

# CHAPTER 4: FREEDOM OF EXPRESSION AND OPINION

## UN Convention on the Rights of Persons with Disabilities

### Article 21, Freedom of expression and opinion and access to information:

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

### Article 2, Definitions (excerpts):

For the purposes of the present Convention:

“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non-spoken languages.

## OBJECTIVES

The background information and exercises contained in this chapter will enable participants to work towards the following objectives:

- Define the right to freedom of expression and opinion
- Explain the importance of the right to freedom of expression and opinion for people with disabilities
- Understand the interrelation between the right to freedom of expression and opinion and other human rights
- Identify ways in which the right to freedom of expression and opinion of people with disabilities has been promoted or denied

- Understand the provisions related to freedom of expression and opinion in the UN **Convention on the Rights of Persons with Disabilities (CRPD)**.

## **GETTING STARTED: THINKING ABOUT FREEDOM OF EXPRESSION AND OPINION**

The human right to freedom of expression and opinion addresses a number of specific but interrelated concepts, each of which can be subjected to differing degrees of restriction by States:

### **1. Freedom of opinion**

Everyone has the right to hold any opinion or view, regardless of how popular, unpleasant, or controversial others might find that opinion. This is a right that is absolutely protected and cannot be subjected to any form of restriction by States, as to do so would be to permit State interference into people's very minds and thoughts. Essentially, we all have the right to think as we please and not to be told what or how to think.

### **2. Freedom of expression**

The right to freedom of expression has two distinct parts:

- a. Right to impart or share information and ideas of all kinds
- b. Right to seek and receive information.

Clearly the right to freedom of expression includes the right to exchange information and articulate ideas and opinions, as well as to obtain information so that ideas and opinions can be developed.

Unlike the right to freedom of opinion, the right to freedom of expression carries with it certain responsibilities and *can* be subjected to restrictions by the State. This is because the expression of ideas or exchange of information can sometimes be harmful to others, such as when people incite hatred against others, or say untrue things that could harm the reputation of another person. For this reason the State is permitted to impose some restrictions on the right to expression in the interests of public safety, order, health, morals, or protection of the fundamental rights and freedoms of others. However, such restrictions must be provided by law and actually necessary to protect those interests. In addition, any restrictions imposed by the State should not be so great as to effectively erase the right.

The right to freedom of expression and opinion is critical to the enjoyment of other human rights by people with disabilities. For example, it would be hard to imagine the forming and effective functioning of disabled peoples organizations or trade unions, without the ability of members to participate in the sharing and exchange of information and ideas. Similarly, the ability of people with disabilities to participate in political and public life, such as through voting and public service, would be severely hampered if candidates could not express their views and voters could not access information about the issues. The formation and exchange of ideas is also essential to the right to education, where research and debate are critical components of many academic environments. In the same way, the development and exchange of ideas is critical to the development of culture and can provide an important means of expression. Indeed, unless people with disabilities enjoy the right to freedom of expression and opinion, no State can comply with its legal obligation under the Convention on the Rights of Persons with Disabilities,



which in Article 3(3) calls for consultation with and active involvement of people with disabilities in the implementation of the CRPD.

Violations of other human rights can also negatively impact the enjoyment of the right to freedom of expression and opinion by people with disabilities. For example, lack of access to education can hamper the opportunities for people with disabilities to acquire knowledge and learn skills that contribute to developing of ideas and sharing of those ideas with other people. Violation of the right to privacy may discourage people with disabilities from expressing their ideas in letters or other forms that they feel may be subject to search or confiscation. Such concerns may be heightened for people who do not enjoy the right to live independently and in the community but live in institutional settings where the right to privacy may not be sufficiently respected by staff or others living there.

Despite the importance of the right to freedom of expression and opinion, people with disabilities face numerous barriers to full enjoyment of this right. For instance, many people with disabilities lack access to information in accessible formats. Although numerous formats and technologies already exist, these accessible formats are often not widely available, especially in developing countries where accessible technologies are unaffordable for many people with disabilities. This is certainly true for mainstream media, where not all television programmes are broadcast with subtitles, captioning, or inset sign language interpretation for deaf viewers, or audio description for viewers who are blind or have visual impairments. Few newspapers are available in Braille in a timely manner for readers who are blind, and fewer still offer content in plain language suitable for people with intellectual disabilities. Despite the growing use of the Internet as a source of news and a means of research, many websites remain inaccessible to people with disabilities. Emerging technologies, such as digital broadcasting and broadband, have the potential to enhance the accessibility features available to people with disabilities. However, this potential will only be realised if decision-makers responsible for how information is distributed are aware of the need to address accessibility and are willing to listen to the views of product users who have disabilities.

As with other human rights, one of the greatest barriers to enjoyment of the right to freedom of expression and opinion can be the attitudes of others. Prevailing social attitudes and stereotypes often create an environment in which the opinions of people with disabilities are not welcome. Even when they do express themselves, their ideas and opinions may not be accepted as worthy of consideration on an equal basis with those of others. People with intellectual and psycho-social disabilities commonly face pressure from others to conform not only in their way of thinking, but also in their methods of expressing themselves, to a manner considered “more acceptable.” Some people with psychosocial disabilities have noted that forced treatment involving psychotropic medications can interfere substantially with a person’s thought processes, making it difficult to think clearly and formulate opinions. In some cases the actual objective of using these therapies is to alter the way people with psycho-social disabilities think and express themselves, so that their behavior and beliefs do not offend or upset other people. This treatment is often defended by the argument that it is in the person’s best interests to avoid thoughts, ideas, and opinions that are “not rational.”

In summary, the right to freedom of expression and opinion is essential to the ability of people with disabilities to develop as individuals and to participate in societies on an equal basis with others. However, full enjoyment will remain elusive for people with disabilities as long as access, attitudinal, and other barriers exist.

## Making Information Available in Plain Language

In 2002 Jean Ross and Janet Pringle of the Vocational and Rehabilitation Research Institute (VRRRI) gave a speech to the Plain Language Association International (PLAIN) called “Hey, I can read that! Perspectives on plain language and people with developmental disabilities.” Jean Ross, who self-identifies as someone with a developmental disability, spoke of some of the reasons why it is important for information to be available in plain language:

*It's not fair when things we need to know are not written so we can read them. We feel left out. We have to wait for our support workers, or our family to tell us things. Sometimes they don't have time or they forget. We should be able to read them for ourselves*

Jean and other people with developmental disabilities work with people like Janet in order to “translate” information into plain language. This helps to make the content of the information accessible to as many people as possible. (The information might still need to be available in alternative formats, such as Braille, in order to make it fully accessible to all people with other disabilities.) After the information has initially been translated, the group works together to figure out what the information is trying to say and whether it does so in a way that can be understood by everyone. Jean describes the process as this:

*Janet asks two or three of us to work with her. We read the papers out loud, a little bit at a time. Some of us cannot read at all. Those people listen. Some, like me, can read well. We talk about what each bit means, and we say when we do not understand. Sometimes Janet has to help us find better words and sometimes we find them ourselves. We all take part. No one is ever put down. We all have to feel safe together or it would be too hard to say when we did not understand something. But we know when we say we do not understand; we help lots of others who do not understand.<sup>1</sup>*

1 Ross, Jean and Pringle, Janet. “Hey, I can read that! Perspectives on plain language and people with development disabilities.” 27 Sept. 2002. *Plain Language Association International (PLAIN) Fourth Biennial Conference Proceedings*. <http://www.plainlanguagenetwork.org/conferences/2002/perspect/perspect.pdf> ; see also: The Vocational and Rehabilitation Research Institute (VRRRI): <http://www.vrri.org>



## EXERCISE 4.1: Enjoying the Right to Freedom of Expression and Opinion

**Objective:** To understand what it means to enjoy the right to freedom of expression and opinion

**Time:** 30 minutes

**Materials:** Chart paper and markers or blackboard and chalk

### 1. Brainstorm/Discuss:

Think about the typical life activities in which people with disabilities in your community are engaged. List these responses. (Save this list for further use in Exercises 4.2 and 4.3.)

### 2. Analyze:

- Examine this list of life activities and list participants' responses:
  - In which instances do people with disabilities need access to information in order to participate fully?
  - What kind of information do they need?
  - Who is responsible for providing it?
- Examine this list of life activities and list participants' responses:
  - In which instances do people with disabilities need to be able to develop and communicate opinions in order to participate fully?
  - What different methods of communication can you think of that people with disabilities might use?

### 3. Prioritize:

1. Divide participants into small groups. Ask them to look at the list of needs identified in the Step 2 analysis and decide on the five most important needs of people with disabilities in order to enjoy the right to expression and opinion.
2. Bring the group back together and ask them to share and compare their prioritized lists. Combine these lists to form a list that everyone can agree upon.
3. Explain that this is a first step in the process of advocacy planning for the right to expression and opinion. Encourage participants to keep their prioritized lists for later use.

## United Nations Global Audit of Web Accessibility

The United Nations commissioned Nomensa, a company specializing in technology accessibility, to conduct a survey of websites from around the world in order to obtain an indication of the “accessibility of websites that persons with disabilities might access as part of their daily lives.” The survey examined 100 websites from 20 countries, focusing on five sectors: travel, finance, media, politics, and retail. It found that the vast majority of those websites did not currently meet internationally established accessibility standards and that many would need considerable work to upgrade them. Indeed, only 3 of the 100 websites met the basic accessibility rating. The following excerpts from the report represent some of the survey’s findings, and indicate barriers to access experienced by a variety of people with disabilities:

- 93% did not provide adequate text descriptions for graphical content, causing problems for visually impaired people;
- 78% used foreground and background color combinations with poor contrast, making it difficult for people with mild visual conditions such as color blindness to read information;
- 97% used link text that did not clearly indicate the destination of the link, causing confusion for people with learning difficulties; and
- 92% did not provide a keyboard shortcut allowing people to bypass large blocks of content, causing difficulty and frustration for people with physical impairments.<sup>2</sup>

## EXERCISE 4.2: Understanding Barriers to Freedom of Expression and Opinion

**Objective:** To identify barriers to freedom of expression and opinion faced by people with disabilities

**Time:** 40 minutes

**Materials:** List of life activities generated in Exercise 4.1

### 1. Analyze:

Using the list of life activities generated in Exercise 4.1, ask each participant (or pair of participants) to choose one activity from the list and to evaluate the barriers people with disabilities might face in either accessing information or expressing their thoughts, opinions, and preferences when they participate in that activity.

### 2. Role Play:

Ask each participant or pair to report on their analysis and to role play at least one fictional example of the barriers a person with disabilities might face in accessing information and/or expressing and communicating their opinions when they participate in that particular life activity.

<sup>2</sup> “United Nations Global Audit of Web Accessibility, Executive Summary.” Nov. 2006. *United Nations Department of Economic and Social Affairs: Social Policy and Development*. <http://www.un.org/esa/socdev/enable/documents/execsumnomensa.doc> ; see also: United Nations DESA Enable Global Audit page: <http://www.un.org/esa/socdev/enable/gawanomensa.htm>  
Nomensa: <http://www.nomensa.com/about.html>



### 3. Discuss:

- What are the consequences when people with disabilities are excluded from accessing or imparting information in the life activities examined?
- To the person with disability?
- To society as a whole?
- Which barriers have the greatest effect on people with disabilities?
- What can be done to eliminate these most significant barriers to accessing or imparting information?

## WHAT DOES HUMAN RIGHTS LAW SAY ABOUT FREEDOM OF EXPRESSION AND OPINION?

Article 19 of the **Universal Declaration of Human Rights** (UDHR) provides a concise description of the right to freedom of expression and opinion that captures the essential elements, including the right to hold opinions “without interference,” as well as the right to receive and impart information and ideas “through any media and regardless of frontiers.”<sup>3</sup> Thus, there are no geographic restrictions on the right, and the right can be enjoyed regardless of the methods or media used.

The **International Covenant on Civil and Political Rights** (ICCPR)<sup>4</sup> provides further elaboration of the right, addressing in more detail when and how States may place restrictions on its enjoyment. Article 19 of the ICCPR does not permit restrictions on the freedom of people to hold opinions, but does permit restrictions on the right to freedom of expression, in order to respect the “rights or reputations of others,” national security, public order, public health, or morals. As noted by the **Human Rights Committee** in its General Comment on the right, any such restrictions must be provided by law and necessary to protect the interests permitted by the article. They “may not put in jeopardy the right itself” or be imposed arbitrarily.

Other international human rights conventions do not provide the same level of detail about the freedom of expression and opinion as that given in the ICCPR. For example, Article 5 of the **International Convention on the Elimination of All Forms of Racial Discrimination** (ICERD)<sup>5</sup> merely notes that States must prohibit and eliminate racial discrimination and guarantee equality in enjoyment of the “right to freedom of opinion and expression.” Article 13 of the **Convention on the Rights of the Child** (CRC)<sup>6</sup> largely repeats the ICCPR provisions, though Article 12 states that children should be able to express their views on matters concerning them and that those views should increasingly be taken into account as the child grows in maturity and competence.

The non-legally binding **UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities** (Standard Rules)<sup>7</sup> does not specifically address the right to freedom of expression and opinion. However, several of its rules address preconditions to equality of participation that are relevant to the enjoyment of this right:

- Rule 1 addresses awareness-raising, which can positively impact the attitudinal barriers faced by people with disabilities when trying to exercise their right to freedom of expression and opinion;

3 See <http://www.unhchr.ch/udhr>

4 See <http://www.ohchr.org/english/law/ccpr.htm>

5 See <http://www.ohchr.org/english/law/cerd.htm>

6 See <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

7 See <http://www.un.org/ecosocdev/geninfo/dpi1647e.htm>

- Rule 4 addresses support services and the provision of assistive devices and services that could be useful to people with disabilities in enjoyment of the right;
- Rule 5 addresses accessibility, including access to information and communication;
- Rule 10 notes the need to ensure accessibility of literature, films, and theatre for people with disabilities to fully enjoy culture.

Article 21 of the **Convention on the Rights of Persons with Disabilities** (CRPD) does not address the parameters of the right to freedom of expression and opinion in the same detail as the ICCPR. Instead it examines specific issues impacting the ability of people with disabilities to enjoy the right on an equal basis with others. The article places great emphasis on the need for information, including information distributed by the mass media or for distribution to the general public by both public and private actors to be available in accessible formats and technologies. It also calls for States to accept sign language, Braille, and other means and modes of communication that people with disabilities choose to use whenever they have “official interactions.” In recognition of the importance of sign language, Article 21 also calls for States to recognize and promote the use of sign language. It should be noted that the terms “language” and “communication” used in Article 21 are defined further in Article 2.

Taken as a whole, States’ obligations with regard to the right to freedom of expression and opinion include:

1. Obligation to respect the right by refraining from engaging in any act, custom, or practice that creates barriers to people’s enjoyment of the right (e.g., not prohibiting people who are deaf from communicating in sign language).
2. Obligation to protect the right by ensuring that non-State or “private” actors, such as businesses that distribute information to the general public, do not create or fail to remove barriers to enjoyment of the right (e.g., repairing inaccessible web pages).
3. Obligation to fulfill the right by requiring States to take proactive action to ensure enjoyment of the right by people with disabilities.

In short, international human rights law strongly supports the right to freedom of expression and opinion for people with disabilities, so that they may participate fully in all aspects of life on an equal basis with others.

### EXERCISE 4.3: Understanding Freedom of Expression and Opinion

**Objective:** To review and understand the right to freedom of expression and opinion provisions of the CRPD

**Time:** 45 minutes

**Materials:** Chart paper and markers or blackboard and chalk

#### 1. Review:

Divide the participants into small groups. Ask each group to work together to discuss one of the sections of Article 21.

- What does each section require be achieved?
- Who is responsible to meet this requirement?
- What challenges might there be to implementation?
- How can these challenges be overcome?



## 2. Discuss:

Have the groups report on the outcomes of their discussions.

## 3. Give examples:

Ask for examples of how each of the provisions of Article 21 could be applied to the real life examples listed and discussed in Exercise 4.1 and 4.2.

## 4. Discuss:

- How can Article 21 of the CRPD be used to set national disability rights agendas and formulate platforms of action for submission to political parties or government decision-makers?
- What would it mean for people with disabilities if the CRPD were realized in your country?

### **The National Association for the Deaf: Advocating for Freedom of Expression and Opinion**

The National Association for the Deaf (NAD) is one of the associations advocating for the rights of deaf and hard of hearing people in the United States. It has engaged in a number of advocacy campaigns supporting the increased accessibility of mainstream media for deaf and hard of hearing people, and has also advocated for improved ease of communication for deaf and hard of hearing people. For example, it has participated in the following activities:

- Working with Congress and the Federal Communications Commission to establish new rules on captioning for television broadcasters, in order to increase the number of captioned television programs
- Participating in the Coalition for Movie Captioning (CMC), an umbrella organization of disabled people's organizations that advocates for movies in theatres to be available with quality captions, including on the day and date of release of new movies
- Bringing complaints against companies who refuse to allow customers to communicate with them via telephone relay – a service that enables people to type over the telephone system, facilitating communication between both deaf and hearing people
- Advocating that broadcasters and others who provide information in emergency situations ensure that such information is accessible to people who are deaf or hard of hearing.
- Campaigning for the right of deaf children to learn sign language and for parents of deaf children to be supported should they choose for their child to learn sign language (e.g., through access to sign language learning programs if the parents are hearing).<sup>8</sup>

<sup>8</sup> *National Association of the Deaf.* <http://www.nad.org>

## EXERCISE 4.4: Making a Commitment to Promote Freedom of Expression and Opinion

Emphasize that human rights involve both rights and responsibilities.

- Ask if after learning about the right to freedom of expression and opinion for people with disabilities, the group is ready to think about taking concrete action;
- Acknowledge that, although there is still much planning and information gathering to do, commitment to creating change is also very important;
- Explain that you would like to ask each participant to name one individual action, however small, that she or he is willing and able to take in the next month to promote the right to freedom of expression and opinion of people with disabilities to ensure their full enjoyment of all human rights.

For planning advocacy for the human rights of people with disabilities, see Part 3, “Advocacy! Taking Action for the Human Rights of People with Disabilities,” p. 229.

### USEFUL RESOURCES ON FREEDOM OF EXPRESSION AND OPINION

- American Council of the Blind, helpful resources for blind and visually impaired persons: <http://www.acb.org/resources/index.html>
- General Comment No. 10 of the Human Rights Committee: <http://www1.umn.edu/humanrts/gencomm/hrcom10.htm>
- Inclusion Daily Express: [www.inclusiondaily.com/archives/04/09/15/091504sacourtaccess.htm](http://www.inclusiondaily.com/archives/04/09/15/091504sacourtaccess.htm)
- Manila Declaration on Accessible Information and Communication Technologies (ICT): <http://www.un.org/esa/socdev/enable/maniladecl.htm>
- National Association of the Deaf: <http://www.nad.org>
- The Plain Language Association International (PLAIN): <http://www.plainlanguagenetwork.org>
- United Nations DESA Enable Global Audit: <http://www.un.org/esa/socdev/enable/gawanomensa.htm>
- United Nations Global Audit of Web Accessibility, Executive Summary (2006): <http://www.un.org/esa/socdev/enable/documents/execsumnomensa.doc>
- The Vocational and Rehabilitation Research Institute (VRRRI): <http://www.vrri.org>
- W3C Web Accessibility Initiative – policies addressing web accessibility: <http://www.w3.org/WAI/Policy>

