Persons with Disabilities and their Rights

The Convention on the Rights of Persons with Disabilities does not define disability but provides a broad description intended to be widely inclusive. The Convention on the Right of Person with Disabilities establishes in Article 1 that ‘persons with disabilities’ include ‘those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The Universal Declaration enshrines rights that many of us take for granted: the right to education, to liberty, to be recognized as a person before the law, to be free from torture and cruel, inhuman, or degrading treatment. But too often around the world, people with disabilities continue to be denied the chance to go to school or are confined to institutions, secluded, and restrained. Although often adopted under the false belief they are needed for protection or care, some laws and policies of countries that have otherwise made strides in human rights still discriminate against people with disabilities.

The United Nations Convention on the Rights of Persons with Disabilities [1] of 2006 has profoundly impacted disability law and human rights law globally. With 162 State Parties, the Convention has reached more than 80% universal ratification for its 10th anniversary. Most State Parties have reviewed and revised domestic disability law and have established National Monitoring Mechanisms as prescribed by the Convention. The CRPD seeks to bring about a paradigm shift in disability policy based on a new understanding of disabled persons as right holders and human rights subjects. The theoretical background for this change is a modern model of disability as developed in disability studies and recent group-oriented approaches in modern human rights law. According to Article 1, the purpose of the CRPD “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” It is the first human rights instrument that acknowledges that all disabled persons are right holders and that impairment may not be used as a justification for denial or restrictions of human rights. Such an approach recognizes that disability is a social construct created when impairment interacts with societal barriers. It is based on new thinking about disability, which is usually described as a paradigm shift from the medical model of disability.

The debate about medical versus social model of disability has been the central focus during the first two decades, and several scholars have emphasized that disability studies have moved on to new, fewer dichotomist models such as the political/relational approach of Alison Kafer ([2], p. 7). While it is true that the dichotomy between the medical and social model of disability is an outdated subject for disability studies discourse, it has gained new attention within legal discourse. The CRPD also significantly impacts on international human rights law and its system. The CRPD Committee, established in 2009, consists of 18 independent experts, of whom all but one are disabled persons. No other treaty body has had such a high number of experts with impairments. As a consequence, the accessibility of UN buildings and information and communication systems became an issue.
Since the 1960s, there have been many different models of disability in the scientific literature; the medical (bio)-model, the social model, the economic model, the minority group model, the Universalist model, the Nordic relational model, the capabilities model, and others. All these models attempt to understand and occasionally explain or define disability. The most important models of disability in the English-speaking world have been the medical and the social model of disability. Both models were developed by scholars of disability studies during the 1970s and 1980s in the UK and the USA. With the adoption of the United Nations Convention on the Rights of Persons with Disability, a new model emerged: the human rights model of disability. The medical model of disability, which the CRPD tries to overcome, regards disability as an impairment that needs to be treated, cured, fixed, or rehabilitated. Disability is seen as a deviation from normal health status. The exclusion of disabled persons from society is regarded as an individual problem, and the reasons for exclusion are seen in the impairment. Disability, according to the medical model, remains the exclusive realm of helping and medical disciplines: doctors, nurses, special education teachers, and rehabilitation experts. Michael Oliver, one of the founding fathers of the social model of disability, has called this the ideological construction of disability through individualism and medicalization, the politics of disablement.

Another feature of the medical model of disability is that it is based on two assumptions that have a dangerous impact on human rights: (1) disabled persons need to have shelter and welfare; and (2) impairment can foreclose legal capacity. The first assumption legitimizes segregated facilities for disabled persons, such as special schools, living institutions, or sheltered workshops. The second assumption has led to creating mental health and guardianship laws that take an incapacity approach to disability. During the negotiations of the CRPD, the medical model served as a determent. While there was often no consensus among stakeholders on which way to go in terms of drafting the text of the convention, there was overall agreement that the medical model of disability was not the right path. Rather the social model of disability was supposed to be the philosophical basis for the treaty. The paradigm shift from the medical to the social model has often been stated as the main achievement of the CRPD; however, while it is true that the social model of disability has been the prevalent reference paradigm during the negotiation process.

The social model of disability explains disability as a social construct through discrimination and oppression. Its focus is on society rather than on the individual. Disability is regarded as a mere difference within the continuum of human variations. The social model differentiates between impairment and disability. While the first relates to a condition of the body or the mind, the second is the result of how environment and society respond to that impairment. The exclusion of disabled persons from society is politically analyzed as the result of barriers and discrimination.

The human rights model of disability appeared in an article on international and comparative disability law reform written by Theresia Degener together with Gerard Quinn 1999/2000 and in the background study to the CRPD that was edited in 2001. In a chapter called “Moral Authority for Change,” was wrote:

“Human dignity is the anchor norm of human rights. Each individual is deemed to be of inestimable value, and nobody is insignificant. People are to be valued not just because they are economically or otherwise useful but because of their inherent self-worth. The human rights model focuses on the inherent dignity of the human being and subsequently, but only if necessary, on the person’s medical characteristics. It places the individual center stage in all
decisions affecting him/her and, most importantly, locates the main “problem” outside the person and in society.”

The CRPD has been modeled on existing treaties, notably the International Covenant on Civil and Political Rights [37], the International Covenant on Economic, Social and Cultural Rights [34], the Convention on the Elimination of all Form of Racial Discrimination ([102], p. 195), the Convention Against All Forms of Discrimination Against Women [43], and the Convention on the Rights of the Child ([103], p. 3). While the first two treaties belong to the International Bill of Human Rights17 and comprise the globally recognized core catalog of human rights, the latter are group focused and are of different legal character. CERD and CEDAW are known to be anti-discrimination instruments, CRC is recognized as a more holistic treaty, comprising more than pure anti-discrimination rights. When the CRPD was negotiated between 2002 and 2006, there was an early consensus that the legal character should be a hybrid of both models. Thus, the CRPD demands State Parties to take positive measures concerning many areas of public and private live, such as infrastructure ([1], art. 9), international cooperation, and emergencies ([1], art. 32 and 11), inclusive education and employment ([1], art. 24 and 27), living ([1], art. 19), mobility ([1], art. 20), and decision-making in daily life ([1], art. 12). There are at least two reasons for the strong emphasis on equality and non-discrimination in the Convention. There was consensus that the CRPD should not create new human rights or special rights for disabled persons, and thus, the goal was to provide human rights for disabled persons on an equal basis with the general population in each member state. Secondly, the shift to non-discrimination and equality reflects the supersession of the medical model with the social model. Recognizing disability as a social construct turns the focus on the elements in our world, contributing to the social construction of disability. Discrimination is certainly one of the main factors in this regard. However, the CRPD did not stop short at embracing the non-discrimination and equality principles and contextualizing them to disability. It went further in that it introduced new equality and non-discrimination concepts into international human rights law and a new definition of discrimination. However, the definition of discrimination and equality was left for the treaty bodies to be elaborated in General Comments.

Similarly, CEDAW defines discrimination against women as “any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, based on equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” ([103], p. 3, art. 1). The CRPD adopts this definition but goes beyond. Disability-based discrimination is defined as “any distinction, exclusion or restriction based on disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.” ([1], art. 2). The latter is defined as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” ([1], art. 2). Thus, the CRPD extends the officially recognized definition of discrimination by explicitly embracing all forms of discrimination and by adding state duties to provide for adjustments and modifications to eliminate barriers that prevent disabled persons from equal enjoyment of human rights. Such a duty acknowledges that structural, environmental, communicative, or other barriers exist in a society that amounts to
discrimination against disabled persons. To combat discrimination, it is not sufficient to refrain from “distinction, exclusion or restriction,” some active measures need to be taken in order to make society accessible; similarly, article 9 CRPD on accessibility demands that positive measures are taken to eliminate barriers in the built environment, information and communication, and concerning transportation. In its General Comment No 2 of 2014 on accessibility, the CRPD Committee has distinguished the duty to provide reasonable accommodation from the duty to provide accessibility. While the measures for creating accessibility—e.g., building a ramp—might be the same, the personal scope is different. Accessibility duties target groups of disabled persons, whereas reasonable accommodation is oriented towards the individual. The duty to provide accessibility is, according to General Comment No 2, “an ex-ante duty. States parties, therefore, have the duty to provide accessibility before receiving an individual request to enter or use a place or service. States parties need to set accessibility standards, which must be adopted in consultation with builders and other relevant stakeholders. Accessibility standards must be broad and standardized.” In contrast, “[t]he duty to provide reasonable accommodation is an ex nunc duty, which organizations of persons with disabilities, and they need to be specified for service-providers, means that it is enforceable from the moment an individual with an impairment needs it in a given situation (workplace, school, etc.) in order to enjoy her or his rights on an equal basis in a particular context. Here, accessibility standards can be an indicator, but may not be taken as prescriptive. Reasonable accommodation can be used to ensure accessibility for an individual with a disability in a particular situation. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is assured, taking the dignity, autonomy, and choices of the individual into account.

There is a genuine and widespread lack of general understanding and policy awareness in Europe and the CIS and beyond that most Persons with Disabilities can, in fact, function effectively at work, school, and society, if given the required support. Legacies of the socialist system with its medical model of disability that believed that limitations arising from the disability could potentially be prevented or managed by medical treatment of Persons with Disabilities contributes to this.

The inclusion of persons with disabilities in development efforts is a question of human rights. The human-rights-based approach is central in achieving an inclusive society, non-discrimination, and ensuring equity. It is NOT a matter of moral obligation anymore; it is our legal and developmental obligation. It is, therefore, important for all of us – individuals or institutions - to take effective steps to support the implementation of the CRPD. The constituent elements (national human rights institutions, CSOs, national agencies, judicial and quasi-judicial bodies, legislative bodies) of the national human rights systems in our respective countries have an active duty to take this up and mainstream disability issues, challenges, and, solutions into vision, strategic planning, annual work plans, budgeting, and resource allocation.

Disabled people are the world’s largest growing minority, yet until very recently, they were invisible in international human rights law. Disabled people are not listed among the groups explicitly protected against discrimination in the post-war human rights instruments that make up the International Bill of Rights, one nor under the European Convention on Human Rights (Council of Europe 1950). The European Court of Human Rights only made its first-ever finding of disability discrimination in 2009 in Glor v Switzerland (2009). Kanter argues that this invisibility extended into the international human rights community itself, including mainstream human rights scholarship and many non-governmental organizations. The UN Convention on the
Rights of Persons with Disabilities (CRPD) (United Nations 2006) was developed in response to concerns that existing human rights instruments had ‘yet to create a significant impact on improving the lives of people with disabilities,’ and a commitment by disabled people and their representative organizations to ‘strive for a legally binding international convention on the rights of all people with disabilities to full participation and equality in society’ (Disabled Peoples International et al. 2000). The Convention Right of Persons with Disabilities enhances the visibility of disabled people in international human rights law.

The Convention on the Rights of Persons with Disabilities is a remarkable legal instrument, representing the culmination of many different strands of disability activism over the last few decades. As Kanter explains, it represents a number of ‘firsts’ for an international human rights instrument. True to the spirit of ‘nothing about us without us,’ the Ad Hoc Committee meetings where the text of the Convention on the Right of Persons with Disabilities was drafted and negotiated was attended by representatives of over 40 countries and over 400 different non-governmental organizations and disabled people’s organizations. According to Kanter, this ‘represents the first time the UN invited the people directly affected by the proposed treaty to participate directly’ in its drafting (40). As a participant in those negotiations herself.

Kanter provides a useful history of the development of disability rights in international law, accompanied by a history of treating people with disabilities that are often missing from legal texts. She describes certain key innovations of the Convention on the Right of Persons with Disabilities, including its basis in a social model of disability (Article 1), its inclusion – for the first time in an international human rights instrument – of rights to reasonable accommodation (Article 5) and inclusive education (Article 24). This is the first international treaty to require states to take steps to ensure the accessibility of the physical environment and services for disabled people (Article 9), and to raise awareness regarding persons with disabilities – including fostering respect and combating stereotypes (Article 8). Kanter argues that the Convention on the Right of the Persons with Disabilities makes explicit the interdependency between civil and political, economic, social, and cultural rights – which have traditionally been treated as distinct and separable in international human rights law. The Convention on the Right of Persons with Disabilities established a new and rigorous framework for monitoring its implementation, including a requirement that the UN Committee responsible for oversight of the treaty includes the participation of experts with disabilities (Article 34). Cumulatively, Kanter argues, these innovations represent a ‘paradigm shift’ in approach to disability – from the medical, charity, and welfare responses to a human rights approach.

The next six chapters of Kanter’s book are devoted to exploring the history, significance, and implications of certain key rights contained within the Convention on the Right of Persons with Disabilities: the right to independent living (Article 19) – the first such right of its kind; liberty and security (Article 14); freedom from torture and cruel, inhuman or degrading treatment and punishment (Article 15); physical and mental integrity of the person (Article 17); the right to health (Article 25); access to justice (Article 13); and legal capacity and supported decision-making (Article 12).

Kanter’s selection, and the focus of her analysis, will be of special significance to people with intellectual, psychosocial, and cognitive disabilities, especially those at risk of involuntary institutionalization and forced medical treatment. These rights – and in particular, Article 12 of
the Convention on the Right of Persons with Disabilities – have prompted extensive commentaries in the legal literature, but have as yet attracted relatively little attention from disability studies scholars.

Her analysis of the right to independent living emphasizes both the socio-economic requirements of appropriate housing, accessibility and support, and the right to exercise choice regarding where and with whom one lives. She argues that the Article 14 prohibition on deprivation of liberty on disability-related grounds does not go far enough – because ‘disability neutral’ laws are likely to rely upon ‘vague and unworkable’ standards such as dangerousness or decision-making incapacity, and may result in greater numbers of disabled people being incarcerated (143–151). Kanter discusses some of the limitations of the text of the Convention on the Right of Persons with Disabilities for those who argue that it prohibits involuntary treatment and the complexities around emergency care. Her discussion of Article 12 of the Convention on the Right of Persons with Disabilities and supported decision-making goes straight to the heart of the paradigm shift of the Convention on the Right of Persons with Disabilities, and its ‘potential to transform how we think about independence and autonomy for people with and without disabilities’ (267).

The Development of Disability Rights under International Law makes a welcome and important contribution to the growing literature on the Convention on the Right of Persons with Disabilities. The book’s global coverage is impressive, although this breadth may have made it easier for some inaccuracies – such as describing the Mental Capacity Act 2005 in England and Wales2 – to creep in. Kanter’s book provides an excellent overview of the history, significance, and scope of the Convention on the Right of Persons with Disabilities. It offers an interesting contribution to ongoing debates about the Convention on the Right of Persons with Disabilities and the future of mental health and mental capacity laws.

Kanter says that the Act distinguishes between decision-making and the ability to communicate, such that ‘if a person can make decisions, but has communication difficulties, the person could not be denied legal capacity’ (274). This is incorrect. An inability to communicate one’s decision is considered ‘mental incapacity,’ just as an inability to understand, retain, use or weigh information is (see s3 (1) Mental Capacity Act 2005), and is the basis for restrictions on legal capacity.

The Declaration on the Rights of the Disabled Persons was a declaration of the General Assembly of the United Nations, made on 9 December 1975. It is the 3447th resolution made by the Assembly. As a resolution of the Assembly, it is not binding on member nations, but it forms a framework drawn on for international and domestic law.

It consists of a lengthy preamble and thirteen proclamations that broadly promote the rights of those with disabilities. In 2007 the convention on the rights of persons with Disabilities was adopted. The thirteen proclamations are:

- Definition of the term “disable person” as “any person unable to ensure by himself or herself, wholly or partly, the social life resulting from a deficiency, either congenital or not, in his or her physical or mental capabilities.”
- The assertion that these rights apply to all disabled persons “without any exception whatsoever and distinction or discrimination based on race, color, sex, language, religion,
political or social origin, state of wealth, birth or any other situation applying either to the
disabled person himself or herself or his or her family.”

- Right to respect for human dignity.
- Right to the same civil and political rights as other human beings.
- The right to measure is designed to enable self-reliance.
- Right to medical, psychological, and functional treatment as necessary.
- Right to economic and social security, including the right to employment.
- The right to have consideration of special needs at all stages of economic and social
  planning.
- Right to live with their families or with foster parents and participate in all social,
creative, or recreational activities.
- Right to protection against exploitation, discrimination, and abuse.
- The right to consult organizations of disabled persons for matters of concern.
- Right to be fully informed of the rights proclaimed in the Declaration.

Persons with disabilities constitute a significant portion of the population worldwide, yet they
remain one of the most margined.

Over the past decade, awareness and understanding of issues related to disability rights have
grown. In particular, the Convention on the Rights of Persons with Disabilities, adopted in 2006
and entered into force on May 3, 2008, has been integral to advancing recognition of the human
rights of persons with disabilities. The Convention on the Rights of Persons with Disabilities
provides us with a comprehensive approach to realizing the rights of persons with disabilities.

Globally, more than 1 billion people, roughly 15 percent of the world’s population, live with
some forms of disabilities, older People, people with chronic health conditions, or people with
disabilities – for example, affect their respiratory capacity may be at serious illness or death from
Covid-19 particular risk of infection. Human Rights watch interviewed Kareem McCall, who is
legally blind and self-quarantining at her home in Ontario, Canada, after potentially coming into
contact with someone who tested positive for COVID-19. She said she faced obstacles in
accessing information from Ontario’s Ministry of Health as an online slideshow about staying
healthy during the COVID-19 outbreak was not compatible with screen reading or magnification
technology she relies on.

Persons with disabilities face discrimination and barriers that restrict them from participating
in society on an equal basis with others every day. They are denied their rights to be included in
the general school system, to be employed, to live independently in the community, to move
freely, to vote, to participate in sport and cultural activities, to enjoy social protection, to access
justice, to choose medical treatment and to enter freely into legal communications such as buying
and selling property.

A disproportionate number of people with disabilities live in developing countries, often
marginalized and in extreme poverty, and we see them begging for money and foods on the
street.

People with Disabilities have the following rights as long as they are still counted as citizens
of a country.
Disable people have the right to education, vocational training, and rehabilitation, which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.

The mentally disabled person has a right to proper medical care and physical therapy and such education, training, rehabilitation, and guidance as will enable him to develop his ability and maximum potential to the fullest possible extent; no mentally disabled person should be deprived of such services because of the costs involved.

The education of students with a disability should be valued as highly as the education of students without apparent disabilities. They must acknowledge the value of educating students with disabilities and understand that they require options for the type and location of their education. In order to have any choices at all, students with a disability need a range of services, in a variety of settings relevant to their expressed needs.

To ensure that people with disabilities are not deprived of lifesaving information, communication strategies should include qualified sign language interpretation for televised announcements, websites that are accessible to people with different disabilities, and telephone-based services that have text capabilities for people who are deaf or hard of hearing. Communications should use plain language to maximize understanding.

- Progressive Realization and Non-Discrimination
- Access to Health Services
- Economic Accessibility
- Information Accessibility
- Right to Education
- Right to Work and Employment: Persons with disabilities have low participation in the labor market and, when employed, are frequently employed in low-paying positions.
- Freedom from Violence, Abuse, and Exploitation: Persons with disabilities are vulnerable to violence, abuse, and exploitation, especially when persons with disabilities are reliant upon others for support and care.
- Freedom from Torture
- Right to free movement
- Right to vote and hold a leadership position

Some laws and policies of countries that have otherwise made strides in human rights still discriminate against people with disabilities.

For example, the Council of Europe has developed an Additional draft Protocol to the Oviedo Convention. While recognizing that the rights of people with disabilities are often violated through detention and forced treatment, rather than seek to end such practices, the treaty proposes a framework for them that will perpetuate discrimination against people with disabilities.

Around the world, people with disabilities are stripped of their rights and their dignity.
• In Brazil, thousands of people with disabilities are confined to institutions for decades, denied the chance to live in the community. In one facility, Human Rights Watch met a 70-year-old man with an intellectual disability who had been living there since he was five years old.

• In Lebanon, young Radwan recounted how school after school told him, “We don’t take children in wheelchairs.”

• Human Rights Watch’s newest report details how European Schools, which cater mainly for children of EU employees, are failing students with disabilities. Louise, a 15-year-old who has dyslexia, said: “Those who are a little defective, [the schools] do everything they can to reject them.”

Access to services does not imply only physical services. Of course, globally, the overwhelming majority of buildings, including government institutions, are not accessible to Persons with Disabilities, which restricts their opportunities to exercise their rights in many areas. Multiple barriers still exist in access to employment, education, housing, health, political participation, cultural expression, entertainment, and leisure activities. Inaccessibility and prejudices in society make life difficult and prevent access to basic rights and services such as participating in the political process, gaining access to justice, and engaging in meaningful economic and social activity.

The protection guaranteed in other human rights treaties, and grounded in the universal declaration of Human Right, should apply to all. Persons with disabilities have, however, remained largely invisible, often side-lined in the rights debate, and unable to enjoy the full range of human rights. In recent years, there has been a revolutionary change in approach, globally, to close the protection gap and that persons with disabilities enjoy the same standards of equality, rights, and dignity as everyone else.

It would be worthwhile for all stakeholders to engage into informed national dialogues

On specific steps that should be undertaken to ratify the CRPD. The time has come to ask

Ourselves as members of the UN family: are we doing enough?

The United Nations and person with Disabilities Chronology 1080s till present, Numerous efforts, both substantive and promotional, were taken nationally and internationally to improve the situation of a person with disabilities with the goal of increasing integration in society and improvements in the physical and psychological adjournment of persons with disabilities with communities. Programs were launched, focusing on rehabilitation and disability prevention. National committees representing 141 countries and territories were established to improve the following areas: social and economic condition of persons with disabilities, development, and implementation of programs, research, policy and decision-making, legislation, decentralization from the national to local levels, and assistance to developing countries.
According to the World Health Organization’s 2011 World Disability Report, about 15 percent of Nigeria’s population, or at least 25 million people, have a disability. Many of them face a number of human rights abuses, including stigma, discrimination, violence, and lack of access to healthcare, housing, and education.

On January 23, Nigeria’s President Muhammadu Buhari signed into law the Discrimination against Persons with Disabilities (Prohibition) Act, 2018, following nine years of relentless advocacy by disability rights groups and activists.

“The law prohibits discrimination on the basis of disability and imposes sanctions including fines and prison sentences on those who contravene it. It also stipulates a five-year transitional period for modifying public buildings, structures, and automobiles to make them accessible and usable for people with disabilities”.

In conclusion, one of the most important things governments can do to protect people with disabilities during the coronavirus pandemic is to consult with them regularly to make sure policies meet their needs. Otherwise, other catastrophes loom if millions of people are left out of the COVID-19 response.”

References

8: Arkadi Toritsyn, and A. H. Monjurul Kabir


43. Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 (Nigeria)