**Human Rights, Legal Frameworks and Disabled Dance**

International human rights instruments support general rights to culture and cultural rights, as well as specific cultural rights in relation to disability. Our question is: What substantive provisions within these instruments might support disabled dance?

1. ***Cultural Rights and the Right to Culture in General Instruments***

Cultural rights in general human rights instruments focus on respect for, and protection of, cultural diversity and integrity, and those rights are both broadly and narrowly based: broad in the sense of referring to general notions of cultural identity and diversity; narrow in the sense of prescribing specific culture-related rights.[[1]](#footnote-1) The idea that culture is central to identity is a foundational tenet of the Universal Declaration of Human Rights 1948 (UDHR).[[2]](#footnote-2) The International Covenant on Civil and Political Rights 1966 (ICCPR),[[3]](#footnote-3) develops and concretises cultural rights by erecting the right to seek, receive, and impart information and ideas in any media of choice,[[4]](#footnote-4) and the right of minorities to enjoy culture.[[5]](#footnote-5) Other cultural rights which add to the richness of framework include the right to enjoy the arts; conservation, development and diffusion of culture; freedom of assembly and association and the principle of non-discrimination. In articulating the important elements that contribute to the realisation of cultural rights it has been said that they are:

A category of human rights that puts enhanced emphasis on moral rights, collective cultural identity, cultural integrity, cultural cooperation, cross cultural communications, and intercultural exchange.[[6]](#footnote-6)

The right to culture is another important element of the human rights cultural framework. Articles 27.1 and 27.2 of the Universal Declaration on Human Rights (UDHR) refer to the right of cultural participation and the right to protection of the products of culture, saying that everyone has:

* the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits; and
* the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.[[7]](#footnote-7)

This idea of the right to participate in culture and the right to enjoy cultural artefacts and practices is expanded on in the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR),[[8]](#footnote-8) which stipulates that States must ensure that everyone has the right to: (a) take part in cultural life; (b) enjoy the benefits of scientific progress and its applications; and (c) benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.[[9]](#footnote-9)

***b. Cultural, Human Rights and Disability***

Human rights instruments applicable to disability are also important. Developed via a participative and inclusive process, the UN Convention on the Rights of Persons with Disabilities 2006 (CRPD)[[10]](#footnote-10) has been described as one of the most successful international treaty negotiations,[[11]](#footnote-11) followed by one of the speediest ratifications.[[12]](#footnote-12) More importantly, it was conceived of as “an unprecedented opportunity for domestic law, policy reform, and genesis on behalf of the globe’s ‘largest minority’,”[[13]](#footnote-13) with significant transformative potential.[[14]](#footnote-14) The CRPD directs States to ensure that people with disabilities have access on equal terms to cultural materials and places of cultural performances and services.[[15]](#footnote-15) It also requires States to 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.[[16]](#footnote-16)

Nothing is said in the CRPD about participation in cultural performance.[[17]](#footnote-17) While this *could* be problematic, two arguments suggest that such is not the case. First, analogies can be drawn with the reasoning of the Human Rights Committee in General Comment 21, where the Committee noted that there are three interrelated parts to the right to participate in cultural life; one of these is contribution to cultural life.[[18]](#footnote-18) Contribution to cultural life “refers to the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community.” Given the reference to *participation* in the title of Article 30, CRPD, it can be argued that the Article is apt to cover the right to participate in cultural performance.

Second, the right to participation *for all* is embedded in the human rights framework.[[19]](#footnote-19) For example, a non-binding Resolution in relation to the ICESCR was adopted in 1993 which acknowledges the “strong moral and political commitment of Governments to take action to attain equalisation of opportunities for persons with disabilities.”[[20]](#footnote-20) It directs States to ensure that persons with disabilities can utilise their artistic potential for their own benefit and for the benefit of the community,[[21]](#footnote-21) and that places and works of culture should be accessible to those with disabilities.[[22]](#footnote-22) In 1994, the UN Committee on Economic, Social and Cultural Rights issued a General Comment on persons with disabilities that made reference to the 1993 Resolution.[[23]](#footnote-23) It states that, although there is no specific reference to disability in the ICESCR, the position of persons with disabilities is within the human rights framework, and the position of persons with disabilities should be protected and promoted through general and specific instruments and actions.[[24]](#footnote-24) It alsostresses 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.[[25]](#footnote-25)

1. A. Eide, ‘Cultural Rights as Individual Human Rights’ in A. Eide, C. Krause, and A. Rosas (eds), *Economic, Social and  Cultural Rights*, 2nd ed. (Netherlands: M. Nijhoff Publishers, 2001), at 289. For cultural rights in the case law of the European Court of Human Rights, see <<http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf>> [accessed 6 May 2016]. [↑](#footnote-ref-1)
2. At <<http://www.un.org/en/documents/udhr/>> [accessed 6 May 2016]. [↑](#footnote-ref-2)
3. At <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> [accessed 6 May 2016]. [↑](#footnote-ref-3)
4. Article 19, ICCPR. [↑](#footnote-ref-4)
5. Article 27, ICCPR. [↑](#footnote-ref-5)
6. R. Coombe, The expanding Purview of Cultural Properties and their Politics, Annual Review of Law and Social Science Vol. 5: 393-412, p 394. [↑](#footnote-ref-6)
7. For a discussion on the drafting history of Article 27 and its juxtaposition with IP, see A. Plomer, ‘The Human Rights Paradox: Intellectual Property Rights and Rights of Access to Science’ (2013) 35 *Human Rights Quarterly* 124-175. [↑](#footnote-ref-7)
8. At <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> [accessed 6 May 2016]. [↑](#footnote-ref-8)
9. Article 15.1, ICESCR. [↑](#footnote-ref-9)
10. At < <http://www.un.org/disabilities/convention/conventionfull.shtml>> [accessed 6 May 2016]. [↑](#footnote-ref-10)
11. L. Arbour, UN High Commissioner for Human Rights, General Assembly Ad Hoc Committee, 8th Session, New York, 5 December 2006. For a discussion on the CRPD’s development, see K. Guernsey et al., *Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank*, SP Discussion Paper 0712, 2007, at <<http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf>> [accessed 6 May 2016]. [↑](#footnote-ref-11)
12. It is the second most rapidly ratified Treaty: UN Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General*, UN Doc A/HRC/10/48, 26 January 2009, at 4, at <<http://www.un.org/disabilities/documents/reports/ohchr/A.HRC.10.48AEV.pdf>> [accessed 6 May 2016]. [↑](#footnote-ref-12)
13. 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, at 451. [↑](#footnote-ref-13)
14. Those drafting the CRPD sought to inculcate a transformative vision that would move beyond current human rights practice: UN Secretary-General, *Official Statement: Secretary-General Hails Adoption of Landmark Convention on Rights of People with Disabilities*, UN Doc SG/SM/10797, 13 December 13, 2006. [↑](#footnote-ref-14)
15. Articles 1 and 30, CRPD. [↑](#footnote-ref-15)
16. Articles 1 and 30, CRPD. [↑](#footnote-ref-16)
17. We have argued elsewhere that this raises complex questions: A. Brown and C. Waelde, ‘Human Rights, Persons with Disabilities and Copyright’ in C. Geiger (ed.), *Research Handbook on Human Rights and Intellectual Property* (Cheltenham: Edward Elgar, 2014) 577-602. [↑](#footnote-ref-17)
18. Committee on Economic, Social and Cultural Rights, 43rd Session, 2-20 November 2009, General Comment No. 21, para 15. [↑](#footnote-ref-18)
19. The ICESCR contains the right to take part in cultural life Article 15(1)(a), and the ICCPR contains the right to receive and impart information Article 19, both of which are required to be delivered without discrimination as to race, colour, sex, or ‘other status’ Article 2(2), ICESCR, and Article 2(1), ICCPR the latter of which was expected to encompass disability. [↑](#footnote-ref-19)
20. Recital 14, 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. [↑](#footnote-ref-20)
21. Rule 10(1), 1993 Resolution. [↑](#footnote-ref-21)
22. Rule 10(2), 1993 Resolution. [↑](#footnote-ref-22)
23. General Comment No. 5 (1994): Persons with Disabilities, E/1995/22(SUPP), 1 January 1995. [↑](#footnote-ref-23)
24. Paras 5 and 6, General Comment No. 5. [↑](#footnote-ref-24)
25. Paras 37, 38 and 39, General Comment No. 5. [↑](#footnote-ref-25)