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DISABILITY
RESEARCH
NETWORK



The UNCRPD: Problems with inclusion in monitoring



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Context

- Traditional treaty body reporting structures were a relatively late addition to the UNCRPD
- Focus in the negotiations was initially more on creation of national level monitoring structures
- UN Committee to provide advice to states on implementing the Convention
- Traditional UN Human rights reporting process exists and is underway (arts. 34-39)



Involvement in monitoring?

Sources of problems for real involvement are clearly emerging

...

- Interpretation of the UNCRPD
- Academics
- Human rights sector
- Independent experts/consultants
- Disability charities
- Disabled people themselves



Interpretation

Reporting on whose human rights?

- Problems of definition of ‘disabled person’ (art. 1)

Inclusion of whom in the reporting process itself?

- Participation and involvement of ‘persons with disabilities and their representative organisations’ (art. 33)



Definition of 'Disability'

'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.'
(Article 1 CRPD)

As pointed out earlier, the Committee has criticised approaches based on 'impairments' and stressed the need for States to focus on barriers



General Comment 1 no art. 12

“The Committee reaffirms that a person’s status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be grounds for denying legal capacity or any of the rights provided for in article 12.”

Para. 9



Concluding Observation

... it is concerned at the risk of exclusion of persons who should be protected by the Convention, in particular persons with **psychosocial** disabilities (“mental illness”) ...

Concluding Observation on Tunisia Para. 8

[Emphasis added]



General Obligation

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their **representative organisations**.

Article 4(3)

[Emphasis added]



National implementation and monitoring

Civil society, in particular **persons with disabilities** and their **representative organisations**, shall be involved and participate fully in the monitoring process.

Article 33(3)

[Emphasis added]



Representative organisations

- Committee calling for greater inclusion of such organisations in its Concluding Observations
- “The Committee understands disabled persons organizations to be those comprised by a majority of persons with disabilities - at least half of its membership -, governed, led and directed by persons with disabilities.” (Guidelines on participation in work of the Committee, para. 3)



Possible better CRPD-based definition?

Organisations whose membership consists **solely** of disabled people and which are **completely** controlled by (at Board level), staffed by, and working for disabled people **wholly** in accordance with the social model of disability.



Academics

- Risk of knowledge/power being used without engagement with persons with disabilities
- Risk of research agendas not being informed by human rights concerns of disabled people themselves
- Risk of extensive resources effectively drowning the voices of disabled people themselves



Human rights sector

- Same issues as for academics ...
- Inaccessible material on human rights reproducing poor state practice
- Competition for funding
- Use of expertise which 'representative organisations' don't yet possess to excuse their exclusion
- Narrow interpretation of article 33(2)



Article 33(2)

States Parties shall ... maintain, strengthen, designate or establish within the State Party, a **framework**, including one or more independent mechanisms ... to promote, protect and monitor implementation of the present Convention. ...

[Emphasis added]



Independent experts/consultants

All of the above ...

AND

There needs to be greater consideration of conflicts of interest and the need to focus on capacity-building and genuine partnership working with representative organisations.



Disability charities

- Same issues as academics and human rights sector
- Greater resources used to gain overwhelming position/control
- Token engagement with disabled people: 'rent a crip'
- Key perpetrators of human rights violations



Committee on the Rights of Persons with Disabilities

The members of the Committee shall be elected by States Parties, consideration being given to ... participation of experts with disabilities.

Art. 34(4)

Currently 17 of 18 members of the Committee are persons with disabilities?



Disabled people themselves

- Politics amongst Representative Organisations themselves
- Career disabled people exerting control over other disabled people
- Lack of a pan-disability perspective on the part of individuals and/or organisations
- Participation in negotiation of the treaty does not make one a party to the treaty
- Personal experience of profound human rights violations does not always support development of balanced and nuanced approaches to address such violations in general



UK Representative organisation successes

- Dramatic reduction in number of Reservations from 36 to 6
- Ratification of the Optional Protocol to allow individual complaints and investigation of grave or systematic violations
- Extensive engagement with individual disabled people to inform shadow reports



Conclusion: Lack of implementation

- Social barriers experienced by disabled people work against their inclusion in monitoring of the impact of those barriers
- Human rights violations across the UNCRPD prevent the inclusion of persons with disabilities in the monitoring/reporting which it requires
- There is a vicious circle in reality which the aspiration to inclusion will find hard to break