The UN Convention on the Rights of Persons with Disabilities and the Right to Independent Living

Paper for the European Network on Independent Living
Tabitha Collingbourne - 2009

Introduction

When the UN Convention on the Rights of Persons with Disabilities (the Convention/CRPD) came into force on 3rd May 2008, it marked the end of one process and the beginning of another. The Convention’s existence is a major milestone in the history of both disability and human rights. Its content is a spectacular reaffirmation of the equal application of all human rights to disabled people. Its design takes international human rights forward in important ways. It has already heightened awareness of disability as a human rights issue around the world, and has begun to bring about change. And it offers some unique opportunities for disabled people and their allies to build on these achievements and to continue to influence progress.

But it should not be forgotten that this Convention came about because all of the existing human rights mechanisms had failed to protect the rights of disabled people. The next, and arguably more difficult, process is to translate the aspirations set out in the Convention into the reality of people’s lives. That translation will involve fundamental social, political, legal and practical change, in a multitude of settings. As the Special Rapporteur on Disability said in 2007, this Convention ‘invites the international community to change its views, its knowledge, its direction, its behaviour and attitudes, its manner to manner of dealing with an entire population which encompasses women, men, children and the elderly.’ Those kinds of change do not happen easily or quickly, if at all, and they meet with all kinds of resistance. Those working to take implementation forward will need to use all of the resources at their disposal.

The Convention itself is one of those resources, and it can be used in many different ways. This paper highlights some of the key innovations of the Convention in the wider context of international human rights. It then looks at Article 19, the right to live independently and to be included in the community, in the light of
those developments, and touches on some of the challenges that lie ahead.

The international human rights context


Pluralisation

While disability activists have been struggling to overturn centuries of exclusion and oppression to demand equality, inclusion and rights, the international human rights agenda has also been developing: from its primary post-war purpose of protecting people against the abuse of state power to one which also aims to restore power and dignity to the individual. One result of this has been what Frédéric Mégret has called the ‘pluralisation’ of human rights: the increasing recognition that particular groups or categories of people are worthy of specific human rights protection (1). Examples of such groups have included women, children and migrant workers. The CRDP can be seen as a continuation of that process, combining disabled people’s call for rights with the UN’s recognition that existing human rights frameworks have failed to protect those rights. That combination has produced a Convention that challenges societies to accommodate the differences of disability, and to respect disabled people’s dignity, autonomy and independence on an equal basis with others.

Indivisibility of rights

Another development has been re-evaluation at the UN of the relationship between civil and political rights (such as the rights to life, liberty, fair trial or freedom of expression) on the one hand and economic, social and cultural rights (such as the rights to work, health, education or an adequate standard of living) on the other. Historically, these two ‘sets’ of rights have developed unequally in terms of their perceived importance, the obligations they impose and the way they have been monitored. In the 1990s, with Kofi Annan as UN General Secretary and Mary Robinson as Human Rights Commissioner, it became a mantra that ‘[a]ll human rights are universal, indivisible and interdependent and interrelated’ and must be treated equally (2). This is important for disabled people,
because that indivisibility is particularly true in the context of disability (3). Just as civil and political rights are of utmost importance to people who are sidelined, excluded, treated as less than human and sometimes killed because of impairment or illness, so also, those rights are meaningless without the economic, social and cultural conditions which make it possible to exercise them, and which are so often absent in the lives of disabled people. The indivisibility of rights was a fundamental precept of the Universal Declaration of Human Rights in 1948, and is recognised again in the drafting of the CRPD. All of the rights – civil, cultural, economic, political and social – are more closely integrated here than in previous human rights treaties, to the extent that it becomes impossible sometimes to untangle them.

**Reasonable accommodation**

The Convention also reflects the discrimination law concept of reasonable accommodation. Sometimes just refraining from discrimination is not enough: it may be necessary to put extra things in place to enable real equality to happen. Many of the Convention’s Articles not only require States to guarantee the particular right on an equal basis for disabled people, they also give quite specific directions as to how that should be done. These include ‘negative’ actions, such as abolishing discriminatory laws and customs, or combating stereotypes and prejudice; and ‘positive’ actions, such as researching new technologies or introducing minimum standards of accessibility. They include using Braille, sign language, and other alternative communication methods in official interactions; and ensuring access to equipment and to personal support. No previous UN Convention has been so specific about the actual steps to be taken. By combining the fundamental human rights values of autonomy, dignity and equality with the concept of reasonable accommodation, this Convention pins down those values in a new, strong and practical way.

The influences of ongoing pluralisation of the human rights agenda, renewed indivisibility of rights and the introduction of reasonable accommodation can all be seen in the drafting of Article 19 of the Convention. The Article also serves to illustrate some of the potential risks and challenges for the realisation of Convention rights.
Article 19: living independently and being included in the community

Article 19 of the Convention sets out the right to live independently and be included in the community. It requires States to recognise the equal right of disabled people to live in the community, with choices equal to others, and to take measures to facilitate their full enjoyment of that right.

Pluralisation

The philosophy and practice of independent living has been developed by disabled people as resistance to their experiences of enforced dependency and segregation. Its encapsulation in Article 19 of the Convention can be therefore seen as a further step in the pluralisation of human rights, with existing rights being reformulated to take account of those experiences. Or it can be seen as a new right.

Although the CRPD does not set out to create new rights, this is the first appearance of a right to independent living in international human rights law. As such, it was correctly challenged by government delegations during drafting. That challenge was overturned by the argument that whereas people generally assume they have freedom and choice, that assumption cannot be made in the context of disability (4). In other words, as the catch-phrase goes, ‘independent living is what other people take for granted’. The fact that this debate took place goes to the heart of why a Convention was necessary: the failure of others to see or address the human consequences of the exclusion, segregation and objectification of disabled people. Independent living, when understood in the sense developed by the disabled people’s movement, directly and fundamentally challenges those deep-seated attitudes and practices. It demands visibility, the right to have rights, and the right to exercise them on an equal basis with others.

Indivisibility

Article 19 is also an example of the inseparable integration of civil and political with social, economic and cultural rights in the Convention, as in people’s lives. Autonomy, or self-determination, is a fundamental value which underpins the entire human rights
framework. Furthermore, living and participating in the community inevitably engages a range of civil and political rights and responsibilities. In exercising their autonomy and their civil and political rights and responsibilities, people make a whole variety of choices. Enabling those choices stretches right across public policy and service provision, including employment, housing, transport, education, health and social support, financial provision and more. In other words, it requires the realisation of economic, social and cultural rights.

**Reasonable accommodation**

More specifically, Article 19 requires States to ensure that disabled people have the opportunity to choose where and with whom they live, so that they are not obliged to live in a particular ‘living arrangement’. This implies the availability of alternative housing options. States must also ensure that a range of support services, including personal assistance, can be accessed to support community living and to prevent isolation or segregation.

The inclusion of Article 19 in the Convention is an achievement for disabled people, and the extent of its realisation will serve as an important barometer for progress in implementing the Convention as a whole. But there are also risks, both conceptual and practical.

**Risks and challenges**

Philosophically, ‘independent living’ can be a slippery concept which is open to partial or mis-interpretations, and to application in contexts far removed from the principles and practices from which it grew (5). It may even become a new expression of old and unchanged oppression (6). By encapsulating independent living in international law, it becomes not just available but a requirement in widely differing political and cultural settings around the world. Whether or not it achieves its emancipatory potential will depend on many factors, not least the ability of disabled people to retain ownership of its meaning, its interpretation and its application.

The clear emphasis on choice and inclusion in Article 19 demands some fundamental shifts in thinking for governments and service providers. Traditional ‘welfare’ services typically restrict choice, and seek to compensate the individual for their exclusion from society. Their transformation into services which truly support
autonomy and inclusion demands a sea-change in the philosophy and culture of public service provision, as well as its practice. Such transformation entails a rebalancing of power between State and citizen and between provider and recipient, prompting further potential areas of resistance. The institutional arrangements currently in place are likely to be founded on traditional oppressive assumptions, and there are many with a vested interest in the continuation of existing practices.

Furthermore, although the close integration of civil, cultural, economic, political and social rights in Article 19 may be a highly desirable reflection of reality, from a legal standpoint it raises interesting questions for the Article’s interpretation and implementation. Under international human rights law, civil and political rights must be implemented immediately, whereas economic, social and cultural rights may be implemented progressively to the maximum of available resources (7). To what extent the right to independent living is immediately applicable, and to what extent open to progressive realisation will no doubt be a question for deliberation by the UN Committee on the Rights of Persons with Disabilities.

**Implementation and monitoring**

It is perhaps in anticipation of these kinds of challenges that the Convention’s provisions for implementation and monitoring make the innovations they do. Like other human rights treaties, the CRPD sets up a UN monitoring Committee to oversee its implementation. This Committee will consider reports from States on their progress in implementing disabled people’s rights, and applications from individuals or groups who claim that their rights have been violated. The members of the Committee have been elected by a Conference of States Parties to the Convention, which will meet every two years to consider 'any matter with regard to the implementation’ of the Convention. This in itself is a new development, but the Convention goes further. Each State must designate focal points within their national government for implementing the Convention across government. They must also maintain independent national human rights institutions, and fully involve civil society, particularly disabled people and their organisations. This system has the potential to greatly strengthen the implementation and monitoring process, providing what Gerard
Quinn calls ‘the transmission belt between international law and the domestic matrix for change’ (8). It establishes strong links between international, national and local spheres, and between government, civil society and disabled people. It offers, at least in theory, a host of opportunities for those working to take implementation forward.

*Nothing about us without us*

‘Nothing about us without us’ is reflected in the Convention’s preamble (o): ‘persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them’. That theme underlies both the existence and the purpose and principles of the Convention, and is specifically and repeatedly written into its implementation and monitoring systems. Ratifying States must ‘closely consult with and actively involve’ disabled people in the development and implementation of law and policy, and when they are nominating their candidates for the UN monitoring Committee. International cooperation must include partnership with international and regional organisations of disabled people. At national level, disabled people and their organisations ‘shall be involved and participate fully in the monitoring process’. Opportunities for active involvement in the development, implementation and monitoring of the fundamental transformations required for translation of Convention rights into reality are offered to disabled people at local, national, regional and international levels.

**Conclusion**

The CRPD is indeed, in the words of Kofi Annan, a ‘remarkable and forward-looking document’ (9). It reaffirms that all human rights apply to disabled people. It formulates disabled people’s struggle for visibility, equality and rights in the context of international human rights. It reintegrates civil, cultural, economic, political and social rights. It introduces the concept of reasonable accommodation to human rights law. And it provides new implementation and monitoring frameworks designed to try to ensure that - this time - disabled people’s rights cannot be ignored.

Article 19 reflects the special nature of the Convention. It can be seen as continuing the process of pluralisation in its reformulation
of existing rights in response to the particular experiences of
disabled people, and in its clear statement in international law of
their right to autonomy, participation and inclusion as opposition
to dependency, segregation and institutionalisation. It exemplifies
the indivisibility of all human rights in the context of disability, and
specifically requires the availability of housing options and service
provisions to enable exercise of the right.

Article 19 also heralds some of the challenges ahead. The social,
political and legal interpretation of independent living is up for
grabs. It may develop in different ways in different ideological
settings, not always in line with the philosophy of the independent
living movement, and not always within its control. Moreover,
many strong political, legal and administrative systems that have
institutionalised segregation and oppression remain in place and
will resist change, sometimes whilst appearing to conform.

This paper has sought to highlight aspects of the UN Convention
on the Rights of Persons with Disabilities and Article 19 that
provide opportunities for disabled people and their allies working to
take implementation forward. It has also touched briefly on some
of the potentially formidable challenges they face. The
implementation and monitoring opportunities the Convention offers
will need to be powerfully activated for independent living and the
other Convention rights to avoid being diffused and deflected by
alternative agendas and become a reality for disabled people
around the world.

Notes

Tabitha Collingbourne is a doctoral student at the University of
Sheffield, UK.

(1) Mégret, F, 'The Disabilities Convention: Human Rights of
Persons with Disabilities or Disability Rights?' (2008) Human
Rights Quarterly, 30/2, 493

(2) Vienna Declaration and Plan of Action 1993, Article 5

(3) Leandro Despouy, 'Human Rights and Disabled Persons', 1993
available at www.un.org/esa/socdev/enable/dispaperdes0.htm ;
Quinn, G & Bruce, A, 'Toward Free and Inclusive Societies for
People with Disabilities: reflections on the liberating role of economic, social and cultural rights’ [www.nuigalway.ie/cdlp](http://www.nuigalway.ie/cdlp)


(7) This is reflected in Article 4(2) of the Convention.
