

International Disability Law: A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities

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International Disability Law

This book provides a concise guide to international disability law. It analyses the case law of the CRPD Committee and other international human rights treaty bodies, and provides commentaries on more than 50 leading cases. The author elaborates on the obligations of States Parties under the CRPD and other international treaties, while also spelling out the rights of persons with disabilities, and the different mechanisms that exist at both domestic and international levels for ensuring that those rights are respected, protected and promoted. The author also delineates the traditional differentiation between civil and political rights on the one hand, and economic, social and cultural rights on the other. He demonstrates, through analysis of the evolving case law, how the gap between these two sets of rights is gradually closing. The result is a powerful tool for political decision-makers, academics, legal practitioners, law students, persons with disabilities and their representative organisations, human rights activists and general readers.

Coomara Pyaneandee has been a practising barrister for 17 years and is the current Vice-Chairperson of the UN Committee on the Rights of Persons with Disabilities. He holds an LLB and an LLM in Public Law from the University of London. His main areas of practice include disability discrimination, protection of women and children from domestic violence and workers' compensation.

International Disability Law

A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities

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To my Mum and Dad

Contents

[Table of cases](#)

[Foreword](#)

[Preface](#)

[Acknowledgements](#)

[List of](#)

[abbreviations](#) [Introduction](#) [PART I General provisions](#) [1 Functions of the CRPD Committee](#) [The establishment of the CRPD Committee](#) [General comments](#) [The salient features of the Convention](#) [The Optional Protocol to the Convention](#) [Admissibility of complaints under the Optional Protocol](#) [Examples of inadmissibility](#) [Interim measures](#) [Inadmissibility of anonymous complaints](#) [Grave or systematic violations](#) [2 Pillars of the CRPD](#) [Introduction](#) [The Preamble and Article 1 CRPD](#) [Article 2 Definitions](#) [Article 3 General principles](#) [Article 4 General obligations](#) [Article 5 Equality and non-discrimination](#) [Equality before the law](#) [Equality under the law](#) [Equal protection and equal benefit of the law](#) [Discrimination](#) [Reasonable accommodation](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [3 Women and girls with disabilities](#) [Introduction](#) [The protection of the rights of women under international law](#) [The scope of Article 6 CRPD](#) [Multiple and/or intersectional discrimination](#) [Freedom from exploitation, violence and abuse](#) [Violence and armed conflict](#) [Forced sterilisation](#) [Discrimination at the crossroads](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [PART II Civil and political rights](#) [4 Legal capacity and access to justice](#) [Introduction](#) [Miscarriage of justice](#) [The scope of the right to legal capacity](#) [The meaning of 'support' under Article 12\(3\)](#) [Article 12\(4\)](#) [Effective access to the justice system](#) [Reasonable accommodation and procedural accommodation](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [Article 12](#) [Article 13](#) [5 Security of the person](#) [Introduction](#) [Liberty, detention and imprisonment](#) [Freedom from torture or cruel, inhuman or degrading treatment or punishment](#) [Torture by omission](#) [Medical or scientific experimentation](#) [Liberty, detention and accessibility](#) [Liberty and institutionalisation](#) [Liberty, security and integrity](#) [Liberty, health and rehabilitation](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [6 Right to life](#) [Introduction](#) [The arbitrary deprivation of life](#) [Right to life and freedom from torture](#) [Right to life and the death penalty](#) [Right to life of the unborn and abortion](#) [Right to life and euthanasia](#) [Right to life and enforced disappearance](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [7 Participation in political and public life](#) [Introduction](#) [Freedom of opinion and expression](#) [Freedom of expression and official interactions](#) [Participation in political life \(the rights to vote and to be elected\)](#) [Right to participate in public life](#) [Freedom of association](#) [Freedom of assembly](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [PART III Economic, social and cultural rights](#) [8 Accessibility](#) [Introduction](#) [States Parties' obligations in relation to Article 9](#) [Reasonable accommodation and accessibility](#) [Real-time information and access to transport](#) [Universal design](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [Housing as a key element to inclusive cities](#) [Transportation and public services](#) [ICTs for building inclusive, resilient smart cities](#) [CRPD Committee, General Comment No.2 on Article 9 \(Accessibility\)](#) [9 Right to education](#) [Introduction](#) [The origin of the right to education](#) [Barriers to inclusive education](#) [The obligations of States Parties under Article 24 CRPD](#) [The obligation to progressively realise Article 24 CRPD](#) [Defining exclusion, segregation and integration](#) [Segregation and integration](#) [The meaning of inclusive education](#) [Reasonable accommodation](#) [Access to justice](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [10 Right to work and employment](#) [Introduction](#) [The origin of the right to work of persons with disabilities](#) [The scope of Article 27 CRPD](#) [Disability-based discrimination under Article 27 CRPD](#) [Reasonable accommodation and discrimination](#) [Quotas](#) [Conclusion](#) [Summary of Concluding Observations and Recommendations](#) [Employment of persons with disabilities: a marketing framework](#) [11 Inclusive independent living](#) [Introduction](#) [The nature of States Parties' obligations under Article 19](#) [Institutionalisation](#) [Legal capacity](#) [Access to adequate housing](#) [Conclusion](#) [Summary of Concluding Observations and](#)

Bujdoso et al v Hungary (2013) CRPD/C/10/D/4/2011	61–2 , 66 , 113–15
D.L. v Sweden (2017) CRPD/C/17/D/31/2015	11
D.R. v Australia (2017) CRPD/C/17/D/14/2013	12
F v Austria (2015) CRPD/C/14/D/21/2014	131–3
Fiona Given v Australia (forthcoming)	114 , 131
Gemma Beasley v Australia (2016) CRPD/C/15/D/11/2013	28 , 64 , 66 , 111 , 116
H.M. v Sweden (2012) CRPD/C/7/D/3/2011	29 , 31 , 180 , 186
James Marlon Noble v Australia (2016) CRPD/C/16/7/2012	11 , 57 –8 , 71 , 80
L.M.L. v UK (2017) CRPD/C/17/D/27/2015	13
Liliane Gröninger v Germany (2014) CRPD/C/11/D/2/2010	164 , 166
Makarov v Lithuania (forthcoming) CRPD/C/18/D/30/2015	62 , 66
Marie-Louise Jungelin v Sweden (2014) CRPD/C/12/D/5/2011	166
Michael Lockrey v Australia (2016) CRPD/C/15/D/13/2013	111
Nyusti and Takács v Hungary (2013) CRPD/C/9/D/1/2010	28
O.O.J. v Sweden (2017) CRPD/C/18/D/28/2015	13–14
X v Tanzania (2017) CRPD/C/18/D/22/2014	8 , 19–20 , 42 , 76 , 78 , 84 , 173 , 193
X v Argentina (2012) CRPD/C/11/D/8/2012	78 , 81 , 82 , 83 , 87 HRC
Amanda Jane Mellet v Ireland (2016) CCPR/C/116/D/2324/2013	96
Andrei Olechkevitch v Belarus (2013) CCPR/C/107/D/1785/2008	110
Aumeeraudy-Cziffra v Mauritius (1981) CCPR/C/12/D/35/1978	13
Denis Yevdokimov and Artiom Rezanov v Russian Federation (2011) CCPR/C/ 101/D/1410/2005	83
Evgeny Basarevsky and Valery Rybchenko v Belarus (2016) CCPR/C/117/D/2108/2011-CCPR/C/117/D/2109/2011	117–18
Fijalkowska v Poland (2006) CCPR/C/84/D/1061/2002	59 , 79 , 87n

Gauthier v Canada (1999) CCPR/C/65/D/633/1995	111
Herrera Rubio v Colombia (1990) CCPR/C/31/D/161/1983	101
Judge v Canada (2003) CCPR/C/78/D/829/1998	93–4
Karen Noelia Llantoy Huamán v Peru (2005) CCPR/C/85/D/1153/2003	96
Katsora et al. v. Belarus (2010) CCPR/C/100/D/1383/2005	117
Leonid Svetik v Belarus (2004) CCPR/C/81/D/927/2000	110
Lubuto v Zambia (1995) CCPR/C/55/D/390/1990/Rev.1	93
Robert John Fardon v Australia (2010) ICCPR/C/98/D/1629/2007	73–5
Sergei Androsenko v Belarus (2016) CCPR/C/116/D/2092/2011	117
Siobhan Whelan v Ireland (2017) CCPR/C/119/D/2425/2014	96–7
Valentin Evrezov v Belarus (2015) CCPR/C/114/D/1988/2010	117
Valentin Evzrezov v Belarus (2016) CCPR/C/117/D/2101/2011	117
Vasily Yuzepchuk v Belarus (2014) CCPR/C/112/D/1906/2009	13, 91
Viktorovich Shchetko and Vladimir Vladimirovich v Belarus (2006) CCPR/C/87/ D/1009/2001	109
Vladimir Romanovsky v Belarus (2015) CCPR/C/115/D/2011/2010	116
Yuba Kumari Katwal v Nepal (2015) CCPR/C/113/D/2000/2010	10 CESC
ECP et al v Spain (2016) E/C.12/58/D/13/2016	11
I.D.G. v Spain (2015) E/C.12/55/D/2/2014	185 CEDAW Committee
R.P.B. v the Philippines (2014) CEDAW/C/57/D/34/2011	40
S.V.P. v Bulgaria (2012) CEDAW/C/53/D/31/2011	39, 41 Other Domestic and International Case Law
Atkins v Virginia 536 U.S. 304 (2002)	94
Buck v Bell, 274 U.S. 200 (1927) (US Supreme Court)	45
Carter v Canada (Attorney General) 2015 SCC 5 (Supreme Court of Canada)	98

CC v KK and STCC [2012] EWCOP 2136 (26 July 2012) UK Court of Protection	183-4
César Alan Rodríguez v Argentina, Tax and Administrative Court – Chamber No. 1 of Buenos Aires, 24 October 2016	153
Coleman v Attridge Law (C-303/06, CJEU)	29
Constitutional Court of Colombia, Decision C-133/14 of 11 March 2014	46
Constitutional Court of Colombia, Decision C-182 of 13 April 2016	46
Constitutional Court of Spain, Decision 215/1994 of 14 July 1994	46
Constitutional Court of Spain, Case No.6868/2012 of 27 January 2014	150
Decision of the French Défenseur des droits MLD-2015-080 (2015)	169
HCJ/07 Lior Levy et al v State of Israel et al IsrSC 2008 (3) 4561	186
International Association Autism Europe v France, ECSR Complaint No. 13/2002, 4 November 2003	145-6
Matadeen v Pointu [1999] 1 AC 98 (UK Judicial Committee of the Privy Council)	28
Olmstead v L.C. 527 U.S. 581 (1999) (US Supreme Court) 182-3	
Re F (Mental Patient: Sterilisation) [1990] 2 AC 1 45	
Relaxion Group plc v Rhys-Harper (FC); D’Souza v London Borough of Lambeth; Jones v 3M Healthcare Limited and three other actions [2003] UKHL 33	169
Secretary of the Department of Health and Community Services v JWB and SMB (1992) 175 CLR 218	45
Standard Bank of South Africa v CCMA and Others (JR 662/06) [2007] ZALC 98; [2008] 4 BLLR 356 (LC)	168-9
Western Cape Forum for Intellectual Disability v South Africa, (2011 (5) SA 87 (WCC)) [2010] ZAWCHC 544; 18678/2007 (11 November 2010)	148-9

[Foreword](#)

As Vice-Chairperson of the Committee on the Rights of Persons with Disabilities, I draw my background from civil society organisations. As a disabled person, I experience the daily reality of discrimination. We are now moving into the second decade of the adoption of the CRPD. It is time for us to reflect on the past and prepare on the future. A new era of struggle against discrimination has started. By now, 177 countries in all parts of the world have ratified the Disabilities Convention. Yet, the challenge for human rights activists and, in particular, disability activists is as daunting as

it was three decades ago. The expression of words is one thing but its translation into action by states is another. We must therefore continue to be proactive, vigilant and take the lead to continue to overcome the temptation of deliberate acts and omissions which marginalise our rights. With easy access to modern technology and social media, our voices can in relative terms be made resounding compared to my young days, when I had the feeling I was shouting in the desert.

Turning to the present publication, I salute its contents all the more because it has come out at the right time. All the subjects discussed in the 11 chapters have been analysed objectively, albeit from an insider's perspective. My colleague and friend, the author, has throughout the process exposed the reader a fresh and practical perspective of the disability rights Convention. Given the eloquent way he often expresses his dissenting views, I imagine that his job has been very challenging. His experience as a practising lawyer is also very revealing when one reads between the lines. His writing skills and presentation of the core legal elements of the Convention in the promotion of a human rights model of disability reflects the person I have known for a number of years.

The extensive reference to the case law of the Committee and its comparison with other human rights treaty bodies are useful analytical materials to construct upon for future guidance. Extensive references to disability-based discrimination, law policies and practices are eye-openers for the readers to think out of the box. For instance, the chapters on the right to life ([Chapter 6](#)) and freedom of expression ([Chapter 7](#)) illustrate clearly how the CRPD contributes to the advancement of truly inclusive societies. The exposure of the case of *Noble v. Australia* (miscarriage of justice towards persons with intellectual disability) and *X v. Tanzania* (person with albinism having his arm chopped off) warn the reader of the real threats and dangers ahead if we are not mindful of where persons with disabilities position themselves as the largest minority in the world in the twenty-first century. Exploitation, oppression and marginalisation, cruelty, in particular to women and girls with disabilities, are still real today.

The book also sums up in simple terms the complex terminological jargons which are frequently used in international public law discourse. In this regard, the author lives up to our expectations in the sense that the modern understanding of the concept of accessibility close to his heart to a very great extent educates the reader as to how he/she can be an active participant in removing physical social and psychological barriers which have been continuously built by society.

The author analyses extensively the socio-economic and cultural rights of persons with disabilities and concludes that independent living and being included in the community ought to be our ultimate aim. In this respect, his work is also normative in substance. It is true to say that the beginning of the twenty-first century has witnessed the gradual collapse of traditional theories on the gap between civil and political rights on the one hand and economic, social and cultural rights on the other. I agree that the CRPD's contribution to that end has been enormous. While my personal dreams have been translated into real living experiences, I hope that this book will serve to convert dreams into real changes in society.

Dr Damjan Tatic (PhD)

Vice-Chairperson CRPD Committee

[Preface](#)

It is high time all the rights and obligations of persons with disabilities and all stakeholders be analysed and compiled in one publication. There are several motivations behind this work. First, there is the need to explain in plain language, and in all possible formats, the technical concepts which form part of our rich and evolving disability law and policy. Second, persons with disabilities and their representative organisations must be equipped with the tools to understand and master

the basics of their rights and states' obligations towards them. This is crucial for both the self-empowerment of persons with disabilities and to facilitate their advocacy work. Third, this book serves as a reminder for States Parties to the Convention on the Rights of Persons with Disabilities (hereinafter the CRPD or the Convention) that persons with disabilities are, first and foremost, rights-holders. Therefore, there is an obligation on States Parties to promote, protect, respect and fulfil these rights under international law. It is also hoped that States Parties will take maximum advantage of the present work in implementing legislation and policy.

Finally, as we welcome the second decade of the adoption of the CRPD, it must be noted that millions of persons with disabilities worldwide do not yet have access to basic services, and that they are still the subject of pity and charity. Yet the charitable model of disability has been combated in all its forms during the past decades by disability rights activists. Many of them are no longer amongst us, and the best way to pay tribute to them is by building upon their work. My modest contribution to this rich legacy is the present work.

The struggle of persons with disabilities for equal recognition and nondiscrimination continues. Simply by being aware and conscious of our rights and states' obligations, we take one step forward together towards achieving that goal. This book seeks to promote and defend the human rights model of disability. It also attempts to maintain a practical approach to issues that affect the daily living conditions of persons with disabilities. With these goals in mind, throughout this work, we remain close to the hearts and minds of persons with living experiences of their disabilities. This is not a coincidence, given that we draw our strength and inspiration from civil society and disability rights movements. We are always mindful that we do not suffer from disability, but rather from all forms of discrimination which are sometimes oppressive and tyrannical.

It is hoped that this book will be of value to students who have embarked upon disability legal studies or studies in related fields. It will also be a useful guide for readers who have an interest in public international law, politics, economics and social affairs. The chapters have been arranged in a manner conducive to arousing and satisfying the readers' curiosity. Comments and criticisms of the work are welcome, irrespective of their tenor and form, as this is the only way we can hope to improve in future editions.

[Acknowledgements](#)

The support of all the professionally dedicated members of Coomara Pyaneandee Chambers has been unflinching throughout the conceptualisation of this work. Although I would have wished to spend more time with my private practice and socialise more with members of the chambers, unfortunately, it had been a very difficult year.

I would like to share with the reader the fact that the idea of this book was first discussed with my father; a man who only started formally educating himself in Tamil language at the age of 40. He was very enthusiastic and was looking forward to its translation into Tamil. Unfortunately, he passed away at the very time when the sample chapters were submitted for peer reviewing. In the realm of uncertainty and in the colourless world of blind persons, we express thanks and gratitude when we run out of words. We reconcile ourselves in plain simplicity and say thank you. I accordingly thank him for everything and especially his dedication, conviction and determination and, more importantly, his ideal of the advancement towards truly inclusive societies. While now alone, my mother, Ambigay Pyaneandee, as ever determined and confident with pride, shall forever continue the battle with the unending support of my two sisters, Sheila and Toolsee, and myself.

My very dear friend, Dr Maeve Hosier, who showed a keen interest in human rights and disability discrimination immediately welcomed the initiative and kindly agreed to be the editor for the book. She polished all the chapters in native English and shared a lot of valuable suggestions. I feel

greatly indebted to her for having devoted time, energy and patience to edit the entire manuscript.

My special thanks equally go to my young and dynamic junior researcher who played a key role in gathering, reading, summarising and analysing the materials. In so doing, Neel Raamandarsingh Purmah has quickly learnt to work with the strictest academic rigour.

By mid-October 2017, in the tropical warm summer of Mauritius, I announced to Maeve and Neel my willingness to target the general reader. I therefore had recourse to Professor Serge Rivière, a longstanding friend whose life and the literary world are so compounded that the divorce between the two is simply not imaginable. He also read the manuscript and made interesting suggestions. All the way through, he was faithful to the cause of the general reader from a non-lawyer perspective.

My secretary and personal assistant, Ms Sophie (Shritasingh Shibnaut), and my long time collaborator Chet Bundhoo have been coordinating both my professional and personal commitments with wisdom and excellence. They both deserve the credit for being able to submit the manuscript on time.

I would also like to express my deepest gratitude to Dr Damjan Tatic, the co-Vice Chairperson of the Committee on the Rights of Persons with Disabilities, who endorsed its contents and kindly agreed to write the Foreword.

Finally, I would be guilty of serious omission as a parent if I were to forget my two turbulent and lovely teenage children, Eassen and Nirvana. They have very often distracted me while I was in the middle of the most important paragraphs. These constant and unpredictable knocks on my office door, which I understand were very innocent, but whose pattern leads any reasonable person to believe that it was intentional! However, the pleasure of being called 'Dad', and their encouragement to the cause we all defend, remind me of my own teenage years.

Abbreviations

CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee Committee on the Elimination of Discrimination against Women — CERD Committee on the Elimination of Racial Discrimination
CESCR Committee on Economic, Social and Cultural Rights
CRC Convention on the Rights of the Child
CRC Committee Committee on the Rights of the Child
CRPD Convention on the Rights of Persons with Disabilities
CRPD Committee Committee on the Rights of Persons with Disabilities
DPO Disabled Persons' Organisation
ECOSOC UN Economic and Social Council
ECSR European Committee on Social Rights
HRC Human Rights Committee
ICCPR International Covenant on Civil and Political Rights
ICERD International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR International Covenant on Economic, Social and Cultural Rights
ILO International Labour Organisation
NGO Non-Governmental Organisation
NHRI National Human Rights Institution
OHCHR Office of the United Nations High Commissioner for Human Rights
UDHR Universal Declaration of Human Rights
UN United Nations
UNESCO United Nations Educational, Scientific and Cultural Organization
UNICEF United Nations Children's Fund
WEI Women Enabled International

Introduction

The United Nations Convention on the Rights of Persons with Disabilities (hereinafter the CRPD or the Convention) is the first international human rights treaty which comprehensively codifies and consolidates the universal rights of persons with disabilities. Following three decades of relentless struggle, on 13 December 2006, the world finally came together to adopt the Convention. The CRPD had its origins in the UN General Assembly in 2001, when the Mexican Prime Minister, Mr Vicente Fox Quesada, proposed the establishment of an ad hoc committee to consider proposals

for 'an international convention to uphold the dignity and rights of persons with disabilities'.¹ The CRPD was opened for signature on 30 March 2007 and it became the first treaty to codify the economic, social, cultural, civil and political rights of persons with disabilities. It integrates established concepts relating to disability into mainstream disability law and policy.

The Optional Protocol to the CRPD provides a monitoring mechanism for alleged violations of the rights enshrined in the Convention. It serves as a vehicle for assisting individuals or groups who have exhausted domestic legal remedies to lodge complaints against a State Party. The Committee may also initiate an inquiry procedure in the case of serious allegations against a State Party, as occurred recently in relation to the United Kingdom.²

Since 2008, the CRPD Committee has been proactive in defending, promoting and enhancing the human rights model of disability. The CRPD rests upon two fundamental principles, namely that persons with impairments are rights-holders, and that disability manifests itself only when persons with impairments encounter social, economic, environmental and other barriers. Such barriers must be removed in order to ensure the full inclusion and effective participation of persons with disabilities in both political and public life. In accordance with the human rights model of disability, persons with disabilities do not suffer from 'disability', but rather they suffer from 'discrimination'. This rights-based model helps us to understand the contribution of the CRPD at both a domestic and an international levels. For example, in the UK, the concept of 'reasonable adjustment' has been instrumental in securing rights for persons with disabilities within the workplace, in line with the employer's duty to make reasonable adjustments.³ At international level, the CRPD has continuously challenged domestic legislation, policies and practice which are based upon the premise that persons with disabilities are 'medicalised' and perceived to be in need of constant medical care. From this perspective, there is an assumption that persons with disabilities suffer from a medical condition which needs to be cured or attended to. The increasing number of ratifications of the CRPD by States Parties signals a rejection of this model.

To date, a total of 177 countries have signed and ratified the CRPD, and 92 countries have signed and ratified its Optional Protocol.⁴ It can safely be stated that, in general, the human rights model of disability, as enshrined in the CRPD, has gained support in many parts of the world. As will be seen in [Chapter 1](#), the CRPD Committee has already reviewed the reports of 69 countries out of the 177 states who are party to the Convention. These reports set out the steps taken to give effect to States Parties' obligations in conformity with the Convention.⁵ The Committee has issued Concluding Observations and Recommendations in relation to these country reports, which pave the way for a better understanding of the fundamental rights and freedoms of persons with disabilities.⁶ As a consequence, concepts such as 'reasonable accommodation' (Article 5(3) CRPD), 'accessibility' (Article 9 CRPD) and 'universal design' (Articles 2 and 4(1)(f) CRPD) which promote the right to independent living and inclusion in the community, are now better understood. These concepts have constantly been analysed by the Committee and are being used at domestic level for the implementation of legislation and policy around the globe. Moreover, the obligation of States Parties to listen to people with disabilities, in accordance with their rights, and to consult with them and their representative organisations regarding the formulation of legislation and policy, is gradually becoming a reality, albeit in an incremental manner.⁷

At the level of the UN, the CRPD has made a major breakthrough which has positively impacted upon the lives of persons with disabilities globally. It has built upon the experiences of existing international human rights covenants, such as the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). The CRPD Committee has highlighted the lack of a disability legal perspective in such covenants. For instance, in relation to the principles of equality and non-discrimination which are entrenched in all international covenants, the CRPD Committee has assumed a leading role in extending the application of these

concepts to new categories of situations. The application of the principles of equality and non-discrimination to novel situations thus marks a decisive paradigm shift in the way in which disability-based discrimination instruments are interpreted. This evolutionary approach within the mandate of the CRPD calls for a deeper understanding of the traditional classification between civil and political rights on the one hand, and economic, social and cultural rights on the other.

For historical reasons, the world has given greater importance to civil and political rights than to economic, social and cultural rights. From an international perspective, it may be said that civil and political rights define and regulate individual or group rights vis-à-vis the state. During the period of the Second World War, the lives of millions of people were threatened. People were tortured, arbitrarily deprived of their liberty, and their freedom of expression was curtailed. As a result, in the post-war period, civil and political rights were the immediate priority to be addressed by the international community via the mechanism of the United Nations. There was also an emotional response to the events of the Second World War, which resulted in a desire to redefine the value of human life. On the other hand, economic, social and cultural rights focused on the wellbeing of citizens. The obligation of states to safeguard economic, social and cultural rights is progressive in nature and is subject to the availability of financial and operational resources.⁸ It is for this reason that the ICESCR ranks subordinate to the ICCPR. As a consequence, States Parties considered that the rights to housing, transportation, employment, cultural life and sport should be addressed only at domestic level. This was the case even though these same States Parties were also signatories to the UDHR of 1948, which does not differentiate between the two sets of rights. In line with the UDHR, all human rights are universal, indivisible, interrelated and interdependent.

Throughout this book, the questions which arise are: What accounts for the dichotomy between these two categories of rights? How do the provisions of the CRPD contribute to the debate?

Proponents of the dichotomy theory rest their arguments upon the following premises. First, they are of the view that economic, social and cultural rights are 'aspirational', as opposed to the 'real' rights which are entrenched in the ICCPR. For instance, the socio-economic right to education is vague and somewhat difficult to define. Hence, the nature and scope for its implementation by states are unclear. Second, it is argued that the implementation of economic, social and cultural rights depends upon positive actions by states whose willingness to uphold such rights is often questionable. States regularly offer the same excuse for failing to adopt measures aimed at implementing economic, social and cultural rights, namely that they are expensive and would require budgetary allocations which are unavailable, given the competing demands upon their purses. Third, there is the principle that the manner and form of implementation of policies must be left to governments' discretion, and their political choices in terms of policies cannot and should not be reviewed by courts. Finally, it is claimed that courts should not adjudicate on economic, social and cultural rights. However, proponents of the dichotomy theory lose sight of the practical effects of discrimination, which fall mostly within the sphere of economic, social and cultural rights; for example, access to the built environment and ICT ([Chapter 8](#)), the right to inclusive education ([Chapter 9](#)), the right to employment ([Chapter 10](#)) or the right to independent living and being included in the community ([Chapter 11](#)).

Since 2008, by virtue of its jurisprudence, including Concluding Observations and Recommendations, General Comments and, in particular, its communications under the Optional Protocol, the CRPD Committee has constantly launched and continues to launch assaults on the dichotomy theory of rights. While the CRPD Committee has succeeded in strengthening the efficacy of civil and political rights and in widening its scope of application, it has also effectively closed the traditional status gaps between the two sets of rights. }

In common with other international human rights bodies, such as the Committee on the

Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Racial Discrimination (CERD), the CRPD Committee explicitly integrates both civil and political rights and economic, social and cultural rights. In the case of the provisions of the CRPD, conservative States Parties could have navigated under the illusion that they would have a greater margin of discretion in the progressive realisation of economic, social and cultural rights as opposed to the civil and political rights of persons with disabilities. However, fortunately this has not been the case. For instance, the right to education has been considered by the CRPD Committee in a General Comment issued on the relevant Article in which the right to education was interpreted as being the right to 'inclusive education'. [9](#) In another General Comment, the right to independent living and inclusion in the community was considered as both a civil right and a socio-economic right which can be realised only if all economic, civil, social and cultural rights enshrined in this norm are fulfilled.[10](#) Thus, the rights to education and to independent living and inclusion in the community traditionally understood, defined and classified as socio-economic rights, impose on states obligations which are far more extensive than was initially anticipated. In the following chapters, it will be seen how the CRPD Committee, the youngest of all international UN treaty bodies, has succeeded in laying the concrete foundation for the protection and enhancement of the rights of persons with disabilities. This is very critical for humanity as a whole, at a time when human rights are coming under increasing threat.

This book, which contains 11 chapters, excluding the introduction and the concluding chapter, is divided into three parts: [Chapters 1–3](#) in [Part I](#) focus mainly on Article 34 CRPD as well as on the first six articles of the CRPD. [Chapters 3–7](#) deal with civil and political rights in [Part II](#). [Chapters 8–11](#) cover economic, social and cultural rights in [Part III](#). The concluding chapter summarises the main arguments and provides an insight into the way ahead. With the exception of [Chapter 1](#), the remaining chapters are all structured in the same way. We start off by explaining the core elements and normative contents of the different provisions of the Convention. These are illustrated by the use of concrete examples in particular contexts, i.e. how the principles enshrined are applicable to individual cases. At the end of each chapter, we provide the reader with a summary of the Concluding Observations and Recommendations of the CRPD Committee whilst referring to other authoritative sources to guide the reader in the implementation of the rights at issue.

This book provides a concise guide to international disability law. It analyses the case law of the CRPD Committee and other international human rights treaty bodies, and provides commentaries on more than 50 leading cases. The author elaborates on the obligations of States Parties under the CRPD and other international treaties, while also spelling out the rights of persons with disabilities, and the different mechanisms that exist at both domestic and international levels for ensuring that those rights are respected, protected and promoted. The author also delineates the traditional differentiation between civil and political rights on the one hand, and economic, social and cultural rights on the other. He demonstrates, through analysis of the evolving case law, how the gap between these two sets of rights is gradually closing. The result is a powerful tool for political decisionmakers, academics, legal practitioners, law students, persons with disabilities and their representative organisations, human rights activists and general readers.

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(CRPD - Child Family School Community Socialization And Support This book list for those with persons with developmental and physical disabilities Publishes literature problem and it has been reflected in many international legal instruments. of their disability (United Nations Convention on the Rights of the Child, 1989; Code Reflect - Arizona Summit Law School 2016 - Fall Book List Contract Law, Selected of justice used in the United States: civil and criminal, juvenile, and therapeutic.. Abused women and survivor therapy : a practical guide for the psychotherapist by Lenore E Walker (Book) Convention on the Rights of the Child, United Nations.

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