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Analysis of the Legal Meaning of Article 27 of the UN CRPD: Key Challenges for Adapted Work Settings

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Abstract
The UN CRPD marks a shift of thinking in the disability sector; it lays down the premises for the enjoyment of human rights by persons with disabilities and it demands State parties to put into place proper structures and services to make sure the conditions for enjoyment of human rights are respected.

From the experience of the UN Standard Rules, the United Nations have further elaborated on the current international treaty on disability, the UN CRPD, and further deepened its impact at international level.

Adapted work settings, commonly known also as sheltered workshops, are not referred to in the UNCRPD. This requires clarifications for the thousands of people that benefit from their services and whose future looks therefore uncertain.

This report focuses on the role of adapted work settings in the international framework provided by the UNCRPD; in particular, special attention has been given to Article 26 and 27, as they both deal with principles, measures and services offered by adapted work settings.

The analysis was carried out starting from three main subjects:

- what the Convention brought in general terms through its paradigm shift and the subsequent challenges for social services

- the analysis of the current text of Article 26 and 27 and the links to the role of sheltered workshop matters

- the history of the discussions around the inclusion of sheltered workshops in the UN CRPD.

Article 26 dealing with issues concerning the "functioning" of the individual, renews the entitlement to habilitation and rehabilitation service, the latter considered as going beyond the medical sense of it, keeping a connotation of a non-permanent treatment. Article 27 concerns the right to work, which should lead to the possibility to gain a living and lead a life of dignity. Most sheltered workshops, that are providing rehabilitation and work related activities, seem, according to some, to be not fully compliant with either of the two articles as they provide rehabilitation-based activities on an on-going basis and offer work without fully guaranteeing conditions applying under the labour law.

This concern emerged as well during the negotiation activities of the UN CRPD and was partly responsible for their exclusion from the current article on the right to work.

However, the implementation of the Convention presents some challenges, especially when it comes to rights and obligations concerning overlapping fields of action, as may be the case for Article 26 and 27. Services like sheltered workshops may sometimes and very often fulfill more than one function for persons with disabilities, and thus their compliance to the UN CRPD articles is particularly sensitive. In the framework of a holistic approach to persons with disabilities, where disability itself is not the focus of attention, but everything is about the individual and the enjoyment of his rights, it is of utter importance to keep a good balance between the multitude of skills, personal choices, possibilities of individual development and society's response.

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This report looks at the possible links existing between sheltered workshops and the UN CRPD in order to gain a view on the state of play and on future developments needed in the provision of work opportunities to persons with (intellectual) disabilities.

Keywords
disability, human rights, United Nations, UNCRPD, adapted work settings, labour law, rehabilitation, right to work, Article 26, Article 27

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Analysis of the legal meaning of Article 27 of the UN CRPD

Key challenges for adapted work settings

3/14/2012

Sabrina Ferraina

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Analysis of the legal meaning of Article 27 of the UN CRPD

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INTRODUCTION

Although employment is only one aspect of life, and many other aspects, such as health, family and education are as important, employment has become central in the lives of persons with and without disabilities as it helps to fulfill the person and give a meaningful sense to one's life by contributing to the growth and development of society.

Before the adoption of the United Nation Convention on the Rights of Persons with Disabilities (UN CRPD), the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993) had set the scene for the promotion of human rights. However, as the Standards Rules only provide with policy guidelines and are not enforceable, the need for a Convention with clearer and broader inputs was felt and led to a legally binding instrument, the UN CRPD, which entered into force on 3 May 2008. The UN CRPD aims at applying the principle of non-discrimination with regard to every human right and to interpret it in the correct way in every context of human beings' existence. The UN CRPD is legally binding and therefore its articles will pave the way to the future political developments in the disability sector.

The Convention provides with a legal set of standards on disability rights based on a new approach to disability: the *social model* of disability, which considers society as responsible for disabling persons through its environmental and psychological barriers, thus limiting the interaction of people with the barriers it creates.

In the area of work the Convention argues employment as a means to gain a living in a work environment that is "open, inclusive and accessible to persons with disabilities"[1]. One of the ways to realize an open accessible environment is to take effective action on removing practical, environmental and societal barriers to access employment, and therefore also by providing satisfactory "reasonable adjustments", so as to make sure that barriers can be overcome with major positive effects on the lives of people.

Acceptance of the UN CRPD and of its implications is the upcoming step after its ratification. The role of civil society, civil servants and State authorities is to promote the shift of paradigm urged by the Convention and support society in further developing the understanding and the correct implementation of the Convention.

With regard to this demand, the social sector is highly challenged by the Convention in that it is asked to revise the three pillars it was built on when the medical model of support was the prevailing one. Its challenges regard the areas of education, living and employment with the three types of services they provide respectively: special schools, residential settings and sheltered workshops.

Sheltered workshops, that are the core focus of this paper, are currently questioned on a number of issues such as:

- The uncertainty of their role in society: should they be transitional rehabilitation-working environments or should they be considered as regular working environments?
- The unclearness on the concept they represent (every State in Europe has developed services under different conditions and different underlying values,

[1] Article 27 (1), CRPD

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some are more professional-vocational oriented, others are more socially-rehabilitation oriented)
- The lack of agreement on what should be the outcomes of these services.

The need to establish a link between the theoretical framework provided by the Convention and the reality in the field is high and a number of poses key issues to be solved in order to correctly implement the obligations set forth by the Convention.

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This concern emerged as well during the negotiation activities of the UN CRPD and was partly responsible for their exclusion from the current article on the right to work.

However, the implementation of the Convention presents some challenges, especially when it comes to rights and obligations concerning overlapping fields of action, as may be the case for Article 26 and 27. Services like sheltered workshops may sometimes and very often fulfill more than one function for persons with disabilities, and thus their compliance to the UN CRPD articles is particularly sensitive. In the framework of a holistic approach to persons with disabilities, where disability itself is not the focus of attention, but everything is about the individual and the enjoyment of his rights, it is of utter importance to keep a good balance between the multitude of skills, personal choices, possibilities of individual development and society’s response.

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1
THE UN CRPD AS SCENE SETTING FOR THE PROMOTION OF RIGHTS FOR PERSONS WITH DISABILITIES

1.1 The UN CRPD: an overview

In the past the approach to disability was mainly ruled by a medical model which was responsible for splitting society in two systems: one for persons with disabilities and the other one those without a disability.
This mindset has been deeply rooted in society, in people's way of thinking on disability and on the way life was built around for those having a disability. In concrete terms it led to the exclusion from non-disabled world, being denied access to mainstream services and being condemned to enjoy fewer rights and opportunities.
Only in the last thirty years a shift of thinking in the approach to disability started to address disability looking at societal barriers and giving birth to a social model of disability. The adoption of the Convention in 2006 is an indicator of the adoption and the consensus reached on this approach and paves the way for the further promotion of this approach in the world.

The drafting of the UNCRPD has been negotiated in a six-years-long process starting from the establishment of an Ad Hoc Committee by General Assembly resolution 56/168 of 19 December 2001 and being adopted on 13 December 2006 by the Plenary of the General Assembly.
Eight sessions laid the basis for discussion of the Convention by the Ad Hoc Committee and by States and relevant international, regional and national organizations dealing with disabled people's interests.

The Convention introduced a holistic and integrated human rights approach to address social and economic inequality faced by persons with disabilities (Quinn 2002). It clearly acknowledges that societal barriers and prejudices are themselves disabling, therefore it is the society to be demanded to adapt to users - and not the other way around - according to their specific individual needs. Individualized support, personalized planning and empowerment of the users are elements required to be part not only of the outcomes of policies, but should be carefully built in in all processes and policy instruments.

1.2 A shift of paradigm for persons

The UN CRPD applies human rights to a specific category of vulnerable persons, namely persons with disabilities. It re-affirms, re-formulates, articulates and sometimes extends the rights of persons with disabilities (Mégret 2008). Along this the Convention calls for a shift of paradigm in the human rights scene setting: it demands a change from a biomedical and paternalistic approach to a social model of care.
In particular, the UN Convention marks an important step in unfolding three key changes in the field of human rights for persons with disabilities (Quinn 2002):

- A shift from "objective needs to *subjective rights*", that is a gradual development from policies which deal with "objective needs" to policies aiming at the enjoyment of subjective rights.
- A change of mindset from paternalistic to *interactive ethics*. The Convention displays a gradual replacement of a top-down ethic, which treats persons with disabilities as passive recipients of care, by an interactive ethic, which involves persons with disabilities in decision-making and restores their self-determination.
- The demand to look beyond material conditions and *focus also on the empowerment of the individual* with a gradual development from emphasis on providing shelter, food and medical care to growing emphasis on individual choice, autonomy and participation.

The shift of paradigm challenges society as a whole as rights have to be understood according to new interpretations; this means on one side that awareness has to be raised in order to understand correctly the principles behind every article, and on the other side States have to comply to these rights by setting up appropriate support schemes and services and by readapting existing ones according to the international standards set up by the Convention.

1.3 The right to work

The right to work is a fundamental right, recognized in several international legal instruments as the ILO Convention nr 159, which is essential for realizing other human rights and forms an inseparable and inherent part of human dignity and it contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, the development and recognition within the community.
The right to work has been thoroughly elaborated by Article 6, 7 and 8 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) which deal respectively with the right to gain a living, the right to just and favorable conditions and the right to form trade unions.
Article 27 of the UN CRPD is cross-referencing the prescriptions of the ICESCR, though not in an as exhaustive way, as it intends by no means to replace the ICESCR, but for stressing the importance of applying a disability lens in the field of work.

1.4 A shift of paradigm for services

While the Convention elaborates on a number of issues in all areas of life, some concepts are underpinning its rationale and are therefore key in interpreting the text as they are cross-referenced in the entire text and set the basis for building a society free of stigma and hence of discrimination: inclusion, participation and community living. These concepts are widely mentioned through the entire Convention, however a short reference below is worth their importance.

Inclusion
Inclusion is the process whereby every person who wishes to (irrespective of age, disability, gender, religion, sexual preference or nationality) can access and fully participate in all aspects of an activity or service in the same way as any other member of the community.

Inclusion is a term used by people with disabilities and other disability rights advocates for the idea that all people should freely, openly and without pity accommodate any person with a disability without restrictions or limitations of any kind[2].
Inclusion requires time, space, effort and resources, but it creates a society which is fairer, more cohesive and richer.
Inclusion underlies the entire Convention but is explicitly referred to in Article 3, 19, 24 and 26. Though seeming an easy-to-understand concept, its meaning is often confused with integration.
However, the two concepts differ according to the following:

- inclusive settings require mainstream settings and services have to adapt to the needs of the persons with disability
- Integrated settings accept the person with disability is accepted in the mainstream services and settings, but the person has to adapt to to them.

With inclusion, the burden of adaptation therefore lies on settings/services/society, and not on the person (integration).

Participation
Participation should be understood in a very broad meaning going well beyond the political participation (and the voting context in particular).
Active participation in society is the key element that allows people with disability to be equally treated as the others, overcoming the barriers deriving by their disability. Besides being explicitly mentioned in Article 29 (Participation in political and public life) and Article 30 (Participation in cultural life, recreation, leisure and sport), it is part of the General Principles (Article 3) and is recalled several times in all other articles.

Community living
Community based living is demanded in Article 19 and Article 23, 24 and 26. Article 19 imposes a general obligation on Parties to enable persons with disabilities to live independently and to participate fully in all aspects of life. It recognizes the right of persons with disabilities to live independently and to be included in the community, thus it demands accommodation options equal to others, and that these options support the inclusion and participation of persons with disabilities in community life.
Community living translates also into participation in society.

The above concepts apply equally to people and social services which are highly challenged as they need to be (re)structured in a way that is in line with the principles of the Convention. Like society, most services have been organized so as to provide for assistance and care under the medical support-based approach, which basically limited freedom of choice and of responsibilities for the users and had a protective approach - rather than an empowerment oriented attitude promoted with the Convention - which, with the best possible intentions, resulted in exclusion of people with disabilities them from the rest of society.
In the past services tended to group people on the basis of common limitations, being it on a physical, intellectual or on a psychological level. Putting together people with “fewer skills” helped to sustain the concept that those persons would have shared common difficulties and would not have suffered from frustrations deriving by being put together with “higher functioning” persons.

[2] Center for Disability Law and Policy

Several support services built on the medical model are facing similar difficulties in adapting to the Convention and its shift of mind and, in particular, three pillars of the established support system are challenged by the Convention:

- Residential settings
- Special schools
- Sheltered workshops.

All three types of services are questioned, at different levels, on the basis of exclusion and, segregation from the rest of society.
Society is to (re)organize services for a consistent part of the population, adapting existing structures, creating new ones and putting into place the right support mechanisms for all. It implies huge efforts both at economical level, as well as in terms of human resources, but mostly it requires recognizing that part of the established services are not acceptable according to the standards set forth by the Convention.

1.5 Key articles for social services

The Convention delineates a comprehensive approach towards a correct understanding of the rights of persons with disabilities. Though it does not establish new rights or entitlements, it paves the way to interpret existing ones in the correct way, and the social model of disability with its key principles constitutes the framework reference.
A few articles are particularly relevant for social services as they lay out the way they should be organized and what effects they should produce on the lives of disabled persons; their potential impact is looked at in the following paragraphs.

Article 3 General principles
Article 3 of the UN CRPD sets forth the Convention's general principles and unfolds the general (or normative) principles upon which the UN CRPD is based; it serves therefore as a guideline for the interpretation of the Convention.
Article 3 includes, as a general principle, "equality of opportunity", a term not defined in the UN CRPD itself, but drawn from the UN Standard Rules on the Equalization of Opportunities of Persons with Disabilities (Ferri 2010) where it is meant as the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities (UN Standard Rules 1993).
This principle implies therefore that the needs of every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation.
Equality of rights translates into concrete action with a view to achieving equality: this puts the States in the condition of being "facilitative" so as to empower people to improve their own condition (Fredman 2006). As part of this, provisions should be made to assist persons with disabilities to assume their full responsibility as members of society.

Article 4 General obligations
Article 4 requires States Parties to take measures that ensure the promotion and full realisation of all human rights and fundamental freedoms for all persons with disabilities, while also prohibiting any form of discrimination in their attainment.

Article 12 Equal recognition before the law

Article 12 addresses legal capacity, and confirms that persons with disabilities "enjoy legal capacity on an equal basis with others in all aspects of life". This article clearly restores voice and emphasizes the right of people with disabilities to choose the life they are living. Nevertheless, this is also requiring other parties to respect the voice and part, putting the system up-side down (Ferri, 2010).
Free choice is the natural consequence of Article 12, in fact Article 12 makes clear that substitute decision making is to be replaced by assisted decision making, thus enabling the individual to be responsible for his own decisions. The freedom to choose is therefore naturally expressed in deciding on where and how to live (as expressed in Article 19), but is a crosscutting principle tackling every area of life.

Article 19 Living independently and being included in the community
Article 19 of the Convention is also imperative and can be seen as a logical extension of Article 12, in the sense that recognition of legal capacity restores the "power" of persons with disabilities to decide about their own lives, while the right to independent living paves the way for persons with disabilities to choose how to live their lives; it also puts an obligation on State Parties in that they must ensure legal framework to promote autonomy of persons with disabilities and their full inclusion in society (Ferri 2010).

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2.
IMPLICATIONS OF ARTICLE 27 FOR ADAPTED WORK SETTINGS

2.1 Article 27 UNCRPD

Article 27 of the UN CRPD: 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 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."

This article requires States to uphold and promote the rights of persons with disabilities so as to[3]:

- give them the right to work and earn a living
- choose the work of their own preference
- not to be treated unfairly when employed
- to receive equal pay for equal work done just like everyone else
- to benefit from equal opportunities and safe and healthy working conditions just like everyone else
- to be able to complain and to join labour and trade unions, and not be harassed
- provide them with career counseling, vocational trainings and career opportunities
- promote self-employment and business opportunities
- to have the possibility to be hired both in the public and in the private sector
- make sure reasonable changes are made in the work place environment (i.e. fulfill the "reasonable accommodation" principle) according to the personal needs
- promote vocational and professional rehabilitation programmes to support the return to work.

Accessibility to work is a broad issue that includes, with being guaranteed the right to work, all subsequent rights in terms of decent working conditions (i.e. employment status: remuneration, seniority, career advancement etc).
The article remarks the priority need for persons with disabilities to have access to open, inclusive and accessible employment in the mainstream labour market.

2.1.1 Reasonable accommodation

The notion of reasonable accommodation was developed to address the issue of impairment and to acknowledge the need of persons with disability to be treated in a different way than persons without a disability to make rights "real" for them (Quinn 2002). Its relevance in the Article is key as it is the precondition to allowing people to have access to an open and inclusive environment through the specific individual adaptations needed. Through reasonable accommodation people with disability may lead a life of participation in the community, fulfilling therefore other basic rights included in the Convention.
In terms of rights at the workplace, the concept of reasonable accommodation entails that legal measures requiring employers to provide reasonable accommodation of the impairment and disability related needs of employees and prospective employees should be put into place, so as to permit to preserve this right and also to allow employers to ask for funding when accommodations imply substantial, not foreseen, financial costs. The right to work requires, inter alia,

[3] Centre for Disability Studies

examining whether labour laws prohibit discrimination in the workplace and require employers to take positive steps to ensure physically accessible buildings as well as accessible technology such as computer and Internet technology for those persons with disabilities that may require it. The final objective of a successful provision of reasonable accommodation is the setting up of enabling environments.
Reasonable accommodation is not only a matter for physically disabled people; in fact the needs of individuals with intellectual disabilities are equally to be taken into consideration. In particular, reasonable accommodation on the labour market for persons with intellectual disabilities may regard the following:

- working arrangements (adjusting working time and leave, flexibility in the organization of the work such as, for example, by splitting one task in several ones, etc.),
- reorganization of workstations by adapting existing equipment or acquiring new tools,
- installation and/or provision of ad hoc communication material like pictograms, readers, etc.,
- provision of tailored supervisory control and management and specialized training.

2.2 Links between sheltered workshops and Article 26 of the UNCRPD

Article 26 of the UN CRPD: Habilitation and rehabilitation

"1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, 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, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

This article was introduced in the UN CRPD after negotiations that saw it at first integrated with the article concerning health (i.e. Article 25) and being subsequently split to remark its meaning linked to the general wellbeing of the person, not only including the medical condition. It's a direct appliance of the shift from the medical model of disability towards the human rights one, though the importance of

rehabilitation had been already recognized in previous human rights treaties such as the UN Standard Rules of 1993.
By putting obligations on the States parties, the Article outlines the right to being guaranteed rehabilitation services as well as the obligation from the States to alter the environment to allow persons with disabilities to be integrated rather than requesting persons to adapt to society.

While rehabilitation is a wide concept that opens to a broad range of interpretations, the World Health Organization, together with the World Bank (2011), defines it as "a set of measures that assist individuals who experience, or are likely to experience, disability to achieve and maintain optimal functioning in interaction with their environments". Sometimes rehabilitation is also distinguished by "habilitation" whereby support services are meant for those who acquire disabilities congenitally or early in life, whilst "rehabilitation" would refer to those who have experienced a loss in function and need therefore support to regain maximal functioning.
The overarching objective of the rehabilitation process is the improvement in individual functioning, so as to reduce the impact of a broad range of health conditions. Typically, rehabilitation occurs for a specific period of time; it can involve single or multiple interventions delivered by an individual or a team of rehabilitation workers, and can be needed from the acute or initial phase immediately following recognition of a health condition through to post-acute and maintenance phases (World Health of Organization and World Bank, 2011).

Rehabilitation involves identification of a person's needs, relating them to relevant factors of the person and the environment, defining rehabilitation goals, planning and implementing the measures, and assessing the effects. Rehabilitation can therefore cover a wide range of actions in the areas of health, employment, education and social services, which have the objective of allowing the full participation of persons with disabilities in their communities.

Through the Article on Habilitation and rehabilitation the Convention requires States to ensure the following:

- provision of services and skills to persons with disabilities to enable maximum independence and full participation in the community
- availability of habilitation and rehabilitation services, especially in health, employment, education and social services sectors
- early intervention so as to guarantee the best outcome
- the promotion of training programmes for staff working in habilitation and rehabilitation services.

While sheltered workshops provide with professional activities under "sheltered" environments and conditions for persons with "intellectual disabilities", in some countries they do also provide for rehabilitation activities aimed at improving personal and social skills and thus facilitating inclusion and participation.
Although all matters related to sheltered workshops have always been primarily analysed under the conditions of the Article on the right to work of the UNCRPD (i.e. Article 27), at least part of the objectives of Article 26 seem to be realized by those sheltered workshops providing for rehabilitation activities.
The fact that sheltered workshops are holistic structures which give support to their users in several fields, leads to the question of their potential cross-referencing of the two articles of the Convention concerned: 27 and 26.
Literature research did not give any relevant input on the matter, leaving therefore the question open to further exploration.

3.
THE NEGOTIATIONS PROCEDURE OF ARTICLE 27 OF THE UNCRPD REGARDING SHELTERED WORKSHOPS[4]

During the negotiation process the inclusion of sheltered workshops matters in the Article on Work and Employment was raised several times by different organizations. Sheltered workshops were dealt with within the "alternative forms of employment" and raised concerns for their approach of dealing with persons with disabilities in a highly supportive and tailored to the individual needs way, but, on the same time, keeping them in exclusive protected settings that would not allow a full interaction with persons without disabilities. Because of this, sheltered workshops were considered liable of not promoting full inclusion in society. Being the Convention a human rights instrument based on the principles of integration and inclusion in the community, services provided by sheltered workshops were questioned on their guaranteeing and preserving the above, thus not being potentially fully in line with the Convention principles.
The issue was of such a nature that it led to the formulation of contrasting opinions with parties strongly approving their mentioning in the Article and others not at all in favor of it, considering the prescriptions of the Article as applying to no matter what type of employment and being there no need for further specification.

In the following paragraphs an overview of the different opinions concerning sheltered workshops is provided, highlighting those parties who took a position concerning sheltered workshops, either a very clear one in favor or not or a more blended approach with no full agreement or disagreement.

3.1 The first draft of the Article on the Right to Work: Draft Article 22 (i.e. Article 27 UNCRPD)

The very first draft on the Article on the Right to Work following below was the starting point of the discussion. It does not include any reference to sheltered workshops.

Draft Article 22
RIGHT TO WORK

States Parties recognise the right of persons with disabilities to work, which includes the opportunity to gain a living by work that they freely choose or accept, with a view to promoting equal opportunity and treatment of persons with disabilities, and protecting them from poverty. States Parties shall take appropriate steps to safeguard and promote the realisation of this right, including measures to:

a. promote a labour market and work environment that are open, inclusive, and accessible to all persons with disabilities;
b. enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services, assistive devices, and vocational and continuing training;

[4] All information contained in this chapter was collected in the UN CRPD online archives at: http://www.un.org/disabilities/default.asp?id=150

c. promote employment opportunities and career advancement for persons with disabilities in the open labour market, including opportunities for self-employment and starting one's own business, as well as assistance in finding, obtaining and maintaining employment;
d. encourage employers to hire persons with disabilities, such as through affirmative action programs, incentives and quotas;
e. ensure the reasonable accommodation of persons with disabilities in the workplace and work environment;
f. promote the acquisition by persons with disabilities of work experience in the open labour market;
g. promote vocational and professional rehabilitation, job retention and return-to-work programs;
h. protect through legislation persons with disabilities with regard to employment, continuance of employment, career advancement, working conditions, including equal remuneration for work of equal value and equal opportunities, and the redressing of grievances, and to ensure that persons with disabilities are able to exercise their labour and trade union rights;
i. ensure that persons with disabilities have equal opportunity to employment in the public sector;
j. promote recognition of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market, and to combat stereotypes and prejudices about persons with disabilities in the workplace and the labour market.

3.2 First phase: discussion on the draft Article on the Right to Work – 3rd Session 24 May - 4 June 2004

In the third session the Ad Hoc Committee started its negotiation on a draft convention based on the draft text prepared by the Working Group. Parties were given the possibility to comment on the draft text.

Bahrain suggested a new subparagraph that would read: "*Encourage the creation of workshops for persons with disabilities and to promote their production*."

Israel submitted a proposal on the article containing two additional paragraphs regarding sheltered/assisted employment:
"*a) States parties recognize that priority shall be given to the full integration of persons with disabilities in the open labour market and that employment of persons with disabilities outside the open labour market should be reduced to and maintained at the minimum level possible.*
b) States parties shall enact legislation protecting the rights of persons with disabilities who are employed outside the open labour market, such legislation providing for the application of all the employment protection laws and standards applicable in the open labour market save where derogation from such laws and standards in strictly necessary".

Namibia called State parties to provide in particular:
2. States Parties shall ensure effective and appropriate regulation and resources that would provide for the development of alternative forms of community-based employment for persons with disabilities who may not have the capacity to work in the open labour market, in conditions which ensure useful and remunerative work

and which provide opportunities for vocational advancement including transfer to open employment.
3. States Parties recognize the right of persons with disabilities to be protected from economic exploitation. States Parties shall take effective legislative, administrative, social and educational measures to ensure the implementation of this article to this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular provide for:

"*a) For effective and appropriate regulation of non-integrated work settings, including sheltered workshop; and*
b) For effective and appropriate penalties or sanctions to ensure the enforcement of the present article".

Uganda proposed the following subparagraph: "*Ensure that the government as an employer promotes and regulates flexible and alternative work arrangements and an environment that offers reasonable accommodation of the needs of persons with disabilities*", which would give further obligation to States.

The **European Union**, represented by Ireland, expressed "*concern about the possibility that persons who avail themselves of alternative forms of work might be dealt with less favorably than in the general labor market*". It stated that if these concepts are referred to, that they be meaningful forms of work under just and favorable conditions. The EU referred thereby to Article 7 of the ICECSR and firmly opposed Israel's proposals on sheltered workshops and the exception to derogate from general labor regulations.

Colombia with **Costa Rica** was in favor of adding the concept of community social work to the text of the Article.

Serbia and Montenegro supported the EU principles, but stressed the need to discuss alternative forms of employment for people who cannot find work in the open labor market, as advocated by the ILO. Alternate work must be meaningful work, and must not have less favorable conditions. It suggested addressing these issues in a new paragraph.

Chile proposes the following integration:
"*Promote enterprises by persons with disabilities, established and developed, with access to sources of credit and financing without conditions and requirements other than those established for clients without disabilities, in accordance with stipulations indicated in article 9 (e) of the Convention.*
Support modalities of protected work for persons with disabilities who cannot be incorporated in the competitive market.
Develop campaigns for the prevention of labour accidents"

Kenya proposed a new paragraph: "*States Parties shall promote employment of persons with disabilities in the informal sector through the creation of an enabling environment and the provision of incentives and necessary support services*." This would support the participation of persons with disabilities in the informal sector, where the bulk of employment occurs in developing countries.

The **International Labour Organization** (ILO) remarked that many currently unemployed persons with disabilities are capable of working given the right opportunities and the appropriate support, however, "*in rural areas they are most likely to enter into informal as opposed to formal employment. This fact is not*

reflected in the Article, nor is the reality that many persons with disabilities are outside the open labour market, working in protected workshops".

The **European Disability Forum** (EDF) highlighted that the goal of the Article on Work was to ensure equal employment levels for PWD in private and public, open and alternative settings. It also stated that "*Alternative means of employment are a fact, and are helpful in accommodating some PWD who have reduced productivity, thus enabling them to become a part of the labour market. However, as Serbia and Montenegro stated, these PWD need to be guaranteed the same labour rights as workers in the open labour market*".

Inclusion International (II) and the **Canadian Association for Community Living (CACL):**
"*An inclusive labor market must examine the sources and causes of labor market exclusion of persons with intellectual disabilities, the majority of whom live in poverty. People with intellectual disabilities need supports to obtain and maintain employment, and many of these supports are tied to income. Critical supports are often lost as income increases, making it difficult to maintain employment. Supports should be personalized, flexible, and at times, ongoing. II and CACL strongly opposed sheltered workshops, as they keep people excluded and foster notions that people with intellectual disabilities cannot be meaningfully employed. They called on all States Parties to end this practice and act as model employers*".

The (Australian) **National Association of Community Legal Centres**, along with **People with Disability Australia Incorporated** and **Australian Federation of Disability Organizations states:** "*Alternative forms of employment must be provided within inclusive mainstream settings, and should be transitional, avoiding permanence and total segregation*".

The **World Network of Users and Survivors of Psychiatry** opposed the idea of sheltered workshops for people with psychosocial disabilities because it leads to segregation in the work environment and added that "*The equal pay for equal work provision in 22(h) protects against economic exploitation that can occur in sheltered workshops*".

3.3 Second phase: 3rd – 4th – 5th – 6th Session of the Ad Hoc Committee August 2004 - August 2005

By the sixth session the Ad Hoc Committee completed two readings of the draft text. Some parties submitted additional information to sustain their position.

The **International Labour Organization** (ILO) making reference to existing provisions either of national law or international instruments, in particular those of Convention Nr. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons and Convention Nr. 111 concerning Discrimination in Respect of Employment and Occupation, recommended that the Convention should adopt measures that would ensure the development of alternative forms of employment for persons with disability who may not have the capacity to work in the open labour market. In particular, with regard to provisions concerning the Right to Decent Work, the ILO submitted the following proposals:

- *"States party to ensure the development of alternative forms of employment for persons with disabilities who may not have the capacity to work in the open labour market*
- *Sheltered workshops to provide, not only useful and remunerative work, but opportunities for vocational advancement with, wherever possible, transfer to open employment*
- *The role of the ILO in the field of vocational rehabilitation and employment of persons with disabilities to be promoted, particularly with regard to: the encouragement and facilitation of international cooperation the utilization of the ILO Code of Practice on Managing Disability in the Workplace the improvement of reliable and valid statistical and other information the promotion of research and evaluation of programmes and practices".*

Israel, by approving the ILO's proposal referring to alternative forms of employment, submitted comments on the Article by inserting a dedicated paragraph that would specifically take them into consideration. The dedicated paragraph, "paragraph h", recites:

"*Ensure that alternative forms of employment outside the open labour market are adequately resourced, in conditions that ensure useful, remunerative and decent work, provide opportunities for vocational advancement and facilitate the move into the open labour market*".

Israel justified the need for this paragraph for considering the Convention not in the position to "*ignore the reality of many PWD working in sheltered employment or for whom there are no other work options. States Parties should address this reality by ensuring useful and remunerative work that would facilitate PWD entry into the open labour market*".

The above proposal of inserting "paragraph h" was welcomed by **Serbia** and **Montenegro**, who stressed the need to "*discuss alternate forms of employment for people who cannot find work in the open labor market, as advocated by the ILO. Alternate work must be meaningful work, and must not have less favorable conditions*".

The **Latin American Region Disabled Federation** considered sheltered workshops necessary to provide integration, but they should not be used for overt or covert institutionalization.

People with Disability Australia (PWDA) took a strong position against sheltered workshops calling for the Convention to not "*create rights to segregated employment settings that might permanently warehouse* persons *with disability*".

3.4 Third phase: 7th and 8th Session of the Ad Hoc Committee January 2006 – August 2006

In the course of the Seventh Session of the Ad Hoc Committee, positions from the different parties were further shaped.

The **ILO** submitted a Technical Advisory Note to specifically address its concerns regarding the lack of provisions in the Convention for alternative forms of work for

people who may be unable to work in the open labour market, temporarily or on a more long term basis.
The Note made reference to the ILO Recommendation Nr. 168.

It recognized that "*other than in the opening phrase: 'States Parties recognise the right of persons with disabilities to work ..,' the Article fails to address the rights of the vast majority of persons with disabilities throughout the world who do not and/or cannot work in the open labour market*".

[…]

2.5 "The right to decent work, freely chosen or accepted, applies to all persons with disabilities, including those who do not or cannot work in the open labour market. Article 27 should explicitly acknowledge that right".

3.3 "The right of persons with disabilities to engage in work or employment 'which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment' is acknowledged in ILO Recommendation No. 168. Measures called for by the ILO to promote such employment opportunities include appropriate government support for the establishment of various types of sheltered employment for disabled persons for whom access to open employment is not practicable, encouragement of the development of cooperatives by and for disabled persons, appropriate government support for the establishment and development of small-scale industry and other types of production workshops by and for disabled persons, provided such workshops meet defined minimum standards".

3.4 "The European Commission has formally recognised the need for alternative forms of work and employment for persons with disabilities and made legal provision to enable EU Member States to provide financial aid to support such employment where necessary".

3.5 "Alternative forms of work and employment extend considerably beyond those mentioned in Article 27, viz. self-employment, entrepreneurship, starting one's own business. They include sheltered employment, supported employment, protected employment schemes, provision of contract labour to companies, enclaves, mobile work crews, reserved occupations, social enterprises, community enterprises, community cooperatives, cottage industry and worker cooperatives".

[…]

3.8 "Persons with disabilities are not a homogenous group. They are individuals, with individual differences in their work motivation and job satisfiers. The type of employment (open, sheltered, supported, etc) is not necessarily an indicator of its value to an individual. Some may, for example, opt for work which best meets their social needs rather than work which pays more but is less satisfying. Every person has the right to free choice of work. That choice is not and should not be restricted to work 'to earn a living".

3.9 "The existence of, and need for, alternative forms of work and employment for persons with disabilities should be acknowledged in Article 27. The Convention should include an obligation to develop and implement policies that promote and regulate flexible and alternative work arrangements that reasonably

accommodate the needs of individual disabled workers and to take appropriate steps to protect the rights of those who engage in such work".

[…]

4.4 "*The ILO has developed comprehensive instruments regarding the work-related rights of persons with disabilities, including in particular Convention No. 159 and Recommendation No. 168. Measures called for include government support to eliminate the potential for exploitation within the framework of vocational training and sheltered employment*".

4.5 "*Article 27 should acknowledge the right of persons with disabilities to the enjoyment with just and favourable conditions of work which respect, in particular, health, safety and dignity. The Convention should include an obligation to develop and implement policies that promote, regulate and safeguard that right for all persons with disabilities who work, both in the open labour market and in alternative forms of work and employment*".

The **National Human Rights Institutions** (NHRI) took a sharper position against alternative forms of employment towards the end of the negotiation discussions. At first they recognized the difficulties in determining the best approach for promoting the right to work for PWD as this is strongly based on the context. Therefore they called the Convention, by means of a dedicated article on Work, to allow space for the continuation of existing approaches that have been successful. However, later on they clarified their position on the Article and, by so doing, they made reference to Article 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
By referring to Article 6 (1) they expressed their concern on the role of sheltered facilities with substandard conditions in providing an opportunity to gain one's living. They recalled also on Article 7 of the ICESCR that refers to the right of everyone to the enjoyment of just and favourable conditions of work.
Their position was of enhancing the dynamic of integration in the open labour market and call for decent conditions of employment and standards for all.

The **Japan Disability Forum** (JDF) submitted the following text with regard to alternative employment opportunities: "*In the Chairman's Text, no option is given for people with disabilities who have difficulties in finding employment in the open labour market. In reality, not a small number of persons with disabilities are in need for such an option of alternative employment opportunities. Under the Law for Support of Independence of People with Disabilities, it is purported that the existing workshops or work centers for persons with severe disabilities shall be re-organized as "transitional vocational center to assist them in moving to open labour market" and "center for support of continuous employment (competitive employment and non-competitive employment)." Labour related laws should be applied to persons with disabilities in those centers so that they can also be covered by the laws as in the case of workers in the labour market*".

New Zealand expressed serious concern on the possibility to include alternative conditions of persons with disabilities, considering it as going in the very opposite of inclusion or equality: "*The idea that "alternatives" need to be found for persons with more serious disabilities, would only serve to shift the line of who may be discriminated against*". New Zealand remarked that even where considerable support and accommodations are needed, the work should still be considered part of the labor market and the fact that some delegations had suggested that this falls

outside the labor market, would be a risky assertion opening the door for sheltered workshops. Therefore New Zealand did not support the new provision proposed by Israel.

Mental Disability Rights International (MDRI) supported New Zealand and opposed the Israeli proposition on alternative forms of employment. Also a representative of a **UK NGO** did not support the inclusion of sheltered workshops in Article 27 considering them as an outdated concept that creates barriers and even represent a form of institutionalization. Reasons for this position included the fact that many persons with a disability in workshops do never make the transition into the open employment market. Therefore, according to the UK representative, sheltered workshops reduce the responsibility of state parties to support persons with disability in the open employment and retaining sheltered employment in the text supports and legitimizes this type of situation.

Israel clarified that its proposition aimed at stressing that States Parties should take all possible measures to facilitate the move of persons with disability from outside the open labour market into the open labour market without implying that sheltered workshops are desirable or preferable. Rather, it is a positive obligation to move away from such types of employment. As it must be recognized that many people are working in various situations outside the open labour market - which are not necessarily limited to sheltered workshops - it is necessary to extend protections to those people. Israel could not ignore the attitude that much of work performed by PWD is not of economic value and is thus only rehabilitative and falls outside the framework of industrial relations and labour law. To consign persons with disability in those situations to provisions on rehabilitation and leave them outside the ambit of Article 27 leaves them largely unprotected.

The **International Disability Caucus** (IDC) retained not to include alternative forms of employment such as sheltered workshops because of their "*historical tradition of exclusion and segregation with the application of separate standards*". They considered the Convention and in particular the Article on Work as being applicable to whatever type of work setting irrespective of their form of employment. What IDC called for was to ensure that persons with disability have the same right to equal pay for equal work, and the equal application of national minimum wage and other labor standards wherever they work. This was particularly stressed for what concerns the non-profit sector that is sometimes excluded from national provisions on labor laws leading to deprivation of rights in this sector. As to the Israeli proposition of a paragraph on alternative forms of employment, the IDC considered it as paving the way for perpetuating sheltered workshops effectively maintaining separate standards.

The **World Network of Users and Survivors of Psychiatry** (WNUSP) questioned sheltered workshops for the potential of institutionalization that they may encompass, though it could occur without an intentional deprivation of liberty.

The **International Disability Alliance** (IDA) was of the same advice. IDA's member organizations include amongst the others Disabled Peoples' International, Inclusion International, Rehabilitation International, World Blind Union, World Federation of the Deaf, World Federation of the Deaf-Blind, the European Disability Forum, Down Syndrome International (DSI), International Federation of Hard of Hearing People (IFHOH) The Pacific Disability Forum (PDF), The Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families (RIADIS), the **Arab Organization of Disabled People (AODP)** and WNUSP. In its

statement IDA says "*The right to free choice of employment, to just and favorable conditions of work is denied among others by being relegated to sheltered workshops*".

3.5 The conclusion of the negotiation procedure

As the negotiation came towards the end alternative forms of employment were twice required, at the end of Session 6 and of Session 7, to be further debated as there was no agreement on a final position.

Three notes came along with the draft article of the sixth session from the Ad Hoc Committee:

"*There was general agreement in the Committee to take a rights-based approach to this article. The Committee also noted that the text of the Convention should not derogate from existing international instruments, such as International Labour Organisation Conventions*".

"*The Committee expressed a general preference for States to recognise the importance of access by persons with disabilities to the open labour market, in order to empower and enable them to participate fully in society. General concern was expressed about the potential for exploitation of persons with disabilities. The balance of views in the Committee on sheltered workshops was that such settings were undesirable because of the potential for segregation from the community and their conditions of employment. There was agreement that there should be further consideration of this point*".

"*The Committee noted that there was a degree of over-lap between this Article and Articles* 17 (i.e. Education), 19 (i.e. Accessibility) and *21 bis* (i.e. Habilitation or rehabilitation for the purposes of work)".

In the readjustments of the text no relevant changes were made, but on the wording level.
There was a general agreement that the chapeau of the article should deal with general principles and that the sub-paragraphs should deal with measures to realise those principles.

The negotiation process highlighted several issues concerning the role of sheltered workplaces in relation to the principles stated in the new international human rights instrument for persons with disability:

- Economic exploitation: non-payment of the salary of a person with disabilities for its effective work
- Disadvantaged treatment of persons with disabilities regarding working conditions or environment (i.e. employment, salary, and promotion, on the sole ground of their disabilities)
- Doubtful function of affirmative action schemes whereby sheltered employment services may be part, acting as facilitating services for progression towards the open labour market
- Doubtful function of serving as rehabilitation and vocational training centers without real guarantees of success towards improved working conditions with equal opportunities in employment.

Employment was agreed by several parties to be fundamental to guarantee full integration of persons with disabilities in society. As a consequence, alternative forms of employment, who are not always providing for comparable equal opportunities for their users, never fully convinced all parties.

A few remarks are worth mentioning as well to understand the discussion on sheltered workshops throughout the negotiations.
Sheltered workshops were never included in the draft texts of the Article, not even in the very first one prepared by the Working Group, which constituted the basis for the discussions and was reworked until an agreement was reached. When sheltered workshops were discussed, the biggest concern was that of preventing, through their being explicitly mentioned in the Article, users to be exploited, being not officially entitled to labour law rights. Parties who were in favour for their inclusion in the Article never questioned the open labour market as being the first and most desirable choice for all; the open labour market was confirmed to be the priority; however, some parties attempted several times to recall that for some people it might be particularly hard to work in the open labour market.
The discussions did not cast the correct allocation of sheltered workshops under Article 27 (i.e. former Article 22 at the start of the discussion). No other Article was questioned as possibly being more appropriate than Article 27 to take into consideration the role of sheltered workshops. Alternative forms of care - and sheltered workshops amongst them - were not included to avoid for States to be provided with excuses in the case certain employment solutions were/are not available.
It's worth remarking also that, besides the ILO which is an intergovernmental organization, sheltered workshops were mainly advocated by countries, whose concerns related to the inclusion of sheltered workshops in the Convention were partly due to the lack of structures for persons with disabilities. More powerful and richer countries, where a wider choice of models and structures has been experimented, did never even consider sheltered workshops as an option, not even for the most excluded people. The latters' proposals were also endorsed by big disability organizations such as the International Disability Alliance, which represents different world associations of disabled people, and the International Disability Caucus, which strongly opposed against the possibility of conceiving sheltered workshops as an employment opportunity for persons with (intellectual) disabilities.

The discussion was channeled to a growing need of removing all barriers to inclusion and this finally led to the approved version of the Article on the Right to Work whereby sheltered workshops are not included.

3.6 Adapted work settings: from the UN Standard Rules to the UN CRPD

The analysis carried out on the UN CRPD reveals little, on how adapted work settings should look at developments in the disability sector and where their role in the disability policies and services is to be put.

In the UN Standard Rules of 1993 sheltered workshops were listed amongst the options of employment when the open labour market proved not to be a feasible solution.

Adapted work settings have a historical tradition in Europe and have provided - and are still doing so - services to thousands of people with (intellectual, but not only) disabilities. The employment opportunities offered are mainly for people whose physical, intellectual, and mental conditions make it difficult to meet the working conditions of the competitive open labour market. Those services are described with several names and consequently the benefits offered vary, but what they all have in common is the peculiarity of offering jobs in a protected (sheltered) environment where the weakest people do not have to comply with competition and demands of the open labour market. Moreover, because of their disability status, these persons benefit from extended social security benefits that may compensate their no return in money for the work they carry out.

The lack of reference to adapted work settings in the UN CRPD leaves the door open to several interpretations concerning their role in society.

Though they were not referred to in the UN CRPD, their expertise in disability issues is stressed by other instruments, serving to the implementation of the UN CRPD:

- Action Line nr 5 (Employment, vocational guidance and training) of the Council of Europe Disability Action Plan recognizes the function of sheltered employment in guaranteeing work to persons with disabilities.
- The European Disability Strategy refers to sheltered settings in light of the development of intra-job mobility in the labour market, though it does not clearly identify how adapted work settings should act.

Recently, other bodies acknowledged their role, such as the European Parliament with the Resolution of 25 October 2011, recognizing the role of sheltered workshops in acting as facilitators towards progression to the open labour market and the European Council (2011), through its Conclusions regarding support of the implementation of the European Disability Strategy 2010-2020, calling for an increase of employment opportunities, including sheltered employment solutions.

It seems however, that the stigma accompanying them might still be playing an important role in their substantial exclusion from the political scene of social services.

3.7 Key questions related to Article 27 and adapted work settings

- Are there forms of employment targeted at people with disabilities (such as sheltered or supported employment) that are exempt from labour standards, resulting in inferior protection and exploitation? What steps are being taken to change this situation?[5]
- Do programs exist for transitioning persons with disabilities currently in sheltered employment to work in the open labour market?[6]
- How should existing sheltered workshops be restructured - if needed - in terms of content, laws and services offered?
- What type of users should be entitled to sheltered workshop services? Should there be minimum/maximum requirements of work performance for users to attend sheltered workshops?

[5] IDA 2010. Guidance document. Effective Use of International Human Rights Monitoring Mechanisms to Protect the Rights of Persons with Disabilities

[6] IDA 2010. Guidance document. Effective Use of International Human Rights Monitoring Mechanisms to Protect the Rights of Persons with Disabilities

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- It would be important to clarify whether sheltered workshops are addressing work related activities or not, as this would help to sustain their link to Article 27 only and/or also Article 26 of the UNCRPD.

4.
THE OPINIONS OF THE EXPERTS

Experts in the field of disability and in disability policy related issues were asked to provide further insight on how they see the role of sheltered workshops in light of the UNCRPD.
Reckoning the double function that most sheltered workshops take on, being providers of working opportunities and of rehabilitation programmes, the experts were asked to consider possible links to Article 27 and Article 26.
In particular, the experts were required as well to comment on paragraph "k" of Article 27, whereby sheltered workshops might possibly be called for on the basis of the rehabilitation programmes they provide:

"*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:*
[…]
(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities".

Germain Weber, professor of Clinical Psychology at the University of Vienna
Weber considers traditional sheltered workshop settings hard to be addressed by Article 27, paragraph 1k. He says: "*Paragraph k mentions the establishment of rehabilitation settings, in the context of work. This means specialised centers where people who lost their work habilitation (e.g. acquired functional limitation through an accident), will be trained in an appropriate, but definitely limited period of time to overcome or minimise the limitation and thus will be able to take up an appropriate job in an inclusive work setting again*".
He adds that the concept of inclusion is not applicable to sheltered workshops as "*Inclusive would mean where people with and without disabilities work on a symmetrical level together. Thus, in an inclusive work setting a person with a disability could be the supervisor of a person without a disability and vice-versa*".
In many countries in Europe people with intellectual disability are working daily, and are only offered monthly pocket-money compensation without having a right to a pension.

Barbara Murray, senior specialist on disability at ILO
The ILO expressed several times concerns about the the lack of provision in article 27 for alternative forms of work for people who may be unable to work in the open labour market, temporarily or on a more long term basis, as is provided for in ILO Recommendation Vocational Rehabilitation and Employment of Disabled Persons (No. 168), and supported by other international instruments, though the note welcomes the emphasis on promoting labour market opportunities for persons with disabilities. However, as quoted in chapter 2, ILO's proposal during the UNCRPD negotiations met with resistance from the International Disability Caucus which did not wish for the CRPD to provide for any departure from the principle of full and effective inclusion.
At present, therefore, in countries that have ratified the CRPD, "*sheltered workshops have to aim to support participation in the community, and thus, facilitate the progression of persons with disabilities to more inclusive work environments as soon as possible; and, importantly, they will need to comply with the national labour laws and bring working conditions into line with standards applicable in the labour market in general*".

Article 27 k applies, according to Murray, to vocational and professional rehabilitation services and programmes as envisaged in Article 26.

Mark Priestley, Professor of Disability Policy at the University of Leeds
Priesley says sheltered employment poses the same type of questions as 'special' schools. He quotes the Un Standard Rules (1993) where: "The aim should always be for persons with disabilities to obtain employment in the open labour market. For persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be assessed in terms of their relevance and sufficiency in providing opportunities for persons with disabilities to gain employment in the labour market" and considers sheltered employment settings as increasingly seen as an undesirable alternative to the mainstream also at the time of the Standard Rules, and were only accepted "where its quality could be assessed as helping towards employment in the open labour market". The UNCRPD moves even more away from sheltered employment towards supported employment.

Priesley adds "*The UNCRPD emphasises similar priorities to the 1993 Rules, but takes a more categorical rights based approach – i.e. disabled people have the same rights as everyone to be included in the same labour market (this human rights approach does not seek to recognise the creation of separate or segregated employment for disabled people – the same is true in the Article on Education, where only rights to mainstream education are recognised). In principle, the concept of forced separation of disabled people into a sheltered/segregated employment market would be in conflict with the UNCRPD.*
There have been also some specific concerns about institutionalised systems of sheltered employment, which may contravene the UNCRPD in terms of e.g. 'equal remuneration for work of equal value', 'labour and trade union rights', 'access to general technical and vocational guidance programmes, placement services and vocational and continuing training', 'work experience in the open labour market', and the risk of 'forced or compulsory labour".

"I think the UNCRPD is clear that everyone has an equal right to work in the mainstream (open) labour market and they have an equal right to access mainstream (general) employment support services. They cannot be forced into compulsory work and they must receive equal pay for work of equal value. Vocational rehabilitation schemes may be 'appropriate' if their clear purpose is to facilitate future employment in the mainstream. A government policy of permanent, forced labour, in segregated workshops, below the legal minimum wage, without trade union rights, would be a clear contravention of UNCRPD in my personal opinion".

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5. CONCLUSIONS

This report analyzed guidelines and information available on sheltered workshops and their links to the UN CRPD.

The Convention establishes, in fact, a wide perspective on how rights should be enjoyed by persons with disabilities and what measures States should put in place to make sure those rights are correctly implemented.
Though the Convention sets out principles and obligations in terms of positive actions to be taken, international legislation is lacking guidelines on how to effectively implement them. The Convention offers a vision, which is yet to be implemented in reality with sometimes some massive gaps between the principles laid down in the text and reality on the ground.

The Convention brought about a new perspective on social sector policies, whose sense can be grasped only when considering the text in its entirety, that is to say that each article of the Convention adds on the other, with no possibility of taking into account articles in a separate way. Single articles make reference to a particular area of action, but are not to be interpreted in a standalone way, as the principles they are built on make part of a general framework introduced with the Convention: the social model of disability.

Considering the right to work, employment has to be seen as more than the simple provision of work related activities: employment is related to the enjoyment of a number of fundamental rights. Employment provides many opportunities for social participation: from economic independence, to family formation, to a sense of contributing to the national economy and wellbeing. In all regions of the world there is a sizeable gap between working conditions and employment trends of persons with disabilities and those of others. Persons with disabilities have not been fully integrated into the labour market yet; most are either unemployed or have been dissuaded from actively seeking work through allowances systems. Amongst those who are working, many are underemployed, paid below minimum wage, and work below their capabilities. This lack of economic participation translates into a significant impact on the lives of persons with disabilities, as they are consequently unable to earn an adequate standard of living (proclaimed in Article 28 of the UN CRPD) and to live independently in the community (as indicated in Article 19 of the UN CRPD).
People with (intellectual) disabilities are particularly unprotected as their involvement in the labour market requires adaptations and tailored support that is often not made available. Many of them are currently users of sheltered workshops where they carry out work activities and receive vocational rehabilitation on a continuous basis.

The Convention deals with the right to work stressing, in particular, the following points:

- priority should be given to participation to the open labour market and all efforts should be done, through reasonable accommodation, to achieve this;
- persons with disabilities should, in any case, enjoy their labour rights as others.

It is worth mentioning, however, that a definition of “open labour market” was not found, which may raise misunderstandings on its proper use.
Alternative forms of employment - which are traditionally not considered part of the open labour market - such as sheltered workshops, are not explicitly mentioned, but

it is reasonable to assume that the above principles should be valid no matter what scheme of employment is in use.
This resulted as well from the remarks of the Ad Hoc Committee at the end of the UN CRPD negotiations stating:
"*The Committee expressed a general preference for States to recognise the importance of access by persons with disabilities to the open labour market, in order to empower and enable them to participate fully in society. General concern was expressed about the potential for exploitation of persons with disabilities. The balance of views in the Committee on sheltered workshops was that such settings were undesirable because of the potential for segregation from the community and their conditions of employment. There was agreement that there should be further consideration of this point*".

The study carried out on the meaning of Article 26 and 27 of the UNCRPD with regard to sheltered settings led to a number of issues not tackled by the Convention itself.
While it is clear that Article 26 deals with habilitation and rehabilitation, there is no clearness on how habilitation and/or rehabilitation should be understood. Being limited- in-time processes or lifelong ones, the two "treatments" seem eventually to overlap, not only as to what concerns the timeframe, but also with regard to objectives and outcomes. This issue is certainly worth further exploration if sheltered settings are to provide also rehabilitation services.
As to Article 27, given that it covers the entire spectrum of the labour market, it still opens a breach on how inclusive and open working environments should be meant and – once a commonly agreed definition is reached – whether this would automatically exclude protected forms of employments that take specifically care of vulnerable people in need of extra support, or whether this would include them provided they meet the requirements set in article 27.

If we consider the labour market as a continuum, employment programmes may differ one from the other according to the prevalence of different employment related criteria: the environment features (i.e. the working conditions), the payment schemes (including both salary and social security benefits) and the outcomes of the employment programme. A minimum set of requirements needs to be guaranteed, as well as a certain degree of flexibility, in order to allow everyone to work according to its skills and abilities.

The fact that sheltered workshops are not dealt with in the Convention leaves existing sheltered services with little or no hints on how to (re)define the facilities they provide and how to make sure the services they provide are correctly understood by authorities and society as a whole.
However, the lack of studies and guidelines, that is certainly acting as an obstacle, could constitute both a challenge, as innovations will be needed (like for many different types of social services), as well as an opportunity for the (re)structuring of services in a way that could fill in the gap in the scene setting of international policies regarding the role of sheltered workshops.
Identifying strengths and opportunities, as well as better addressing weaknesses and threats, is a much needed duty in the effort of improving the lives of persons with disabilities.

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