



NIHRC Jurisdictional recording temple: example of Article 19

Article 19: Living independently and being included in the community

Text of the Convention: Living independently

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

This article must be interpreted with due regard to the preamble and general articles of application 1 to 9. The article supports the realisation of other CRPD rights: 12, 14, 23 and 26

UNCRPD Committee reporting guidelines

Article 19 - Living independently and being included in the community

This article recognizes the right of persons with disabilities to live independently and to participate in the community.

States Parties should report on:

- 1 The existence of available independent living schemes, including the provision of personal assistants for persons who so require
- 2 The existence of in-house support services allowing persons with disabilities to live in their community
- 3 The existence and range of options of residential services for living arrangements, including shared and sheltered accommodation which take into account the form of disability
- 4 The degree of accessibility for persons with disabilities to community services and facilities provided to the general population

Tripartite Typology

By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights

The obligation to respect –

States parties must refrain from directly or indirectly infringing on disabled peoples' enjoyment of the right to independent living. States must also refrain from policies that enforce discriminatory practices that may impact their right to independent living. The duty to respect also requires the State to take all positive actions necessary to protect the right. This consideration takes both the necessary action and uses the necessary resources to satisfy the duty requirements.

The obligation to protect –

States parties should adopt all appropriate legislation and other measures to prevent threats to the right to independent living of disabled people by state officials, as well as third parties. Protective measures could include careful monitoring of all settings where disabled people live or receive services, whether publicly or privately operated. Transitioning disabled people into community-living situations with appropriate supports and out of institutions would also constitute protective measures. Therefore, if the State should privatize a public service, it shall still remain responsible to satisfy a certain level of the right.

The obligation to fulfil –

States parties should adopt positive measures to ensure the enjoyment of the right to independent living and being included in the community. The duty to fulfil can be further divided into three key areas to facilitate, provide and promote the right to life. The State should identify problem areas and provide relief as well as create conditions that enable disabled persons to enjoy the right. Such as information campaigns on the services available to facilitate independent living and provide appropriate training for relevant staff.

International HR Standards General Comments from UN Committees

Article 19 equates the right to liberty with the right of persons with disability to live in and be a part of the community. It will operate as a prohibition on institutional models of supported accommodation for persons with disability, and require national investment in community based living options.

ICCPR → Article 9 Right to Liberty + General Comment No.8

Article 12 Freedom of Movement + General Comment No.27

Article 17 Right to respect for privacy and family life + General Comment No.16

CESCR, General Comment 5, Persons with Disabilities

ICESCR → Article 9 Right to Social Security

General Comment 19 → Right to Social Security Relevant Extracts below

1. Article 9 of the International Covenant on Economic, Social and Cultural Rights (the Covenant) provides that, 'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.' The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.

2. The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member;
(b) unaffordable access to health care;
(c) insufficient family support, particularly for children and adult dependents.

3. Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.

9. The right to social security includes the right not to be subject to arbitrary

and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies.

10. In interpreting these aspects, it should be borne in mind that social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy.

12. The social security system should provide for the coverage of the following nine principal branches of social security:

(h) Disability

20. In its general comment No. 5 ((1994) on persons with disabilities, the Committee emphasized the importance of providing adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost, or received a reduction in, their income, have been denied employment opportunities or have a permanent disability. Such support should be provided in a dignified manner¹⁷ and reflect the special needs for assistance and other expenses often associated with disability. The support provided should cover family members and other informal carers.

Footnote 17 Institutionalization of persons with disabilities, unless rendered necessary for other reasons, cannot be regarded as an adequate substitute for the social security and income-support rights of such persons, as well as rehabilitation and employment support, in order to assist persons with disabilities to secure work as required by articles 6 and 7 of the Covenant.

B. Specific legal obligations

43. The right to social security, like any human right, imposes three types of obligations on States parties: the obligation to respect, the obligation to protect and the obligation to fulfil.

1. Obligation to respect

44. The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to social security. The obligation includes, inter alia, refraining from engaging in any practice or activity that, for example, denies or limits equal access to adequate social security; arbitrarily or unreasonably interferes with self-help or customary or traditional arrangements for social security; arbitrarily or unreasonably interferes with institutions that have been established by individuals or corporate bodies to provide social security.

2. Obligation to protect

45. The obligation to protect requires that State parties prevent third parties from interfering in any way with the enjoyment of the right to social security. Third parties include individuals, groups, corporations and other entities, as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures, for example, to restrain third parties from denying equal access to social security schemes operated by them or by others and imposing unreasonable eligibility

conditions; arbitrarily or unreasonably interfering with self-help or customary or traditional arrangements for social security that are consistent with the right to social security; and failing to pay legally required contributions for employees or other beneficiaries into the social security system.

46. Where social security schemes, whether contributory or non-contributory, are operated or controlled by third parties, States parties retain the responsibility of administering the national social security system and ensuring that private actors do not compromise equal, adequate, affordable, and accessible social security. To prevent such abuses an effective regulatory system must be established which includes framework legislation, independent monitoring, genuine public participation and imposition of penalties for non-compliance.

3. Obligation to fulfil

47. The obligation to fulfil requires States parties to adopt the necessary measures, including the implementation of a social security scheme, directed towards the full realization of the right to social security. The obligation to fulfil can be subdivided into the obligations to facilitate, promote and provide.

48. The obligation to facilitate requires States parties to take positive measures to assist individuals and communities to enjoy the right to social security. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national social security strategy and plan of action to realize this right;³¹ ensuring that the social security system will be adequate, accessible for everyone and will cover social risks and contingencies.³²

49. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes, particularly in rural and deprived urban areas, or amongst linguistic and other minorities.

50. States parties are also obliged to provide the right to social security when individuals or a group are unable, on grounds reasonably considered to be beyond their control, to realize that right themselves, within the existing social security system with the means at their disposal. States parties will need to establish non-contributory schemes or other social assistance measures to provide support to those individuals and groups who are unable to make sufficient contributions for their own protection. Special attention should be given to ensuring that the social security system can respond in times of emergency, for example during and after natural disasters, armed conflict and crop failure.

51. It is important that social security schemes cover disadvantaged and marginalized groups, even where there is limited capacity to finance social security, either from tax revenues and/or contributions from beneficiaries. Low-cost and alternative schemes could be developed to cover immediately

those without access to social security, although the aim should be to integrate them into regular social security schemes. Policies and a legislative framework could be adopted for the progressive inclusion of those in the informal economy or who are otherwise excluded from access to social security.

Collating information on Article 19

Main elements of the article	Existing Evidence	Further research needed
Independent living/ accessibility/availability	*extract from the Policy Doc with reference to funding. * refer to PSI Report and use of statistics with particular reference to NIHE and accessible transport	
access to information, support services and social and community services/ equality and non discrimination	*extracts from the Policy Doc with reference to 'The Supporting People (SP) program,' and the 'Autistic Spectrum Disorder (ASD) Network Group.' *one paragraph from the Legal Opinion *one Paragraph from the UK State Report *extract from the OFMdfM Report with specific reference to the Northern Ireland Supporting People Strategy 2010 – 2015 and the Physical and Sensory Disability Strategy - 2011-2015	
Inclusion in the community	*extract from the UK State Report	

<p>Use of legislation/protection</p>	<p>*refer to policy doc and use of Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004, the Chronically Sick and Disabled Persons Northern Ireland Act 1978, the Health and Personal Social Services (Northern Ireland) Order 1972 and principally in the Carers and Direct Payments Act (Northern Ireland) 2002 (CDPA). *refer to legal opinion and social care legislation *one paragraph from the PSI Report with reference to transport and the DDA</p>	

How readily available are statistics in this issue area?

Department for Social Development
Northern Ireland Statistics and Research Agency (NISRA) -
The Northern Ireland Multiple Deprivation Measure (NIMDM) 2010
OFMdfM: Report of the Promoting Social Inclusion Working Group on Disability,(December 2009) – published in 2009 but the data and survey information dates from 2006.

Are there any circumstances particularly relevant to Northern Ireland?

Northern Ireland Audit Office report highlights: *"Within Northern Ireland, expenditure on learning disability services per head of population has been significantly lower than elsewhere in the United Kingdom and, as a result, progress in resettling patients has been much slower."*

Further research required

Action/result

Further research

Check PSI report recommendations

Check PAC report – NI Assembly on Long stay patients in Learning Disability Hospitals

Check out new UK legislation “Right to Control”

Bamford report → Equal Lives

Carers and Direct Payments Act (Northern Ireland) 2002

The Carers and Direct Payments Act (Northern Ireland) 2002 was implemented in two stages. It repeals the Personal Social Services (Direct Payments) (NI) Order 1996. The first stage which came into force in March 2003 made three main provisions. The Act allows Health and Social Services Trusts to provide personal social services to support carers directly. It gives them the right to an assessment of their own needs. Thirdly, Trusts are required to inform people of their legal right to a care assessment. The second stage of the Act, implemented in April 2004, widened the availability of Direct Payments. Since its implementation, Trusts have had the power to make Direct Payments available to more people.

The original legislation made Direct Payments available to disabled people over the age of 18 who were eligible for Social Services and deemed by the Trust as being willing and able to manage Direct Payments with as much assistance as necessary. The main changes that the new legislation brings are that Trusts have the power to make Direct Payments

- to disabled people (including 16-17 year olds) for services to meet their own assessed needs.
- to older people who get services from the Trust.
- to disabled people with parental responsibility for a child.
- to people with parental responsibility for disabled children.
- to carers (including 16/17 year olds) for services to meet their own assessed needs.

In addition, Trusts have a duty to make a Direct Payment, where someone who has been assessed as needing services requests a Direct Payment and meets the conditions for receipt of a Direct Payment.