

Human Rights and Disability: The International Context

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Abstract

The human rights approach to disability is part of the human rights movement that has developed over the latter half of the 20th century. The increasing international attention to human rights issues has led to a number of significant international human rights commitments in the areas of disability. Examples of these achievements are reviewed, and some recently proposed strategies for enforcing the human rights of people with disabilities, to ensure international commitments are respected and meaningful at the local level, are described.

Human rights are an international issue, practiced at the local level. Around the globe governments are increasingly viewing the rights of their citizens in a manner consistent with international human rights codes, and international human rights initiatives are beginning to address disability within a human rights context. Shifts in ways of thinking about disability are linked to this trend. Traces of a model of disability as a matter of deviance, deficiency, or disease - the pathology of an individual's failure, or a family's failure to attain standards of normalcy - persist in some spheres. Yet it is becoming more evident that this perspective not only aggravates individual limitations and reinforces disadvantage, but also creates marginalization and discrimination. It is increasingly common for disability to be viewed as a pathology of society, that is, as a matter of environmental and societal conditions related to a society's success or failure to be inclusive. This new framework of human rights sets the stage for countries to support social well-being for all their citizens.

The Emergence of Human Rights and a Rights-Based Approach to Disability

The human rights model includes disability within a paradigm of rights that has been emerging since the United Nations Universal Declaration of Human Rights of 1948. This declaration recognized that all people have

certain civil, political, economic, social, cultural, and development rights, despite differences between individuals. From this perspective, a rights model of disability perceives variation in human characteristics associated with disability, whether in cognitive, sensory, or motor ability, as inherent to the human condition. Such variations do not limit potential contributions to society, but rather diversify the range of potential contributions and the range of mechanisms to ensure individual potential is realized. Thus, a rights approach presumes that society is obliged to provide whatever mechanisms are necessary for individuals to realize their rights. In the case of people with disabilities, this may involve the provision of supports, services, and aids to enable social and economic integration, self-determination, and the enjoyment of legal and social rights. Underlying this presumption is the principle that all people have the right to participate and to exercise self-determination as equals in society.

Theoretically, a rights-outcome approach constructs an analysis of how society marginalizes people and how society can be adjusted to eliminate this marginalization. As Quinn and Degener (2002) state in a report evaluating UN human rights instruments in a disability context:

[T]he human rights perspective means viewing people with disabilities as subjects and not as objects. It entails moving away from viewing people with disabilities as problems toward viewing them as rights holders. Importantly, it means locating any problems outside the person and especially in the manner by which various economic and social processes accommodate the difference of disability or not as the case may be. The debate about disability rights is therefore connected to a larger debate about the place of difference in society. (p. 1)

The Universal Declaration of Human Rights was the first major step in the creation of a United Nations human rights system. In 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both legally binding human rights treaties, were adopted to define the rights articulated in the Declaration. Additional treaties seek to protect and promote the rights of specific vulnerable groups: the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child. These human rights instruments all have mechanisms to monitor government compliance with treaty

obligations. "Treaty monitoring bodies" review state reports on the implementation of treaty rights and some treaty bodies also review complaints alleging human rights violations. Human rights instruments are not only guidelines for states, but they also create obligations that require governments to reform their policies and practices to realize human rights for all citizens.

Although few human rights treaties specifically mention disability, the matter of how the International Covenant on Economic, Social and Cultural Rights (ICESCR) applies to people with disabilities was formally addressed by the Committee on Economic Social and Cultural Rights (1994), the treaty body that monitors government compliance with the ICESCR. The Committee reasoned that:

... since the Covenant's provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. In addition, insofar as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability. Moreover, the requirement contained in article 2 of the Covenant that the rights 'enunciated ¼ will be exercised without discrimination of any kind' based on certain specified grounds 'or other status' clearly applies to discrimination on the grounds of disability. (para. 5)

A specific focus on disability rights at the UN level has been maintained by a Special Rapporteur on disability, first appointed in 1984 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and mandated by the United Nations Commission for Social Development. As Special Rapporteur, Leandro Despouy chronicled widespread human rights abuses in the area of disability in a comprehensive report, *Human Rights and Disabled Persons*, published in 1992. He recommended disability as a human rights concern and called for greater involvement of the UN treaty monitoring bodies in addressing disability rights violations. More recently, Bengt Lindqvist, Special Rapporteur from 1994 to 2002, reported that such problems persist, stating that "the problem so far has been that disability-related obstacles to full enjoyment of human rights have been neglected" (Lindqvist, 2002a). Even in the context of an international human rights system of treaties and monitoring bodies, disability has not always been understood as a rights issue, but viewed instead as a pathology of exceptional individuals. As such, states have not been required to ensure the inclusion of people with disabilities in law and policy.

Recent International Developments in Disability Rights

In response to the human rights crisis faced by people with disabilities, the UN has initiated a number of agreements, statements, world conferences, and other meetings focused on disability rights. States are gradually advancing toward a human rights perspective on disability, and 39 countries have instituted non-discrimination or equal opportunity legislation in the context of disability (Quinn & Degener, 2002). What follows is a brief summary of some of the major human rights landmarks for people with disabilities. The summary includes international commitments to disability rights, such as The World Programme of Action concerning Disabled Persons, The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, and related UN resolutions. Reference to selected regional commitments and international conferences are also included as examples of recent developments. This overview illustrates a growing acknowledgement that disability is a human rights issue.

World Programme of Action Concerning Disabled Persons, 1982

During the International Year of Disabled Persons, 1982, the UN General Assembly adopted the World Programme of Action concerning Disabled Persons. The World Programme emphasized equal opportunity rights for people with disabilities, as well as equal access to improved living conditions resulting from economic and social development. Further, for the first time, the relationship between disability and the environment was officially recognized in the definition of handicap. The implementation of the World Programme of Action required states to establish legal authority for instituting measures to reach Programme objectives, to eliminate barriers to full participation, and to support the creation and growth of organizations of people with disabilities. The World Programme of Action proposed government action to ensure the equalization of opportunity for people with disabilities in a variety of spheres, from education to legislation, and from employment to sports and culture. The UN Decade of Disabled Persons 1983-1992 was declared to provide a timeframe for governments to implement the World Programme.

The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1994

The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in 1993, signify the United Nations' endorsement of the human rights approach to disability

(Quinn & Degener, 2002). The Rules address the exclusion of people with disabilities by emphasizing individual empowerment for independence and increased structural access (Lindqvist, 2002a). The Standard Rules were a direct outcome of the rights-based philosophy of disability established with the adoption of the World Programme of Action and which remained central during the Decade of Disabled Persons. The Special Rapporteur on Disability oversees the Rules. Recently, the Special Rapporteur reported that the Rules are now being applied in all regions of the world, by many governments and disability organizations for advocacy, policy-making, legislation, and evaluation (Lindqvist, 2002b).

The Rules promote accessibility, encouraging states to develop programs of action that ensure accessible physical environments and access to information and communication. The 22 rules are divided into four chapters that address: preconditions for equal participation; target areas for equal participation, such as accessibility, education, employment, income issues, culture, and so on; implementation measures, specifically areas such as policy-making and planning, legislation, and other government procedures and systems; and a monitoring mechanism. The Rules are designed to ensure that children and adults with disabilities can exercise the same rights and obligations as other members of their societies without obstacles. The Standard Rules reflect a strong human rights perspective: giving states the responsibility for the removal of such obstacles in partnership with individuals and organizations.

Initially the Rules were not legally binding, but rather served as guidelines for policy development and demonstrated a commitment to enabling the human rights of people with disabilities through equalization of opportunities. The Rules have gained increased authority with the recent UN resolution described below, which suggests governments are now legally required to adhere to the Rules.

Resolutions of the United Nations Commission on Human Rights

The UN Commission on Human Rights recently passed ground breaking resolutions, confirming that disability is a human rights issue. In 1998 the Commission adopted resolution 1998/31, which is a general recognition of the United Nations' responsibility for the human rights of people with disabilities. The resolution states that inequality and discrimination related to disability are violations of human rights. In 2000, the Commission adopted a new resolution, reaffirming resolution 1998/31 and stating that a violation of the Standard Rules is a violation of the human rights of people with disabilities:

The Commission on Human Rights [...] [r]ecognizes that any violation of the fundamental principle of equality or any discrimination or other negative differential treatment of persons with disabilities inconsistent with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities is an infringement of the human rights of persons with disabilities. (para. 1)

This statement can be interpreted as the creation of an international norm according to which all nations must follow the Standard Rules and is an important breakthrough in the shift to a human rights approach to disability. Further, the resolution expressed the urgent need for action and invited the High Commissioner for Human Rights and the Special Rapporteur on Disability to "examine measures to strengthen the protection and monitoring of the human rights of persons with disabilities" (UN Commission on Human Rights, 2000).

Regional Agreements and Declarations

The Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities deserves special mention since it is currently the only international treaty entirely dedicated to people with disabilities. This Convention was approved in Guatemala in 1999, and entered in force in 2001. It is open to ratification by member states of the Organization of American States. The Convention defines disability as "a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities in daily life, and which can be caused or aggravated by the economic and social environment" (Article I, para. 1). Governments are required to implement measures related to legislation, social programs and organization, education, and labour to fully integrate people with disabilities into society. The Convention calls for rehabilitation, education, job training, and other measures to promote the independence and quality of life of people with disabilities.

Regional organizations are focusing on the need to call attention to disability issues and to promote action. For example, in April 1992, the Economic and Social Commission for Asia and the Pacific (ESCAP) declared the period from 1993 to 2002 as the Asian and Pacific Decade of Disabled Persons. The Governments of the region committed to the full participation and equality of people with disabilities through the adoption of the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific

Region, and the Agenda for Action for the Asian and Pacific Decade of Disabled Persons. The focus for action during the Decade was "the expansion of opportunities for the full participation of people with disabilities in society and their equality in the development process" (Economic and Social Commission for Asia and the Pacific, 1992a). The Agenda for Action aimed to improve public awareness of the goals of the Asian and Pacific Decade of Disabled Persons and increase accessibility and communication.

Disabled Persons International (DPI) Sapporo Declaration, 2002

The disability community has fostered the emerging human rights approach to disability. Members of the disability community have advocated at the international level for the creation of a special convention specific to rights for people with disabilities, as well as the adoption of anti-discrimination legislation and policies in every country to ensure the equalization of opportunities for people with disabilities. Disabled Persons International (DPI), a global network of people with disabilities, published the Sapporo Declaration in October 2002, following a conference that involved representatives from disability communities in 109 countries. Pointing to the exclusion or marginalization of the rights of people with disabilities within the monitoring procedures of the UN human rights system, the Sapporo Declaration calls for:

A specific international human rights convention that is reflective of the full range of civil, political, economic, social and cultural rights and that includes a strong convention monitoring mechanism informed by the unique perspective of people with disabilities to ensure the credibility, legitimacy and efficacy of the convention. (Disabled People's International, 2002)

Declarations of international disability conferences emphasize equality and inclusion and address priorities such as education; improvement of the quality of life and standard of living of people with disabilities; elimination of discriminatory attitudes and practices; removal of information, legal, and infrastructure barriers; and increased resources to facilitate equal participation of people with disabilities in their societies.

International Norms and Standards Relating to Disability

In recent years, the United Nations has convened three significant meetings of experts to consult on international norms and standards relating to disability. The first of these was held in Berkeley, California in 1998 and

included fifteen experts in international law and disability policy (Report of the United Nations Consultative Expert Group Meeting, 1998). Their discussions focused on strategies to increase the understanding of disability-related international norms and standards in relation to domestic law and policies. In addition, the group was concerned with devising appropriate legislative frameworks and model national legislation that would promote the application of international norms and standards. At the international level, the group suggested two primary methods of promoting the realization of rights for people with disabilities: increasing the use of existing UN human rights mechanisms to enforce the human rights of people with disabilities, and creating a new international human rights instrument specific to disability issues.

The second series of UN consultations was held in Hong Kong in 1999 and involved more than fifty experts (Interregional Seminar and Symposium, 1999). This group further reviewed and discussed international norms and standards in light of promoting and protecting the rights of people with disabilities, as well as issues related to the creation of a new international instrument on the rights of people with disabilities. Special attention was directed to the right to inclusive education and the participation of people with disabilities in policy and decision-making.

A third international seminar was convened by the UN Special Rapporteur on Disability in Stockholm, Sweden in November 2000 (Rioux, 2001). Emphasizing the timeliness of the work to bring the infringement of the human rights of people with disabilities onto the world stage, 27 experts drafted guidelines for more effective identification and reporting of violations of the rights of people with disabilities. The expert seminar recommended the collection of data in five areas: individual cases, legal cases, legislation, media, and government programs, services and practices. It was anticipated that focus on these areas would provide a more complete picture of the human rights situation of people with disabilities.

Making International Commitments a Reality: Enforcement of Human Rights

These examples of recent international developments highlight the growing momentum for a human rights approach to disability at the international level. The challenge remains to ensure that these statements and commitments have an impact on the lives of people with disabilities at the local level. To that end, many efforts have been focused on strengthening enforcement mechanisms related to disability rights and monitoring government compliance with human rights obligations.

Strengthening Disability Rights Instruments

Recently, at a forum in Osaka Japan, the UN Special Rapporteur on Disability, Bengt Lindqvist, and a UN panel of experts on disability proposed a "multi-track" approach for updating the Standard Rules (Lindqvist, 2002a). This approach would involve an increase in funding to the monitoring mechanism for the Standard Rules and a revision of the content of the Rules to articulate them in more detail through a proposed supplement. This draft supplement will be considered by the Commission for Social Development in 2004. The Osaka meeting also emphasized that the monitoring mechanisms of non-disability-specific human rights instruments could be developed to incorporate a disability dimension in their treaty monitoring function (Lindqvist, 2002a).

The experts meeting at Osaka also supported the drafting of a convention on the rights of people with disabilities. This was suggested as early as 1992 when Special Rapporteur Despouy advocated for a special convention on disability in his report Human Rights and Disabled Persons (para. 280). There is broad support within the disability community for a specific disability convention. According to Quinn and Degener (2002), a disability convention would:

enable attention to be focused on disability and would tailor general human rights norms to meet the particular circumstances of persons with disabilities. It would add visibility to the disability issue within the human rights system. It would have practical advantages for all the stakeholders inasmuch as States parties would be clearer on their precise obligations in the disability field, and civil society would also be able to focus on one coherent set of norms rather than six different sets of norms [of the current major international human rights treaties]. (p. 9)

The creation of monitoring mechanisms through a new disability-focused treaty would be an important means of enforcing disability rights protection.

The development of such an instrument is currently being explored by the UN. In September 2001, at the General Assembly of the United Nations, Mexico proposed the establishment of an ad hoc committee to consider an international convention to protect and promote the rights of people with disabilities and submitted a draft text of such a convention. Consequently, in December of that year, the UN General Assembly adopted resolution 56/168 establishing an ad hoc committee to consider proposals for an international disability rights convention.

Several committee meetings have been convened to consider proposed treaty drafts. At the early meetings in this convention process, the Mexican draft text was presented and discussed, principles were identified for the elaboration of a convention, and a list of possible content was agreed upon, expressly including a human rights base to the convention and the input of disability organizations (Lindqvist, 2002a). Government representatives and disability NGOs first met together to discuss the convention proposals in July and August 2002 and a second meeting will take place in June 2003. Although a convention would not come into force for several years, the continuing meetings and discussion are encouraging.

Enforcing Disability Rights Using Existing International Human Rights Treaties

Short of a new disability convention, contemporary human rights instruments already include articles for the equal rights of people with disabilities. As noted in the summary of landmarks of human rights and disability above, numerous experts have argued for greater use to be made of existing human rights treaties, which have historically been underused in terms of advancing disability rights. Each of the major international human rights instruments includes a non-discrimination provision requiring governments to respect and ensure all treaty rights without discrimination. Disability is not explicitly listed as a prohibited ground of discrimination, but the Committee on Economic, Social and Cultural Rights (1994), quoted above, is a persuasive authority for arguing that people with disabilities "are clearly entitled to the full range of rights" (para. 5).

The human rights treaty monitoring bodies are active bodies, routinely receiving state reports and complaints of human rights violations. Advocacy before the treaty monitoring bodies is a feasible strategy for enforcement that could be undertaken concurrently with the efforts to establish a specific disability convention.

Monitoring the Human Rights Situation of People with Disabilities

Monitoring government compliance with international human rights agreements requires accurate information about the human rights situation of people with disabilities. Building on the recommendations of the third UN expert seminar on disability held in Stockholm, Sweden in 2000, Disability Rights Promotion International (DRPI) was created in 2002 to facilitate capacity building and disability rights monitoring (for details, see

website www.yorku.ca/dрпи). Having completed inventories of monitoring tools, training resources, and opportunities for using international human rights instruments in the disability context, DRPI is working collaboratively with disability rights organizations and others active in human rights to prepare disability rights monitoring tools, train monitors, and support monitoring test sites in various regions of the world.

Monitoring activities will focus on individual cases of human rights violations, legal cases, legislation, media portrayal of people with disabilities, and government programs, services and practices. It is anticipated that effective monitoring in these five areas will expose the extent of discrimination faced by people with disabilities, providing the necessary documentation for various advocacy activities by disability organizations and for governments to develop policy and plans to ensure the inclusion of people with disabilities in their societies.

Conclusion

These efforts to strengthen the monitoring mechanism of the Standard Rules, to establish a new convention specific to disability, and to monitor the human rights situation of people with disabilities globally, are all aimed at implementing the many important international commitments addressing the human rights of people with disabilities. Recent decades have witnessed the increasing recognition of disability as a human rights issue and an acknowledgement of the UN human rights system's responsibility to take action to protect and promote the human rights of people with disabilities.

A human rights framework is empowering. Where a model of individual pathology marginalizes people with disabilities and forces them to attempt to conform to social contexts that do not account for their needs, a human rights approach insists that governments take measures to foster inclusive societies that anticipate and respond to variations in human characteristics that are inherent to the human condition. People with disabilities are entitled to enjoy all human rights. International human rights instruments provide benchmarks to inform local level discussions about inclusive government policies and laws. The recent developments at the international level highlight the importance of a human rights approach to disability. For these international statements to become local realities, we must continue to insist on a human rights perspective and on effective monitoring mechanisms to expose government inaction and provide recourse for violations of the human rights of people with disabilities.

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