



Position Brief for Policy Makers: Policy Brief: Human Rights obligations on States in respect of dance made and performed by dancers with disabilities

This position brief targets policy makers.

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.

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.

This paper highlights the human rights obligations that States have in relation to dancers with disabilities and the works that they choreograph. The Convention on the Rights of Persons with Disabilities 2006 (CRPD) contains measures relating to the rights of the disabled and participation in culture. This instrument, combined with the rights in the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) to take part in cultural life, and the International Covenant on Civil and Political Rights 1966 (ICCPR) to the right to receive and impart information, together provide a stronger framework than has ever previously existed for the recognition and support of the rights of people with disabilities in relation to cultural life.

Discussion

InVisible Difference: Disability, Dance and Law, is a project funded by the Arts and Humanities Research Council. The research team has made the observation that dance made and performed by dancers with disabilities is almost entirely absent from our cultural heritage and asks *why* this is the case. This is particularly so when we are at a moment in time when the human rights framework, which gives rights to persons with disabilities to take part in cultural life and places obligations on States to facilitate that inclusion, is stronger than it has ever been.

The Human Rights Framework

With regard to the general right to participate in culture, the framework comprises the following: The ICESCR contains the right to take part in cultural life,¹ and the ICCPR contains the right to receive and impart information,² both of which are required to be delivered without discrimination as to race, colour, sex, or 'other status',³ the latter of which encompasses disability.

¹ Article 15(1)(a), ICESCR.

² Article 19, ICCPR.

³ Article 2(2), ICESCR, and Article 2(1), ICCPR.





With regard to the rights of persons with disabilities to take part in cultural life, 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,⁴ and that places and works of culture should be accessible to those with disabilities.⁵ In 1994, the UN Committee on Economic, Social and Cultural Rights issued a General Comment 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 the position of persons with disabilities should be protected and promoted through general and specific instruments and actions.⁶ 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.⁷

Most recently, and specifically in relation to disability, the CRPD conceived of “an unprecedented opportunity for domestic law, policy reform, and genesis on behalf of the globe’s ‘largest minority’”⁸ exhorts States to ensure that people with disabilities have access on equal terms to cultural materials and places of cultural performances and services.⁹ It also requires that States ensure that persons with disabilities can take part on an equal basis in recreational, leisure and sporting activities, and have access to services provided by organisations in these areas.¹⁰

The obligations on States

In terms of obligations on States, in 2009 the UN Committee on Economic, Social and Cultural Rights issued a further General Comment which requires States to take a range of steps, including financial measures, to facilitate participation in cultural life.¹¹ At any time, but especially in times of austerity, persons with disabilities are likely to face hurdles to obtaining public funding for performance works. The 2009 General Comment 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.¹²

Practical proposals

We have noted elsewhere that, as public funding for the arts decreases, all artists are being encouraged to commercialise their practice in order to survive in the new, and constrained, funding environment. A successful commercial practice will depend on the market. While we have noted that funding from commercial royalty streams exploiting dance are unlikely ever to be able to replace public funding, there are measures that can be taken to help to raise knowledge and understanding of disabled dance. Our research, through discourse analysis of YouTube videos; through a survey of the responses of dance critics to disabled dance; and through ethnographic research with dancers and choreographers with disabilities, we have shown that levels of audience literacy in relation to disabled dance are dangerously low. While

⁴ Rule 10(1), 1993 Resolution.

⁵ Rule 10(2), 1993 Resolution.

⁶ Paras 5 and 6, General Comment No. 5.

⁷ Paras 37, 38 and 39, General Comment No. 5.

⁸ 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.

⁹ Articles 1 and 30, CRPD.

¹⁰ Articles 1 and 30, CRPD.

¹¹ 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.

¹² Para 23, 2009 General Comment. The EU Charter can support similar arguments under Articles 21(1) and 26.





levels of critical literacy are so low, audiences are unlikely to be able to understand, appreciate or engage with disabled dance, further marginalising the art-form and keeping it from becoming a part of our cultural heritage.

We have also shown that while publicly funded audience research has been carried out for dance in general, we can find no publicly funded project addressing audience literacy for disabled dance.

We would point to the obligations on States in terms of the human rights framework outlined above and urge the State to fill this gap by funding research designed to raise the profile of disabled dance. This will enable meaningful and informed discussions to take place over what is 'good' dance, and what is merely mediocre. It will enable the audiences to engage in informed and meaningful critiquing of the genre that disabled dancers crave and deserve, and that is almost certainly necessary before our repository and memory institutions take proper notice of their work.

Recommendations

The human rights framework with respect to disability and culture is stronger now than it has been at any time in the past. This places obligations on States to ensure that artists with disabilities can take part in cultural life. The framework encourages special measures (positive discrimination) to be taken on behalf of minorities:

1. Addressing audience literacy in the case of dance made and performed by dancers with disabilities would go some way to countering the conditions that perpetuate discrimination with respect to the artform.
2. Public funding should be directed specifically at research and practical measures aimed at increasing audience literacy for dance made and performed by dancers with disabilities.

Should you require further information please contact Professor Charlotte Waelde
c.e.waelde@exeter.ac.uk
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