

Conceptualisations of Disability in ICF and CPRD

Their contribution to the realization of
the Right to Work

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Outline

1. Functions of classifications
2. Constructions of disability & normalcy in the ICF
3. Human Rights als Analytical Instrument and normative fundament for politics
4. The Human Rights Model of Disability
5. Participation in the labour market without discrimination
 - Legal instrument of reasonable accomodation
 - Human Rights Principle of Accessibility
6. In the light of the concept of the Fragile Body
7. Conclusions

Classifications as powerful instruments

Classifications are not only to be seen as
“Properties of mind and standards, as ideal
numbers of floating cultural inheritances”

But as having “material force in the world”

(Bowker/Leigh Star 2000: 48)

➤ Classifications as powerful constructs

(Gregory 1997)

First Classification of disability (1980)

Medical Model: Equalisation of disability with disease

Disease /
Disorder



International Classification of Impairments, Disabilities and Handicaps (World Health Organization 1980)

UPIAS Definition of Disability (1976)

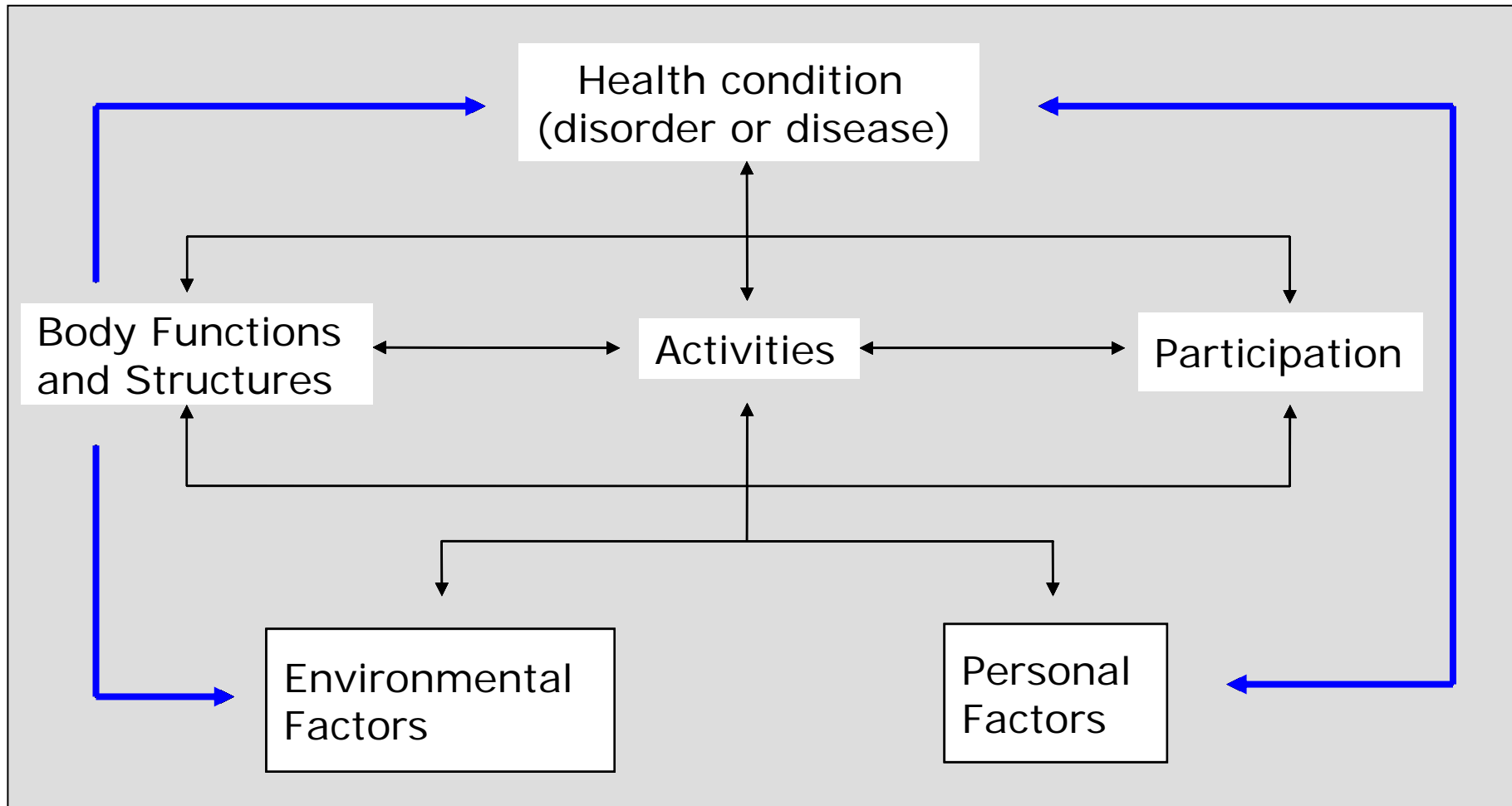
“In our view it is society which disables physically impaired people.

Disability is something **imposed on top** of our ***impairments*** by the way we are **unnecessarily isolated** and **excluded** from full participation in society. “

(Union of the Physically Impaired against Segregation (UPIAS) in: Oliver 1996: 33)

→ Development of the ***Social model of Disability***

Construction of disability (ICF*)



*WHO 2001, Hirschberg 2009

ICF-Definitions of Disability

- **Disability** as **umbrella term** of 3 components
- and **result of the interaction** of several components

“Disability is an **umbrella term** for impairments, activity limitations and participation restrictions.

It denotes the **negative aspects** of the **interaction** between an individual (**with a health condition**) and that individual´s **contextual factors** (environmental and personal factors)“ (WHO 2001: 213)

Relation of disability & normalcy in the ICF

- Heterogeneity of the relationship between disability and normalcy: (Foucault 1977, 1982)
 - **Dichotomy**: disability vs. Functioning
 - Either disabled or non disabled
 - **Flexibility**: Spectrum between disability and functioning
 - Grey area of severe to light impairments
 - And furthermore to “superhigh functioning”
 - Transition zone between normalcy and abnormalcy by risks through disabilities: Abnormalcy as “risky area of denormalisations” (Link 1999, 2004)
- ⇒ **Flexible normalist differentiation** of the **protonormalist basis** of the ICF
-

Discourse analysis of the ICF-Definitions

- Discourse analysis of the ICF: Proto- and flexible-normalistic Constructs of *Normalcy and Disability*
(cf. Hirschberg 2009)
- Conclusions of the discourse analysis:
 - Constructs: Recognise the historical development of **conceptualisations of disability**
 - Disability as social practices: acknowledge **doing disability**
 - Acknowledge the power of different acteurs constructing disability as societal reality

Results of the Analysis of the ICF

- Diversity of voices in the lines of discourses reflects the **heterogeneous conceptualisation of disability**
 - Especially regarding biomedicalisation, participation and capacity
- **Extension** of the classifying spectrum and practise with the ICF
 - Beginning orientation towards to risk factors and genetic information ⇒ in 3. WHO classification of disability manifested?
- Synthesis of **medical** and **social** model through the **biopsychosocial approach** is dependent on its practical implementation
- **Tense relationship** between **participation** and **exclusion**

Development of Human Rights Treaties

Answer to **structural and systematical experience of injustice**:

▪ Expressing the issues of the *liberation movements*

- Workers?
- Women
- Afroamericans
- Homosexuals?
- Children
- Disabled people
- Elderly
- ...



For Resistance against suppression cf.
Davis 2002, Charlton 2006, for Universal
Design vgl. Davidson 2006)

Background of the CRPD

□ Context of the development

- Human Rights as an answer to **structural and systematical experience of injustice**
- CRPD (13/12/2006, worldwide 164 ratifications): **specific experience and perspective of persons with disabilities**
- Specification and firm establishment of the existing Human Rights Treaties

□ Paradigm Shift: Persons with disabilities

- **Not viewed as "objects of charity"**, medical treatment and social protection
- **But as "subjects with rights"**, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent
- as well as being **active members of society**

Understanding of Disability (CRPD)

„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**.“
(Art. 1 para. 2 CRPD)



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Perspective of change in understanding

- Possible change of the understanding of disability throughout time and societal change

“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”

(Preamble e CRPD)

Definition of Discrimination against ...

“**Discrimination on the basis of disability**”

means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

It includes all forms of discrimination, **including denial of reasonable accommodation**”

(Art. 2 CRPD)

Significance of the CRPD

The high commissioner for Human Rights, Navi Pillay, regards the CRPD as fundamental change thinking about disabled people

(speech in front of commission on Human Rights, march 2009)

“The convention requires us to **move away from charity-based or medical-based approaches** to disability **to a new perspective** stemming from and **firmly grounded in human rights** (...). These traditional approaches and attitudes, **no matter how well intentioned they might have been**, regarded persons with disabilities either as **passive recipients of good will or deeds**, or as **problems to be fixed**, or both.”

The Human Rights Model of Disability

Values for disability policy:

- **Focus:** Human dignity of persons with impairments
- Relation between civil and political rights AND economic, social and cultural rights
- Basis for the development of theories of social justice: including: Living with pain, the diminishment of the quality of life and the possibility of an early death because of the impairment
- Identity politics and identification as minority
- Instrument for policies of prevention of disabilities (reducing barriers)
- Fundament for the development of an instrument to reduce disabilities driven by poverty (Degener 2015)

Intersectionality in the CRPD and ICF

“The classification does not cover circumstances that are not health-related, such as those brought about by **socioeconomic factors**. For example, because of their **race, gender, religion** or **other socioeconomic characteristics** people **may be restricted** in their execution of a task in their current environment, **but** these are not health-related restrictions of participation as classified in the ICF” (WHO 2001: 7)

“Concerned about the difficult conditions faced by persons with disabilities who are subject to **multiple or aggravated forms of discrimination** on the basis of **race, colour, sex, language, religion, political** or **other opinion, national, ethnic, indigenous** or **social origin, property, birth, age** or **another status**” (CRPD preamble p)

- Consequences for the right to work and, in general for participation in society?

The right to work and employment (Art. 27)

- State parties recognize the right of persons with disabilities to work:
 - On an equal basis with others
 - Including the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment
 - that is **open**, **inclusive** and **accessible** to persons with disabilities (Para. 1)

- State parties shall take appropriate steps to
 - **prohibit discrimination on the basis of disability** (Para. 1 a)
 - ensure persons with disabilities to exercise their **labour and trade union rights** on an equal basis with others (Abs. 1 c)
 - Ensure that **reasonable accommodation** is provided to persons with disabilities in their work place (Para. 1i)

Obligations to the right of work

Governmental obligations:

(General Comments to the art. 13, Covenant on Educational, Social and Cultural Rights)

- *Availability*
 - **inclusive** work places
- *Accessibility*
 - Especially **regarding physical access** (light, sound, time, space...)
- *Acceptability*
 - **Reasonable** accommodations as assisting possibilities
- *Adaptibility*
 - **Inclusion** as international standard but **locally to be adjusted** (indigenous, minority, migrant, disabled workers, professionals)

General Principles: Non-discrimination

- Fundamental principle of international human rights law
- Includes direct and indirect discrimination
- *reasonable accommodation*:
 - 'necessary and appropriate modification and adjustments
 - not imposing a disproportionate or undue burden,
 - where needed in a particular case,
 - to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms' (Art. 2 para 4)
- Must be made for persons with disabilities

More than a general principle: Accessibility

- ❑ Important as a means to empowerment & inclusion
- ❑ Both: a general principle & a stand-alone article (art. 3, 9)
- ❑ A general obligation of the signatory state (art. 4)
- Duty of the state **to realize accessible workplaces** in society
- Duty of the employer (state/entrepreneur) to **offer reasonable accommodation** to a disabled employee

Fragility as condition humaine

Respect for difference and acceptance of adults and children with disabilities (and their impairments) as part of human diversity and humanity (cf. Degener 2015, art. 3 d CRPD)

- impairment as construction by society (Waldschmidt 2005, Shildrick 2002, u.a.)
- Versus: dominant tradition of the medical model of disability
- Chronic illnesses and traumatas as result of social conditions (escape of war, prosecution, violence...)



The concept of the fragile body

- All people have a (chronic) disease, disorder or disability at a certain time in their life (WHO/World Bank 2011)
- Feeling pain, being vulnerable (physically, psychologically or socially) and being dependent on others is *characteristic* for all people – in a more or less intense way (Good et al. 1992)

Conclusion:

- Persons are temporarily or momentarily able-bodied (Zola 1993)
- ***Spectrum*** of health and ability; no dichotomy between normalcy and deviance (health and disease, ability and disability)
- Vulnerability and dependance as human conditions

The concept of the fragile body in society

Categorizing health is essential in the health care system:

- To diagnose injuries, (chronic) illnesses
- To classify disabilities

even if it is a spectrum of experience during one´s life.
(Foucault 1978)

Classifications constitute an ambiguity:

- They are used to allocate benefits
- And they can contribute to stigmatisations
- The meaning of classifications and categories is ambivalent (Hirschberg 2009)
- Important: Being aware of this ***ambiguity and dilemma***

Benefits of the CRPD

What is the advantage of **conceptualising disability as part of Human diversity**?

- ❑ Taking into account all sorts of fragility developing measures of participation in specific areas of life
- ❑ Paying attention to intersections with age, race, class and gender to prevent disparity in society

What are the **gains to society**?

- ❑ Preventing segregation of disabled and chronically ill persons being categorised and stigmatised
- ❑ Empowerment of chronically ill and disabled persons, empowerment of all and thereby of society
- ❑ Raising awareness for democratic processes
- ❑ Advocating democracy

Conclusions

- Classifications, definitions as **powerful: ICF & CRPD**
- In ICF & CRPD: Important to take into account all aspects of disability of a person and her whole psychosocial & physical environment
- CRPD: Disability connected with a Human Rights approach
- Important **instruments for access to the labour market:**
 - **Reasonable accommodation** for a disabled person on the work place (individual right)
 - Appropriate measures for **structural and systematic accessibility in society** (Human Rights principle)
- **Necessary:** Respect of the fragility of the body as ***condition humaine*** (Hirschberg 2016)

Thank you
for your attention!

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