

International Encyclopedia of Rehabilitation

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Legislation: Disability Rights in a Global Setting

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Introduction

Although persons with disabilities represent a significant population group in all societies, they are largely excluded from satisfactory employment opportunities, experience considerably higher levels of income deprivation, and are often entirely dependent upon informal support mechanisms augmented by publicly provided human services and publicly sanctioned income transfers. They are disadvantaged because, as a group, they are the object of pervasive institutionalized discrimination. Thus disability engenders distinctive forms of exclusion and, like gender, age and social class, should be regarded as an organizing principle of social inequality in its own right (Hyde 2001, 2006). The inclusion of persons with disabilities in a society, and thus their status as citizens of a particular country or, indeed, the world, requires them to have a range of statutory rights.

The Fundamental Rights of Citizenship

The principle of equality is integral to the design of just social institutions. This rests on the claim that “members of a political society are related not just through their communities and their instrumental associations but also as fellow citizens...Someone deprived of this equal enjoyment is a second class citizen” (Miller 1999, p 30). Citizenship is of course comprised of rights, which may generally be defined as a moral construct that assigns “priority to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberative action to ensure such protection” (Freeden 1991, p 7). The central concern of much of the public and scholarly debates regarding the inclusion of persons with disabilities as citizens is the relative and specific importance of two sets of rights.

Negative and positive rights differ in several fundamental respects. (Negative rights are also referred to in the relevant literature as “civil” or “liberty” rights; while positive rights may sometimes be referred to as “social” or “welfare” rights (Marshall 1950). “Political” rights are integral to citizenship, but have only indirect relevance to distributive justice, in

that individual participation in the political process “can” influence policy, which helps to shape resource allocation (Van Parij, 1995). The political process is of course an increasingly important domain within which persons with disabilities can seek to augment their status as citizens.) The primary difference regards the nature of the citizenship *claims* that each right embodies. Negative rights protect voluntary action, but positive rights aim to facilitate access to the resources that are deemed fundamental to individual autonomy. Negative rights “guarantee freedom from interference by others...whereas welfare rights guarantee freedom to have various things that are regarded as necessities” (Kelly 1998, p 22). This means that negative and positive rights differ with regard to the specific *obligations* that they impose on agents. Negative rights impose a duty of forbearance, but positive rights require agents to unilaterally transfer a proportion of their resources to others. Fundamentally, therefore, negative and positive rights differ with regard to the *ends* that are embedded in their specific normative rationale. Negative rights are concerned with processes, or procedural justice, conferring the “legal capacity to strive for the things one would like to possess”, but not guaranteeing any success in acquiring them. “A property right is not a right to possess property but to acquire it if you can” (Marshall 1950, p 34). It is a right not to be coerced by other agents. Positive rights, in contrast, are concerned with securing particular distributive outcomes, or substantive justice. They require, as a moral imperative, that a proportion of the resources of the “economically active” be “distributed in such a way that everyone enjoys certain goods” (Kelly 1998, p 22).

Negative rights are thus concerned with protecting formal freedom, in that they define the legitimate scope of voluntary exchange, or action spaces. What they fail to take account of is the diminutive capacity of those who lack resources to take advantage of the opportunities that are embedded in their legitimate freedoms. The profound disadvantage that is routinely experienced by persons with disabilities, in particular, highlights the importance of encompassing positive rights within the scope of citizenship.

The Global Emergence of Rights for Persons with Disabilities

The International Labor Organization was the first international organization to advance the rights of persons with disabilities. In the 1920s and 1930s it began establishing minimum standards for statutory income security benefits to persons with disabilities, and the conditions under which they are granted. In a series of Conventions adopted since 1925, the International Labor Organization has promoted the right to a decent standard of living and medical care for employed persons who become permanently disabled as a result of employment injury, extending the right to a decent standard of living to employed persons who become permanently disabled as a result of other, non-occupational causes. In the process of establishing these social security rights and national obligations, the International Labor Organization has privileged social security provision to employed persons with permanent disabilities caused by employment accidents or occupational diseases (Dixon 1999, Dixon and Hyde 2000).

After the Second World War, the framework within which the rights of persons with disabilities emerged was defined by the United Nation’s 1948 Universal Declaration of Human Rights. This advanced the proposition that every person had the following [rights](#)

(http://www.hrea.org/index.php?base_id=104&language_id=1&erc_doc_id=445&category_id=24&category_type=3&group=; http://www.hrea.org/index.php?base_id=152):

- the right of equality before law;
- the right to non discrimination;
- the right to equal opportunity;
- the right to independent living;
- the right to full integration; and
- the right to security.

Over the ensuing 25 years, the proposition that persons with disabilities were entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with other human beings gained increasing recognition, culminating in the 1975 [United Nations Declaration on the Rights of Disabled Persons](#)

(<http://www.unhchr.ch/html/menu3/b/72.htm>). This proclaimed that persons with disabilities “shall enjoy all the rights set forth in this Declaration,” granted “without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.” These human rights embrace:

- the inherent right to respect for their human dignity;
- the same civil and political rights as other human beings;
- the right to measures designed to enable them to become as self-reliant as possible;
- the right to medical, psychological and functional treatment, so as to enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration;
- the right to economic and social security and to a decent level of living;
- the right to have their special needs taken into consideration at all stages of economic and social planning;
- the right to live with their families or with foster parents and to participate in all social, creative or recreational activities;
- the right to be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature;
- the right to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property;
- the right to have organizations that represent them consulted in all matters regarding their rights; and
- the right to be fully informed, by all appropriate means, of the rights contained in this Declaration.

It is to the specific contemporary Conventions relating to the rights of persons with disabilities that have been adopted by the International Labor Organization and the United Nations that attention is now turned.

The 1952 International Labor Organization Disability-related Social Security Conventions: Social Security Rights Articulated

The Social Security (Minimum Standards) Convention, 1952 (No. 102), is the flagship of all International Labor Organization social security conventions. It is the only international instrument, based on basic social security principles, that benchmarks minimum standards for social security provision (Chapman and Sage 2002, Martí Buffill 1969). It sets out the minimum standard for the level of benefits for, and the conditions under which they are granted to, persons with disabilities; specifically those suffering employment injury (Section VI) or invalidity (Section IX). By July 2008, this Convention had been ratified by 43 member countries, over half of which were in Western and Eastern Europe. The United States of America has yet to ratify it. It replaced a number of earlier Conventions (Workmen's Compensation (Accidents) Convention, 1925 (No. 17), Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18), Workmen's Compensation (Minimum Scale) Recommendation, 1925 (No. 22), Workmen's Compensation (Jurisdiction) Recommendation, 1925 (No. 23), Workmen's Compensation (Occupational Diseases) Recommendation, 1925 (No. 24), Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933 (No. 43), and Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)) and has been subsequently revised by the Employment Injury Benefit Convention (No. 121), 1964, which had been ratified by 43 countries as of July 2008, and by Invalidity, Old-Age and Survivors' Benefits Convention (No. 128), 1967, which had been ratified by 16 countries as of July 2008.

Section VI of the [1952 Social Security \(Minimum Standards\) Convention](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C102) (<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C102>) relates to employment injury provision by statutory income-security systems in the event of occupational accidents and diseases:

Article 32: The contingencies covered shall include the permanent and total loss of earning capacity, or partial loss thereof in excess of a prescribed degree, by covered employees due to employment accidents or a prescribed diseases.

Article 33: The persons protected shall comprise prescribed classes of employees, constituting not less than 50 per cent of all employees, although in less developed countries coverage can be restricted to those employed in industrial workplaces employing 20 persons or more.

Article 34: Medical care shall be afforded with a view to maintaining, restoring or improving the health of the person protected and his ability to work and to attend to his personal needs. It shall comprise:

- general practitioner and specialist in-patient care and out-patient care, including domiciliary visiting;
- dental care;
- nursing care at home or in hospital or other medical institutions;

- maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
- dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances, kept in repair, and eyeglasses; and
- the care furnished by members of such other professions as may at any time be legally recognized as allied to the medical profession, under the supervision of a medical or dental practitioner.

Article 35: The institutions or Government departments administering the medical care shall co-operate, wherever appropriate, with the general vocational rehabilitation services, with a view to the re-establishment of handicapped persons in suitable work. National laws or regulations may authorize such institutions or departments to ensure provision for the vocational rehabilitation of handicapped persons.

Article 36: In respect of incapacity for work causing a permanent and total loss of earning capacity, the benefit shall be a periodical payment calculated for a man with a wife and two children — the standard beneficiary — as 50 per cent of either previous earnings (with respect to earning-related pensions) or the wage of an ordinary adult male laborer (with respect to flat-rate pensions). This rate was increased to 60 per cent of the reference wage by the 1964 Employment Injury Benefit Convention (No. 121).

Article 37: The benefit specified in Articles 34 and 36 shall be secured at least to a person protected who was employed in the territory of the member state at the time of the accident if the injury is due to accident or at the time of contracting the disease if the injury is due to a disease.

Article 38: This benefit shall be granted throughout the continuance of the contingency.

Section IX of the [1952 Social Security \(Minimum Standards\) Convention](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C102)

(<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C102>) relates to invalidity provision by statutory income-security systems in the event of non-occupational accidents and disease:

Article 54: The contingency covered shall include the permanent inability of a covered person to engage in any gainful economic activity, to an extent prescribed.

Article 55: The persons protected shall comprise either:

- prescribed classes of employees, constituting not less than 50 per cent. of all employees, although in less developed countries coverage can be restricted to those employed in industrial workplaces employing 20 persons or more; or
- prescribed classes of the economically active population, constituting not less than 20 per cent. of all residents; or

- all residents whose means during the contingency do not exceed limits prescribed.

Article 56: The benefit shall be a periodical payment calculated as follows:

- where protection is extended to classes of employees or classes of the economically active population, the periodic payments shall constitute for the standard beneficiary — a man with a wife and two children — either 40 per cent of previous earnings (with respect to earning-related pensions) or the wage of an ordinary adult male laborer for the standard beneficiary (with respect to flat-rate pensions);
- where protection is extended to all residents whose means during the contingency do not exceed prescribed limits are protected, the periodic payments shall constitute 40 per cent of the wage of an ordinary adult male laborer for the standard beneficiary.

Under the 1967 Invalidity, Old-Age and Survivors' Benefits Convention (No. 128), these rates was increased to 50 percent of the reference wage and the so-determined periodic payment shall be adjusted in the event of substantial changes in the general level of earnings and/or in the cost of living.

Article 57: To be eligible for these benefits a person shall have satisfied a qualifying period which shall be either 15 years of contribution or employment, or 10 years of residence; or which shall be a qualifying period of three years of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid. Those unable to satisfy these minimum eligibility requirements shall receive a reduced benefit.

Article 58: This benefit shall be granted throughout the contingency

The 2006 United Nations Convention on the Rights of Persons with Disabilities: Human Rights Articulated

This Convention built on a number of prior specific international instruments and declarations intended to promote and protect the rights of persons with disabilities, notably, the Declaration of Rights of Mentally Retarded Persons (1971), the Declaration of Rights of Disabled Persons (1975), the World Programme of Action concerning Disabled Persons (1981), the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991), and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993). It was negotiated between 2002 and 2006, making it the United Nation's fastest negotiated human rights treaty. It was adopted on December 13, 2006 and opened for signature by all United Nations member states and by regional integration organizations on March 30, 2007. On that day, 82 countries signed this Convention, one of which (Jamaica) also ratified it, and 44 countries signed the Optional Protocol (also international treaty, one that establishes procedures for strengthening the implementation and monitoring of the Convention). This is the highest number of countries ever committing to a United Nations Convention on its

opening day. It is the first human rights convention to which a regional integration organization could make a commitment — the European Community did so on the opening day. It came into force on May 3, 2008, after it had been ratified by 20 countries, and after the Optional Protocol had been ratified by 10 countries. As of July 2008, 129 countries had signed the Convention, of which 27 had ratified it, and 71 countries had signed the Optional Protocol, of which [16](http://www.un.org/disabilities/default.asp?navid=12&pid=150) (<http://www.un.org/disabilities/default.asp?navid=12&pid=150>) had ratified it. Sixty-one countries have yet to make a commitment to this Convention, most of which are microstates, states in transition, states in civil war, or least developed states, with the conspicuous [exceptions](http://ratifynow.org/) (<http://ratifynow.org/>) being Switzerland and the United States of America.

The Convention on the Rights of Persons with Disabilities is the first human rights convention of the 21st century and it is the first legally binding human rights instrument that comprehensively protects rights of persons with disabilities and that has an explicit, [social development dimension](http://www.un.org/disabilities/default.asp?navid=12&pid=150) (<http://www.un.org/disabilities/default.asp?navid=12&pid=150>):

It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced .

The [Convention](http://www.un.org/disabilities/default.asp?id=259) (<http://www.un.org/disabilities/default.asp?id=259>) comprises:

Preamble Clause: This gives the general context and identifies important background issues. It recognizes that “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”

Purpose Clause: This establishes that the goal is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of all persons with disabilities, and to promote respect for their inherent dignity

Definitions Clause: These define key terms in the Convention. It does not include a definition of “disability” or “persons with disabilities”, but Article 1 states: “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”.

General Principles Clauses: These identify the imperatives, including non-discrimination and the principle of equality, that apply to the enjoyment of all rights. Article 3 articulates these as:

- respect for inherent dignity, individual autonomy, including the freedom to make one's own choices and independence of persons;
- non-discrimination;
- full and effective participation and inclusion in society;
- respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- equality of opportunity;
- accessibility;
- equality between men and women; and
- respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Obligations Clauses: These clarify the steps that signatory states must take to promote, protect and ensure the rights by:

- adopting legislation and administrative measures to promote the human rights of persons with disabilities;
- adopting legislative and other measures to abolish discrimination;
- protecting and promoting the rights of persons with disabilities in all policies and programmes;
- stopping any practice that breaches the rights of persons with disabilities;
- ensuring that the public sector respects the rights of persons with disabilities;
- ensuring that the private sector and individuals respect the rights of persons with disabilities;
- undertaking research and development of accessible goods, services and technology for persons with disabilities and encourage others to undertake such research;
- providing accessible information about assistive technology to persons with disabilities;
- promoting training on the rights of the Convention to professionals and staff who work with persons with disabilities; and
- consulting with and involving persons with disabilities in developing and implementing legislation and policies and in decision-making processes that concern them.

Specific Rights Clauses: These affirm that persons with disabilities the same civil, cultural, economic, political and social human rights as everyone else, including

- equality before the law without discrimination;
- right to life, liberty and security of the person;
- equal recognition before the law and legal capacity;
- freedom from torture;
- freedom from exploitation, violence and abuse;
- right to respect physical and mental integrity;
- freedom of movement and nationality;

- right to live in the community;
- freedom of expression and opinion;
- respect for privacy;
- respect for home and the family;
- right to education;
- right to health;
- right to work;
- right to an adequate standard of living;
- right to participate in political and public life; and
- right to participate in cultural life.

Enabling Measures Clauses: These specify the specific steps that signatory states must take to ensure an enabling environment for the enjoyment of human rights.

International Cooperation Clause: This recognizes the importance of the international community working together to ensure the full enjoyment of the rights of persons with disability.

Implementation and Monitoring Clause: This requires States to establish national frameworks for monitoring and implementing the Convention.

Procedural Clauses: These specify the procedural requirements relevant to the Convention.

Conclusion

The world has now come to accept, in principle, that persons with disabilities are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with other human beings. It acknowledges that they are entitled to a decent standard of living, whether through work or by means of statutory income-security measures. This represents considerable progress over the last 80 years. The challenge now is to convert the rhetoric of disability rights into actions that promote and protect those rights, so as to advance the well-being of a group of people who have long been subjected to (Hyde 2006, p 270):

- profound discrimination;
- profound economic disadvantage;
- segregation and social exclusion;
- dependency upon charity;
- freedom-constraining state regulation; and
- negative stereotyping in the popular media.

Further Reading

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UN Convention on the Rights of Persons with Disabilities

[United Nations Treaty Collection](#)

http://untreaty.un.org/English/notpubl/IV_15_english.pdf

[Rights and Dignity of Persons with Disabilities](http://www.un.org/disabilities/)

<http://www.un.org/disabilities/>

[Convention on the Rights of Persons with Disabilities](http://www.un.org/disabilities/convention/conventionfull.shtml)

<http://www.un.org/disabilities/convention/conventionfull.shtml>

[Office of the United Nations High Commissioner for Human Rights](http://www2.ohchr.org/english/law/disabilities-convention.htm)

<http://www2.ohchr.org/english/law/disabilities-convention.htm>

[GLADNET](http://www.ilr.cornell.edu/edi/gladnet/unconvention.cfm)

<http://www.ilr.cornell.edu/edi/gladnet/unconvention.cfm>

[Promoting the rights of persons with disabilities: Full participation and equality in social life and development](http://www.worldenable.net/rights/)

<http://www.worldenable.net/rights/>

[Australian Human Rights Commission](http://www.hreoc.gov.au/disability_rights/convention.htm)

http://www.hreoc.gov.au/disability_rights/convention.htm

ILO Disability-related Social Security Conventions

[Social Security at the International Labour Organization](http://www.oit.org/global/What_we_do/InternationalLabourStandards/Subjects/Socialsecurity/lang--en/index.htm)

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[Social Security \(Minimum Standards\) Convention, 1952](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C102)

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[Employment Injury Benefits Convention, 1964](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C121)

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