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The UNCRPD and Sign Language Peoples

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1. Introduction

On 13 December 2006, the General Assembly of the United Nations adopted the Convention on the Rights of Persons with Disabilities (UNCRPD) and its associated Optional Protocol, the first human rights treaty to be adopted in the 21st century. The UNCRPD opened for signature on 30 March 2007 and entered into force on 3 May 2008. The Convention has over 150 signatories and more than 140 State Parties have ratified it.

The UNCRPD is a group-specific treaty in that it caters to a specific group of people: persons with disabilities¹, a group of about 1 billion people worldwide (WHO 2011), often referred to as the world's largest minority. Deaf people are included in the Convention; all articles are applicable to them. Specific reference to sign languages and Deaf culture is made in 5 different articles.

This article posits that while the inclusion of Deaf people in the Convention provides opportunities for potential benefit, it also obscures some crucial differences between Deaf people and persons with disabilities. To highlight these differences, the concept of Sign Language Peoples (SLPs) is used throughout the text². The SLP concept and the ideas, which it embodies, are beginning to gain acceptance following its emergence in Deaf Studies literature (Batterbury, Ladd & Gulliver 2007). The concept represents the notion that sign language-using Deaf people are collectivities and need to be recognised as culturo-linguistic minorities requiring legal protection akin to what is granted to other linguistic and cultural minorities. This differs from the UNCRPD's notion of Deaf people and the Deaf community as a group of individual rights holders with disabilities. This is not to say that the UNCRPD's notion of SLPs is not useful for them to claim some of their linguistic and cultural rights. In some ways, it is. At the same time however, the UNCRPD's understanding of SLPs has some inherent limitations.

¹ The UNCRPD uses the term "persons with disabilities" but this people first-language is not uncontested both within the larger disability movement and Disability Studies where some people prefer to use "disabled people" (Meekosha & Soldatic 2011). Also, the UN uses "DPOs" (Disabled People's Organisations) which seems to contradict with the language use in the UNCRPD.

² Except for some cases when e.g. quoting from the UNCRPD.

Both the possibilities and the limitations of the Convention will be explored in the present article.

Firstly, the UNCRPD's rationale, purpose and key concepts will be described, and the reasons the World Federation of the Deaf (WFD) chose to become involved in the negotiations.

2. Rationale, purpose and key concepts of the UNCRPD

2.1. Rationale and purpose

The UNCRPD is often promoted as 'the missing piece' of human rights legislation, since prior to its development persons with disabilities were not mentioned as a protected category in any of the *binding* instruments of international human rights law. Disability was not seen as a human rights or equality issue but as a medical problem of an individual. While persons with disabilities have always theoretically been entitled to human rights and each of the core UN treaties theoretically applies to them, they have often been denied these rights, both in law and in practice (Mégret 2008; Stein 2007). People with disabilities were thus in effect invisible as subjects of human rights and equality law. Instead of active agents they continued to be treated as objects of welfare or charity with minimal rights. The UNCRPD is the first international convention to explicitly recognise disability as a fundamental human rights issue (Kayess & French 2008, Lawson 2007) and creates a new category of "disability human rights" (Stein 2007). Its purpose is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity" (Article 1).

People involved in promoting the Convention often assert that the UNCRPD does not create any new rights but only applies existing human rights to people with disabilities. This downplaying of the novelty of the UNCRPD is contested however (Mégret 2008; Kayess & French 2008): while the UNCRPD indeed reaffirms the applicability of existing human rights to persons with disabilities and stands in affirmation of "the right to have rights" (Mégret 2008:500) it goes further than that. It also enriches and modifies existing rights when it comes to people with disabilities, by thoroughly reformulating them and highlighting how the rights it proposes are to be implemented and guaranteed. It further creates new categories of rights that depart from the traditional emphasis of human rights on the relationship of the individual with the State, and focuses on the societal dimension of the rights experience by also taking into account the oppressive acts of the private sphere and society (and not only the State). Finally, the UNCRPD comes close to creating new rights specific to persons with

disabilities for example regarding the concept of “autonomy” (see Article 3 General principles) (Mégret 2008).

The general obligations to which States must comply (Article 4) are situated at three different levels: promote (foster recognition), protect (prevent interference with) and ensure (enable realisation of). These obligations are supplemented by the duty on States to raise awareness of the contribution and potential of people with disabilities, to counter stereotypes and promote positive images of disability (Article 8).

2.2. Implementation and monitoring

The UNCRPD contains very specific measures on national implementation (Article 33), and international monitoring (Article 34 and 35). State Parties are required to establish one or more focal points within their government and develop a coordination mechanism to facilitate action (33.1). They further need to establish, maintain, strengthen or designate a framework, including one or more independent mechanisms, to protect and monitor implementation of the Convention (33.2). Civil society and in particular persons with disabilities themselves and their representative organisations need to be involved and participate fully in this monitoring process (33.3).

Concerning international monitoring, a Committee on the Rights of Persons with Disabilities has been established. This Committee has several important functions. Firstly, it receives and considers the regular reports by State Parties detailing the progress they have made in implementing the UNCRPD (and the parallel reports by representative organisations of people with disabilities which often accompany them), engages in constructive dialogue with the State Parties and issues concluding observations and recommendations for follow-up action to improve implementation. These reports need to be submitted by State Parties two years after the entry into force of the Convention for the State Party concerned, with subsequent reports at least every four years thereafter. Article 35.7 invites State Parties to engage in this reporting “in an open and transparent process” with “due consideration” to the provision in Article 4.3, namely the close involvement of and consultation with people with disabilities through their representative organisations.

The second task of the committee is to hold days of general discussion, open to the public, during which it discusses issues of general interest arising from the Convention. Thirdly, the Committee issues general comments to clarify specific provisions in the Convention or specific issues arising in the implementation of the Convention. For example, articles 9 (Accessibility) and 12 (Legal Capacity) have recently been subject to a general comment. The Committee issues a draft

of the comment based on extensive input and comments from a broad range of stakeholders³. The fourth responsibility of the Committee is that it has – through the Optional Protocol – the authority to receive complaints from individuals or groups of individuals who are subject to the jurisdiction of States that have ratified the Optional Protocol. Further, the Committee has the authority to conduct inquiries into the possible occurrence of grave or systematic violations of the Convention (UN 2010).

Members of this Committee “shall be of high moral standing and recognized competence in the fields covered” by the Convention (Article 34.3) and will be elected by State Parties with due regard to equitable geographic distribution, representation of different forms of civilization and the principle legal systems, balanced gender representation and participation of experts with disabilities (Schulze 2010). Significantly, there is no absolute requirement for persons with disabilities to sit on this body but State Parties are “invited to give due consideration” to the provision set out in Article 4.3 and thus closely consult with persons with disabilities and their representative organisations when deciding whom to nominate. Currently, 17 of the 18 members of the Committee are themselves persons with disabilities (p.c. Eeva Tupi 18/02/14). The role and composition of this committee in relation to SLPs will be further discussed in chapter 3.3.3 of the present article.

2.2. Some key concepts of the UNCRPD

2.2.1. *From a medical model to a social model of disability*

The question whether or not to include a definition of ‘disability’ or ‘persons with disabilities’ was one of the most controversial issues for the Ad Hoc Committee (the committee in charge of drafting the CPRD). In the end, it was decided not to include a definition but rather provide guidance on the concept of ‘disability’ and its relevance to the Convention (UN 2010) through elements of the Preamble and Article 1. Article 1 states: “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”. The taxonomy is not exhaustive⁴ and paragraph e) of the Preamble clearly endorses a social approach

³ EUD for example has provided feedback on the draft of general comments on Article 9 while WFD has provided feedback on the draft of general comments on Article 12: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>

⁴ But it does nevertheless limit the application of the UNCRPD to persons who have ‘long-term’ impairments and apart from the impairment categories listed, is it not self-evident what other impairment groups fall within the boundaries of the UNCRPD. This will be determined domestically, possibly depriving some impairment groups of protection (Kayess & French 2008).

to disability by recognising that disability is an “evolving concept” which may vary between societies (Kayess & French 2008).

The Convention thus marks a paradigm shift within UN legal drafting from a medical model to a social and human rights based model of disability by recognising that disability is not an individual medical problem but “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)). The UNCRPD thus urges State Parties to take action to remove societal barriers to the participation and inclusion of persons with disabilities. It does not expect the individual to change, going as far as the UNCRPD not referring to prevention or treatment of impairment at all. This is one of the most remarkable differences from the UNCRPD and the UN’s prior work in the area of disability and human rights (Kayess & French 2008). It is crucial since it confirms that even people who cannot or do not want their impairment to be ‘cured’ nonetheless have rights and do not need to rely on charity or goodwill.

2.2.2. Substantive equality

The principle of substantive (or difference-aware) equality acknowledges the fact that treating people equally does not necessarily mean simply ensuring that they have equal rights; rather that in some cases a differential treatment of people facing different circumstances is justified. The UNCRPD contains key substantive equality measures including positive action measures such as the designation of quotas, the instituting of affirmative action policies (Article 27.1(h)) and the obligation to provide reasonable accommodation (Article 5.3.).

2.2.3. ‘Nothing about us without us’

Negotiations for the UNCRPD are said to have involved “the highest level of participation by representatives of civil society, overwhelmingly that of people with disabilities and disabled persons organisations, of any human rights convention in history” (Kayess & French 2008:3-4). WFD has consultative status with the UN and as a member of the International Disability Alliance (IDA) participated in the UNCRPD Ad Hoc meetings and negotiations. The involvement of WFD will be further detailed in part 3.1.

During the negotiations, the disability movement played a crucial role under the slogan “Nothing about us without us”. The UNCRPD, although not using the slogan as such in its text, has recognised this role must continue and persons with disabilities must be consulted and involved in all stages of the implementation and monitoring process of the Convention. The “Declaration of

Madrid” (2007) establishes priorities in this regard and contains recommendations to the UN Member States on priority areas of action to ensure the participation of civil society in the implementation and follow-up of the Convention (UN 2008).

The most explicit reference to the principle is in Article 4.3 which states “In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations”. Further reference to the principle is made in the Preamble, Articles 33.3, 34.3 and 35.3.

2.2.4. Non-discrimination and the provision of reasonable accommodation

In order to promote equality and eliminate discrimination, State Parties are obliged to take all appropriate measures to ensure reasonable accommodation is provided (Article 5.3.). Reasonable accommodation is defined in Article 2 (Definitions) as “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”⁵. Emphasis is on the individual rather than on a group; it is the individual who must be protected against discrimination and is entitled to reasonable accommodation.

The State has the positive obligation to identify and remove barriers. However, the reasonable accommodation duty is subject to a defence of “disproportionate or undue burden” which means that the practical manifestations are likely to differ from State to State and situation to situation, depending on financial means (Lawson 2007). Under the UNCRPD, a failure to provide reasonable accommodations is seen as discrimination on the basis of Article 2.

3. The UNCRPD and Sign Language Peoples

3.1. Rationale for WFD participation in this Convention

It is important to understand why the World Federation of the Deaf decided to become involved with a human rights treaty regarding persons with disabilities. Prior to the development of the UNCRPD, WFD was looking for opportunities to protect and promote sign languages at EU level following the European

⁵ While a general definition of the concept of “reasonable accommodations” is included in the UNCRPD, a definition in relation to Deaf people would require a whole new article.

Parliament resolutions on sign languages in 1988 and its reiteration in 1998. But the two organisations intended to support and work for minority languages at EU level, The European Bureau on Lesser Used Languages (EBLUL) and Mercator failed to include any sign languages in their remit and databases (Krausneker 2003). Sign languages were further excluded from the European Charter on Minority Languages (1992) based on false arguments, for example that sign languages are created artificially, that they do not have a long historical background, that they are not different from the official language of the State and are a means of communication within any language (Krausneker 2000).

Thus when WFD was informed of the development of a UN human rights convention on persons with disabilities, they decided to join the negotiations because they saw a different opportunity to achieve their culturo-linguistic goals. Initially, the disability movement did not understand their decision since they had come to believe that SLPs saw themselves only as linguistic minorities (H3 2011).

The sustained involvement of WFD representatives during the drafting stages of the UNCRPD led to the Convention being the first international human rights treaty to include sign languages in their own right, mentioning them in 5 different articles (Article 2, 9, 21, 24, and 30) and to make reference to Deaf culture (Article 30.4). Indeed, “[...] no other disability group and their needs are mentioned overtly as precisely and often in the convention as the Deaf/Deafblind group” (Wilcox, Krausneker & Armstrong 2012:14).

After the adoption of the UNCRPD, WFD continued to influence the view of the UN towards sign languages and their users. Former WFD President and current EUD President Markku Jokinen attended the first UN Forum on Minority Issues in 2008 emphasising in his statement that ‘deaf sign language users’ [sic] should be recognised as linguistic minorities along with spoken language minorities (Haualand & Allen 2009). However, WFD’s – so far – on-off presence in the UN Forum on Minority Issues did not counterbalance their six years of attendance of the UNCRPD Ad Hoc meetings, which proved to be an excellent opportunity to raise the disability movement’s awareness about the status of SLPs. Raising awareness within language minorities will probably take as much time (p.c. Markku Jokinen 3 May 2012). It remains to be seen what effect being included in the UNCRPD has on other advocacy efforts to recognise SLPs as linguistic and cultural minorities.

3.2. Reception of the Convention by SLPs

SLPs’ self-identity (as either a culturo-linguistic minority group and/or a group of persons with disabilities) is a very complex issue. Responses to the question of

self-identity are in most cases biased by external factors (such as the fear to lose benefit payments and the influence of internalised oppression) and seldom addressed from an ontological point of view. There is thus no conclusive evidence on the view of SLPs on their disability status, although preliminary research points (also) to an underlying group identity and culture unrelated to disability categorisations (Batterbury 2012).

Because of this complex question of identity, reactions of SLPs to the adoption of the UNCRPD were equally varied. Some SLPs perceived it as an offence that they were included, whilst others appreciated the benefits of the treaty, but expressed reservations about whether the treaty would cover all the issues, which they knew arose from being a culturo-linguistic minority. This crucial issue is explored further below.

Some SLP associations apprehended that forming part of the UNCRPD meant that all their efforts to make their national governments understand the culturo-linguistic model had been jeopardised. They believed that WFD should have continued to pursue the linguistic minority pathway, and that WFD's energies might now be deflected to the disability direction.

In addition, other SLP associations, particularly those in the developing world, have not been able to develop opinions on this as a result of lack of access to information on the UNCRPD either because they do not have any information or the content of the information available is not understandable or legible (p.c. Michele Friedner 21 February 2014).

3.3. The UNCRPD articles and SLPs

3.3.1. Articles in the UNCRPD which mention sign languages or Deaf culture

All articles of the UNCRPD can be applied to SLPs but here only those will be mentioned that include sign languages or Deaf culture.

a) Recognition of sign languages

- The UNCRPD is the first international human rights treaty that recognises sign languages as languages on an equal par with spoken languages (Article 2).
- The UNCRPD guarantees the right to interact, obtain information, and express oneself in sign language, also in official interactions. As a means to guarantee this right reference is made to “accepting and facilitating the use of sign languages” and “recognizing and promoting the use of sign languages” (Article 21).

b) Education

- The UNCRPD urges State Parties to employ teachers who are qualified in sign language and deliver education in the most appropriate learning environment and the most appropriate languages (Article 24).

c) Interpreting

- The UNCRPD guarantees the right to professional sign language interpreters to facilitate accessibility (Article 9).

d) Deaf culture

- The UNCRPD states persons with disabilities are entitled to recognition and support of their specific cultural and linguistic identity, including sign languages and Deaf culture (Article 30).

3.3.2. Implementation of the articles

Implementation of the Convention very much depends on how State Parties interpret each of the articles, and on the extent to which SLPs national representatives can explain appropriate reading of the articles. In this regard, it is a huge challenge for both those representatives and their national governments to interpret and legally implement the articles, especially the innovative ones in terms of UN human rights legislation, e.g. the right to recognition and support of cultural and linguistic identity.

Batterbury (2012; 2013) states that apart from the question of interpretation and implementation, the inclusion of sign languages and Deaf culture in the UNCRPD nevertheless gives transnational approval to the Deaf political agenda (especially in the absence of other binding international instruments that include sign languages). Indeed, one of the key issues on this international Deaf political agenda is the recognition of sign languages and the UNCRPD has effectively been catalytic in this regard. In Hungary, ratification of the UNCRPD was one of the triggers for the legislative process leading to the passing of Act CXXV of 2009 on Hungarian Sign Language and the use of Hungarian Sign Language (EUD 2009). The terms of reference of the inquiry into the recognition of New Zealand Sign Language were closely informed by requirements of the UNCRPD (Human Rights Commission 2013). UNCRPD ratification or national governments' intention to ratify has been the impetus for the development of sign language recognition legislation in Russia, Finland, and Japan.

3.3.3. The 'Nothing about us, without us' principle

Although SLPs continue to face global exclusion from policymaking and subsequent legislative decisions, the UNCRPD used a different approach

concerning development, implementation and monitoring. It became the first international human rights treaty to be negotiated in direct dialogue with official national SLPs representatives. WFD, together with the Russian, Chilean and Korean SLPs associations were involved at the drafting stages of the UNCRPD from 2004 to 2006 (Batterbury 2012).

Currently, one of the 18 members of the Committee on the Rights of Persons with Disabilities is a hard of hearing person but the Committee does not include any SLPs. Half of the current members will end their term at the end of 2014, and the 7th Conference of State Parties will elect nine new members in June 2014. WFD called on their member organisations to nominate “deaf experts” [sic] as committee members (WFD 2014).

The level of involvement required for monitoring and implementing the UNCRPD represents a challenge for SLPs in most countries because of the very issues the UNCRPD was established to ameliorate: lack of access to information and education, lack of access to sign language interpreters, lack of capacity building, and others.

3.4. Weaknesses and challenges of the UNCRPD related to SLPs

Although the mention of sign languages and Deaf culture in the UNCRPD is certainly unique, there is a risk that significant weaknesses of the UNCRPD will be overlooked. These will therefore be addressed below.

3.4.1. Dominant individualist human rights framework

By aligning themselves with the disability movement, SLPs are restricted by the perspectives, priorities, and vocabulary of this movement. The most notable example of this is education. The concept of “inclusion” for example is a priority for the disability movement (Lawson 2007) and is enshrined as a core principle of the UNCRPD, but has been perceived with much caution and criticism by SLPs because it has led to the widespread closure of Deaf schools in favour of mainstreaming policies which have isolated Deaf children from each other and from their adult communities (Brennan 2003; Ladd 2003).

However, the main conceptual weakness of the UNCRPD is not only the disability framework but the fact that UN human rights instruments in general and thus also the UNCRPD are rooted in a dominant *individualist* human rights framework⁶. Although the UNCRPD appears to be an example of a group-specific

⁶ This weakness is also identified by Disability Studies scholars who state the hegemonic North determines the constitution of human rights and who perceive the UNCRPD as part of this hegemony because of its adoption of Northern conceptualisations of disability rights (Meekosha & Soldatic 2011).

treaty (Mégret 2008), the protected group is that of persons with disabilities, whose priorities differ in some cases from SLPs' priorities (see 3.4.3). Moreover, the "community" as used in the UNCRPD refers to the able-bodied group in which people with disabilities are expected to participate and integrate. The UNCRPD is externally and individually focused, on preventing individuals' discrimination by State Parties and ensuring individuals' access to majority societies by *individual* measures such as reasonable accommodation. The UNCRPD only uses the term "Deaf community" in Article 24.3(b): "Facilitating the learning of sign language and the promotion of the linguistic identity of the Deaf community". Even so, its use is still situated within an individualistic human rights framework, i.e. rights held by individuals within the group (the deaf community) and not by the group as a whole.

This individualist framework does not offer opportunities for a group-based rights approach for SLPs and for a deeper understanding of the crucial differences between SLPs as linguistic and cultural minorities and groups of persons with disabilities (Batterbury, Ladd & Gulliver 2007). This is especially relevant when considering educational issues as well as the protection of SLPs from harmful medical practices and the safeguarding and promotion of sign languages and SLPs' cultures, customs and traditions (Emery 2010; 2011). The next parts will illustrate this.

3.4.2. Absence of cultural dimensions

Because the CPRD's intrinsic external focus, it is not concerned with the quality of lives *within* a group, despite the fact that the quality of individuals' lives is very much dependent on the quality of the collective lives of a group. SLPs, whose languages and cultures have been damaged by centuries of oralism and who face continuing threats, are seeking much-needed internal reconstruction and revitalisation of their communities (Ladd 2003). This includes the right of SLPs to be born, to acquire and maintain their languages⁷, to establish and control their own schools, to practice, develop and safeguard their cultures, to set up national heritage museums, Deaf TV programming and Deaf Studies departments, and so on. In this respect documents such as the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) which explicitly deals with a wide range of ways in which minority cultures should be protected and promoted, and the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) might offer a model nearest to SLPs' requirements (Ladd 2007; 2013).

⁷ While the UNCRPD does not overtly restrict this, it provides this right from an individualist human rights framework and not as a right, which is held by SLPs as a group.

3.4.3. Interpretation and implementation of the UNCRPD

a) Article 24 (Education)

Article 24 is probably the most controversial article of the UNCRPD for SLPs, given that education has long been the primary battleground in the fight for their rights. As for any linguistic and cultural minority, the quality of education is crucial for the future health of the community as a whole.

The article on education must be read in two parts. 24.1. states “State Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, State Parties shall ensure an inclusive education system at all levels [...]”.

Article 24.2. focuses on the measures to realise this right and emphasises “reasonable accommodation of the individual’s requirements” (24.2(c)), “effective individualized support measures” in environments that “maximize academic and social development, consistent with the goal of full inclusion” (24.2(e)).

During the negotiations, the World Federation of the Deaf lobbied extensively for the rights of SLPs to maintain the existence of Deaf schools, for bilingual education in sign language environments and for ensuring that Deaf children were not isolated in mainstream education and prevented from learning sign language (Batterbury 2012; UN Enable 2005a; b). They also argued that “the Deaf” [sic] are a minority group and Deaf children and adults suffer linguistic and cultural genocide every day all over the world (Jokinen 2005). For these efforts, some disability groups criticized WFD. In the end, the need for two more separate paragraphs was acknowledged by the State Parties, although the formulation turned out not to be as precise as WFD had originally desired because the negotiating parties saw their demands as exceptional to the general principle of educational ‘inclusion’ (Batterbury 2012). Also, because of the international character of the treaty the paragraphs had to be written in generalised language to allow State Parties to develop their own legislation (p.c. Markku Jokinen 6 March 2013)⁸. These paragraphs became parts 3 and 4 of Article 24.

Article 24.3(a) therefore states that State Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community (24.3). To

⁸ Upon ratification, the UK government entered a reservation on the education clause to be able to carry on having ‘special’ schools. This might facilitate the continuance of specialist Deaf schools despite the on-going UK trend for their closure (Batterbury 2012).

this end, State Parties shall take appropriate measures to facilitate “the learning of sign language and the promotion of the linguistic identity of the Deaf community” (24.3(b)) and ensure “that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development” (24.3(c)).

Thus, while parts 1 and 2 emphasise the right to full inclusion based on individualised support measures, parts 3 and 4 come closer to SLP communities’ requirements by leaving some room to develop policies other than those promoted by inclusive education. Also, if article 24 is used in conjunction with articles 3, 21 and 30 it could be made clear that the articles are interrelated, thus offering the opportunity for a ‘Deaf-friendly’ reading of article 24.

However, the implementation of the UNCRPD will very much depend on how it is interpreted by State Parties and in this respect SLPs’ concerns about ‘loaded’ interpretations of the article by governments and policy makers are very much justified. For example in Flanders (Belgium) Article 24 of the UNCRPD was the impetus for the Flemish government to allow sign language interpreters in kindergarten, while the demands of the Flemish SLP community to structural bilingual education from kindergarten have not yet been met.

The responsibility lies with SLPs representative organisations to explain the different readings and parts of Article 24, and try to influence government policies. However, given that these are already heavily entrenched in the ideologies of inclusion (which for deaf children in most cases means individual mainstreaming) means that there is a real possibility that article 24 will simply enshrine these policies in law.

b) Absence of Bioethical Protection

Article 10 states that “[...] every human being has the inherent right to life” and that State Parties shall take all necessary measures to ensure its effective enjoyment by persons with disabilities. Traditionally, law applies the ‘right to life’ to humans already born (e.g. the right not to be killed), rather than to an embryo not yet born (i.e. the right of this embryo to be born). Using the ‘right to life’ of the unborn raises moral questions as to whether a foetus has rights over that of the woman carrying it. However, the right to be born raises questions as to when a foetus becomes ‘human’. Traditionally, law has not afforded foetuses human rights because they are not human (Bryan 2008), and as to whether anybody really has a ‘right’ to be born. The current state of the law is an effective minefield when it comes to genetics and the selection on the basis of screening

out disability, and the UNCRPD does not touch on this. Indeed, its silence on bioethical issues, Pre-Implantation Genetic Diagnosis (PGD) and genetic interventions may “come to be regarded as its greatest failing” (Kayess & French 2008:29). This silence is all the more striking given one of the nine general principles of the UNCRPD is “Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity” (Article 3 (d)).

The issue of PGD and genetic intervention is crucial for SLPs communities because it can be said to have as its ultimate aim the elimination of SLPs as part of human diversity (EUD 2012). In the UK the Human Fertilisation and Embryology Act (HFEA) was adopted in 2008. Clause 14(4) can be interpreted as the prohibition of the selection of a Deaf embryo over a non-Deaf one. Activism in and outside the UK attempted to amend the Bill but in the end they only achieved that a reference to Deafness was removed in the explanatory notes and the Act passed with clause 14(4) intact (Bauman & Murray 2010). The Act was adopted before the UK ratified the UNCRPD (2009), but after signature (2007).

c) Interpretation of Article 15 (Freedom from torture or cruel, inhuman or degrading treatment or punishment) and 17 (Protecting the integrity of the person)

Article 17 reads: “Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others”. During the 8th session of the Ad Hoc Committee, attempts were made to expand this article to include regulations about the treatment of persons with disabilities against their will⁹. The concern of the disability movement however, was that in attempting to regulate involuntary treatment¹⁰, it authorized such interventions, which would be against the very spirit of the Convention. In the end it was decided not to expand the article and limit it to the one paragraph it consists of now (Lawson 2007). The article can be read together with Article 15, which states that “[...] no one shall be subjected without his or her free consent to medical or scientific experimentation”. Still, the language of articles 15 and 17 again leaves room for interpretation and implementation of the articles will highly depend on this.

4. Conclusion

⁹ An example of this would be forced cochlear implants on children who are Deaf or hard of hearing, the fitting of leg braces for people who prefer a wheelchair, or the forced administration of anti-depressant or sedative drugs or the use of electro-convulsive therapy on people with various kinds of psychological or neurological conditions (Lawson 2007).

¹⁰ E.g. minimise it through the active promotion of alternatives, undertake it only in exceptional circumstances in accordance with procedures established by law and with the application of legal safeguards, undertake it in the least restrictive setting possible with the best interests of the person taken fully into account.

Sustained involvement of the World Federation of the Deaf in the UNCRPD's negotiations led to the UNCRPD being the first international human rights instrument delivering some of the main priorities on SLPs' political agenda. In practice, though, its implementation will very much depend on the interpretation of the specific articles by State Parties and the extent to which SLPs are (equipped to be) involved in the national implementation and international monitoring process. Therefore, it is crucial to invest in SLPs capacity building so that the 'nothing about us without us' principle, which was instrumental in developing the Convention, does not remain hollow.

This article further highlighted some possible weaknesses and challenges of the UNCRPD for SLPs, mainly the dominant individualist human rights framework and the absence of cultural dimensions, which leads to a lack of opportunities for a group-based rights approach for SLPs and does not allow for a deeper understanding of the crucial differences between SLPs and groups of persons with disabilities. SLPs representative organisations are burdened with the difficult task of guiding their national governments towards meaningful implementation of the UNCRPD while at the same time continuing their struggle for legal recognition as linguistic and cultural minorities.

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Biography

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