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The challenge of measuring disability equality for the CRPD

Jerome Bickenbach
 Swiss Paraplegic Research

Convention on the Rights of Persons with Disabilities
 United Nations-General Assembly, A/61/611, 6.12.06

Article 3 - General principles

The principles of the present Convention shall be:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b. Non-discrimination;
- c. Full and effective participation and inclusion in society;
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e. Equality of opportunity;
- f. Accessibility;
- g. Equality between men and women;
- h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

CRPD – the Rights

- Article 9 Accessibility
- Article 11 Situations of risk and humanitarian emergencies
- Article 12 Equal recognition before the law
- Article 13 Access to justice
- Article 15 Freedom from torture, cruel...degrading treatment or punishment
- Article 16 Freedom from exploitation, violence and abuse
- Article 17 Protecting the integrity of the person
- Article 18 Liberty of movement and nationality
- Article 19 Living independently and being included in the community
- Article 20 Personal mobility
- Article 21 Freedom of expression and opinion, and access to information
- Article 22 Respect for privacy
- Article 23 Respect for home and the family
- Article 24 Education
- Article 25 Health
- Article 26 Habilitation and rehabilitation
- Article 27 Work and employment
- Article 28 Adequate standard of living and social protection
- Article 29 Participation in political and public life
- Article 30 Participation in cultural life, recreation, leisure and sport

The benefits and dangers of rights

WHAT RIGHTS ARE **REALLY**

Legal standing and entry points

Political negotiation tokens

The benefits and dangers of rights

WHEN RIGHTS ARE **DANGEROUS**

Empty, political rhetoric

Overbroad and unfeasible and so ignored

Excuse for inaction

Gaining the benefits but avoiding the dangers...

Take care to interpret rights...

concretely

narrowly

realistically

focused but flexible ...



So that implementation can be monitored and MEASURED

Challenges for measuring EQUALITY RIGHTS

*...for implementation and monitoring of the
CRPD substantive and procedural rights*

Operationalization of rights....

Basic legal analysis

1. Substantive, procedural or both
2. Scope of rights:
3. Comparator class (for equality rights)

*....keeping in mind the goal of interpreting rights for
implementation*

LEGAL ANALYSIS OF RIGHTS

1. Substance rights v. process rights

Right to a job

Right to fair employment procedures

Content of the right

Anticipated outcome

LEGAL ANALYSIS OF RIGHTS

2. Scope of the right

Identify content of right:

What it is a right to...

Identify beneficiary of right:

Absolute: *'For all persons with disabilities'*

Qualified: *'For people who need rehabilitation...'*

Identify who has the obligation: (*'State parties'*)

Identify strength of obligation:

'Must' duties, conditional duties, standards, mandatory regulations, voluntary regulations ...

LEGAL ANALYSIS OF RIGHTS

3. Comparator class (for equality rights)

Article 9 - Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, **on an equal basis with others**, to the physical environment....

Operationalization is just the beginning (the 'easy' part)

e.g.

Article 26 Habilitation and Rehabilitation

Article 26 - 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.

Article 26 - Habilitation and rehabilitation

Substance rights (Outcomes)

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:

Article 26 - Habilitation and rehabilitation

Process rights

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:

Article 26 - Habilitation and rehabilitation

Substance rights → Outcomes analysis

A. *Enable persons with disabilities to attain and maintain*

1. maximum independence,
2. full physical, mental, social and vocational ability,
3. full inclusion, and
4. [full] participation in all aspects of life.

Interpretation challenges – 1

A. *Enable persons with disabilities to attain and maintain*

1. **maximum** independence,
2. **full** physical, mental, social and vocational ability,
3. **full** inclusion, and
4. [**full**] participation in all aspects of life.

Interpretation challenges – 1

“MAXIMUM” “FULL”

Why not ‘optimal’?

Absolute or relative (to the individual)?

Mandatory?

(Suppose some person with a disability doesn't want to be included?)

Comparator?

“on an equal basis with others”

Interpretation challenges – 2

A. Enable persons with disabilities to attain and maintain

1. maximum **independence**,
2. full **physical, mental, social and vocational ability**,
3. full **inclusion**, and
4. **[full] participation in all aspects of life.**

Interpretation challenges – 2

- ✓ **Independence**
- ✓ **Physical, mental, social and vocational ability**
- ✓ **Inclusion**
- ✓ **Participation**

Complexity of each concept
Means or ends?
Operational?
Scalable?
Measurable?

Gaining the benefits but avoiding the dangers...

Take care to interpret rights...

concretely

narrowly

realistically

focused but flexible ...



So that implementation can be monitored and measured

WHY?

Without relevant and reliable population data, there is

- ✓ **no monitoring**
- ✓ **no meaningful implementation**
- ✓ **no meaningful rights....**

CRPD

Implementing-monitoring mechanisms

Article 31 - Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

- a. Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
- b. Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

THE challenge of disability equality?

...creation, collection, analysis of relevant population data

Why is the CRPD important ?