

HIV, disability and discrimination: Making the links in international law, including the UN Convention on the Rights of Persons with Disabilities

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1 Issues

- PHAs and people with (other) disabilities have many common experiences, from stereotyping and discrimination, to a devaluing of their lives and contributions, to multiple barriers to gaining access to services, to a need for effective legal protections and remedies for challenging infringement of human rights.
- Whether and how HIV and/or AIDS should be conceived of as disabilities, for various legal or other purposes, is a matter of ongoing debate among PHAs, people with (pre-existing) disabilities and human rights advocates working on these issues.
- International law provides some protection against HIV-based discrimination, under the guise of prohibiting discrimination based on “health status” or “other status”. But the extent of states’ obligations has not been comprehensively addressed in any international treaty.
- The **UN Convention on the Rights of Persons with Disabilities (CRPD)** entered into force in May 2008. Ratifying states must amend national laws and policies to give greater protection to the human rights of people with disabilities, including abolishing disability-based discrimination by the state and protecting persons against such discrimination by others. The CRPD addresses many issues faced by people living with HIV/AIDS (PHAs), but does not explicitly include HIV or AIDS within its open-ended definition of “disability”.

2 Description

- We consider the many links between HIV and (other) disabilities, including some such links articulated in some areas of law. We conclude that the shared human rights struggle of both the disability rights and AIDS movements can be strengthened by a greater appreciation of the potential benefits of making common cause, while also recognizing the challenges and tensions of such collaboration.
- Therefore, we explore the opportunities that the CRPD and other related legal mechanisms dealing with disability provide for advancing the human rights of PHAs facing human rights infringements.

3 Lessons learned

- There is considerable variation in how national anti-discrimination laws reflect the links between HIV and disability. Some jurisdictions explicitly or by interpretation treat discrimination based on HIV and/or AIDS status as a form of prohibited “disability” discrimination. In others, there is an explicit distinction drawn in the law, distancing HIV from the concept of disability while at the same time prohibiting discrimination based on HIV status.
- In international human rights law, there is one universally accepted definition of “disability”. The CRPD itself is open-ended, recognizing that “disability is an evolving concept” and that “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” (Article 1).
- The CRPD offers a new tool for collaboration between HIV and disability rights advocates in advancing human rights, internationally but with implications at the domestic level as well.

4 Next Steps

- Domestic focal points responsible for implementing the CRPD should consider its relevance for HIV (e.g., gathering data about HIV-related discrimination, formulating policy on disability-related discrimination that includes HIV/AIDS).
- Specialized UN agencies (e.g., UNAIDS) can engage with states parties and others to ensure HIV is part of the implementation of CRPD.
- The UN Committee on the Rights of Persons with Disabilities should take links between HIV and (other) disabilities into account in interpreting CRPD, and develop a “general recommendation” outlining CRPD’s application in the specific context of HIV/AIDS.
- NGOs can use the Conference of CRPD States Parties to raise issues of HIV and its links to (other) disabilities.
- Advocates can file complaints under the CRPD’s Optional Protocol (where ratified) regarding deficiencies in implementing Convention obligations.

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