

THE HUMAN RIGHTS DIMENSION OF DISABILITY

Paper prepared by the Office of the High Commissioner for Human Rights

1. Introduction

Various surveys on disability estimate that over 600 million persons – meaning approximately 10 per cent of the world’s total population – suffer from some type of disability. Over two thirds of them live in developing countries. While their living conditions vary, they are united in one common experience: being exposed to various forms of discrimination and social exclusion, which prevent them from exercising their rights and freedoms and make it difficult for them to participate fully in the activities of their societies.

The disability rights debate is not about the enjoyment of specific rights. Rather, it is about ensuring the equal effective enjoyment of all human rights, without discrimination, by people with disabilities. The non-discrimination principle helps make human rights relevant in the specific context of disability, just as it does in the contexts of age, sex and children. Non-discrimination, and the equal effective enjoyment of all human rights by people with disabilities are therefore the dominant theme of the long-overdue reform in the way disability and persons with disabilities are viewed throughout the world.

2. Disability as a human rights issue

In the past, persons with disabilities suffered from a relative “invisibility”, and tended to be viewed as “objects” of protection, treatment and assistance rather than subjects of rights. This approach towards persons with disabilities, commonly referred to as “medical model” or “welfare model” of disability, focused on the persons’ medical traits (such as their specific impairments), and had the effect of locating the “problem” of disability within the person, viewed as an object for clinical or welfare interventions.

Persons with disabilities were excluded from mainstream society, and provided with special schools, sheltered workshops, and separate housing and transportation on the assumption that they were incapable of coping with either society at large or all or most major life activities. They were also denied equal access to those basic rights and fundamental freedoms (e.g. health care, employment, education, vote, participation in cultural activities) that those who enjoy them take for granted.

In the last two decades, the approach towards persons with disabilities has changed, and they have started to be viewed as holders of rights. The shift to a rights-based approach has been authoritatively endorsed by the United Nations, and is reflected in several developments which have taken place at the international and national level since the proclamation by the General Assembly of the year 1981 as the “International Year of the Disabled” under the slogan “Full Participation and Equality”.¹

3. The rights-based approach to disability: main elements.

The rights-based approach to disability essentially means viewing persons with disabilities as subjects of law. Its final aim is to empower disabled persons, and to ensure their active participation in political, economic, social, and cultural life in a way that is respectful and accommodating of their difference.

The human rights approach focuses on the human being, and locates the “problem” of persons with disabilities to fully participate, benefit and contribute to social life outside the person and in the society. The “problems” experienced by persons with disabilities under this model do not result from the person’s physical or mental impairment, but rather from a lack of responsiveness by the State and civil society to the difference that disability represents. It follows that it is for the State to tackle socially created obstacles in order to ensure full respect for the dignity and the human rights of all persons. A key element of this new concept is the recognition that

exclusion and segregation of people with disabilities do not logically follow from the fact of impairment, but rather result from political choices based on false assumptions about disability. Inaccessibility problems are not inevitably raised by mobility, visual or hearing impairments, but instead are a corollary of political decisions to build steps but not ramps, to provide information in printed letter version only, or to forgo sign language or other forms of communication. Instead of viewing disability as an individual problem, the focus finally has shifted to how the environment and society as a whole fails to consider human differences.²

The rights-based approach to disability is normatively based on international human rights standards and operationally directed to enhancing the promotion and protection of the human rights of persons with disabilities. Strengthening the protection of human rights is also a way to prevent disability. In some cases, disability is a direct consequence of violations of human rights and humanitarian law. Torture and abuse can cause permanent injuries; chronic and severe undernourishment and malnutrition almost invariably entail serious disability (for instance, underdevelopment of brain cells in babies, blindness caused by vitamin A deficiency, etc.); lack of access to basic health care (e.g. vaccinations) can also result in disability.

In this context, the expression “international human rights standards” refers to:

- the 1948 Universal Declaration of Human Rights (UDHR);
- the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the 1966 International Covenant on Civil and Political Rights (ICCPR);
- the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- the 1989 Convention of the Rights of the Child (CRC).

In addition to these treaties, the General Assembly has adopted several resolutions and declarations specifically related to the issue of disability, which have greatly contributed to increasing attention or awareness to the human rights dimension of disability issues. These instruments include:³

- the Principles for the protection of persons with mental illness and the improvement of mental health care (often referred to as “MI Principles”);⁴
- the World Programme of Action concerning Disabled Persons (WPA);⁵
- the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.⁶

Other United Nations instruments that address the issue of disability include:

- the 1958 ILO Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation;
- the 1962 UNESCO Convention against Discrimination in Education; and
- the 1983 ILO Convention (No. 159) concerning Vocational Rehabilitation and Employment (Disabled Persons).

At the regional level, the issue of disability is referred to – inter alia – in the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (the so-called ‘Protocol of San Salvador’), the 1996 Revised European Social Charter, and the 1999 Inter-American Convention on the Elimination of all Forms of Discrimination against People with Disabilities.

Four core values of human rights law are of particular importance in the context of disability:

- the *dignity* of each individual, who is deemed to be of inestimable value because of his/her inherent self-worth, and not because s/he is economically or otherwise “useful”;
- the concept of *autonomy* or self-determination, which is based on the presumption of a capacity for self-directed action and behaviour, and requires that the person be placed at the centre of all decisions affecting him/her;
- the inherent *equality* of all regardless of difference;
- and the ethic of *solidarity*, which requires society to sustain the freedom of the person with appropriate social supports.

The human rights approach to disability puts an increased emphasis on the participation of persons with disabilities and their representatives (Disabled People’s Organisations – DPOs – and organizations of parents of persons with disabilities unable to represent themselves) in the formulation and implementation of plans and policies aimed at supporting their equal participation in societal life.

4. The six core human rights treaties and their relevance in the field of disability

The promotion and protection of human rights is one of the fundamental aims of the United Nations. Since its creation,⁷ the Organisation has made enormous progress in setting legal standards in the field of human rights and establishing mechanisms to monitor the implementation of these standards. The State Parties to the six core human rights conventions are obliged to respect and to ensure the rights recognized in these instruments to individuals, and to take the necessary steps to give effect to these rights. Each of these six core human rights treaties⁸ establishes a committee of independent experts, usually

referred to as “treaty monitoring body” or “treaty body”, to monitor the domestic implementation of the human rights provisions contained in those treaties.⁹

With the exception of the CRC, which contains two provisions on children with disabilities, none of the six core human rights treaties refer explicitly to the issue of disability. Rather, international human rights law applies to this category of individuals via the anti-discrimination clauses included in each treaty.¹⁰ Under these provisions, States Parties undertake to guarantee that the rights recognized in the treaty will be exercised without distinction of any kind, “such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Although disability is not expressly included among the prohibited grounds for discrimination,¹¹ it is widely accepted that it falls under the heading “other status” and is thus treated as a ground in respect of which discrimination is prohibited.

Discrimination against persons with disabilities may take various forms, which range from “blatant” discrimination, such as the denial of educational opportunities, to more “subtle” forms of discrimination, such as *de facto* exclusion and isolation deriving from physical and social barriers. “Disability-based discrimination” may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights by persons with disabilities.¹²

Non-discrimination norms play an overarching role in ensuring the equal and effective enjoyment of civil, cultural, economic, political and social rights by persons with disabilities. While the obligation to realise the full enjoyment of some rights (especially in the field of economic, social and cultural rights) is progressive and may be conditioned by available resources, the obligation to guarantee that each right is enjoyed by everyone without discrimination is of immediate effect.¹³

This obligation requires States to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. In the case of vulnerable and disadvantaged groups, the obligation is “to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities”.¹⁴ These measures – often referred to with the comprehensive term “reasonable accommodation” – aim at eliminating the disadvantages flowing from disability, and thus at achieving the objectives of full participation and equality of opportunities for all persons with disabilities. Such measures – as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective – are not considered discriminatory under existing human rights standards.

A recent study on human rights and disability¹⁵ analysed the relevance of the United Nations human rights system in the context of disability. The study concludes that the United Nations human rights treaties have considerable potential in the field of disability, but have generally been underused in advancing the rights of persons with disabilities. Its main thesis is that the process of disability reform that is taking place across the globe could be strengthened and accelerated if greater and more targeted use were made of these human rights instruments. The following is a brief analysis of the six core human rights instruments from a disability perspective.

(a) The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR aims at the protection and promotion of a wide range of economic, social and cultural rights. Like the ICCPR, it does not contain any explicit reference to persons with disabilities, but many of its provisions are undoubtedly of great importance in the context of disability:¹⁶

- the right to work (article 6) may be violated when the State fails to adopt adequate regulations and policies to make the workplace accessible to disabled persons, to provide persons with disabilities with adequate technical and vocational guidance to improve their capabilities and skills or to support the integration of the disabled in mainstream employment by measures such as reserved or designated employment, loans and grants for small business or other technical or financial assistance to enterprises employing workers with disabilities;
- the right to an adequate standard of living (article 11) in the context of disability requires States to adopt all those measures which may be necessary to ensure physical and economic access to adequate food, housing and clothing and respect for the specific needs of this group of individuals (e.g. particular clothing needs or housing in a location which allows access to employment options, health care services, schools and other social facilities);
- persons with disabilities must be provided with the same level of medical care as other members of society, and have the right to have access to, and to benefit from, those medical and social services – including orthopedic devices – which enable them to become independent, prevent further disabilities and support their social integration (article 12);
- the right to education (article 13) is violated whenever children with disabilities are denied access to public educational institutions (e.g. because buildings are not accessible) or when their special educational needs – including special communication needs (e.g. use of sign language or Braille) – are not taken into account in developing national educational programmes.

(b) The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR provides protection for civil and political rights. Many of its provisions are of particular relevance for persons with disabilities, including:

- article 6 (Right to life), which may be violated when life-saving treatment is denied on the account of disability;
- article 7 (right to freedom from torture and other cruel, inhuman or degrading treatment and punishment), which may be violated when persons with disabilities are placed in an inappropriate environment¹⁷ or when a person with a mental or psychiatric disability is subject to medical or scientific experimentation without his/her prior informed consent;
- involuntary or forced institutionalisation of persons with mental or psychiatric disabilities may constitute, when carried out without strict procedural safeguards, arbitrary detention in breach of the right to liberty and security of a person (article 9);¹⁸
- the right to be recognised as a person before the law (article 16) may be violated when a person is deprived of his/her legal capacity on account of an actual or perceived disability without the safeguards to protect the rights of the person and/or periodical

review by competent judicial authorities to verify the need for representation and the proper exercise of the function by the legal representative;

- the denial of the right to form a family (e.g. forced sterilisation), to live with one's own family or to experience sexuality and parenthood may constitute violations of the right to right to marry and found a family (article 23) and/or the right to privacy and family life (article 17);¹⁹
- the right to vote (article 25) may be violated if polling stations are inaccessible by wheelchair users or if the election material is available in printed version only (and provided that alternatives – e.g. postal vote – are not available).

(c) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The CAT is of obvious importance to persons with disabilities. Torture is often the cause of severe physical or mental disability. Furthermore, persons with disabilities, and especially those who live in institutionalized settings, are particularly vulnerable to torture or other forms of inhuman or degrading treatment. A massive imbalance of power often exists in institutions between an inmate and those in authority. This imbalance is magnified many times over in institutional settings for persons with disabilities. Torture, and the less severe but equally abominable phenomena of cruel, inhuman or degrading treatment or punishment, are not uncommon in mental and physical disability institutions – whether public or private – and negatively affect the physical and emotional well-being of their residents. Legal protection against torture is therefore of the utmost importance in protecting the human rights and dignity of persons with disabilities and ensuring respect for their physical and psychic integrity wherever they reside.

The definition of torture contained in article 1 of CAT²⁰ covers those forms of ill-treatment that intentionally cause severe pain or suffering and are carried out by individuals exercising public functions, which renders it inapplicable in many cases involving the abuse of persons with disabilities in institutions and other settings. However, States parties to the Convention are also under a duty to prevent cruel, inhuman or degrading treatment or punishment (article 16), and this provision may be of great relevance in cases of ill-treatment against persons with disabilities. A violation of this provision may occur, for example, when the State:

- fails to take positive action such as the provision of medical treatment or services to disabled persons living in institutionalised settings;
- fails to proceed to a prompt and impartial investigation, when there is reasonable ground to believe that torture or inhuman or degrading treatment has been inflicted on a disabled person living in a public or private institution;
- fails to provide a victim of cruel, inhuman or degrading treatment with appropriate means of redress and fair and adequate compensation, including the means for full rehabilitation.

(d) The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The CERD and the CEDAW deal with particular groups or categories of persons who are at risk of discrimination. These treaties generally serve two purposes. First, they establish

the principle of non-discrimination with respect to the enjoyment of all human rights for the categories of persons covered. Secondly, and to the extent required, they add specificity to the general ICCPR and ICESCR rights, tailoring them more directly to the circumstances of the individuals belonging to these groups. These group-specific conventions are of obvious importance in the context of double discrimination. People with disabilities may suffer discrimination not only because they are disabled but also because they belong to other categories such as ethnic groups or women.

CERD aims at the elimination of racial discrimination in all its forms. When people with disabilities happen to belong to a racial group or minority, they may face discrimination on the grounds of both race and disability. The Convention prohibits “any form of distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.²¹ Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms (i.e. affirmative action) shall not be deemed racial discrimination, provided that some conditions are respected.²²

The overarching goal of CEDAW is the achievement of *de iure* and *de facto* equality for women. The non-discrimination rights included in the Convention cover the whole spectrum of human rights, be they civil, cultural, economic, political or social. Although the Convention does not specifically refer to women with disabilities, it is clear that as the CEDAW provisions cover all women, they apply equally to women with disabilities and able-bodied women. Women with disabilities may be vulnerable on account of both disability and gender, and are more likely to suffer from discrimination than able-bodied women or men with disabilities. The cumulative effects of attitudes based on the interaction of gender and disability is that women with disabilities often have less independence and less access to education and to employment than both men with disabilities and able-bodied women. With regard to disabled women, States are in particular required to take measures, including special measures, to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life.²³

(d) The Convention on the Rights of the Child (CRC)

The CRC is the first legally binding instrument to deal specifically with rights of children. It contains 42 detailed provisions enshrining the rights of children in all areas of their lives and includes provisions on economic, social and cultural rights and on civil and political rights. The CRC is also the first human rights treaty which specifically refers to the issue of disability. article 2 expressly prohibits any discrimination in respect of the enjoyment of Convention rights on the ground of, *inter alia*, disability. Most importantly, the Convention includes a specific provision (article 23) on the rights of children with disabilities, which reads as follows:

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 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.

The Convention also includes other provisions which are particularly relevant to children with disabilities, such as the right not to be separated from one's family (article 9), the right to protection from abuse (article 19), the right to an adequate standard of living (article 27), the right to health care (article 24), the right to education (articles 28 and article 29) and the right to physical and psychological recovery and social reintegration for victims of neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts (article 39).²⁴ The application of general rights provisions to disabled children is expressly provided for in the prohibition of discrimination on the ground of disability contained in article 2.

5. Implications of human rights law in the context of CBR programmes

The concept of community-based rehabilitation (hereinafter, CBR)²⁵ has been elaborated in the 1980s as a strategy to enhance the quality of life of all children and adults with disabilities. Its goal is to promote rehabilitation, equalisation of opportunities and social inclusion of persons with disabilities within their communities.

The term "rehabilitation" refers to a process aimed at reducing the impact of disability for an individual, thus "enabling him or her to achieve independence, social integration, a better quality of life and self-actualisation."²⁶ Unlike the "conventional" system for rehabilitation, in which rehabilitation was provided in institutions, in CBR the delivery of primary rehabilitation therapy to persons with disabilities takes place at the community level, through the combined efforts of disabled persons themselves, their families and organisations, the community in which they live and the appropriate health, educational, vocational and social services.²⁷

From a human rights perspective, community-based rehabilitation represents a better solution than institutionalisation. CBR allows persons with disabilities to participate in rehabilitation programmes while continuing to live with their families or, in any case, within their communities.²⁸ Institutionalisation should represent an exception to this general rule, and be required only when no other alternative exists. For instance, the

Committee on the Rights of the Child recommended the development of programmes which promote alternatives to institutionalisation,²⁹ and encouraged States parties

to make every effort to provide assistance for children with disabilities and support services for their families, to the maximum extent on an out-patient or community basis, thereby avoiding removal of children with disabilities from their families for placement in institutions.³⁰

Furthermore, admission in institutions can only be based on the consent of the patient or, alternatively, on the basis of specific procedures established by law.³¹

The shift from institutionalisation to CBR must in no case result in reduced allocation of resources for the promotion of rehabilitation and social inclusion of persons with disabilities. Under international human rights law, States are under an obligation to take steps “to the maximum of their available resources” with a view to achieving progressively the full enjoyment of economic, social and cultural rights.³² Furthermore, although the progressive realisation of economic, social and cultural rights may be limited by resource constraints,³³ the obligation to guarantee that human rights “will be exercised without discrimination” is an immediate one.³⁴ Thus, limited financial resources have to be used in a non-discriminatory way, to promote equal opportunities for disabled persons *vis-à-vis* able-bodied persons and to facilitate social integration of all persons with disabilities, and not only of some of them.

Furthermore, the fact that CBR programmes are managed and implemented at the community level or by civil society organisations can never absolve States from their duty to ensure full compliance with their obligations under human rights law. States are in fact under an obligation to ensure that not only the public sphere, but also the private sphere, are subject to regulation to ensure the equitable treatment of persons with disabilities.³⁵

When the concept of CBR was originally developed, the human rights dimension of CBR strategies was not fully taken into account. However, in the course of the implementation of CBR programmes, it has become increasingly clear that international human rights law has an important role to play in efforts aimed at ensuring the full participation and equalization of opportunities for persons with disabilities. This growing awareness is now reflected in a new joint position paper on CBR drafted by the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children’s Fund (UNICEF) and the World Health Organization (WHO), which expressly refers to the International Bill of Rights and the United Nations Standard Rules as the legal and moral foundations for the concept of CBR.³⁶ The objectives, principles and implementation of CBR programmes have to be interpreted and evaluated in the light of human rights standards.

The consequences of this shift in perspective reinforce the importance of:

- **Empowerment.** CBR programmes should aim at empowering persons with disabilities, with a view to enhancing – to the fullest possible extent – their physical and mental abilities and facilitating their active participation in economic, social, cultural and political life. In particular, CBR should aim to promote the right of children, youth, men and women with disabilities to live within their communities, to enjoy the highest attainable standard of physical and mental health, and to participate, on an equal footing with other community members, in educational, social, cultural, religious, economic and political activities.

- ***Inclusiveness.*** CBR programmes should provide assistance for persons with all types of impairments, including physical, sensory, psychological and mental disabilities. CBR should also include all age groups: children, youth, adults and older people. In the implementation of CBR programmes, special attention should be paid to the particular situation of girls and women with disabilities, who are often the target of a double discrimination, based on both gender and disability.
- ***Participation.*** Persons with disabilities and their representatives should participate in all stages of the development of CBR programmes, including initial programme design and implementation. The active involvement of disabled persons, members of families of persons with disabilities and disabled persons' organisations (DPOs) in the planning and implementation of CBR programmes facilitates the correct identification of the specific needs of the beneficiaries and of the appropriate measures to address them, taking account of the specific political, economic and social situation existing at the local level.
- ***Awareness-raising.*** The participation of the disability community in the development of CBR programmes contributes to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution. The interaction between persons with disabilities and other sectors of the community promotes positive attitudes towards persons with disabilities, and conveys the message that persons with disabilities are citizens with the same rights and obligations as others, thus justifying measures to remove all obstacles to full participation. Furthermore, CBR programmes – while primarily aimed at strengthening the promotion and protection of the human rights and dignity of persons with disabilities – are also an instrument to address the human rights of all the citizens in the community.³⁷
- ***Accountability.*** Rights-based approaches aim at raising levels of accountability in the implementation of CBR programmes, which has to be measured against human rights standards. Rights-based approaches in the development and implementation of CBR help to identify claim-holders (and their entitlements) and corresponding duty-bearers (and their obligations), and aim at developing mechanisms for redress and accountability. Finally, they set the parameters for allocation of limited resources in a non-discriminatory way.

ENDNOTES

¹ General Assembly resolution 36/77 of 8 December 1981.

² G. Quinn and T. Degener, *A Survey of International, Comparative and Regional Disability Law Reform*, in *Disability Rights Law and Policy - International and National Perspectives*, Breslin & Yee Eds., Transnational (USA) 2002.

³ The General Assembly adopted a number of resolutions from the 1950s onwards relating to disability as a medical or welfare issue. In the 1970s, the General Assembly adopted two resolutions – the Declaration on the Rights of Mentally Retarded Persons (General Assembly resolution 2856 (XXVI) of 20 December 1971) and the Declaration on the Rights of Disabled Persons (General Assembly resolution 3447 (XXX) of 9 December 1975) – which show the first signs of a shift from a “caring” to a “rights-based” approach. However, it has to be noted that in general terms these instruments still reflect a notion of disability according to which disabled persons are primarily seen as individuals with medical problems, dependent on social security and welfare, and in need of segregated services and institutions.

⁴ General Assembly resolution 46/119 of 17 December 1991. These principles give valuable guidance for the evaluation of States’ obligations in the context of institutionalized disabled persons, by prohibiting certain kinds of treatment such as sterilization and psychosurgery and other forms of irreversible medical “therapy” in the case of involuntary patients. They give detailed information on instances in which free and informed consent for medical treatment is necessary.

⁵ General Assembly resolution 37/52 of 3 December 1982. The WPA set the guidelines for a world strategy to promote the adoption of effective measures for the achievement of “equality of opportunities” and “full participation” of persons with disabilities in social life and development. “Equality of opportunities” is defined in the WPA as “the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, are made accessible to all.”

⁶ General Assembly resolution 48/96 of 20 December 1993. The Standard Rules, which were drafted against the backdrop of the WPA, are the main United Nations rules guiding action in this area. They explicitly take the International Bill of Human Rights (which comprises the Universal Declaration of Human Rights and the two international Covenants on Civil and Political Rights and Economic, Social and Cultural Rights) as their political and moral foundation (para. 13), and constitute an important reference guide in identifying the relevant obligations of States parties under the existing human rights instruments. The Standard Rules aim at ensuring that “girls, boys, men and women with disabilities, as members of their societies, may exercise the same rights and obligations as others”, and require States to remove obstacles to equal participation (para. 15). The Rules are monitored by a United Nations Special Rapporteur, who reports to the Commission for Social Development.

⁷ In 1948, the Universal Declaration of Human Rights solemnly recognised that “all human beings are born free and equal in dignity and rights”, and that they are entitled “to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

⁸ See *supra*, page 2.

⁹ Four treaties (ICCPR, CAT, CERD, CEDAW) also establishes procedures which allow individuals who claim to be victims of a violation by a State party of the rights set out in the respective treaties may submit individual complaints to the treaty monitoring body. It has become an increasingly common practice for the treaty monitoring bodies to issue “general comments” or “recommendations”, which purport to be authoritative – although not legally binding – interpretations of the treaties.

¹⁰ Article 2(1) ICCPR; article 2(2) ICESCR; article 1 CAT; article 1 CEDAW; article 1 CERD ; article 2(1) CRC.

¹¹ With the exception of article 2(1) CRC, which states that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, *disability*, birth or other status” (Emphasis added).

¹² See Committee on Economic, Social and Cultural Rights, General Comment no. 5 (*Persons with disabilities*), para. 15.

¹³ See Committee on Economic, Social and Cultural Rights, General Comment no. 3 (*The nature of States parties obligations*), para. 1.

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment no. 5, *cit.*, para. 9. For example, the implementation of the right to education for persons with disabilities requires States not only to refrain from adopting measures that would hinder or prevent the enjoyment of this right, but also to adopt positive measures – such as the improvement of accessibility of school buildings, the provision of necessary equipment and adequate learning material, and teachers who have been trained to educate children with disabilities within regular schools – aimed at ensuring the actual and effective enjoyment of this right by persons with disabilities.

¹⁵ G. Quinn and T. Degener, *Human Rights and Disability: the Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, HR/PUB/02/1, United Nations, New York and Geneva, 2002.

¹⁶ In its General Comment no. 5, the Committee on Economic, Social and Cultural Rights noted that “the effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.” (Committee on Economic, Social and Cultural Rights, General Comment no. 5, *cit.* para. 15).

¹⁷ For instance, inaccessibility of sanitary facilities or the impossibility of leaving the cell in the case of detained persons may amount to degrading treatment when the ordinary prison regime is applied to a person with a disability.

¹⁸ See Principles 16 (*Involuntary admission*), 17 (*Review Body*) and 18 (*Procedural safeguards*) of the Principles for the protection of persons with mental illness. See also footnote 28 below.

¹⁹ These issues, which are of particular relevance in the case of persons with mental disabilities, may also be considered under article 10 (Right to protection of the family, mothers and children) and 12 (Right to health) of the ICESCR.

²⁰ Article 1 of the Convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

²¹ Article 1 (1).

²² Article 1 (4):

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

²³ In its General Recommendation no. 18 (*Women with disabilities*), the Committee on the Elimination of Discrimination against Women recommended that States parties provide information on disabled women in their periodic reports, and in particular on measures taken to ensure their equal access to education, employment, health services and social security.

²⁴ This provision requires States to adopt measures to help children who are victims of human rights violations, and provides that recovery and reintegration must take place in an environment that fosters health, self-respect and dignity of the child. Although the norm does not expressly refer to children with disability, its relevance in the context of disability is clear.

²⁵ Dr. Helander elaborated the following definition of CBR:

“**Community-based rehabilitation (CBR)** is a common-sense strategy for enhancing the quality of life of people with disabilities by improving service delivery in order to reach all in need by, providing more equitable opportunities and by promoting and protecting their rights. CBR builds on the full and co-ordinated involvement of people with disabilities and their families. It should be supported at all levels of society: community, intermediate and national. It seeks the integration of the interventions of all relevant sectors - educational, health, legislative, social and vocational - and aims at the full representation and empowerment of disabled people, promotes interventions in the general systems of society, and adaptations of the physical and psychological environment that will facilitate the inclusion and the self-actualisation of disabled people. The goal of CBR is to bring about a change; to develop a system capable of reaching all disabled people in need and to educate and involve governments and the

public. CBR should be sustained in each country by using a level of resources that is realistic and maintainable.”

E. Helander, *Prejudice and Dignity, An Introduction to Community-Based Rehabilitation* (Second Edition), UNDP, New York 1999, page 8.

²⁶ E. Helander, *Prejudice and Dignity, cit.*, page 8. The author stresses that “rehabilitation includes not only the training of disabled people but also interventions in the general systems of society, adaptations of the environment, protection of human rights and empowerment”. See also the definition of rehabilitation contained in the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, *cit.*, at para. 23.

²⁷ *Community-Based Rehabilitation for and with People with Disabilities*, Joint Position Paper, International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Health Organization (WHO), 1994, page 1.

²⁸ Rule 3 (Rehabilitation) of the UN Standard Rules states that

All rehabilitation services should be available in the local community where the person with disabilities lives. However, in some instances, in order to attain a certain training objective, special time-limited rehabilitation courses may be organized, where appropriate, in residential form.

The importance of living within one’s own community is also stressed by Principle 7 of the “Principles for the protection of persons with mental illness and the improvement of mental health care” (see *supra*, footnote 4) which states:

- 1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.*
- 2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.*

²⁹ Day of General Discussion on “Children with disabilities”, CRC/C/66, Annex V, 16th session, 6 October 1997.

³⁰ Recommendations adopted by the Committee on the Rights of the Child following the Day of General Discussion on “State Violence against Children” (2000), para. 20, available at <http://www.unhcr.ch/html/menu2/6/crc/doc/days/violence.pdf>.

³¹ In the case of persons with mental or psychiatric disabilities, the “Principles for the protection of persons with mental illness and the improvement of mental health care” (“MI Principles”) require involuntary admission decisions to be taken by qualified mental health practitioners who have to be monitored by judicial or other independent and impartial review bodies. Legitimate grounds for involuntary commitment are immediate harm to the individual or others, or a serious deterioration in his/her conditions. Patients held in institutions are entitled to enjoy the full range of civil, cultural, economic, political and social rights set forth in international human rights instruments. Persons with mental and psychiatric disabilities have, in particular, the right to be recognised as a person before the law, the right to privacy, the right to freedom of communication, and the other rights expressly referred to in Principle 13 of the “MI Principles”.

³² See Article 2 (1), ICESCR.

³³ In its General Comment no. 3 (*The Nature of States Parties Obligations*), the Committee on Economic, Social and Cultural Rights noted that

a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. (...) Even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. (paras. 10-11).

³⁴ *Ibid.*, para. 1.

³⁵ See Committee on Economic, Social and Cultural Rights, General Comment no. 5 (*Persons with disabilities*), para. 11, whereby the Committee notes that

in a context in which arrangements for the provision of public services are increasingly being privatized and in which the free market is being relied on to an ever greater extent, it is essential that private employers, private suppliers of goods and services, and other non-public entities be subject to both non-discrimination and equality norms in relation to persons with disabilities. In circumstances where such protection does not extend beyond the public domain, the ability of persons with disabilities to participate in the mainstream of community activities and to realize their full potential as active members of society will be severely and often arbitrarily constrained.

³⁶ *Community-Based Rehabilitation with and for People with Disabilities*, Draft Joint Position Paper, International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO) United Nations Children's Fund (UNICEF) and World Health Organization (WHO), 2002, page 2.

³⁷ For example, the implementation of policies and programmes aimed at removing obstacles in the field of education – while being primarily directed at implementing the right children with disabilities to be educated in integrated settings – also benefits students without disabilities, who can in this way be exposed to the positive values of difference, tolerance, and understanding.