

Lysbilde 1



Lysbilde 2

Topics

- Penal system issues
 - Insanity defense
- Child custody
- Children's rights
- Using international law

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Penal system

- CRPD Article 12
 - "Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."
- CRPD Article 14
 - "The existence of a disability shall in no case justify a deprivation of liberty."
 - "If persons with disabilities are deprived of their liberty... they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation."

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Penal system 2

- OHCHR Information Note on Persons with Disabilities in Detention
- “The recognition of legal capacity on an equal basis with others in all aspects of life has a bearing on the issue of criminal responsibility and the insanity defence clauses in many legal systems.”

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Implications

- If arrested or deprived of liberty for any reason, same rights as others
 - ICCPR Articles 9, 10, 14
 - UN Standard Minimum Rules on Treatment of Prisoners
- CRPD objectives and principles apply to detainees
 - "Individual autonomy including the freedom to make one's own choices"
- Protection against forced treatment applies equally in prison, since health care must be for the person's own benefit and not for convenience of third parties

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Insanity defense

- Should it be done away with?
 - Avoidance of responsibility – fair or unfair?
 - Inconsistent with equal legal capacity in principle
- Mens rea as sufficient
 - Is inability to control one's actions a disability issue? Should it be an excuse for crime?
- Can fairness in imputing criminal responsibility be an independent consideration?
 - Including disability as well as other reasons
 - Result should be acquittal

Child custody

- CRPD Article 23
 - "In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents."
 - "States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities."
- CRPD Article 22
 - "States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others."

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Implications

- Parents with psychosocial disabilities should be treated equally with other parents
- Is it discrimination to allow any psychiatric or health records to be used in custody proceedings?
- What kinds of support in child-rearing would be useful?

Children

- CRPD Article 7:
 - “Children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”
- CRPD Article 25:
 - “Provide ... early identification and intervention as appropriate”

Children 2

- CRPD Article 24:
 - “States Parties shall ensure that ... children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability.”
 - “... Reasonable accommodation of the individual’s requirements is provided”
 - “... Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion”

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Implications

- Children have the right to express their views on whether to use psychiatric drugs, and their views must be given some weight.
- We need to be cautious on "early identification and intervention"; note "as appropriate"
- Children should not be required to take psychiatric drugs as a condition for receiving an education.
- Reasonable accommodation and individualized supports should allow teachers to respond to needs of diverse learners.

Using international law

- UN treaties – treaty monitoring committees
 - Shadow reports
 - Individual complaints
- Special Rapporteur on Torture
 - Urgent appeals
 - Letters of allegation
- No need to be a lawyer, but useful to know the legal standards

Supportive institutions

- Office of the High Commissioner for Human Rights, www.ohchr.org
 - Information about all treaties, fact sheets
 - Liberty and Justice for Detainees Week
- Dialogue with human rights NGOs
 - Association for the Prevention of Torture
- User/survivor organizations need presence in Geneva

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A blue rectangular slide with a white title and a list of bullet points. The title is 'National level' in white text. Below the title is a horizontal white line. The list contains five items, each starting with a yellow circle. The first item is 'CRPD ratification'. The second item is 'Required consultations with organizations representing persons with disabilities (CRPD Article 4.3)', which has three sub-bullets: 'Implementation (e.g. law and policy reforms)', 'Candidate for monitoring committee', and 'Preparation of reports'. The fifth item is 'Interaction with national human rights commission or equivalent'.

National level

- CRPD ratification
- Required consultations with organizations representing persons with disabilities (CRPD Article 4.3)
 - Implementation (e.g. law and policy reforms)
 - Candidate for monitoring committee
 - Preparation of reports
- Interaction with national human rights commission or equivalent

Europe

- European Court of Human Rights
 - Dubious record on forced psychiatry but beginning to recognize most extreme deprivation of legal capacity as a human rights violation
- Committee to Prevent Torture
 - Visits psychiatric institutions among other places of detention
 - Has come out strongly against unmodified ECT
 - May be influenced by CRPD and Report of the Special Rapporteur on Torture