

**Submission to the Committee on the Rights of Persons with Disabilities on its
Draft General Comment on the right to work
Sexual Rights Initiative
December 2021**

This submission is prepared by the Sexual Rights Initiative (SRI).¹ The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Egypt, Argentina, and South Africa that work together to advance human rights related to sexuality at the United Nations.

Introduction

The suggested changes to the General Recommendation proposed in this document are based on our submissionⁱ to the Committee on its outline and our oral intervention during the General discussion on the right of persons with disabilities to work and employment. In our different submissions we highlight the importance of an intersectional analysis that recognizes the ableist, sexist and patriarchal systems, structures and institutions that define productivity and dependency. Changes to these systems, structures and institutions will contribute to the realization of bodily autonomy, where persons with disabilities, and especially women with disabilities, have the ability to make and exercise choices not limited by oppression, discrimination, stigma, coercion, violence, lack of opportunities or possible consequences. Only when choice is no longer an illusion, can we meaningfully engage in work “freely chosen or accepted,” as phrased in article 27 of the CRPD Convention.ⁱⁱ

Suggested Amendments

Paragraph 24

Persons with disabilities are often disproportionately affected by intersectional and multiple discrimination. The diversity among persons with disabilities means they face diverse barriers to realizing the right to work and follow different pathways into work throughout their working lives. *Multiple discrimination* refers to the situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated.ⁱⁱⁱ *Intersectional discrimination* [DELETE occurs when several grounds interact with each other at the same time in such a way as to be inseparable] [INSERT captures the structural and dynamic consequences of the interaction between different forms of discrimination or systems of oppression.] Intersectional discrimination [DELETE recognizes that individuals do not experience discrimination as members of a homogenous group but, rather, as individuals with multidimensional layers of identities, statuses and life

¹ <http://www.sexualrightsinitiative.com/>

circumstances.] [INSERT: recognizes the manner in which racism, patriarchy, ableism, economic disadvantages and other discriminatory systems create layers of inequality that structures the relative positions of individuals in society.] [DELETE: These additional grounds include age, race, indigenous, national or social origin, refugee, migrant or asylum seeker status, political or other opinion, religion, sex, sexual orientation and gender identity.]

Rationale:

The definition of the Expert Group Meeting on gender and racial discrimination convened by OHCHR in 2000 of intersectionality makes a clear reference to the structural configuration of inequality that creates dynamics of disempowerment. Highlighting this element of the definition of intersectionality clearly leads to the necessary state obligations for sustainable and long-lasting change. As pointed by the Expert Group, “[t]he idea of ‘intersectionality’ seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment.”^{iv}

Intersectional discrimination refers to the way that systems of power, not identities, manifest through discrimination. As a result, having a list of grounds or identities is not necessary once the systems and structures have been named. However, if the Committee decides to keep a list of grounds or identities, we suggest it adds “inter alia” to include any and all forms of discrimination.

Paragraph 25

The concepts of multiple and intersectional discrimination acknowledge the lived realities and experiences of the heightened disadvantage of individuals caused by these forms of discrimination. The Committee has addressed different situations of multiple and intersectional discrimination, including:

- a. Women and gender non-conforming persons with disabilities face [DELETE an intersection of gender and disability-related barriers in attitudes, circumstances and work itself.] [INSERT multiple and intersectional discrimination] [DELETE These include compounded effects of double-discrimination] that limit opportunities to work, increased risk of violence and harassment in the workplace, as well as other barriers^v.

- b. Disability and age also interact to mean that youth and older persons with disabilities can face substantially different challenges to realize the right to work.

Rationale:

Intersectional discrimination seeks to incorporate and highlight the effect of different systems of discrimination. However, as said by Kimberle Crenshaw, intersectionality is not a summatory exercise of discrimination,

“Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.”^{vi}

In addition, persons can face more than two forms of discrimination.

Recognizing this approach, the Committee on the Elimination of Discrimination against Women, in its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, stated that “the discrimination of women based on sex and gender is **inextricably linked** with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.”

Paragraph 64

Women with disabilities are at great risk of exploitation in the informal economy and in unpaid work. Women generally are often overrepresented in the informal economy, unpaid **[DELETE home]** **[INSERT care]** workers, and family businesses, which in turn exacerbates inequalities in areas such as remuneration, health and safety, rest, leisure and paid leave. Women with disabilities are even more at risk. Young people with disabilities may be **[INSERT: at]** a greater risk of exploitation in the formal economy through inappropriate use of unpaid internships and training programmes.

Rationale:

Home work does not include domestic or unpaid work, according to the ILO:

The definition of home work, its scope and the measures for protecting home workers were the subject of debate at the 82nd and 83rd sessions of the International Labour Conference, in 1995 and 1996, leading to the adoption of the Home Work Convention (No. 177) and Recommendation (No. 184), 1996. Convention No. 177 defines home work as “work carried out by a person ... (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in

a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used” (Art. 1).^{vii}

According to the ILO, the term care workers covers a wider variety of activities, including domestic work:

“Care work consists of two overlapping activities: direct, personal and relational care activities, such as feeding a baby or nursing an ill partner; and indirect care activities, such as cooking and cleaning. Unpaid care work is care work provided without a monetary reward by unpaid carers. Unpaid care is considered as work and is thus a crucial dimension of the world of work. Paid care work is performed for pay or profit by care workers. They comprise a wide range of personal service workers, such as nurses, teachers, doctors and personal care workers. Domestic workers, who provide both direct and indirect care in households, are also part of the care workforce.”^{viii}

Paragraph 80

Addressing the multiple **[INSERT: and intersectional]** discrimination that women with disabilities (article 6) face in work includes substantial efforts to address structures and attitudes that affect women with disabilities in work and through the employment cycle. **[INSERT: The full exercise of sexual and reproductive rights is essential for women with disabilities to be able to access and keep work.]** Women with disabilities face unique barriers to equal participation in the workplace that States parties must address. These includes sexual harassment, unequal pay for work of equal value and the lack of access to seek redress because of discriminatory attitudes dismissing their claims, as well as physical, information and communication barriers.

Rationale:

As recognized by ILO, UNESCO, and UNFPA, when women with disabilities engage in formal work “a weakened exercise of sexual and reproductive rights negatively impacts the empowerment and identity development of women, girls and youth with disabilities, also hindering the exercise of other rights such as work.”^{ix}

As stated by ILO in study carried out in Perú, hindering sexual and reproductive rights exposes women with disabilities to greater risk of gender-based violence.^x The same forces that permit and cause violence outside of the world of work drive situations of violence likely to be reproduced in the work environment, affecting the ability of women with disabilities to keep work. Misinformation provided to women with disabilities by health care providers, education institutions and society through stereotypes about their sexual and reproductive rights fuels the barriers to employment.

Paragraph 85

Article 16 on freedom from exploitation, violence and abuse – requires State parties to adopt due diligence frameworks to combat exploitation of persons with disabilities through begging and protect persons with disabilities from exploitation, violence and abuse. [INSERT: States must ensure full access to social protection, health systems and support programmes that allow them to live their lives with dignity, including through universal basic income.] Incorporating a disability [INSERT: -rights] perspective into its legislation, strategies and programmes [DELETE in this area] includes incorporating references in legislation, accessible services and in-service training of police, prosecutors, judges, and inspectors and ensuring sufficient resources for their implementation and monitoring.

Paragraph 93 iv)

[DELETE 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.] [INSERT Disability-related social protection and access to health must be reformed so that eligibility and access is not means-tested, require unemployment, or depend on family members, otherwise they perpetuate a cycle of poverty.] These create a disincentive to work, and in cases where they are tied to health benefits or other essential supports, can make pursuing work inviable.

Rationale:

State policies and systems often condition coverage by the status in the family. The “head of household” who does the “productive” work pays a contribution that grants him direct access to social protection and health systems, while the other members of the family, the ones who do unpaid and unrecognized reproductive labour^{xi} are granted access as dependents. This situation -in which access to resources is dependent upon family relations- gives the families of people with disabilities more power and control over the lives of persons with disabilities. As in some countries access to social protection is closely related to access to health, it is necessary to include access to health in this paragraph.

ⁱ Sexual Rights Initiative, Submission to the CRPD on its concept note on art. 27 (right to work). Available at: https://www.ohchr.org/Documents/HRBodies/CRPD/DGD/2021/Sexual_Rights_Initiative.docx (1 December 2021)

ⁱⁱ Id.

ⁱⁱⁱ CRPD general comment No. 3 (2016), para. 4(c) drawing on Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures, para. 12.

^{iv} UN Division for the Advancement of Women, Office of the High Commissioner for Human Rights, and the United Nations Development Fund for Women. *Report of the Expert Group Meeting on Gender and Racial Discrimination*. 21-24 November 2000, available at <http://www.un.org/womenwatch/daw/csw/genrac/report.htm>

^v Paragraph 24

CRPD General Comment No.3 (2016) on women and girls with disabilities.

^{vi} Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," University of Chicago Legal Forum: Vol. 1989: Iss. 1, Article 8. Available at: <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>

^{vii} ILO, Working from home: From Invisibility to decent work. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_765806.pdf

^{viii} ILO, Care work and care jobs for the future of decent work. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633166.pdf

^{ix} ILO, UNESCO, UNFPA, *Caja de herramientas para la inclusión laboral de personas con discapacidad. Resumen y recomendaciones para generar condiciones favorables para la inclusión laboral de personas con discapacidad con énfasis en las mujeres*, p. 11. [ILO] Available at: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_760023.pdf

^x *Id.*

^{xi} Mignon Duffy, *Doing the Dirty Work: Gender, Race, and Reproductive Labor in Historical Perspective*, Gender and Society, vol. 21, no. 3, 2007, pp. 315–317.