

UN Convention on the Rights of Persons with Disabilities 2007



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Key

Discrimination – treating a person or a particular group of people differently, especially in a worse way from the way in which you treat other people due to their disfigurement

Legislation – a law, or set of laws

Disfigurement – a physical change, for example a scar, which alters a person's appearance

Legally binding – a valid agreement enforceable under the law

Social model – a model that believes that people are disabled by barriers in society rather than their physical disability

Medical model – a model that believes people are disabled by their impairments or differences

Reasonable accommodations – means necessary and appropriate modifications or adjustments which don't impose a disproportionate burden to ensure a person with a disability can enjoy or exercise their rights on an equal basis with others

Harassment – unwanted behavior which is offensive, intimidating or humiliating

Am I better protected through the **UN Convention** or **Human Rights** protections?

Disability Law – UN Convention on the Rights of Persons with Disabilities

Provided that a State Party (i.e. a country that is part of the United Nations) has ratified the Optional Protocol to the “**UN Convention on the Rights of Persons with Disabilities**” or “**UNCRPD**”, an individual/face equality activist can make a complaint to the UN Committee on the Rights of Persons with Disabilities (the “**Committee**”). The UNCRPD is therefore, in theory, the instrument which provides greater scope to enforce the rights of persons with facial disfigurements.

However, the following limitations must be recognized:

- many countries have not ratified the Optional Protocol to the UNCRPD
- if the Committee determines that there has been a violation of the UNCRPD, it will only make public recommendations. The Committee will not take any legal action, and recommendations that are made are often ignored
- State Parties are responsible for monitoring their own compliance with UNCRPD. Ease of enforcement under the UNCRPD will depend on the willingness of the relevant State Party to cooperate with such an action

Human Rights Legislation – The UN Declaration of Human Rights

Declarations such as The UN Declaration of Human Rights “**the UNDHR**” are not legally binding for governments that have signed them but instead serve as a set of guidelines.

It follows that individuals and human rights groups cannot enforce rights directly under the UNDHR, which instead creates principles to be interpreted and implemented by national legislation (e.g. the Human Rights Act 1998). It is this national legislation that will carry greater weight as a means of protecting the rights of individuals with facial disfigurement.



Must people with disfigurements **identify as ‘disabled’** to access protections under the Convention on the Rights of Persons with Disabilities?

Yes.

Paragraph 2 of Article 1 of the UNCRPD provides a very open description or non-definition of disabilities stating that 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 definition reflects a social model of disability rather than a medical model. This is consistent with the UNCRPD being an expression of human rights.

Does the Convention on the Rights of Persons with Disabilities protect **citizens with disfigurements**?

Yes.

By way of example, Article 18 of the UNCRPD concerns the rights of disabled persons' "*Liberty of movement and nationality.*" Article 18(1) provides that State Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others.

Does the Convention on the Rights of Persons with Disabilities protect **customers with disfigurements**?

Yes.

There is no specific, general protection for customers or consumers with disabilities under the UNCRPD. However, there are various Articles which provide some level of protection. For example, State Parties:

- have general obligations to prohibit discrimination on the basis of disability (Article 5(1)), to provide effective legal protection against discrimination (Article 5(2)) and to take steps to ensure that reasonable accommodation is provided (Article 5(3))
- must recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities enjoy access to films, theatre and other cultural activities (Article 30(1)(b)) and enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance (Article 30(1)(c))
- must take appropriate measures to ensure that persons with disabilities have access to sporting, recreational and tourism venues (Article 30(5)(c))



Does the Convention on the Rights of Persons with Disabilities protect **job applicants with disfigurements**?

Yes.

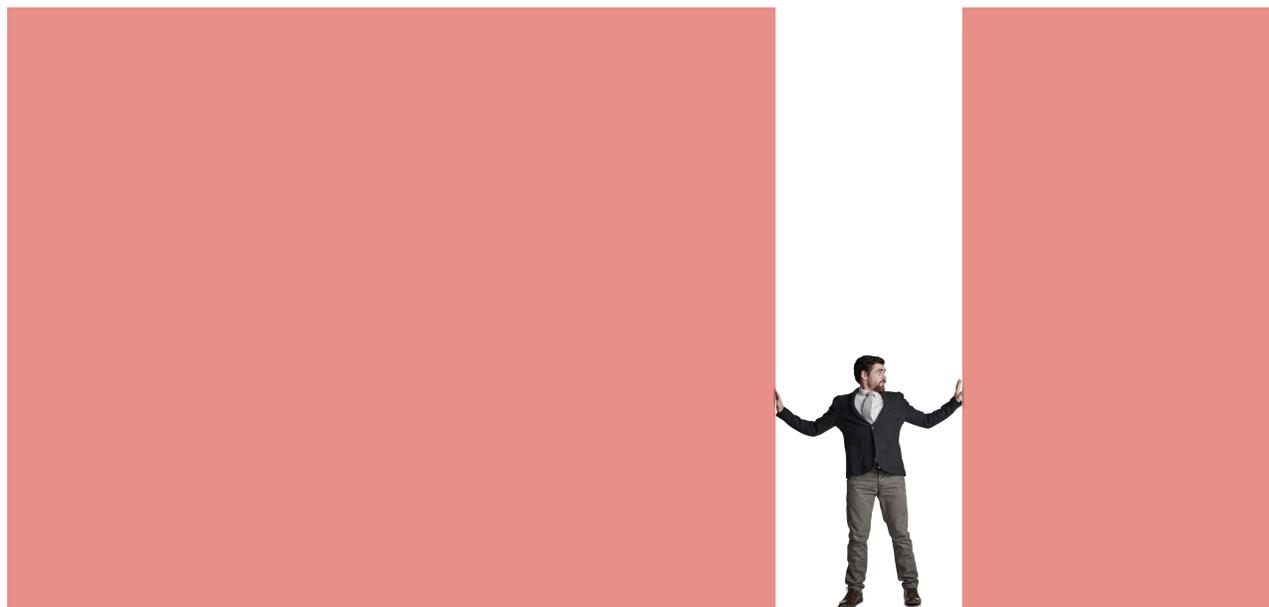
Under Article 27 of the UNCRPD, State Parties recognize the right of persons with disabilities to work free of discrimination. Article 27(a) of the UNCRPD is widely drafted and specifically prohibits discrimination on the basis of disability with regard to conditions of recruitment and hiring.



Does the Convention on the Rights of Persons with Disabilities protect **employees with disfigurements**?

Yes.

Article 27 of the UNCRPD explicitly protects the rights of disabled employees, including requiring State Parties to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment (Article 27(a)) and to protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances (Article 27(b)).



What are the **three biggest gaps** in the protection offered by the Convention on the Rights of Persons with Disabilities to those with disfigurements?

Gap 1 – Does not define disability” to include facial disfigurement

The UNCRPD does not clearly define the term “disability” or “disabled persons” or make any express reference to facial disfigurement. This means that State Parties are not required to enact legislation which protects the rights of persons with a facial disfigurement, leaving them vulnerable to discrimination.

Gap 2 – UNCRPD is ambiguous and lacks detailed protection

Much of the language of the UNCRPD is aspirational and State Parties are left to interpret it and incorporate it into national legislation to the extent such State Party thinks fit. This means that the broad protections under the UNCRPD (e.g. concerning awareness raising, education and work and employment) may be insufficient to properly protect persons with facial disfigurement from complex issues of discrimination and prejudice.

Gap 3 – Lacks sufficient enforcement mechanism by aggrieved individuals

In practice, individuals have limited means to take direct enforcement action under the UNCRPD. Only if a State Party has signed the Optional Protocol is it possible for an individual or group (e.g. a civil society organization) to complain to the relevant Committee about a State Party’s alleged violation of the UNCRPD. Even then, the procedures for pursuing a complaint to the Committee may be daunting for an individual.

Further, if the Committee finds in favour of the individual, there may be challenges when enforcing the decision in the individual’s home country.

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