

**JOINT PARLIAMENTARY COMMITTEE ON
HUMAN RIGHTS - INQUIRY INTO THE
IMPLEMENTATION OF DISABLED PEOPLE'S
RIGHT TO INDEPENDENT LIVING**

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What I will address

- ⦿ The JCHR Inquiry and my role
- ⦿ Relevant obligations arising from CRPD
- ⦿ Employing the Conventions to appraise policy and legislation
- ⦿ Human rights and public spending decisions

The Inquiry

- Human Rights Committee of both Houses of Parliament – Commons and Lords
- Scrutinises law and conducts themed inquiries
- Chose to focus on disabled people's right to independent living in context of UK Government reforms and spending decisions

Article 19 - Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all 'persons with disabilities' to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by 'persons with disabilities' of this right and their full inclusion and participation in the community, including by ensuring that:

Article 19 continued

- ⦿ a) 'Persons with disabilities' have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- ⦿ b) 'Persons with disabilities' have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- ⦿ c) Community services and facilities for the general population are available on an equal basis to 'persons with disabilities' and are responsive to their needs.

Article 4 - General obligations

- States Parties undertake:
- a) To adopt all appropriate law, policy and measures to implement the Convention
- b) To modify or abolish existing laws, regulations, customs and practices that constitute discrimination
- c) To take into account the protection and promotion of the human rights of 'persons with disabilities' in all policies and programmes;
- d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

Article 4 – General Obligations

- e) To take all appropriate measures to eliminate discrimination on ‘the basis of disability’
- 2 Take measures to progressively realise economic, social and cultural rights
- 3 Consult with actively involve disabled people in implementation
- 5. Ensure all parts of ‘federal States’ are covered
- Similar provisions are included in other international human rights Treaties

Is UK law and policy sufficient to implement Article 19?

- ◉ Existing 'matrix' of human rights, equality and community care law insufficient
- ◉ Recommend an assessment of the need for and feasibility of freestanding legislation to give more concrete effect in UK law to right to independent living
- ◉ Chimes with comment by CoE Human Rights Commissioner (March 2012): "There is a need to define a level of support below which one's dignity and ability to be included in the community is compromised. Any person should be empowered to enforce their entitlement to this level of support."
- ◉ Range of other specific policy recommendations made

The impact of national and local spending decisions

- Concern expressed to the Committee about the individual and cumulative impacts of reforms and spending decisions
- Disability Living Allowance, Housing Benefit, the Independent Living Fund, Legal Aid and local authority funding of adult social care
- Committee concluded that taken together these reforms and spending reductions present a significant risk of retrogression and of breaching UK's obligations

When might reform or spending decisions amount to retrogression?

- “There is a strong presumption that **retrogressive measures** taken in relation to the right to social security **are prohibited** under the Covenant. If any deliberately retrogressive measures are taken, the State party has the **burden of proving that they have been introduced after the most careful consideration of all alternatives** and that they are duly justified by reference to the totality of the rights provided for in the Covenant, **in the context of the full use of the maximum available resources of the State party.**” UN Committee on ESCR General Comment 19 (2009)

When might reform or spending decisions amount to retrogression?

- General Comment 4 UN Committee on ESC rights “a general decline in living and housing conditions, directly attributable to policy and legislative decisions by the States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant”.
- Paragraph 11: “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.”

Human rights, spending decisions and the Courts

- UK Government amended housing benefit rules, calculating entitlement on basis of number of rooms required
- Took no account of disability-related need for an additional room (overnight carers and extra space for disabled children)

Human rights, spending decisions in the Courts

- Found to be in breach of Article 14 ECHR
- “Where, as in the present case, a group recognised as being in need of protection against discrimination – the severely disabled – is significantly disadvantaged by the application of ostensibly neutral criteria, discrimination is established, subject to justification”
- Article 19 CRPD cited in the judgement

CRPD as an interpretative tool for ECHR

“If the correct legal analysis of the meaning of Article 14 discrimination in the circumstances of these appeals had been elusive or uncertain (and I have held that it is not), I would have resorted to the CRDP and it would have resolved the uncertainty in favour of the appellants. It seems to me that it has the potential to illuminate our approach to both discrimination and justification.”

Concluding remarks

- Inquiry has demonstrated implementation gap and risks of non compliance
- UNCRPD is a powerful accountability mechanism in the domestic sphere, not just the international
- JCHR Inquiry receiving world-wide interest
- Report should be used as basis of a dialogue between disabled people, government, independent mechanisms and other actors to plan next steps