

Submission to the CRPD on its concept note on art. 27 (right to work)

Introduction

1. This submission is prepared by the Sexual Rights Initiative (SRI). 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.¹
2. This submission first suggests that the Committee should develop an intersectional analysis that recognizes the ableist, sexist and patriarchal systems, structures and institutions that define productivity and dependency. Secondly, it highlights how the full enjoyment of sexual and reproductive rights, broadly understood, redistributes resources, legitimacy, and power, therefore conditioning access to and keeping work. In reciprocity, access to work mediates the exercise of sexual and reproductive rights. The submission concludes by suggesting recommendations for structural changes to accessing work, health, education, and social protection systems.

1. The right not to work and still have material conditions to live and enjoy life

3. Gender analysis must always be rooted in a framework that acknowledges power structures/ imbalances/asymmetries at individual, societal and institutional levels. Because gender and sexuality are deeply symbolic, culturally meaningful concepts, they affect and are affected by many other aspects of human life. The lens of intersectionality is crucial to understanding how sexuality and gender work, in life and, overwhelmingly, in law. Understanding and addressing human rights violations related to sexuality and gender requires thinking about lives and bodies as a whole because race, disability, ethnicity, class, faith and geography shape how people experience their sexualities and genders. Sexuality and gender, in turn, shape how individuals, communities and states interpret environments, laws and policies.²
4. The practices of forced sterilization, abortion, and contraception highlight the unequal power structures that dominate the lives of women and girls with disabilities. Treaty bodies have consistently recognized that States subject marginalized women to involuntary medical procedures, including forced or coerced sterilizations, abortion and contraception.³ Eugenics

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

² Sexual Rights Initiative, Advancing Sexual Rights for All [Position Paper], Available at: <https://www.sexualrightsinitiative.com/sites/default/files/resources/files/2019-05/Advancing-Sexual-Rights-for-All-Full-Paper-FINAL.pdf>

³ See e.g., UN Doc. CEDAW/C/MDA/CO/6 (2020), para. 40(c); UN Doc. CERD/C/UZB/CO/10-12 (2020), para. 12; UN Doc. CCPR/C/CZE/CO/4 (2019) para. 22; UN Doc. E/C.12/SVK/CO/3 (2019), para. 45; UN Doc. CRPD/C/IND/CO/1 (2019), para. 36; UN Doc. CRC/C/MLT/CO/3-6 (2019), para. 28; UN Doc. CAT/C/PER/CO/7 (2018), para. 37.

is rooted in sexism, racism and ableism, forces that permit and encourage forced sterilization and prevails in different forms, including through the legacy of population control informed by white supremacy and replacement theory, which has resurfaced in current politics.⁴ However, the effects of eugenics are not exclusive to reproduction.

5. Eugenics has been historically based on the ideas of “social” and “racial degeneracy” adopting different forms, but always linked to social and economic crisis, criminality, poverty, and absence of expected “progress”.⁵ Race, mental capacity, and moral standards related to sexuality defined the concept of “social degeneracy”.⁶

“Consequently, eugenicists targeted black and indigenous people, anyone who was not physically or mentally “normal”, and people, especially women, who did not comply with moral standards on sexuality. [...] Eugenics experiences in the United States, Canada and Colombia show how the medical concept of “feble-mindedness” was created and shaped around moral values about **sexuality and alcohol, economic productivity and efficiency, and social rejection [based on...] race and class.**”⁷ [emphasis added]

6. Gender, sexuality, race, class, and disability underpin the moral categories targeted by eugenics. These structures shape State policy when defining “productivity” and “dependency”, and shaping regulations on work, access to health systems, and social security.
7. Feminists have analyzed profusely how work is gendered, recognizing that the traditional domestic distribution of work and production is patriarchal by nature. In a very basic summary, in the family, labour is mostly produced by women, with the male “head of household expropriating her surplus labour, [...] both in the use values he appropriates and on the leisure time resulting from the necessary labour time he relinquishes.”⁸ The “economic unit” of the family then defines women as “dependents”, even when it is really men who depend on the labour that is produced in the household.⁹ Through this economic organization men (or masculinity) become the “norm”: the idealized version of “productivity” and “efficiency”.

⁴ Sexual Rights Initiative, Joint Civil Society Statement 42nd Session Of The Un Human Rights Council International Safe Abortion Day - 28 September 2019, Available at: <https://www.sexualrightsinitiative.com/resources/joint-civil-society-statement-42nd-session-un-human-rights-council-international-safe>

⁵ Natalia Acevedo Guerrero, *The medical discourse and the sterilization of people with disabilities in the United States, Canada and Colombia: From eugenics to the present* (Thesis), pp. 100-101. (2015)

⁶ Id.

⁷ Id. “More specifically, eugenicists used IQ testing methodology to identify who was “fit” for marriage and reproduction, and who was “unfit” and should be institutionalized, segregated or sterilized. It is possible to affirm that these methods allowed eugenicists to medicalize and standardize the selection of patients to whom these measures were applied, and thus, rationally justify the relationship between feble-mindedness and afro-descendants, immigrants, indigenous people, poor people, “promiscuous” women, alcoholics, people with venereal diseases, sex workers, and people from the coasts, among other “immoral” or “problematic” groups.”

⁸ Lakshmi Lingam & Tattwamasi Paltasingh, *‘Production’ and ‘Reproduction’ in Feminism: Ideas, Perspectives and Concepts*, IIM Kozhikode Society & Management Review. 2014;3(1):45-53.

⁹ Id.

8. The neoliberal notion of the autonomous actor, that everyone is either completely dependent or completely independent, also underpins other essential issues to autonomy, like legal capacity. The autonomous actor has been constructed as an androcentric concept where men (as the norm) are rational, self-sufficient and atomistic beings that use their objective human rationality to analyze a situation and make the best possible decision. Feminists have criticized this conception of autonomy arguing that it produces the false belief that humans are isolated and alienated subjects. The autonomous actor myth does not address that people usually decide in a relational way, considering the experiences of other persons, their advice and what they can observe of the consequences. Decision making is not static, because it evolves as a person has more opportunities to make decisions (and to make mistakes when doing so). Self-determination is not built in isolation, it is a product of relational experiences and material conditions.
9. States use racist and patriarchal standards of normality and have historically considered persons with disabilities nonproductive and essentially dependent. The lack of “production” added to the “permanent demand for care” creates the label and stigma of being a burden. In addition, the support services needed by some persons with disabilities to access work on an equal basis are largely not supported by social protection systems and the burden of costs are placed on the individual. As capitalism dictates, if you are seen as non-productive, you are not granted the support you need to participate.
10. Going back to the initial example, eugenics targets persons with disabilities based on their assigned productivity to eliminate them, while capitalism targets persons with disabilities to exclude them.¹⁰ Exclusion does not bar exploitation, it just does not happen mostly as formal workers, but as objects of care “that provide never-ending profits for the health industry, [...] to be forever habilitated, rehabilitated, “healed,” “protected” by the health industry, “protected” by the “special” education industry, and “protected” by specially designed working environments.”¹¹ None of these segregated systems promote the independence or participation of persons with disabilities, but actually serve to further exclude them: from healthcare on their terms, from mainstream quality education and from work on the open labour force.
11. The construction of persons with disabilities as victims and dependents, has impacts outside the world of work. For example, understanding persons with disabilities as dependents automatically bars them from many immigration procedures. Several countries have discriminatory immigration laws that ban migration of persons with disabilities by assuming

¹⁰ Exclusion can also lead to death by depriving people of basic means of survival and even loop back into eugenics. In Colombia, for example, young men with disabilities were victims of extrajudicial killings by the military, who then showed them as deaths in combat to get rewards and benefits. They were targeted because they were considered unproductive members of society. See: <https://www.jep.gov.co/especiales1/macrocasos/03.html>

¹¹ Facundo Chávez Penillas & Stuart Schrader, *Crisis, Class, and Disability in Argentina: Red por los Derechos de las Personas con Discapacidad*, Disability Studies Quarterly Vol. 32 No 3 (2012). Available at: <https://dsq-sds.org/article/view/3274/3107>

they will not be able to work and sustain themselves,¹² reinforcing stereotypes around productivity and persons with disabilities being a burden. This can lead to detention and discriminatory procedural laws and allow the forced diversion of persons with disabilities to health institutions.¹³

2. Structures of power are embedded in the legal policy framework and in practice

12. Programs and policies through which States attempt to ensure the rights of persons with disabilities rely on requirements that have historically scrutinized their bodies, openly labeling them as unproductive, unfit, and not normal, even relying on percentages to measure their productivity or normality.¹⁴ Disability assessments, through the power of medicine and capitalist notions of productivity, consider autonomy and agency as opposing disability. Disability assessments set a very high standard to achieve and maintain legal recognition of disability, providing incentives to be “more disabled” and less autonomous, incentives to be dehumanized. These assessments respond to the same capitalist and patriarchal systems that police and stigmatize the bodies of women, adolescents, sex workers, people living with HIV, lesbian, gay, bisexual, transgender, gender non-conforming and intersex persons and restrict the enjoyment of their rights.
13. 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 labour¹⁵ 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.¹⁶ This is particularly dangerous for women with disabilities who often have less autonomy than men with disabilities as a result of patriarchal gender norms. Family members might push women with disabilities to stay in unfulfilling, unhappy and possibly violent situations, for example. This control over their access to economic resources and health services is comparable to restrictions to legal capacity that grant guardianship to the partners of women with disabilities: the concession of inordinate power to guardians who can now control every aspect of the lives of women with disabilities.

¹² See e.g., U.N. Doc. CRPD/C/KOR/CO/1 (2014), paras. 35-36; U.N. Doc. CRPD/C/ARE/CO/1 (2016), paras. 49-50; U.N. Doc. CRPD/C/ARG/CO/1 (2012), paras. 45-46; U.N. Doc. CRPD/C/SVN/CO/1 (2018), paras. 29-30; U.N. Doc. CRPD/C/ARN/CO/1 (2016), paras. 29-30.

¹³ See e.g., “Immigration to Australia is governed by the Migration Act, which is explicitly exempted from the Disability Discrimination Act. While disability discrimination is against the law in Australia, the Department of Immigration and Multicultural Affairs (DIMA) is exempted from this law when dealing with potential migrants and refugees with disability.” Council of Canadians with Disabilities, *Disability & Immigration Law in Australia*, Available at: <http://ccdonline.ca/en/socialpolicy/access-inclusion/disability-and-immigration-law-in-australia>

¹⁴ See, e.g. CRPD, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention, UN. Doc. CRPD/C/15/R.2/Rev.1 (2016), para. 12.

¹⁵ 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.

¹⁶ In some cases, persons with disabilities (often women) lose their disability benefits because of their partner's income, pushing or keeping the whole family into poverty based on the disability status of one of their members.

14. Women with disabilities may have to work informally rather than formally in order not to jeopardize any benefits or health coverage they or their families receive because of “their dependency.” If they were to work formally, it would disprove the “dependency” they must continuously demonstrate. If they choose to work formally, they might lose continuity on life-depending services. And given their already conditioned access to work by the lack of reasonable accommodations, sexism and harassment at the workplace, amongst others, it is not unreasonable to choose the stability offered by programs that rely on dependency. These policies are the poverty trap that has been creating serious barriers and disincentives for women to seek or keep work, barring them from equal payment and economic independence.
15. In addition, persons who have disability benefits may not qualify as unemployed, but as economically inactive. The inactivity rate is the percentage of the working-age population that is neither employed nor looking for work. In many countries, unemployment rates of persons with disabilities are relatively low, but with high inactivity rates.¹⁷ In other words, there is low unemployment because people with disabilities are ruled out permanently of the labour market because they get a disability pension. States must overhaul their research and statistics of national data on labour as well as on social protection to be disaggregated by disability and gender. Disability-related support systems and policies must be reformed so that eligibility and access are not means-tested, require unemployment, or are family based, otherwise they perpetuate a cycle of poverty.¹⁸
16. Women with disabilities can also be left with the only choice of, and even forced to, doing unpaid domestic labour by their families who feel they will not be able to work for various reasons. Barriers to workforce, stigma, fear of their daughters with disabilities being harassed or assaulted, families themselves placing little value on their daughters with disabilities and not supporting them to attend school all limit the choices of women with disabilities when accessing work. Women with disabilities are in the precarity of trying to find work and losing the support provided by their families. In this way, families and caregivers play a role in trapping women with disabilities from leaving the home and accessing work.
17. The formal work that societies recognize and value rests on racism, capitalism, sexism, and ableism. People not engaged in that type of work are demonized and considered to be outside the boundaries protection of the State or not in need of attention from the State because it will be provided by the patriarchal family. When worth and dignity are tied to work, concepts like “welfare queens” are weaponized against black women, creating stigma against those who use social protection:

“Specifically, the welfare queen archetype is typically represented as a woman whose irresponsible choice to have children out of wedlock has caused her to turn to the state

¹⁷ See e.g., Eurostat, Disability statistics - labour market access, Available at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/34420.pdf>

¹⁸ Iris Institute, Disability and Inclusion Based Policy Analysis. Available at: https://irisinstitute.files.wordpress.com/2012/01/is-five-190142-iris_disability_inclusive_lens_eng.pdf

for financial support. Fiscally and sexually irresponsible, she is a threat to social order precisely because she rejects the importance of the nuclear family as a bedrock social institution. [...] As political scientist Ange-Marie Hancock has observed, political conversations that make poor minority mothers a special category engage in a kind of divide and conquer strategy intended to isolate vulnerable communities and to encourage Americans to shame the vulnerable and dependent rather than recognize that the needs and struggles of the disempowered are often shared across different constituencies in the body politic. When we re-examine the so-called demands the welfare queen makes of the state, stripped of the caricature produced by conservative forces, we gain insight into an alternative model of obligation between the state and its citizens.”¹⁹

18. Accordingly, the Committee must not fall into the trap of reinforcing these patriarchal, racist, ableist and classist social and moral values into the concept of work by relying on the traditional views of labour, productivity and dependency. Instead, the Committee should directly debunk them by recognizing that work is not necessary or equivalent to dignity and worth. These “values” are tied to the idea of normalcy and must be challenged, including by opening paths for dignity outside of the right to work; this is the right not to work and still have material conditions to live and enjoy life.²⁰
19. The Committee must recognize domestic work as work, providing recognition of the work women and girls with disabilities may actually be doing already in their homes, but that is not being considered as work and not valued and offered support or benefits. The Committee should encourage States to recognize, value, and redistribute that work. The Committee should take this opportunity to promote and request more research and information on unpaid domestic labour, especially considering gender, disability, race, migration, and class. The General Comment would benefit from addressing intersectional discrimination in accessing equal pay for equal work, including on to the issue of low-wage employment, by recognizes practices enabled by sexism, racism, disability and class, amongst others, often show up in similar ways. Simultaneously, people not working, including those not engaged in domestic work, have a right to access social protection, health systems and disability-related and other kinds of support that allow them to live their lives with dignity, including through universal basic income.

3. Full exercise of sexual and reproductive rights facilitates “freely chosen and accepted” work, free of violence and coercion.

¹⁹ Camille Gear Rich, *Reclaiming the Welfare Queen: Feminist and Critical Race Theory Alternatives to Existing Anti-Poverty Discourse*, 25 Southern California Interdisciplinary Journal 257 (2016). pp. 260-261

²⁰ “Lohana [Berkins] argued that social justice is not about survival, but is only achieved when people can imagine the possibility of enjoying life. She had not read Deleuze, she did not know about the ethics of self-care or similar philosophical proposals. Nor did she despise them, she knew that the political struggle is a struggle for the symbolic order, and she knew how to make her life experience a political fact.” Translated from: Paula Vitorro, *El tiempo de la revolución (social) es ahora* IN: La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio. p. 167. Available at: https://www.algec.org/wp-content/uploads/2017/09/la_revolucion_de_las_mariposas.pdf

20. Women with disabilities are actively discouraged and barred from the world of formal work. However, when women with disabilities do 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.”²¹ Sexual and reproductive rights are materialized through a wide range of rights, including “including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination.”²²
21. The CESCR Committee in its General Comment 22 on the right to sexual and reproductive health, highlights that its right extends beyond health care. Social and underlying determinants of sexual and reproductive health, including access to safe and potable water, adequate sanitation, food and nutrition, housing, safe and healthy working conditions and environment, and health related education and information, amongst others, are all part of sexual and reproductive rights.²³ A full enjoyment of sexual and reproductive rights enables the conditions to exercise 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 we can meaningfully engage in work “freely chosen or accepted,” as phrased in article 27 of the CRPD Convention.
22. Sexual and reproductive health is essential for women with disabilities to be able to access work equipped with greater resources. 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.²⁴ 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. Comprehensive sexuality education can provide part of the information to realize their bodily autonomy. It can facilitate the exercise of their sexual rights and self-care in this field, by helping them navigate the differences between work relationships, friendship, romantic relationships, among others, and to generate alerts against possible situations of exploitation, harassment or sexual violence.²⁵

²¹ 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

²² OHCHR, Sexual and reproductive health and rights, Available at: <https://www.ohchr.org/en/issues/women/wrgs/pages/healthrights.aspx>

²³ CESCR, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/22, para. 7

²⁴ ILO, Supra note 21

²⁵ Id.

23. As recognized by the Committee in the concept note, reasonable accommodation requests are being denied to women based on both their disability and gender. When reasonable accommodations are provided, they must be planned and implemented considering how gender injustice can render them unuseful, counterproductive or even damaging. For example, when a reasonable accommodation request is made for Sign Language Interpretation, it is essential that a woman with disability can feel comfortable talking about gender-sensitive issues while using their services.
24. Harassment is based on the same relations of power discussed previously that condition distribution of both paid and unpaid labour, as well as formal and informal labour. However, “the narrow and individualized conception of harm, discrimination, harassment, and violence in anti-discrimination and human rights doctrine”²⁶ derails most analyses that point to the structures creating that harm and do not consider measures that have the potential for structural change. Effectively addressing harassment goes beyond the ability to produce and enforce workplace regulations that, although important and necessary, do not engage with how equipped women with disabilities are when they move into “the world of work”.
25. Harassment is another example of the structures that seek to bar women with disabilities from work by labeling them as less productive. As noted by the ILO, “acts of violence and harassment against persons with disabilities are often linked to negative stereotypes about their productivity. Commonly-reported practices include harassing performance monitoring procedures, micro-management and over-attribution of mistakes, as well as behaviours “designed to negatively impact the target’s sense of self as a competent person.”²⁷
26. Addressing violence and harassment as it relates to work, also requires addressing specific pre-conditions for accessing work on an equal basis and free from violence, exploitation and abuse. These pre-conditions include: providing reasonable accommodations, having access to personal assistance, being recognized as a person with legal capacity, direct access to benefits that support disability related extra costs, the freedom to exercise sexual rights, and access to accessible sexual and reproductive health services.

4. Recommendations

- Ensure direct and unconditioned access to universal health coverage, social protection systems and welfare programs, including universal basic income, financed adequately through global, equitable tax systems that end loopholes for multinational corporations, illicit financial flows, and tax havens.
- Disability-related support systems and policies must be reformed so that eligibility and access is not means-tested, require unemployment, or are family based, otherwise they perpetuate a cycle of poverty.

²⁶ Alyssa Clutterbuck, *Rethinking Baker: A Critical Race Feminist Theory of Disability*, Appeal: Review of Current Law and Law Reform 51, 2015, p. 13

²⁷ ILO, Violence and harassment against persons with disabilities in the world of work, p. 2. Available at: https://www.ilo.org/global/topics/violence-harassment/resources/WCMS_738118/lang--en/index.htm

- Address social and other determinants of health in law and practice from an intersectional perspective that enable persons with disabilities, in particular women and girls, to effectively enjoy their sexual and reproductive rights.
- Eligibility to access support services needs to be defined in a non-discriminatory way and assessments should move away from the medical approach to disability, comply with the human rights approach and take into account the specific needs of persons with disabilities rather than focusing on impairments.
- Remove migration restrictions based on disability.
- Ensure the right to legal capacity by recognizing the will and preference of persons with disabilities, and particularly women and girls with disabilities in regards to work, by facilitating supported decision making when requested in all parts of the hiring and negotiation process.
- Ensure the right to independent living in the community by creating and financing programs of personal assistance, accessible housing, and supported employment, prioritizing women and girls with disabilities.
- Full access to justice and redress in case of labour discrimination on the basis of disability and gender, including by providing procedural accommodations that have a gender-based approach.
- Ensure the provision of reasonable accommodation with a gender-based approach and safeguards to ensure women with disabilities are not denied reasonable accommodations.
- Ensure that Comprehensive Sexuality Education is part of the mandatory accessible and inclusive school curricula for all children, with particular attention to women and girls with disabilities, including anti-bullying programmes within schools that tackle stigma and discrimination and promote safe spaces for them to learn.
- Create, promote and finance programmes and strategies for inclusive education to keep girls with disabilities in school and lower drop-out rates including through anti-harassment and anti-bullying programmes in schools with particular attention to girls and women with disabilities and accessible and safe WASH programmes (including menstruation hygiene programmes) in schools that support girls and women with disabilities to access WASH safely and with dignity.
- Create, finance and promote awareness raising campaigns on the right to access to work of women with disabilities that address stigma and discrimination using an intersectional approach.
- Overhaul research and statistics of national data on labour as well as on social protection to be disaggregated by disability and gender.