



Rehabilitation International's position paper on the Right to [Re]habilitation

1 Definitions

For the purpose of this paper, the following definitions are used:

Habilitation	To enable, or make able
Rehabilitation	To restore condition, operation or capacity

The defining of terms in this paper is not meant to have legal implications.

In some countries the term habilitation is used to describe the wide range of ways used to assist in enabling persons who are born with disabilities. Their needs are often different from the needs of people who acquire disabilities through e.g. an accident or a disease. In this paper, the term (re)habilitation is referring to rehabilitation as well as habilitation.

2 Summary

Rehabilitation and habilitation go far beyond the health field and embraces a wide range of issues including education, social counseling, vocational training, transportation, accessibility and assistive technology.

The intended goal of [re]habilitation would best be amplified under a separate article within the new UN Convention.

The UN Convention should be a “visibility” project that will both highlight the rights and place of people with disabilities within society and “mainstream” disability into the human rights regime.

The Ad Hoc Committee is urged to give the crafting of a separate article on the Right to [Re]habilitation its highest consideration.

3 Commentary

For most people with disabilities, access to adequate (re)habilitation is a condition for integration into society and participation in the communities in which they live. Without rehabilitation many people with disabilities would be isolated from society, their community and even their family. While (re)habilitation is often thought to include only medical aspects, the reality is that it goes far beyond the health field and embraces a wide range of issues.

It is crucial that the concept of (re)habilitation be separate from that of health care and that a distinct article is devoted to (re)habilitation in the convention. Developing a separate article does not necessarily entail the creation of new rights; it would simply delineate a concept that is already included in existing instruments. Dedicating an article to the issue would advance

international understanding of disability and (re)habilitation through a rights-based perspective, and would provide a clear reference point for policy-making.

This paper aims to engage in a positive discussion with all the stakeholders participating in the negotiations, bearing in mind that we all work for the same aim: the benefit of people with disabilities. For this reason, in this essay, alternatives are put forward, e.g. the approach of including (re)habilitation in each and every article. However, as explained, this exercise proves to be quite arduous and certainly not exempt from omissions. It is our conclusion is that a stand-alone article on (re)habilitation is necessary.

Legal background

Paragraph 23 in the Definitions section of the UN Standard Rules defines [re]habilitation as:

a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence... The rehabilitation process **does not** involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal-oriented activities, for instance vocational rehabilitation.¹

The term [re]habilitation is broad in scope and employs a cross-disciplinary approach to empowering people with disabilities. Rule 3 of the Standard Rules elaborates that the purpose of [re]habilitation never changes faces no matter what particular service mechanisms—vocational, educational, medical, etc.—enhance and facilitate the self-development and autonomy of persons with disabilities, calling on States to “ensure the provision of rehabilitation services to persons with disabilities in order for them to reach and sustain their optimum level of independence and functioning.”²

With this goal in mind, it is necessary to consider the best place for [re]habilitation within the new UN treaty elaborating the rights of persons with disabilities. Thus far, members of the Working Group have considered several approaches: placing the right to [re]habilitation within the right to health (as is composed in Draft Article 21), placing [re]habilitation within various rights (i.e. the right to work or the right to education) as it applies to those rights, or placing it as a stand-alone article.³ This paper examines in brief these approaches and suggests that the intended goal of [re]habilitation would best be amplified under a separate article.

Must [Re]habilitation fall under the Right to Health?

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1. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*. G.A. 85th Plenary Meeting, December 20, 1993, U.N. GAOR, U.N. Doc. A/RES/48/96, available at <http://www1.umn.edu/humanrts/instr/ee/disabilitystandards.html>
 2. *Id.*
 3. Reference to any “Draft Article” and Working Group approaches in drafting, unless otherwise indicated, come from both the proposed articles and their respective footnotes in the *Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, adopted by members of the Working Group of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights of Persons with Disabilities in New York on January 16, 2004.

The misconception is that a discussion of [re]habilitation *belongs* under the right to health. While it is true that even the World Health Organization has adopted an expansive definition of health,⁴ in international (and certainly domestic)⁵ legal practice, [re]habilitation has not been isolated into a primarily health-related issue. In policy terms, perhaps the best way to envision the purpose and starting point of [re]habilitation in the life of a person with a disability is the place where the medical profession ends and the process of acclimating to one's disability and maximizing one's capacity in a full range of life activities begins.

International legal sensibilities of the right to [re]habilitation did begin with a health-based conception, but as the understanding of disability itself has evolved from a medical to a rights-based perspective, so has the understanding of the purpose and place of [re]habilitation. To be sure, in General Comment No. 5 on the ICESCR, the disabled individual's right to have access to [re]habilitation services is affirmed under paragraph 34 linked with a discussion on the right to health, but the language of the affirmation of this distinctive right to [re]habilitation emphasizes the departure from the old conception of [re]habilitation that was marked in Rule 3 of the Standard Rules.⁶ Rule 3 has not only separated [re]habilitation as a stand-alone right but has refocused its goal. According to both its definition in paragraph 23 of the Standard Rules and the language of Rule 3, [re]habilitation should not be understood as a medical service that is guided by the parameters of the doctor-patient relationship but as a unique tool going far beyond the health field and consisting of a wide range of services that empower the individual, placing the individual in control of both his/her own [re]habilitation plan but also a shaper of national and international [re]habilitation policy.

Specific international instruments have moved us several steps forward in advancing this more progressive comprehension of [re]habilitation—taking it, and thus disability itself, out of the medical context and giving the issue a rights-driven focus. For instance, the construction of Article 23.3 of the Convention on the Rights of the Child—the first binding instrument in the UN human rights regime specifically mentioning disability—distinguishes between health care services and [re]habilitation services.

4. Quoting from the University of Minnesota Human Rights Library's website on the WHO and the right to adequate health: "The WHO defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' (<http://www.who.int/en/>).” "The Right to Adequate Health" in *Human Rights Library*. University of Minnesota, n.d. available at: <http://www1.umn.edu/humanrts/edumat/studyguides/righttohealth.html#biblio2>

5. For instance, in the U.S., federal [re]habilitation policy (overseen by the Rehabilitation Services Administration) is placed under the jurisdiction of the Department of Education, helping to underscore that [re]habilitation is a broad policy issue linked to self-development and lifelong learning, not a medical matter merely confined to health-related policies and programs.

6. Paragraph 34 of General Comment No. 5 (ICESCR) states that:

According to the Standard Rules, "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society". The right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services - including orthopedic devices - which enable persons with disabilities to become independent, prevent further disabilities and support their social integration. **Similarly, such persons should be provided with rehabilitation services which would enable them "to reach and sustain their optimum level of independence and functioning"**. All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity.

Ref. General Comment No. 5 (1994): Persons with Disabilities, U.N. ESCOR, 11th Sess., Supp. No. 2, at 102, U.N. Doc. E/1995/22 (1995), available at <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/4b0c449a9ab4ff72c12563ed0054f17d?OpenDocument>

The language does *not* state that disabled children shall have access to “health and [re]habilitation services” but rather elaborates that the child shall have access “to education, training, health care services, rehabilitation services, [etc.]...”⁷ The language in this article’s subparagraph seeks to highlight [re]habilitation services as a separate system and type of empowering mechanism in the lives of children with disabilities that should be set apart from medical “treatment” or other such connotations. But, the language also sets apart [re]habilitation from other linked issues such as education and vocational training. By focusing exclusively on [re]habilitation, Rule 3 of the Standard Rules thus brings to fruition a slow but progressive shift in the specific elaboration of rights guaranteed to people with disabilities and in the positive perception of disability issues that was evolving in the international community over the last few decades.

Other international and regional instruments have contributed to this de-medicalization of the right to [re]habilitation as elaborated so well in Standard Rule 3. ILO Convention No. 159 puts the right to [re]habilitation in a purely vocational context, emphasizing those elements of [re]habilitation policy that pertain to the right to work, creating space for positive action measures, and stressing the need for people with disabilities to steer their own [re]habilitation plans and for their representative organizations to have a strong hand in setting domestic [re]habilitation policy agendas.⁸

Key regional instruments have also given a broader scope to the right to [re]habilitation. Perhaps the oldest regional instrument with specific reference to both disability and recognition of the right to [re]habilitation (specified in Articles 1 and 15) as separate and distinct from both the right to health (Article 11) and the right to vocational training and guidance (elaborated in Articles 9 and 10), and other related services is the European Social Charter whose Preamble proclaims that: “[d]isabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.”⁹ The Charter’s language creates space for the progressive, cross-disciplinary approach to both disability and [re]habilitation that have shifted these issues from a purely medicalized treatment-based conception (often codified under the right to health) to a rights-driven understanding adopted in subsequent regional and international instruments—from the Council of Europe’s own subsequent recommendations on disability policies¹⁰ to the adoption of the Standard Rules and movement toward this convention.

7. Article 23.3 of the CRC states:

Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives **education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities** in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

Ref. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), entered into force on September 2, 1990, *available at* <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.

8. *Convention Concerning Vocational Rehabilitation and Employment of Disabled Persons (ILO No. 159)*, June 20, 1983, UNTS 1401, at 235, entered into force on June 20, 1935, *available at* <http://www.austlii.edu.au/au/other/dfat/treaties/1991/18.html>

9. *European Social Charter*, October 18, 1961, UNTS 89, at 529, entered into force on February 26, 1965, *available at* <http://www.hrea.org/erc/Library/hrdocs/coe/social-charter.html>

10. The Council of Europe’s two most recent recommendations on disability are *Recommendation 1185 on Rehabilitation Policies for Disabled (1992)* [*available at* <http://www.hrea.org/learn/guides/disabilities.html>] and *Recommendation (92)6 on a Coherent Policy for People with Disabilities (1992)* [*available at* <http://cm.coe.int/ta/rec/1992/92r6.htm>].

Thus, given these international and regional developments, linking [re]habilitation exclusively to health now would be a step backward in advancing international understanding of disability through a rights-based perspective—the admitted purpose of this very convention.

Why A Separate Article? Couldn't [Re]habilitation fall under another Right?

Indeed, [re]habilitation is a broad enough issue to fall under several articles. Its vocational emphasis suggests a natural marriage to the Right to Work article under perhaps a special “training”-related clause. Its definitional components—i.e. specific mention of basic skills training, assessments, guidance, and special courses—laid out in Rule 3 of the Standard Rules suggest a linkage to the Right to Education. [Re]habilitation’s deeper purpose in the lives of people with disabilities—to provide the tools to enhance living *independently*—perhaps calls for its *articulation* also in Draft Article 15 on Living Independently and Being Included in the Community. After all, the very objective of Draft Article 15—the notion that States must “*take effective and appropriate measures to enable* persons with disabilities to live independently and be fully included in the community”—cannot be achieved without State Parties ensuring the provision of vital [re]habilitation services that will facilitate the self-empowerment and inclusion of individuals with disabilities within society.

However, perhaps the two strongest reasons to separate out [re]habilitation into an individual and distinct article in this historic treaty stem from the fact that [re]habilitation encompasses so many policy issues. Setting apart [re]habilitation as its own article both highlights its importance as a *human right* and provides greater clarity to what is an extremely cross-disciplinary issue. If [re]habilitation is not mentioned separately, then drafters will either have the burden of ensuring that it is mentioned in every article that might have relevance to it or face the consequence of [re]habilitation being understood as an exhaustive issue only pertaining to a limited scope of policy fields—i.e. health or work or education—depending on where in a particular article its mention might be forgotten.

In the comprehensive study on disability within the United Nations human rights regime, *Human Rights and Disability*, Gerard Quinn and Theresia Degener note the necessity of this Convention as a “visibility” project that will both highlight to the rights and place of people with disabilities within society and will finally “mainstream” disability into the human rights regime.¹¹

An essential part of this “visibility” project is to recognize certain rights and policy processes that enhance the autonomy and self-development of people with disabilities; for people with disabilities, [re]habilitation is at the core of exercising the individual’s autonomy and maximizing participation in society and, therefore, must be a necessary component of the “visibility” project itself.

By crafting the right to [re]habilitation as a new and separate article, we will best be able to make visible its critical role in the lives of people with disabilities that States must acknowledge and ensure. We will also maximize its cross-disciplinary applications in the exercise of other important rights—i.e. the Right to Work, etc.—that will be recognized in the Convention.

11. Gerard Quinn and Theresia Degener et al. “Chapter 13 – Expanding the System: The Debate About a Disability-Specific Convention” in *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*. United Nations, 2002.

Hence, while it is acknowledged:

- 1) that at times [re]habilitation has been linked to the Right to Health, and;
- 2) that there are several (if not many) places where the right to [re]habilitation can be codified in this Convention;

we still find that the most appropriate place for the elaboration of this right would be in a stand-alone article. We conclude this both on the basis of the necessity to reform our own understanding of disability, keeping pace with new social and non-medical ideologies about disability within the human rights discourse, and on the basis of the benefits in terms of visibility and clarity a stand-alone article would provide. The Ad Hoc Committee is thus urged to give the crafting of a separate article on the Right to [Re]habilitation its highest consideration.

Mariyam A. Cementwala, who is working with Professor Gerard Quinn, was the primary contributor to this paper.