
Rights-Holders under the UNCRPD: Challenging Definitions of Disability in Human Rights

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Abstract

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) has been welcomed with much vigour and celebration. Significant as the first bespoke human rights treaty for people with disabilities, we have now entered a new era where focus must shift to implementation and monitoring of States obligations; that is, from 'rights talk' to 'rights action'.

This paper will provide an empowering but critical analysis of disability rights discourse in the context of the CRPD. It will explore the innate conservatism and flaws of 'rights talk' when it comes to disability, and its inherent contingency upon the perceived characteristics of rights-holders. For no other population group in society are rights subject to such a range of both explicit and implicit qualifications. This 'smoke and mirrors' character is particularly evident with respect to conceptualisations of 'individualised support', 'resource availability' and 'reasonable accommodation' and their respective emphases upon the extent of individual impairment or 'deficit' rather than upon the extent of institutional or structural deficit.

Moreover, effective claiming of some of the CRPD's rights may require active self-identification as 'disabled' – on the State's terms – in order to access services or appropriate support. By means of illumination, this paper will draw on a documentary analysis of definitions of disability in State party reports and the CRPD's concluding observations to date. This paper will ultimately highlight how rights for disabled people may come to be experienced as disempowering and conditional, effectively leading to a form of 'rights disqualification'

Keywords: Rights, CRPD, Definitions, Reasonable Accommodation

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