

**SPECIFIC SUBSTANTIVE OBLIGATIONS
UNDER THE UNCRPD (EDUCATION, HEALTH,
ADEQUATE STANDARD OF LIVING AND
SOCIAL PROTECTION, PARTICIPATION IN
POLITICAL, PUBLIC AND CULTURAL LIFE,
RECREATION, LEISURE AND SPORT, PRIVACY
AND DATA PROTECTION)**

Shivaun Quinlivan
School of Law
Centre for Disability Law and Policy
NUI, Galway

UNCRPD

- Imposes duties on the State
- Does not bestow individual rights

No New Rights

- UNCRPD
 - Complement existing human rights treaties
 - Clarifies the obligations and legal duties of states
 - Ensure the equal enjoyment of human rights by all persons with disabilities

UNCRPD

- 25 paragraphs in the preamble
- Article 1 - The purpose of the Convention
- Article 2 - Key Definition
- Articles 3-9 - Articles of general application
- Article 10-30 - Substantive rights
- Article 34-50 - Implementation and Monitoring

Structure of the CRPD

- Articles 3-9 are cross-cutting principles to be applied in all aspects and rights contained in the Convention.

General Principles - Article 3

- Respect for inherent **dignity**, ... including freedom to make one's own choices ...
- **Non-discrimination**
- Full and effective **participation** and **inclusion**
- **Respect** for difference
- **Equality of Opportunity**
- **Accessibility**
- Equality between men and women
- Respect for evolving capacities of children ...

General Obligations

- Numerous duties imposed upon States Parties including the obligation to legislate
- Economic, Social and Cultural Rights, duty to progressively realize these rights
 - Some are immediately applicable
- Duty to consult

General Principles apply to the range of Rights

- Civil and Political
 - Articles 10-23 and 29
- Economic, Social and Cultural
 - Articles 24-28 and 30

Civil and Political Rights

- Traditionally viewed as rights that protect the individual's freedom from unwarranted State infringement
- Often described as
 - Negative State obligations
 - Minimal Cost implications
 - Capable of immediate enforcement

Economic, Social and Cultural Rights

- These rights are described as positive rights that require State action, thought to have significant cost implications. As a result the legal obligations is often of a different nature, States have a duty to:
 - Respect, protect and fulfill
 - Progressive realization

Civil and Political Rights

- Privacy
- Participation in political and public life
- Participation in cultural life

Respect for privacy – Article 22

- Regardless of where a person lives or their living arrangements they should not be subject to:
 - Arbitrary or unlawful interference with privacy
 - Unlawful attacks on honour or reputation
 - Right to protection from same
- State parties will protect privacy of personal, health, and rehabilitation information on an equal basis with others.

Participation in political and public life – Article 29

- State parties shall guarantee ...
 - Right to vote and be elected
 - Voting procedures are accessible
 - Protect secret ballot
 - Voting assistance
- Actively promote participation ...
 - Non-governmental organizations
 - Forming and joining organizations of persons with disabilities

Participation in Cultural Life, Recreation, Leisure and Sport

- This right contains a number of elements:
 - Access to cultural materials
 - Access to television, film,
 - Access to theatre, museums, libraries ... as far as possible
- The opportunity to develop and utilize Persons with disabilities own creative and artistic abilities
- Address the issue of intellectual property rights

Participation in Cultural Life, Recreation, Leisure and Sport (2)

- Recognition of Linguistic identity
- State Parties shall
 - Promote mainstream sporting activities
 - Disability specific sporting activities
 - Access to sporting, recreational venues
 - Children with disabilities have equal access and participation rights
 - Access to services

Economic, Social and Cultural Rights

- Education
- Health
- Adequate standard of living and social protection

Education – Article 24

- Focus is on inclusive education directed to;
 - The full development of human potential
 - The development by persons with disabilities of their personality, talents ... to their fullest potential;

Education (2)

- State Parties shall ensure that Persons with Disabilities are not:
 - Excluded from the general education system, particularly from **free and compulsory** primary education
 - Access quality education equally with others
 - Reasonable accommodation provided
 - Receive support required ... to facilitate education

Education (3)

- Life and social development skills
 - Braille and alternative methods
 - Sign language
 - Education in the most appropriate setting for blind, deaf and deafblind
 - This provision provides a challenge to the notion of mainstreaming

Health – Article 25

- State Parties, recognize the right to attainable standard of health without discrimination
 - Same range, quality and standard of free or affordable health care
 - Provide disability specific services such as early intervention
 - Services close to peoples home
 - Requirement on health professionals
 - Prohibit and prevent discrimination

Adequate standard of living and social protection – Article 28

- Adequate standard of living including:
 - Food
 - Clothing
 - Housing
- Social Protection including:
 - Clean water
 - Appropriate and affordable services
 - Respite, training, counseling ...
 - Housing

Progressive Realization

- Article 4(2)
- To take measures to the maximum of their available resources ... with a view to achieving progressively the full realization of these rights
- Some obligations have immediate effect

ICESCR - General Comment No. 3

- Full realization may be achieved progressively
- “Steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”

Eide’ s formulation

- Ensure
- Protect
- Promote

Articles 3-9 apply to all rights

- Discrimination is prohibited on the basis of disability in relation to the full spectrum of rights within the Convention
- Discrimination includes the duty to provide reasonable accommodation.

- Articles 3-9 provide significant potential in assisting in the progressive realization of these rights.

Conclusion

- UN CRPD is in its infancy

- EU ratifying human rights Treaties also new

- Two ways to go:
 - Minimalist and attempt to avoid implications of UN CRPD
 - Generous and attempt to fulfill human rights of all.