

DPO Network
Submission to the Joint Oireachtas Committee on Disability Matters
The Rights Based Approach and Disability Legislation

What is the UNCRPD?

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is an international human rights treaty.

Ireland ratified the Convention into Irish law in 2018. The Articles contained in the UNCRPD are binding on those States Parties that have ratified the Convention. This means that Ireland has made a commitment to protect and promote the rights of disabled people.

The Convention applies established human rights principles from the UN Declaration on Human Rights to the situation of persons with disabilities. It covers civil and political rights to equal treatment and freedom from discrimination, and social and economic rights in areas like education, health care, employment and transport. The UNCRPD has set an international precedence for a commitment to human-rights based approaches in all practices. What this means for your research is explored further below.

What is a Human Rights Based Approach?

The UNCRPD has changed the policy and legislative landscape in Ireland. There has been a fundamental shift across how disability services are thought of. It is the basis for what is known as a human rights based approach.

Human-rights based approaches can be defined as a conceptual framework for the promotion and protection of human rights based on international human rights standards.¹ It recognises that there can be groups in society that must have their rights protected. The human rights based approach is underpinned by five key human rights principles: Participation, Accountability, Non-discrimination and Equality, Empowerment and Legality.

By embedding all future policy and legislation in a rights based approach, the UNCRPD works to ensure that the rights of people with disabilities are not only progressively realised, but that ongoing changes are made to ensure that they are constantly met. In thinking about A rights based approach to disability and equality legislation, we must look to the UNCRPD and the human rights based approach as our starting point.

¹ European Network of National Human rights institutions: <https://ennhri.org/about-nhris/human-rights-based-approach/#:~:text=Principles,and%20Equality%2C%20Empowerment%20and%20Legality>.

Article 5 CRPD- Equality and Non-discrimination

Equality and non-discrimination are among the most fundamental principles and rights of international human rights law. Equality and non-discrimination are at the heart of the CRPD and are evoked consistently throughout its substantive articles with the repeated use of the wording “*on an equal basis with others*”, which links all substantive rights of the Convention to the non-discrimination principle. Therefore, it is noted that many of the CRPD rights will be relevant and interlink with this topic.

Definitions of Disability

The Preamble to the CRPD states that: *Recognizing* 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.

Article 1 of the CRPD defines disabled persons as: “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.”

Under Article 5(2), there is a positive duty on Member States to enact disability-inclusive anti-discrimination laws that have a broad scope and provide effective legal remedies by eradicating and combatting all discrimination linked to disability.

According to the CRPD Committee, such laws can only be effective if they are based on a definition of disability that includes those who have long-term physical, psychosocial, intellectual or sensory impairments, as well as past, present, future and presumed disabilities, and the associates of disabled people.²

The CRPD Committee has repeatedly criticised Member States for national laws that reflect a medical, narrow concept of disability by overemphasising impairments and the limitation of abilities, while disregarding the social dimensions of disability. Such definitions have repeatedly been found to be incompatible with the CRPD.³

² Committee on the Rights of Persons with Disabilities, [General Comment No. 6 on equality and non-discrimination](#) (2016) UN Doc. CRPD/C/GC/6, paras 17, 20, 73.

³ International Disability Alliance, [IDA's Compilation of the CRPD Committee's Concluding Observations](#) (2019) 6-63.

The current definition of disability in the Equality Acts⁴ is broad and has been interpreted expansively by the WRC and the Labour Court.⁵ For example, case law has established that the definition includes depression, epilepsy, claustrophobia and agoraphobia, alcoholism, facial scarring, HIV infection, diabetes and dyslexia.⁶ Anxiety and stress can also fall within the definition of disability under certain circumstances.⁷ The broad scope of the definition is welcome and should be retained.

The medicalised definition of disability in the Disability Act 2005 is limited and should be reviewed and amended to ensure coherence across the statutory frameworks. It is widely accepted that the Disability Act 2005 must be updated in line with the CRPD.

Discriminatory issues of concern that need to be addressed

- The Equality Acts and Disability Act should also provide for intersectional discrimination where the unique disadvantage(s) experienced by a person as a result of a combination of grounds which can only be understood by examining them together, rather than apart.
- The exemptions to the prohibition of discrimination in the Employment Equality Acts, particularly Section 35(1) on different rates of remuneration for disabled people should be removed.
- The DPO Network is concerned that under the Employment Equality Acts the denial or refusal of reasonable accommodation by an employer or a prospective employer does not currently constitute an act of discrimination. Therefore, the law can be interpreted as not providing a remedy to people denied reasonable accommodation. This is an inconsistency in the equality law framework as such denial is expressly contained within the definition of discrimination found in the Equal Status Act. The CRPD also expressly

⁴ See section 2 EEA and section 2 ESA.

⁵ See for example, Workplace Relations Commission, *Quigley v Health Service Executive*, DEC-S2009-012, 9 February 2009 and Workplace Relations Commission, *A Hair Stylist v A Hairdressing Salon*, ADJ-00015823, 10 July 2020. In the latter case, the Adjudication Officer stated that as the EEA is a remedial social statute, it ought to be construed as widely and as liberally as possible consistent with fairness.

⁶ Note, many of the successful cases to date on this ground involve discrimination as between persons with different disabilities: J. Walsh, *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services* (Dublin: Irish Council for Civil Liberties and Blackhall Publishing, 2012) 23, 104.

⁷ Workplace Relations Commission, *A Hair Stylist v A Hairdressing Salon*, ADJ-00015823, 10 July 2020.

describes the denial of reasonable accommodation as a form of discrimination. We recommend that the Employment Equality Acts be amended to provide that denial of reasonable accommodation is discriminatory, to ensure consistency in equality protections and to bring the law into compliance with the State's international legal obligations.