- Promoting employment opportunities and career advancement for people with disabilities and providing assistance in finding, obtaining, maintaining and returning to employment;
- Promoting opportunities for self-employment, entrepreneurship, developing cooperatives and business start-up;
- Employing people with disabilities in the public sector;
- Promoting employment in the private sector through affirmative action, incentives and other appropriate policies and measures;
- Ensuring provision of reasonable accommodation in the workplace;
- Promoting work experience for people with disabilities in the open labour market; and
- Promoting vocational and professional rehabilitation, job retention and return-to-work programmes.

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5 See <http://www.un.org/ecosocdev/geninfo/dpi1647e.htm>

Although much shorter, Article 27(2) is an important provision addressing the issue of exploitative labor. It requires States to ensure that people with disabilities are not held in slavery or servitude and are protected on an equal basis with others from forced or compulsory labour.

States must *respect* the right work by ensuring that State actors such as government officials do not interfere with the exercise and enjoyment of the right by people with disabilities. States must also *protect* the right by ensuring that non-State actors, such as businesses and trade unions, do not interfere with the exercise and enjoyment of the right. Furthermore, States have an obligation to *fulfill* the right by taking action (such as the steps outlined in Article 27(1)) to ensure that people with disabilities are able to exercise the right. In short, international human rights law strongly supports the right of people with disabilities to work, not only as a right in itself, but so that people with disabilities may better enjoy their other human rights and fully assume their responsibilities as members of society and contribute to that society.

### EXERCISE 10.3: Understanding the Right to Work

**Objective:** To review and understand the right to work affirmed by the CRPD

**Time:** 45 minutes

**Materials:** Chart paper and markers or blackboard and chalk

#### 1. Review:

Divide the participants into small groups. Ask each group to work together to paraphrase Article 27 in common language and give some examples of how that right could be enjoyed and make a difference for people with disabilities in their community.

Note to Facilitator: Given the length of Article 27, you may want to ask different groups to address different sections.

#### 2. Paraphrase:

Read Article 27 aloud. Pause at each comma or natural section to ask different groups for their paraphrase. Discuss the meaning of the section until everyone can agree on a paraphrase. Write the final paraphrase of Article 27 on chart paper.

#### 3. Give examples:

Ask for examples of how the right to work could be enjoyed and make a difference for people with disabilities.

#### 4. Discuss:

How can Article 27 of the CRPD be used to set national disability rights agendas and formulate platforms of action for submission to political parties or government decision-makers? What does it mean to people with disabilities in your country?

### AWARENESS-RAISING IN EMPLOYMENT SETTINGS

In order for employers to uphold their obligations to current and potential employees with disabilities, and in order for people with disabilities to advocate for full enjoyment of their rights, both employers and people with disabilities need to be aware of their obligations and rights. Many employers in both the public and private sectors are increasingly adopting disability policies that outline their responsibilities and the rights of people with disabilities. Sometimes



employers adopt such policies of their own accord, and sometimes they do so in response to national legislation and the encouragement of disabled people's organizations. Such policies help to remind those in decision-making roles of the responsibilities they have towards employees and customers with disabilities. They can also help to empower people with disabilities to claim their rights and challenge violations of their rights.

However, policies alone are typically not enough to ensure awareness or guarantee that people with disabilities fully enjoy their rights. It is not enough for an employer to *have* a policy, but rather steps also need to be taken to ensure that all affected by the policy are aware of its content and understand what they need to do to put the policy into action. Training may be needed to help people understand their rights and responsibilities under the policy, and further supports may be needed to give effect to a policy. In addition, mechanisms need to be in place to address violations of the policy effectively, and people wishing to challenge violations need to understand how to use those mechanisms and feel safe in doing so. If employees worry that they may lose their job or be punished in some way for drawing attention to a violation, then arguably even a well-written policy is ineffective.

- Can you think of any employers that have policies addressing the inclusion of employees with disabilities?
- Were these policies developed with the input of people with disabilities and/or their representative organizations?
- How could these policies or the actions taken to effectively implement them be improved?
- How could you or your organization advocate for or assist in the adoption of such policies?

### **Volkswagen's Corporate Commitment to People with Disabilities**

As part of the 2003 European Year of People with Disabilities, and building upon earlier company initiatives, international car manufacturer Volkswagen signed an agreement pledging to better integrate staff with disabilities into the mainstream work process through education, training and internal communications. As part of the 2003 celebrations, Volkswagen also released a brochure entitled "Away From Paternalism Toward Enablement," in which it outlined a variety of steps it is taking to promote disability issues, including:

- Working to ensure that its products are accessible to people with disabilities;
- Prohibiting disability-based discrimination in the work environment;
- Utilizing principles of universal design to promote a healthy and safe work environment, to integrate employees with disabilities, and to re-integrate employees who may have become disabled during the time they have been employed with the company;
- Utilizing reasonable accommodation where universal design features do not adequately accommodate employees with disabilities; and
- Forming "integration teams" of different management departments and representatives of people with disabilities, in order to work cohesively towards the gradual implementation of disability policies throughout all company departments and manufacturing plants.

## EXERCISE 10.4: Making a Commitment to Promote the Right to Work

Emphasize that human rights involve both rights and responsibilities.

- Ask if after learning about the human right to work of people with disabilities, the group is ready to think about taking concrete action.
- Acknowledge that, although there is still much planning and information gathering to do, commitment to creating change is also very important.
- Explain that you would like to ask each participant to name one individual action, however small, that she or he is willing and able to take in the next month to promote the human right of people with disabilities to exercise their right to work. For example how can participants better help employers to understand that employing people with disabilities is not only legally required, but a desirable thing for employers because of the contributions that people with disabilities can make to the work and workplace?

To plan advocacy for the human rights of people with disabilities, see Part 3, “Advocacy! Taking Action for the Human Rights of People with Disabilities,” p. 229.

### USEFUL RESOURCES ON THE RIGHT TO WORK

- Americans with Disabilities Act Guide for Small Businesses:  
<http://www.ada.gov/smbustxt.htm>
- General Comment No. 5 of Committee on Economic, Social and Cultural Rights:  
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)4b0c449a9ab4ff72c12563ed0054f17d?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)4b0c449a9ab4ff72c12563ed0054f17d?Opendocument)
- ILO Convention 159 (concerning Vocational Rehabilitation and Employment (Disabled Persons): <http://www.ilo.org/ilolex/english/convdisp1.htm>
- ILO “Vocational Rehabilitation and Employment (Disabled Persons) Recommendation (No. 168)”: <http://www.ilo.org/ilolex/english/recdisp1.htm>
- ILO Skills and Employability Department – Disability and Work cross-cutting theme:  
<http://www.ilo.org/public/english/employment/skills/disability/index.htm>

