Chapter 21

Article 23: The Rights of Children with Disabilities

Gerison Lansdown

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim

(continued)

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of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

What Did Children Say?

‘Existence of laws such as anti-discrimination law would protect children with disabilities from discrimination. Some children with disabilities have been abused by other people.’ (Asia-Pacific)

‘Government should give free assistive devices. Our [district] sometimes gives away assistive devices during medical missions only and upon request from the Department of Health. Sometimes patients in public hospitals have to pay for these assistive devices.’ (Asia-Pacific)

‘Provision of free equipment and services e.g., Braille textbooks, wheel-chairs, hearing aids, cane and glasses.’ (Latin America/Caribbean)

Overview

The struggle for recognition of the equal rights of persons with disabilities, including children, dates back many decades. Although United Nations declarations in the 1970s affirmed equal civil and political rights,¹ it was not until the adoption of the Convention, in 1989, that a reference to disability rights was formally embodied in a human rights treaty. Article 2 of the Convention includes reference to disability as a ground for protection from discrimination, and Article 23 provides a dedicated focus on the rights of children with disabilities.

The initial draft presented to the Working Group in 1979 comprised a brief text simply affording special treatment, education, and care to children who are ‘physically, mentally or socially handicapped’ (Office of the United Nations High Commissioner for Human Rights & Rädna Barnen (Society: Sweden), 2007, p. 564). Subsequent discussion highlighted the importance of affirming the equal rights of children with disabilities, and thereby the right to the services and provisions necessary for them to ensure the enjoyment of those rights. The Working Group also debated the balance of responsibility for care of children with disabilities between the parents and the state. It concluded that, although parents continue to have primary responsibilities, the state carries the primary obligation for the financial

¹ See, for example, the 1971 Declaration on the Rights of Mentally Retarded Persons and the 1974 Declaration on the Rights of Disabled Persons. The 1948 Universal Declaration of Human Rights, in article 25, included reference to the right to security in the context of unemployment, sickness, or disability.

burden of services, which must be made available for children with disabilities free of charge wherever possible.

The final text of Article 23 seeks to achieve several objectives:

- to afford recognition that children with disabilities should be able to enjoy a decent life with full participation in the community
- to recognise their right to special services necessitated by virtue of their disability
- to ensure that children with disabilities have access to education, health care, rehabilitation, preparation for employment and recreation, free of charge subject to the financial resources of parents, to enable them to achieve the fullest possible integration and development
- to promote international cooperation.

It is important, however, when addressing the rights of children with disabilities, that States Parties consider their rights in respect of the Convention in its entirety, and not simply in respect of Article 23 (UN Committee on the Rights of the Child, 2007a, para. 5).

Since the adoption of the Convention, the rights of persons with disabilities, including children, have subsequently been significantly enhanced beyond the provisions of the Convention, with the elaboration of the Standard Rules for the Equalisation of Opportunities for Persons with Disabilities in 1993, and, most importantly, with the adoption by the United Nations General Assembly in 2006 of the Convention on the Rights of Persons with Disabilities (CRPD).

This comprehensive treaty, which includes a dedicated article on children with disabilities, does apply equally and in its entirety to children, and represents a paradigm shift in the attitudes and treatment of persons with disabilities, from seeing them as objects of charity to subjects of rights. It recognises 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’ (UN General Assembly, 2006, Article 1). Accordingly, whereas Article 23 identifies the obligation to provide services to address and help mitigate exclusion as a consequence of children’s disabilities, the CRPD addresses the need to remove the barriers that serve to deny those with disabilities from equal and inclusive participation without discrimination. This human rights-based approach has been adopted and reinforced by the Committee, which has also consistently recommended ratification and implementation of the CRPD (2007a, para. 5, 2009, para. 54, 2010, para. 51). However, the continued inclusion of Article 23 within the health and welfare cluster of the reporting guidelines maintains its characterisation as a medical or welfare issue rather than an issue of discrimination (UN Committee on the Rights of the Child, 2005a).

It is worth noting that language has changed between the drafting of the two treaties. For example, the Convention uses the term ‘special care’ which has been the subject of much subsequent criticism in that it perpetuates a welfare or individualised approach to disability. The CRPD, in contrast, speaks of ‘specialist or support services,’ language that has now been widely adopted by the Committee (Byrne,

2019, p. 871). The Convention also refers to ‘integration’ whereas the CRPD demands ‘inclusion.’ While the former can simply mean placing children with disabilities within a mainstream environment, with the onus on them to adapt, the latter demands that the environment itself is adapted to become meaningfully inclusive (UN Committee on the Rights of Persons with Disabilities, 2016, para. 11), and accordingly, is now generally the preferred term employed by the Committee.

General Principles

Article 2 Article 2 represents the first ever inclusion of disability as a ground for protection against disability in a human rights treaty. The Committee highlights the vulnerability of children with disabilities to direct and indirect discrimination and urges States Parties to legislate disability as a forbidden ground for discrimination in their constitutions or within wider non-discrimination legislation. The Committee also presses for effective and accessible remedies for violations, and campaigns to raise awareness of discrimination (2005b, para. 53, 2007b, para. 9). It is important to recognise that the obligation to promote the dignity of children with disabilities demands that they are not subjected to discrimination (Byrne, 2019, p. 865).

Article 3 The obligation to ensure that the best interests of children are taken as a primary consideration extends to public or private welfare institutions, including those that provide services for children with disabilities (UN Committee on the Rights of the Child, 2013a). All decisions concerning children with disabilities must be guided by this principle, in line with the interpretation provided by the Committee in its General Comment on best interests.

Article 6 Children with disabilities have an equal right to life and optimum development with all other children, but discrimination can serve to reduce survival prospects and quality of life (UN Committee on the Rights of the Child, 2006, para. 11 (b) (ii)). Accordingly, practices that serve to deny them these rights, for example abandonment, infanticide, and discrimination in the provision of medical treatment, need to be addressed (UN Committee on the Rights of the Child, 2007a, para. 31; UN General Assembly, 2006 Article 25, para (f)). In addition, the UN Study on Violence has identified children with disabilities as a group of children especially vulnerable to violence (Pinheiro, 2006), which will necessarily impede their optimum development. And, also relevant to the right to life and optimum development, the Committee has expressed deep concern about the prevailing practice of forced sterilisation of girls with disabilities and urged States Parties to prohibit this practice. Early assessment and identification are imperative if children with disabilities are to achieve their optimum development (UN Committee on the Rights of the Child, 2007a, paras. 56–57; UN General Assembly, 2006 Article 23, para 3).

Article 12 Children with disabilities are commonly excluded from opportunities to contribute to decisions that affect their lives. The Committee emphasises the obligation on States Parties to provide the necessary support to children with disabilities to enable them to express their views, and to provide training for parents and professionals on promoting and respecting the evolving capacities of children with disabilities to take increasing responsibilities for decision-making in their lives (2007a, para. 32). The Committee encourages advocacy at the national and local levels to promote the effective participation of children with disabilities in matters that affect them.² The CRPD re-asserts Article 12 of the Convention with regard to children with disabilities and demands that this is ensured on an equal basis with other children and that they are provided with disability and age-appropriate assistance to realise that right (UN General Assembly, 2006 Article 7, para 3). It also demands that children with disabilities, through their representative organisations, are consulted when legislation and policies affecting them are being developed and implemented (UN General Assembly, 2006, Article 4, para 3).

Articles Related or Linked to Article 23

As children with disabilities have the same rights as other children, all the articles in the Convention are of potential relevance but of particular significance are:

- **Article 5**, as the evolving capacities of children with disabilities are commonly disregarded and they are denied opportunities to take increasing responsibility for decision-making in their own lives (Byrne, 2012, p. 419).
- **Article 7**, since children with disabilities are more likely than other children not to be registered at birth.
- **Article 8**, as institutionalisation, a practice more common for children with disabilities, can result in loss of family relations and identity.
- **Article 9**, as children with disabilities are more likely to be separated from their parents and placed in institutions.
- **Article 18**, since the requirement on States Parties to provide support for families to facilitate community-based care has added significance for children with disabilities to reduce vulnerability to institutional placement.
- **Articles 19 and 34**, as children with disabilities are disproportionately vulnerable to physical, sexual and emotional violence, and when they do experience violence, it is more likely to go unreported and unchallenged (UN Secretary General, 2011, paras. 45–49).
- **Article 20**, since disproportionate numbers of children with disabilities are deprived of a family environment and placed in the care of the state.

²See, for example, concluding observations for Chile (2015, para. 56).

- **Article 21**, as although children with disabilities are more likely to be placed in care, they are less likely than other children to be placed for adoption and thereby have the opportunity for family-based care.
- **Article 24**, since many children with disabilities are denied equal rights to health care treatments, as a result of discriminatory quality of life assessments, lack of resources, information, transport, or appropriately targeted programmes (UN Committee on the Rights of the Child, [2007b](#), para. 51).
- **Article 25**, as it is of particular importance that periodic reviews are undertaken for children with disabilities placed in the care of the state, and that these reviews are made accessible and safe through the provision of disability-appropriate information and communication.
- **Articles 26 and 27**, since multiple factors contribute to families of children with disabilities being particularly likely to be living in poverty, including additional costs associated with the disability, and discrimination in the provision of health insurance schemes (UN General Assembly, [2006](#), Article 28; UN Secretary General, [2011](#), paras. 41–43).
- **Articles 28 and 29**, as children with disabilities are entitled to education based on equality of opportunity.
- **Article 31**, since the Committee draws attention to the significant barriers impeding the right to play and recreation for children with disabilities, and welcomes Article 30 of the CRPD, requiring States Parties to ensure that children with disabilities have equal access with other children to participate in play, recreation, sporting and leisure activities including in the mainstream system (UN Committee on the Rights of the Child, [2013b](#), para. 50).
- **Articles 37 and 40**, as children with disabilities, in particular those with psychosocial and intellectual impairments, may be particularly vulnerable within the juvenile justice system, with a lack of appropriate provision for their needs (UN Committee on the Rights of the Child, [2007b](#), para. 4 (a), [2019](#)).

Relevant Instruments

UN Universal Declaration of Human Rights (1948), Article 25

UN Declaration on the Rights of Mentally Retarded persons (1971)

UN Declaration on the Rights of Disabled Persons (1975)

UN World Programme of Action Concerning Disabled Persons (1982)

UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

UN Convention on the Rights of Persons with Disabilities (2006), with particular reference to Article 7 although the Convention as a whole extends to children with disabilities

Attributes

Attribute One: Inclusive Environments to Promote Dignity, Independence, and Participation

Paragraph 1 of Article 23 demands that States Parties recognise that children with disabilities should have full and decent lives in conditions that ensure dignity, promote self-reliance, and facilitate participation. The Committee emphasises that measures taken by States Parties, in respect of realising the rights of children with disabilities, must be directed to this goal (2007a, para. 11). Accordingly, it consistently affirms the need for States Parties to adopt a human rights-based model of disability with comprehensive, cross-departmental strategies to ensure legislation, policies, services, and funding are directed towards the fullest possible inclusion. This would apply, for example, in respect of the rights to health, education, play and recreation, protection from violence, family-based alternative care, and an adequate standard of living.³

The CRPD also affirms that any social protection measure must be provided based on equality of opportunity and without discrimination. Priority investment, in particular, is required to introduce inclusive educational environments and bring an end to the practice of institutionalisation of children with disabilities (UN Committee on the Rights of Persons with Disabilities, 2016, paras. 64, 67–68). Such developments should be coordinated across government and supported at the highest level. Significantly, in the children’s consultation for General Comment no. 19 on public expenditure, the Committee highlighted the need for sufficient funding for all children and demanded that ‘children with special needs’ should not be forgotten (2016, para. 8).

Action by States Parties is also needed to address the wider economic, cultural, social, legal, attitudinal, physical, and communication barriers elaborated in the CRPD that must be removed in order to achieve effective inclusion, participation, and respect for the dignity of the child. Such action includes measures in respect of non-discrimination, awareness-raising, accessibility, equal recognition before the law, access to justice, liberty and security, respect for personal and mental integrity, mobility, privacy, respect for home and the family, and participation in political, public and cultural life.⁴

³Convention on the Rights of the Child, Article 23, paragraph 3. See also, for example, concluding observations for Spain (2018, para. 31) and Guatemala (2017, para. 30), CRC/C/GTM/CO/5-6, 2018, para 30.

⁴See CRPD Articles 8, 9, 12, 13, 17, 20, 22, 23, 29 and 30 (UN General Assembly, 2006); and also Convention on the Rights of the Child General Comment no. 9, The rights of children with disabilities (UN Committee on the Rights of the Child, 2007a, para. 5).

Attribute Two: Access to Targeted Assistance and Services

In addition to the removal of barriers to ensure the creation of inclusive environments, Article 23 requires, in paragraph 2, that States Parties recognise the right of children with disabilities to targeted care and services appropriate to their condition and to the circumstances of the parents or other carers. Such services should be designed to ensure the realisation of the children's rights and optimum inclusion, and can include, for example, early assessment, identification and treatment programmes, alternative family care provision for children unable to be cared for at home, respite care, social security allowances, targeted measures to ensure birth registration, aids and adaptation, and access to assistive technologies (UN Committee on the Rights of the Child, 2007a, paras. 35–36, 45–46, 51–52, 56–57, 2014, para. 45). The Committee has stressed that, in accordance with paragraph 3 of Article 23, provision of these services and assistance should be provided free of charge whenever possible and should be recognised as a matter of high priority (2007a, para. 14). The CRPD insists that within an inclusive education system, from which children with disabilities must not be excluded due to disability, they must also be provided with reasonable accommodation and individualised support measures to enable them to maximise their educational opportunities (UN General Assembly, 2006, Article 28, para 1 and 2 (a), (c), and (d)).

Attribute Three: International Cooperation

States Parties have an obligation to cooperate with one another in the promotion of respect for human rights, including the rights of the child (UN Committee on the Rights of the Child, 2016, para. 39). Article 23, paragraph 4, requires that States Parties promote international cooperation and information exchange in respect of children with disabilities, obligations that, the Committee notes, have generally been poorly implemented (2007a, para. 15). The CRPD also affirms the importance of international cooperation between relevant international and national organisations and civil society, in particular organisations of persons with disabilities to support capacity-building research and scientific knowledge, and technical assistance (UN General Assembly, 2006, Article 32).

International cooperation in respect of disability has two core priorities. First, it needs to support measures to address the causes of disability, for example, diseases, poverty, malnutrition, accidents, child labour, hazardous environments, and armed conflict. In this regard, States Parties need to seek technical and financial assistance, including from UN agencies, as well as, for example, promoting cooperation in the removal of landmines and unexploded ordnance (UN Committee on the Rights of the Child, 2007a, paras. 23, 53–55). Second, it must be directed to the realisation of the rights of children with disabilities. The Committee encourages States Parties to ensure that in the framework of bilateral or multilateral assistance, particular

attention is paid to children with disabilities. Such assistance should facilitate the exchange and support of best possible knowledge and involve development and implementation of special programmes to promote inclusion, with dedicated budgets attached. It recommends that the international community adopt innovative approaches to raising funds, including resources from governments and the private sector (UN Committee on the Rights of the Child, 2007a, paras. 22–23). It also encourages knowledge exchange, particularly in respect of medical knowledge and good practice, early assessment and identification, and support for families. International assistance providing financial support for all forms of segregated residential mental health institutions and services should be ended (UN Human Rights Council, 2017, para. 94(a)).

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