



## Introduction to the UN Convention on the Rights of Persons with Disabilities and its added value

Prof. Dr. Jenny E.  
Goldschmidt (Netherlands´  
Institute of Human Rights,  
Utrecht University)  
ERA Madrid 15  
December 2011



## Outline- combined presentation

- Introduction
  - Position of Convention in Int HR Law
  - General principles
- Part 1:
- Structure and contents of the Convention
  - Normative framework
  - Concept of disability
  - Monitoring system
  - Concluding remarks and questions.
- Part 2
- Nature and contents of H.R. obligations
  - Relevant Disability rights document and cases
  - Comparison with UNCRPD
  - Concluding remarks and questions



## Disability Convention as Turning Point in attitude and approach

**Disability caused by two elements:**

- a. impairment of person**
- b. Environmental barriers**

**See:**

**Preamble of Convention sub (e) and art 2**

- Development from 'hand in cap' to rights based
- Medical model → human rights



## CRPD background

- Start 1971 Declaration



- 2006 CRPD adopted



## CPRD as part of UN system

- 1948: Charter
  - 1966 ICCPR
  - 1966 ICESCR
  - 1965 CERD
  - 1979 CEDAW
  - 1989 CRC
  - 2006 CRPD
- **Part of larger body**
- **No new rights created but elaborated obligations**



## CRPD as part of International anti-discrimination law: some important instruments

- CRPD art 1 EQUAL ENJOYMENT OF ALL Human rights
- Equality framework to be incorporated, e.g.
- article 26 ICCPR
  - Art 2 CDESCR: GC No 20 → see next slides
  - ECHR art 14 (accessory nature)
  - 12<sup>th</sup> Protocol ECHR
  - EU Charter art 21 (non discrimination) and 26 (integration of persons with disabilities)
  - EU Framework Directive 2000/78/EC



## GC CESCR (2009) no 20

### \* Disability

- 28. In its general comment No. 5, the Committee defined discrimination against persons with disabilities<sup>[1]</sup> as “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 economic, social or cultural rights”.<sup>[1]</sup> The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability.<sup>[2]</sup> States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace,<sup>[3]</sup> as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.



## GC CESCR no 20 (Ctd)

- <sup>[1]</sup>For a definition, see CRPD, art. 1: “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.”
- The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability.<sup>[1]</sup> States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace,<sup>[2]</sup> as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.
- <sup>[1]</sup> See CRPD, art. 2: “‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”
- <sup>[2]</sup> See CESCR general comment No. 5, para. 22.



## Concept of 'disability' itself

- Article 1 CRPD Purpose
  - Includes long-term physical, mental, intellectual and sensory impairments *which in interaction with barriers*
- art 2 CRPD:
  - Discrimination : distinction, exclusion, restriction
  - Including: 'assumed' disabilities
  - Including association: Case C-303/06 EUCoJ: Coleman



## General Principles

- Article 3
  - Human dignity
  - Autonomy
  - Non-discrimination
  - Participation
  - Inclusion



## Scope of obligations CRPD

- Article 4
  - Par 1: broad scope, includes training, research, third party effect (e)
  - Par 2: Soc Ec rights: progressive implementation
  - Par 3: involvement of target groups
- Article 8: awareness raising
- Art 31 Data Collection



## Overarching obligations

- Non-discrimination → art 5 and 12 (incl: legal capacity, ownership)
- Accessibility → art 9



## Intersectionality

- Art 5 (2) : on *all grounds*
- Art 6: women
- Art 7: children



## Substantive rights protected

- Art 10 Right to life
- Art 13 Access to Justice
- Art 14 Liberty and security
- Art 15 Freedom from torture and IT
- Art 16 Freedom from abuse
- Art 17 Integrity
- Art 18 movement and nationality
- Art 19 Living independently
- Art 20 Mobility
- Art 21 Expression
- Art 22/23 Privacy and family life
- Art 24 Education
- Art 25 Health
- Art 26 (Re)Habilitation
- Art 27 Work
- Art 28 Social Protection
- Art 29/30. Participation



## Monitoring and implementation

- Art 33: National implementation
  - Focal point
  - Independent framework
- Art 34 Int'l Com on RPD
  - State reports Art 35/36: see handbok
  - Optional Protocol : Individual complaints



## Concluding remarks on CRPD

- Innovative
- Progressive
- Concrete





## Added value

- No new rights so added value lies in concretization of obligations
- New explicit obligations:
  - Accessibility
  - Participation
  - Autonomy



## Human Rights Obligations

- Different forms of positive obligations defined by international and national human rights courts and commissions



## General Human Rights obligations

Duty to

- Respect
- fulfill and
- protect as Human Rights obligations



## Equality and Difference

CRPD Fits into non-discrimination framework: obligation to *take difference into account*.

- Duty to investigate
- Duty to *collect data*
- Challenge neutrality
- Burden of proof
- Sanctions



## Relevant cases

- Thlimennos v. Greece, ECtHR 6 April 2000, No. 34369/97
- D.H. and others V. Czech Rep. , ECtHR 13 November 2007, No. 57325/00
- Opuz v. Turkey, ECtHR 9 June 2009, No. 33401/02



## Progressive implementation

- Autism France v. France, ECSR 4-11-2003, Complaint No. 13/2002.
- ERRC v. Portugal, ECSR 20-6-2011, No. 61/2010



## **Reasonable accommodation- general aspects**

- not only relevant in cases of disability
- e.g. obligation to have women's facilities in the workplace
- but: absolute necessity in disability cases.
- barriers are caused by the environment
- Refusal is sui generis form of discrimination, but no exception to equality.



## **Reasonable accommodation- specific aspects**

- no absolute duty
- but: proportionality test
- depends on concrete circumstances.



## Reasonable accomodation ≠ preferential treatment

- Not temporary
- Aim is to guarantee equality, not to repair inequalities or to accelerate equality.



## Broad scope

- Relation to torture: see Report of UN SR on Torture 2008
- Access to Justice: ECtHR Farcas v. Romania 32596/04 (non admissible)
- Prison Conditions: ECtHR 24-1—2006, Vincent v. France



## Concluding remarks

### Added Value:

- Treaty Conform interpretation
- Due Diligence
- Impact assessment
- Additional burden of proof
- Progressive approach strengthened



## Relevant websites

- SIM data base  
: <http://sim.law.uu.nl/SIM/Dochome.nsf?Open>
- Equal Treatment Commission of the Netherlands:  
[www.cgb.nl](http://www.cgb.nl)
- EU and disability:  
[http://ec.europa.eu/employment\\_social/disability/index\\_en.html](http://ec.europa.eu/employment_social/disability/index_en.html)
- UN and disability:  
<http://www.un.org/esa/socdev/enable/>
- UNHCR and disability:  
<http://www.ohchr.org/english/issues/disability/index.htm>
- Case law:
  - <http://cmiskp.echr.coe.int/>
  - <http://curia.europa.eu/>