



## Policy Brief: The UN Convention on the Rights of Persons with Disabilities (CRPD). Thoughts on the UK Initial Report CRPD/C/GBR/1

The **Invisible Difference: Dance, Disability and Law** project is an Arts and Humanities Research Council-funded project that is exploring issues confronted by professional disabled choreographers and ownership and authorship of their work. We wish to make observations on the UK initial report on the UN Convention on the Rights of Persons with Disabilities most particularly in relation to issues of equality and diversity for disabled dance artists.

### Project Overview

Running from January 2013 to December 2015, ours is an interdisciplinary partnership between academics in Higher Education and artists working in the creative industry. Members of the project are: Professor Sarah Whatley, Coventry University; Professor Charlotte Waelde, University of Exeter; Dr Abbe Brown, University of Aberdeen; Dr Shawn Harmon, University of Edinburgh; Dr Karen Wood and Hannah Donaldson, research assistants; Mathilde Pavis and Kate Marsh, Doctoral candidates and dance artist Caroline Bowditch. During the course of our research we are conducting qualitative research with disabled choreographers and dancers, including Caroline Bowditch, Claire Cunningham, Marc Brew, Chisato Minamimura, and others. We also have strong links with Candoco dance company and other independent disabled dancers. Our interviews have ranged over a series of topics aimed at addressing one of our core questions: *why is dance made and performed by dancers with disabilities almost entirely absent from our cultural heritage?*

### The Human Rights framework in support of minorities and culture

We are aware that the CRPD represents a significant advance in the human rights framework for the rights of persons with disabilities and that it presents “an unprecedented opportunity for domestic law, policy reform, and genesis on behalf of the globe’s ‘largest minority’”.<sup>1</sup> In terms of culture, and the rights of those with disabilities to take part in cultural life, it supplements the existing framework. This includes:

- a Resolution passed in 1993 directs States to ensure that persons with disabilities can utilise their artistic potential for their own benefit and for the benefit of the community,<sup>2</sup> and that places and works of culture should be accessible to those with disabilities.<sup>3</sup>
- the UN Committee on Economic, Social and Cultural Rights General Comment of 1994 on persons with disabilities stating that, although there is no specific reference to disability in the ICESCR, the position of persons with disabilities is considered to be within the human rights framework, and that their position should be protected and promoted through general and specific instruments and actions.<sup>4</sup> It also stresses the right to full participation, stating that it should be made clear that persons with disabilities have equal rights to access cultural venues, and that communication barriers in particular should be eliminated.<sup>5</sup>

<sup>1</sup> J. Lord and M. Stein, ‘The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities’ (2008) 83 *Washington Law Rev* 449-479, 451

<sup>2</sup> Resolution on The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 48/96, Annex, 20 December 1993, adopted by UN General Assembly, Forty-Eighth Session. Rule 10(1), 1993 Resolution

<sup>3</sup> Ibid Rule 10(2), 1993 Resolution

<sup>4</sup> Paras 5 and 6, General Comment No. 5

<sup>5</sup> Paras 37, 38 and 39, General Comment No. 5.





- the 2009 the UN Committee on Economic, Social and Cultural Rights General Comment which requires States to take a range of steps, including financial measures, to facilitate participation in cultural life<sup>6</sup> and provides that States could adopt special measures to “attenuate or suppress conditions which perpetuate discrimination” provided they are reasonable, objective and proportionate and, exceptionally, permanent.<sup>7</sup>

Taken together these measures means the framework is more robust than it has ever been in support of disabled artists and their right to access and to participate in cultural life.

### Equality and diversity

While the disabled dance community is small, it has historically been highly marginalised. For one example of this we point to the absence of almost any representation of their work in our memory institutions. We have argued that a combination of discrimination and indifference goes a long way to explaining this absence.

### The lived experience of disabled dancers, choreographers and audiences.

While dance works are not always about disability, disabled dancers feel part of a community rooted in shared experiences, and disability often informs the work in some way. For example, *Falling in Love with Frida* draws on the life of a woman with a disability (famous Mexican artist Frida Kahlo) choreographed by a woman with disabilities (Caroline Bowditch). The historical ‘Frida’ is reconfigured and re-embodied through the contemporary bodies of Bowditch and her dancers. The work de-centres disability (the physical disabilities of the dancers are neither accentuated nor hidden, the disability simply exists). The work simultaneously reminds us of the absence of disability in our cultural heritage records of dance. It is this that we are trying to address in our project.

Other artists focus on the reality of the disabled body and take a more autobiographical approach to making work, developing a movement lexicon that is derived from and dependent on a unique physicality. By developing an individualist aesthetic, the artist is contributing to a richer, pluralist dance environment, one that we should value and support.

Fundamental to how we value arts and culture is the engagement between artists and audiences. We have been examining the way in which audiences encounter, view and respond to the work of disabled dance artists. Our initial analysis tells us that audiences tend to see the performance as inevitably ‘about’ disability. However ‘de-centred’, the disability is foregrounded and reinforces the division between disabled and non-disabled dance, even in the context of ‘inclusive’ or ‘integrated’ dance. The expectation of difference remains and it would appear that while disabled performers and choreographers are beginning to make the transition into the mainstream, there remains a perception that the work will not reach the same ‘standard’ as the non-disabled dancer.

The relative absence of disabled dancers in mainstream dance means that audiences lack a critical language for engaging with the dance. Our research shows that audiences are challenged when faced with disabled dance. Audiences’ comments neither engage with the dance intellectually nor focus on the body as an expressive mode of communication. The lack of a discourse leads to invisibility, or an inappropriate

<sup>6</sup> Paras 48 and 52(d), General Comment No. 21: Right of Everyone to Take Part in Cultural Life, E/C.12/GC/21, 21 December 2009

<sup>7</sup> Para 23, 2009 General Comment. The EU Charter can support similar arguments under Articles 21(1) and 26.





positioning of the dance within other spheres, such as ‘community art’ or ‘therapeutic practice’. Artists tell us that they want critics to take them seriously; to review the work as an art work.

### Progress in the support of disability dance in the UK

We acknowledge and applaud the support that the UK Government gives to disabled people to enable participation in the arts most particularly through programmes such as Unlimited and the Art’s Council England Disability Equality Scheme. We would however point to the inclusive programme that has been supported for a number of years in Scotland. Beginning in 2004, Janet Smith, then Artistic Director of Scottish Dance Theatre, embarked on a strategy to include disabled dancers in the work of that theatre. Around the same time the Scottish Arts Council (now Creative Scotland) employed an Equalities Officer who focused on arts and disability. Since then it has earmarked funds for disabled performers, created a 4-year post of Dance Agent for Change (held by choreographer and dancer Caroline Bowditch), and embedded equality into all programmes.<sup>8</sup> Scotland’s leadership in this area was acknowledged in 2013 when the British Council undertook a mission to Scotland to learn more about its approaches to equality in the performing arts. This active support of disabled arts has led participants in our research project to note that it is much more likely that a performance by a differently-abled artist will be critiqued in Scotland where there is a growing interest in a disabled dance ethic (and aesthetic).<sup>9</sup> Reviews in England, by contrast, are more rare; an absence of critical interest founded on, it is postulated, the absence of strategic investment as compared to that provided under Creative Scotland’s recent strategy.

While we think that Creative Scotland’s strategy is laudable, we think that it is not enough to fulfill the promise that the CRPD so tantalisingly suggests for disabled people and cultural inclusion. We are also concerned at the threatened withdrawal of the Independent Living Fund that has been eloquently shown to be an essential part of the support for creative artists who have a disability to be able to engage with their profession.<sup>10</sup>

### Conclusion

We think there have been good advances in Government support for disabled dance some of which is alluded to in the UK initial report on the CRPD. There have been other initiatives that deserve recognition in this report. For this we would point to the advances that have been made in Scotland. We do however think that much more should be done for the UK to be able to feel comfortable that it is moving towards fulfilling its obligations under the human rights framework: we have outlined two practical initiatives above.

### Recommendations

We have, elsewhere, made practical recommendations. These include:

1. Developing audience literacy for disabled dance. All artists, including disabled artists, are being encouraged to ‘commercialise to survive’. To do this requires audiences not only to be receptive to their works, but also to actively support their work. To give this active support requires a

<sup>8</sup> Creative Scotland Corporate Report, 2011

<sup>9</sup> On this point, see H. Patrick and C. Bowditch, ‘Developing Professional Equality: An Analysis of a Social Movement in the Scottish Dance Industry’ (2013) 1 *Scottish J of Performance* 75-97.

<sup>10</sup> See for example [http://www.theguardian.com/stage/theatreblog/2014/jul/29/disability-arts-cuts-access-to-work-theatre?CMP=tw\\_t\\_gu](http://www.theguardian.com/stage/theatreblog/2014/jul/29/disability-arts-cuts-access-to-work-theatre?CMP=tw_t_gu); <http://www.candoco.co.uk/2014/08/disability-arts-left-hanging-by-a-thread-a-response-from-candoco/>; <http://exeuntmagazine.com/features/a-state-of-independence/>





critical understanding of the work. As noted above, our research has shown that audience literacy in respect of disabled dance is dangerously low resulting in the absence of an ability to understand and to appreciate the art-form. This in turn results in lower audience numbers that would otherwise be the case.

2. Providing training in intellectual property. If the dance is to be commercialised, then it is the law of copyright that will enable this to happen. Copyright subsists in the dance: the rights to exploit this copyright can be exchanged for royalties. While we have argued elsewhere that copyright royalties cannot, and should not ever replace public funding because (a) it is unlikely that audience numbers will ever be big enough; and (b) the market (via copyright) is blind to policies of diversity and equality, we do think particularly with new social media, there are opportunities for commercialisation of the art form that did not previously exist and that these should be embraced.

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