
Universal Design and Human Rights: The UN Convention on the Rights of Persons with Disabilities (CRPD)

Anne Sieberns

Library, German Institute for Human Rights, Berlin, Germany
sieberns@institut-fuer-menschenrechte.de



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Abstract:

This paper provides information about the concept of accessibility and Universal Design underlying the UN Convention on the Rights of Persons with Disabilities (CRPD). It outlines the obligations of States that have ratified the Convention (State parties) and summarizes how the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) advocates promoting and implementing Universal Design. The concluding chapter aims to encourage librarians to refer to and make use of the CRPD to further Universal Design in their professional environments.

Keywords: Human Rights; UN Convention on the Rights of Persons with Disabilities; Accessibility; Universal Design

Introduction

The UN Convention on the Rights of Persons with Disabilities (CRPD) mentions libraries explicitly only in Article 30, which concerns the right to participate in cultural life. However, the Convention has numerous implications for the work of librarians. Libraries can contribute to realizing the rights of persons with disabilities to information (Article 21), education (Article 24), and cultural participation (Article 30). Access to information, education and knowledge is a key factor that affects inclusiveness, nondiscrimination and participation. Without access to information, persons with disabilities cannot develop well-informed opinions, make their voice heard in public debates, organize with like-minded people, or access justice. Moreover, access to information is also indispensable for the exercise of economic, social and cultural rights, including the rights to education, work and health. The CRPD ensures that these rights also apply to persons with disabilities.

Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006 by the UN General Assembly, came into force internationally in May 2008. By June 2018 it had been ratified by 177 States worldwide. State parties and their public institutions are obliged in their respective

countries to respect, protect and fulfill the rights enshrined in the Convention. The great number of ratifications gives reason to hope that the CRPD will actually improve the living conditions and social status of persons with disabilities worldwide.

The CRPD follows a “human rights model of disability” (Degener 2017). Persons with disabilities are no longer seen as objects of charity, medical treatment, and social protection but as subjects with rights, who are capable of claiming those rights as well as being active members of society. The guiding principles that underlie the Convention include: respect for inherent dignity, non-discrimination, full and effective participation and inclusion in society, accessibility, and equality of opportunity.

In what is generally recognized as a “paradigm shift” in attitudes and approaches to persons with disabilities, the CRPD no longer regards disability as a personal condition or individual deficit but rather as a result of “the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.” (Preamble).

For example, a wheelchair-user might experience difficulty gaining access to a building such as a library not because of the wheelchair, but because of environmental barriers such as inaccessible staircases, narrow aisles, and so on.

Reflecting this paradigm shift, accessibility is one of the central principles of the CRPD. Accessibility is a fundamental prerequisite for the enjoyment of rights set out in the Convention, and a precondition for equal participation in social, cultural and political life. Without accessibility, persons with disabilities cannot live an independent life on an equal basis with others. Consequently, references to accessibility can be found in many articles of the Convention. These references often go hand in hand with the promotion of Universal Design.

References to Universal Design in the CRPD

CRPD Article 2: Definitions

Article 2 CRPD contains definitions of five key terms used throughout the Convention: communication, language, discrimination on the basis of disability, reasonable accommodation, and Universal Design. The drafting committee of the Convention regarded these definitions as necessary because the terms have special meanings and implications in the context of disability and the CRPD:

The terms “communication” and “languages” used in the CRPD include Braille, accessible information and communication technologies, spoken as well as signed languages or other forms of non-spoken languages.

The term “discrimination” includes all forms of discrimination on the basis of disability. For example non-accessibility to public institutions such as libraries constitutes discrimination on the grounds of disability.

“Reasonable accommodation” means the provision of conditions, equipment, and environment that enables an individual to effectively enjoy or exercise “on an equal basis with others all human rights and fundamental freedoms.” The need for reasonable accommodation will be reduced by relying on Universal Design, which is defined in Article 2 as follows:

“‘Universal design’ means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.” However, “universal design shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.”

The last sentence reflects the human rights approach of the Convention: Human rights are fundamental and inherent to everyone. Every individual is equally entitled to all human rights without discrimination. Thus, if there are still persons or groups with special needs that might not yet be met by universally designed facilities and services, reasonable accommodation must be made in order to avoid direct discrimination on the basis of disability.

CRPD Article 4: General Obligations of State Parties

Article 4 of the Convention defines general obligations of State parties to the CRPD. States must adopt legislative, administrative, financial, judicial, and educational measures to eliminate discrimination on the basis of disability. Additionally, Article 4 contains a list of detailed obligations of States, including obligations in the field of Universal Design:

“To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines.” (Article 4, para 1 (f))

CRPD Article 9: Accessibility

Article 9 CRPD deals specifically with the right to accessibility. States and their institutions have to ensure that persons with disabilities have equal opportunities for participation in their respective societies. They are obliged to implement accessibility in all areas of public life, including “the physical environment, transportation, information and communication, including information and communications technologies and systems as well as facilities and services open or provided to the public” – such as libraries.

Part 2 of Article 9 defines the obligations in a more concrete way, not explicitly naming Universal Design but using the concept and aim of Universal Design – planning accessibility from the start – e.g. in the context of information and communication technologies:

“Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.” (Article 9, para 2 (h))

The UN Committee on the Rights of Persons with Disabilities

General Comments

The UN Committee on the Rights of Persons with Disabilities (CRPD Committee) is a body of 18 independent experts that monitors implementation of the Convention by the contracting States. In its “General Comments”, the Committee provides orientation for the interpretation and practical implementation of specific rights enshrined in the Convention. So far, six General Comments have been adopted. No. 7 on the right to participation is currently in the drafting process. General Comments are addressed to all contracting States.

Of particular interest regarding references to Universal Design is General Comment No. 2 on accessibility. Therein the CRPD Committee promotes the implementation of Universal Design in all areas of public life. With its inclusive approach, Universal Design corresponds with the Convention’s human rights model of disability:

“The strict application of universal design to all new goods, products, facilities, technologies and services should ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities, in a way that takes full account of their inherent dignity and diversity.” (CRPD, 2014)

General Comment No. 2 makes clear that new buildings, facilities or services intended for public use should be designed to be accessible from the outset, in accordance with the concept of Universal Design. Barriers within existing objects, facilities, and services should be removed gradually and in a systematic manner.

General Comment No. 4 on Article 24, “The Right to Inclusive Education,” advises States to commit to the prompt introduction of Universal Design in all parts of educational infrastructure and to adopt the Universal Design for Learning (UDL) approach to meet the diverse needs of all learners. However, the Comment highlights once again that “the universal design approach does not exclude the provision of assistive devices, applications and software to those learners with disabilities who may require them.” (CRPD, 2016)

General Comment No. 5 on “the right to independent living” advises States to “insert the principle of universal design for both physical and virtual public spaces as well as to review building codes to ensure that they comply with the principles of universal design and legislative guidelines on construction.” (CRPD, 2017)

General Comment No. 6 on Article 5 on “equality and non-discrimination” states:

“Reasonable accommodation duties are different from accessibility duties. Both aim to guarantee accessibility, but the duty to provide accessibility through universal design or assistive technologies is an ex ante duty, whereas the duty to provide reasonable accommodation is an ex nunc duty.” (para 24)

The Comment goes on to explain that providing accessibility through Universal Design is an “ex ante duty” without regard to the special needs of a particular person with a disability. Hence, implementing Universal Design is a proactive, systemic duty whereas reasonable accommodation, as an “ex nunc duty”, must be provided from the moment that an individual person with a disability requires access. (CRPD, 2018)

Examination of State reports

The CRPD Committee’s main task is to monitor the implementation of the rights enshrined in the Convention in all States that have ratified the CRPD. An important monitoring mechanism is the so called “examination of State reports”: Each State party to the CRPD is obliged to report to the CRPD Committee every four years on how the rights enshrined in the Convention are being implemented. In addition, the CRPD Committee may receive alternative reports from other sources, including Non-Governmental Organizations (NGOs) or Disabled Person’s Organizations (DPOs), national Independent Monitoring Mechanisms (IMMs) or National Human Rights Institutions (NHRIs). Their reports are generally more critical than the State reports.

On the basis of all the available information, the CRPD Committee holds a so-called “constructive dialogue” with State representatives at a meeting in Geneva. Subsequently, the Committee publishes its concerns and recommendations for better implementation of the CRPD in the respective State, referred to as “Concluding Observations”. The recommendations point the way forward for further CRPD implementation in the respective State.

Since 2011, the CRPD Committee has included recommendations regarding Universal Design in several Concluding Observations. For instance, in 2014, the CRPD Committee expressed concerns that Denmark has not adopted comprehensive measures of accessibility and “recommends the State party to conduct continuous training on universal design and accessibility standards” (CRPD/C/DNK/CO/1). In its Concluding Observations for Qatar 2015, the CRPD Committee recommended “that the State party promotes universal design for all buildings and public services, information and social communication media, transport, and services open to the public” (CRPD/C/QAT/CO/1). In 2017, the Concluding Observations on Iran recommended that Iran include in its legislation the principle of Universal Design and promote the application of Universal Design by relevant stakeholders (CRPD/C/IRN/CO/1).

Conclusion

Despite the important role that libraries have to play in realizing the rights of persons with disabilities, libraries and library accessibility have to my knowledge rarely come up as an issue in national implementations of the CRPD. Precisely for this reason, libraries should take the initiative and get involved in the CRPD implementation process in their respective countries. They should raise awareness of their role in implementing the CRPD at the national level. While planning or conducting Universal Design projects, libraries can refer to the CRPD and the above-mentioned General Comments as part of a strategy to secure public support and funding for such efforts.

According to the principle of participation and inclusion in the CRPD, persons with disabilities or their organizations should always be involved in projects and services aimed at them. Other potential partners at the national level are human rights organizations, NHRIs and national Independent Monitoring Mechanisms. Through a joint or independent report, libraries could inform the UN Committee on the Rights of Persons with Disabilities about their activities. Thus the Committee will learn about the efforts of librarians to help persons with disabilities to realize their rights. This could in future result in a decision by the CRPD Committee to urge States to establish universally designed libraries and library services in their respective countries.

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