

CRPD - DAY OF GENERAL DISCUSSION ON
ACCESSIBILITY

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ATLAS COUNCIL

(Redefining disability)

Accessibility to the social environment and the
problem of unlawful reservations to article 29 of the
Convention

Valerie KARR, PhD, Executive Director

1. DISABILITY – It is all about Accessibility!

Discussions about disability rights are often framed as a discussion about ACCESSIBILITY.

Indeed no matter what aspect of the rights of persons with disabilities that you take, you invariably will be confronted with the problem of BARRIERS, be they natural or man-made that prevents persons with disabilities from enjoying their human rights that others take for granted in equal terms with the other members of society.

It is true that persons with disabilities have impairments that other members of the society do not have. But in human societies these impairments have the potential to limit their ability to integrate fully in the society only when they interact with the BARRIERS.

If societies make an effort to remove the BARRIERS we easily can see that the impairments become no longer an issue. Indeed the history of civilization has always been a history of removing BARRIERS that limited the ability of the human being to realize his potential to the fullest possible. Human being were less able to realise themselves, when they had none of the wonders of modern world from airplanes to the internet.

If centuries ago, sending a communication from Europe to America was a painful exercise, today human beings are able to communicate by email live!

If centuries ago, it took months before Christopher Colombo discovered America, today it's a matter of a couple of hours to reach the same destination from Europe.

Therefore, DISABILITY is a matter of ACCESSIBILITY by removing BARRIERS.

2. ACCESSIBILITY IS IN THE CENTRE OF THE DICHOTOMY “Medical model vs. Social Model”

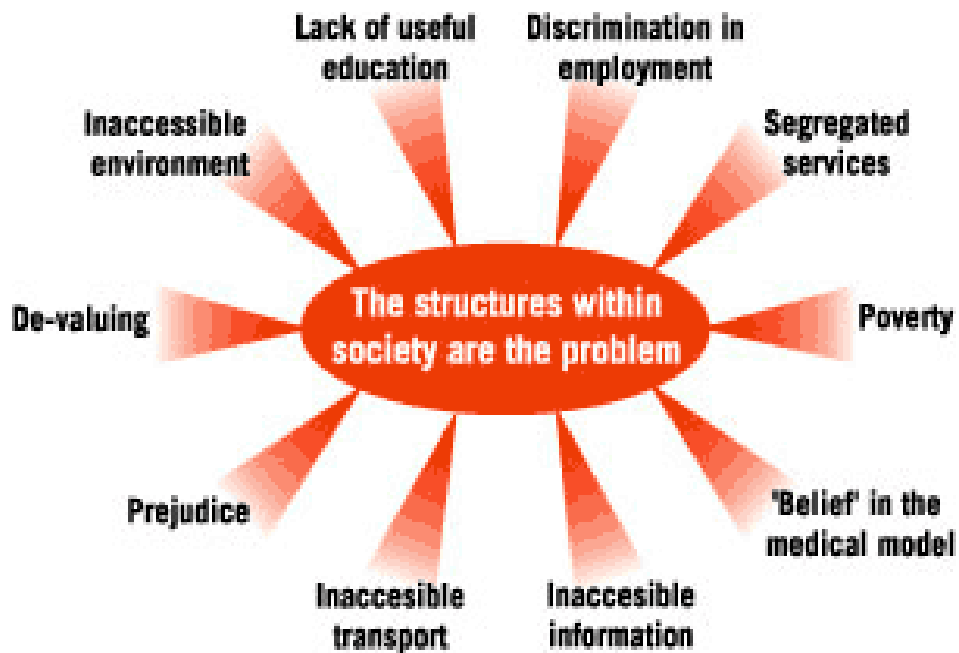
The problem of ACCESSIBILITY is also at the centre of the dichotomy between the medical model and the social model of disability

The Medical and Social Model Thinking



Figure 1. Effects of medical model thinking.

Figure 2. Problems as perceived by 'social model' thinking



**Disabled people as active fighters for equality
working in partnership with allies.**

Source: British Film Institute. *'Medical model' vs. 'social model'*.

Whereas the Medical Model sees the IMPAIRMENTS as the problem, and therefore view as solutions: doctors, charity (benefits Agencies), Special Schools, Training centres etc.

The social Model rightly sees the problem in the societal BARRIERS that need to be removed to allow Persons with Disabilities ACCESS to the GOODS THAT OTHERS TAKE FOR GRANTED.

3. The Right to vote as a GOOD THAT OTHERS TAKE FOR GRANTED

Among the many goods that other members take for granted is the right to participate in political and public life, in particular the right to vote and being elected to public office.

Of the importance of this right the UN Committee on Human Rights state in its General Comment 25:

“The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.” (Emphasis added)

“States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.”¹

It follows from these Human Rights Committee’s remarks, that the right to vote is often restricted including on account of the *disability* of a person.

From this point of view it can be considered that the right to vote and more broadly to participate in political and public life is part of the social environment that others take for granted. Yet for persons with disabilities, enjoying this good is often a question of removing BARRIERS, in other words it is a question of ACCESSIBILITY.

¹ General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25). 12/07/1996. CCPR/C/21/Rev.1/Add.7, General Comment No. 25. (General Comments.

4. RESERVATIONS TO ARTICLE 29 of the CONVENTION AS INVALID *AB INITIO*

Under Article 46 Reservations incompatible with the object and purpose of the Convention are not permitted.

A number of states parties have made reservations to the Convention. Some of them have made generic reservations, others article specific.

An example of a generic reservation is the one made by the Islamic Republic of Iran:

“... with regard to Article 46, the Islamic Republic of Iran declares that it does not consider itself bound by any provisions of the Convention, which may be incompatible with its applicable rules.”²

Since the reservation applies to any provision of the convention it is more obvious to think it would run against the purpose and object of the Convention.

A number of states objected to these generic reservations as being incompatible with article 46 of the Convention.

Belgium one of such countries stated the following:

“Belgium has examined the declaration made by the Islamic Republic of Iran when it acceded to the Convention on the Rights of Persons with Disabilities. The vagueness and general nature of the reservation made by the Islamic

² Islamic Republic of Iran, Declaration made at the time accession, 23 October 2009.

Republic of Iran, which does not feel itself bound by any of the provisions of the Convention that are deemed potentially incompatible with Iranian laws, leaves open the extent of the commitment of the Islamic Republic of Iran to the Convention and therefore raises serious doubts about its commitment to fulfil its obligations under the Convention. Reservations of such unspecified nature may contribute to undermining the bases of international human rights treaties. This reservation should therefore be considered as being incompatible with the object and purpose of the Convention. Belgium recalls that under article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty is not permitted. This objection shall not preclude the entry into force of the Convention between the Islamic Republic of Iran and Belgium.”³

It is however more difficult to prove that a reservation runs against the purpose and object of the Convention when the reservations are made in relation of a specific article. Because it involves defining whether or not the derogated provision is so fundamental that represents the very purpose and object of the Convention.

For example Malta has made the following reservation to article 29 of the Convention:

“(b) Pursuant to Article 29) a) (i) and (iii) of the Convention, while the Government of Malta is fully committed to ensure the effective and full participation of persons with disabilities in political and public life, including the exercise of their right to vote by secret ballot in elections and referenda, and to stand for elections, Malta makes the following reservations:

With regard to (a) (i):

³ Belgium, *Objection to the declaration made by the Islamic Republic of Iran upon accession, 28 June 2010.*

At this stage, Malta reserves the right to continue to apply its current electoral legislation in so far as voting procedures, facilities and materials are concerned.

With regard to (a) (iii):

Malta reserves the right to continue to apply its current electoral legislation in so far as assistance in voting procedures is concerned."⁴

The question is therefore whether or not this reservation would bind other states parties when Malta chooses to become a party to the Convention.⁵

This could only happen if the reservation were considered as made against a provision embodying the purpose and object of the Convention.

i) The Right to vote as part of the purpose and object of the Convention

It is our submission, that the right to vote is part of the purpose and object of the Convention, not *per se*, but in view of the fact that it embodies a fundamental provision of the Convention, the principle and right of accessibility. Since granting a right to vote represents granting access to one of the aspects of the social environment, reservations against the provision codifying such an important right would be contrary to the purpose and object of the convention, which is prohibition of discrimination, provision of reasonable accommodations and accessibility to persons with disabilities.

⁴ Malta, *Interpretative statement and reservation made upon signature*, 30 May 2007.

⁵ Malta has signed the Convention, but has not yet ratified it. International Law requires that a state that has made a reservation at the time of signature must reconfirm it at the time of ratification to be valid.

Therefore reservations to article 29 of the Convention should be considered unlawful and invalid *ab initio* not producing the effects expected by the state party entering them.