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WORLD FEDERATION OF THE DEAF

An International Non-Governmental Organisation in official liaison with ECOSOC, UNESCO, ILO, WHO and the Council of Europe. WFD was established in Rome in 1951.

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Complementary or diametrically opposed: Situating Deaf Communities within ‘disability’ vs ‘cultural and linguistic minority’ constructs: POSITION PAPER

1. Key Points

- Deaf people consider themselves as a linguistic and cultural group, with highly complex natural languages but the rights of deaf people are however assured through disability policy, legislation and international instruments.
- Deaf identity is not a monolithic entity and a person can also have other identities relating to gender, race, disability, socioeconomic status.
- On the international level, the United Nations has assured human rights by: the Convention on the Rights of Persons with Disabilities¹ (CRPD); the International Covenant on Civil and Political Rights² (ICCPR) concerning the rights of persons belonging to ethnic, religious and linguistic minorities (specifically Article 27); the Convention on the Rights of the Child³ (CRC) (specifically Article 30); and the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities⁴ (the Minorities Declaration).
- Deaf Communities are minority communities which have been defined as: “a group which is smaller in number than the rest of the population of a State, whose members have ethnic, religious or linguistic features different from those of the rest of the population, and are guided, if only implicitly, by the will to safeguard their culture, traditions, religion or language.
- Deaf people have a linguistic human right to use sign language as a mother tongue in the family, in the school and the wider community but disability legislation (particularly the CRPD) is not the only legislative means available to achieve this right.
- Disability is defined according to a human rights model of disability⁵. Under the social model of disability that precedes the human rights model, it is the interaction between an individual’s ‘impairment’ and barriers in society that creates “disability”. In other words, it is the environment that is disabling, not the ‘impairment’ itself.
- Linguistic rights are important for deaf people and should not only be granted within a disability paradigm. Deaf Communities sometimes need linguistic rights as linguistic rights and not as a part of a disability construct.

¹ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

² <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx>

⁵ Degener 2016 and Jones 2011.

2. Introduction

Deaf communities around the world have long considered themselves as linguistic and cultural groups⁶, and are characterised by a great diversity of national and regional sign languages around the world. Sign languages are natural, highly complex natural languages with full expressive capacity, with their own grammar, lexicon, humour and associated performance forms. Yet the rights of deaf people around the world are largely assured through disability policy, legislation and international instruments, as distinct from legislation and international instruments that recognise the linguistic and cultural status of deaf people. This can lead to a misunderstanding of the actual situation of deaf communities around the world, and this position paper attempts to review the issues involved, by looking through the linguistic minority as well as the disability lenses. It has been the experience of many deaf people around the world that sign languages have been seen as inferior to spoken languages, and deaf people are seen through the medical and deficit model. Sign languages have even been proscribed in some places around the world. What sort of legislation will protect the linguistic rights of deaf people and their sign languages around the world?

Like any group of people who share a common language, it has long been established that deaf people have their own culture. Early references to deaf culture began to appear in the early 1970s⁷ after some of the earlier research in 1950s and 1960s by Tervoort⁸ and Stokoe⁹ which highlighted that sign languages were not an inferior form of language. Subsequently, concept has spread around the world with deaf communities asserting their linguistic and cultural identities. Latterly, this has been acknowledged in Article 30 of the CRPD. This includes shared experiences, beliefs, attitudes, history, norms, values, traditions, and art shared by deaf people in the same community or country.

Membership of a cultural group usually entails identifying oneself as a part of that group, and identity in general is a complex construct and relates to a person's interaction with the environment around them, and their past and present experiences. It is shaped by (among other things), gender, race, socioeconomic status, age, ethnicity and disability. A deaf identity manifests from personal experience of being deaf, their use of sign language, one's membership of a language community with its history, and common experiences of oppression, resistance and solidarity, but this is not the only identity that deaf people develop through their lives; these other identities also developed through the lifespan. Different identities become more important in different settings, for example – at different times a deaf woman from a cultural minority may find that her deaf identity, her gender and her minority group status all become important in different settings, for example in a group of men, or in a group of hearing people or in a group of people from the majority culture. It is therefore not possible for a deaf identity to be the most important identity amongst different identities.

Deaf identity is also often tied to sign languages and the social connections built on the shared experience with the use of sign language. For example, deaf people regularly come together in deaf spaces, sporting events and gatherings to celebrate their cultural identity and the experience is often grounded in the shared use of sign language. Identification with the Deaf Community that uses sign language creates a broader community of language users. Its membership is not often defined by hearing loss (although deaf people may also have a range of hearing losses and other impairments as in the wider community), but rather by identity with language. This is very much a personal choice,

⁶ Baynton, Gannon, & Bergey, 2007 and Lane, 1999.

⁷ Woodward 1972.

⁸ Tervoort 1953.

⁹ Stokoe 1960.

and yet this opportunity is not always available for young deaf people and adults. Members include all people who are committed to the use and fluency of sign language, such as parents and family members of deaf people, sign language interpreters, sign language learners and teachers. This experience is not unique and has existed with community sign languages and even village sign languages.¹⁰ This capacity for expanded community membership that encompasses disability and other intersections of identity is truly unique within the Deaf Community. As language is central to human nature and culture, and can be an expression of identity, issues surrounding language are particularly important to linguistic minority communities seeking to maintain their distinct group and cultural identity, sometimes/often under conditions of marginalization, exclusion and discrimination.¹¹ Within the larger language communities of different countries, other “people with disabilities”¹² typically identify with and use the dominant languages of the country or region, whereas the Deaf Community’s primary language of communication is a non-dominant and often marginalised language within the broader national community.¹³ Language difference and lack of equity with communication has often created multiple layers of negative impact, which is greatest in the sphere of education.¹⁴ This inherently known difference within the disability community, less often highlighted in public discourse within the broader disability movement, creates a friction between the Deaf community and other disability groups.¹⁵ Foundational to this difference is why the concept of “inclusion” focused on educational placement in mainstream settings is so devastating for deaf children.¹⁶ Inclusion presumes an important fact—that the person with the disability shares the use of the dominant language in the community and education. Inclusion and language immersion are not synonymous in their impact on the Deaf Community. This understanding is key to WFD’s advocacy for the right to deaf culture, and its celebration, shared by many, of the diversity deaf culture adds to our world.¹⁷

The right to access as citizens in a larger dominant language culture, when societal barriers to communication emerge, is the nexus that connects the international Deaf Community with the international disability movement.¹⁸ This has been the heart of the reason for deaf organisations to collaborate with the disability movement on issues of access, with both having the common goal of making society accessible to people with sensory, cognitive, and physical differences. These differences, as well as these political and social identities should be celebrated as a part of the general diversity of the human condition.

This complex intersectionality of identity, language and the need for access creates a unique opportunity to expand our understanding of the applicability of language minority rights together with disability rights for the Deaf Community. This is contentious space. This paper seeks to explore and unpack some of the issues to assist broader discussion and understanding of the protections needed by the Deaf Community to achieve political, educational, economic, cultural and social equity¹⁹.

¹⁰ See Davis 2002, 89 and Horejes 2012, 80.

¹¹ Handbook by the United Nations Special Rapporteur on minority issues 2017, 5.

¹² In quotes to acknowledge the languaculture that affects the views of people and limits full citizenship within our communities through these social categorizations. See, Social model article in Horejes 2012

¹³ Lane 1999.

¹⁴ Humphries 2013 and Lane 1999.

¹⁵ Padden & Humphries 1988 And 2005.

¹⁶ Munoz-Baell & Ruiz 2000.

¹⁷ <https://wfdeaf.org/our-work/human-rights-of-the-deaf/> and Padden & Humphries, 1988 and 2005.

¹⁸ Padden & Humphries 1988 and 2005.

¹⁹ Wrigley 1996.

3. International legal frameworks

The international legal frameworks protecting and seeking to advance the rights of deaf people are varied and come under a range of ‘constructs’. It is important to realise that all human rights are universal (apply to everyone), indivisible (cannot be selectively recognised or applied), interconnected (related to each other) and inalienable (cannot be taken away from people).

Human rights in the modern context are derived from the Universal Declaration of Human Rights²⁰, which was agreed by the United Nations after World War II to provide protection of all people everywhere against the threat of violations of their rights by their governments. These rights are further elaborated and explained in two instruments which again, apply to countries that have ratified the ICCPR and International Covenant on Economic, Social and Cultural Rights²¹ (ICESCR).

Then there are further treaties – called Conventions - which explain how all civil, political, educational, social and cultural rights should be achieved for and by particular groups of people (women, children, people with disabilities, migrant workers and their families) or in relation to particular issues (racial discrimination, enforced disappearances, torture and inhumane treatment). Conventions become legally binding when national governments ratify or accede to them (i.e. become States party).

Declarations also form part of international law but are not legally binding. Examples include the United Nations Declarations on the Rights of Indigenous Persons and the Minorities Declaration. Whilst not legally binding, Declarations nonetheless form part of the United Nations legal framework and may contain norms that are binding. Over time they may also come to be accepted as customary international law or as interpretive aids.

Whilst all treaties and human rights instruments are relevant to and can be used to protect and advance the rights of deaf people, the key international treaties that are most often used to protect the rights of deaf people and to advance ‘deaf specific’ issues are:

- CRPD;
- ICCPR concerning the rights of persons belonging to ethnic, religious and linguistic minorities (specifically Article 27);
- CRC, specifically Article 30 and
- the Minorities Declaration.

Considering the unique language and cultural identity of the Deaf and signing Community, together all of these treaties, particularly the CRPD can be interpreted to make a strong case for recognising deaf people as a cultural and linguistic group. Rights to non-discrimination based on disability status also carry strong interpretative relevance. However, over the decades, linguistic and cultural rights of deaf people using sign language have continually been threatened and harmed, sometimes under the auspice of providing “access” and through the principles of “inclusion”. This illuminates how the experience of the Deaf and signing Community have by virtue of its minority status, not been sufficiently understood or recognized by the broader community (particularly governments, policy makers, educators and the media), many of whom participate in the dominant language(s) of the community and/or have been influenced by the biases against visual and sign languages.²²

²⁰ <http://www.un.org/en/universal-declaration-human-rights/>

²¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

²² See e.g. President Cordano’s statement.

4. Viewing the Deaf Community as a Cultural and Linguistic Minority Group

4a. Who are minorities under international law?

Adopted by consensus in 1992, the Minorities Declaration in its article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity, and provides that States should protect their existence. Specifically, they are “a group which is smaller in number than the rest of the population of a State, whose members have ethnic, religious or linguistic features different from those of the rest of the population, and are guided, if only implicitly, by the will to safeguard their culture, traditions, religion or language. Any group coming within the terms of this definition shall be treated as an ethnic, religious or linguistic minority. To belong to a minority shall be a matter of individual choice.”²³ This therefore defines deaf communities as minority communities in their respective countries around the world.

However, there has not always been an internationally agreed definition to define whether a group is a national/ethnic/cultural/religious or linguistic minority, and this lack of agreement disadvantages deaf communities as a whole. It is often stressed that the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals themselves identify as members of a minority).²⁴

4b. What are linguistic rights?

Linguistic human rights can be described as a series of obligations on State authorities to use certain languages in a number of contexts, not interfere with the linguistic choices and expressions of private parties, and may extend to an obligation to recognise or support the use of languages of minorities or indigenous peoples. Human rights involving language are a combination of legal requirements based on human rights treaties and guidelines for State authorities on how to address languages or minority issues, and potential impacts associated with linguistic diversity within a State. Language rights are to be found in various human rights and freedoms provisions, such as the prohibition of discrimination, freedom of expression, the right to private life, the right to education, and the right of linguistic minorities to use their own language together with other members of their group.

Article 27 of the ICCPR provides that:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

According to the United Nations Human Rights Committee (which is the treaty body overseeing implementation of the ICCPR), any restrictions imposed upon the enjoyment of one’s own Deaf culture and use of one’s own language have to be consistent with the other provisions of the Covenant, read as a whole, and be reasonable and objective.²⁵

²³ Skutnabb-Kangas & Phillipson 1994, 107, note 2.

²⁴ <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx> Note also that whilst many European instruments refer to ‘national minorities’ the UN Minorities Declaration is broader- even if a group is held not to constitute a national minority, it can still be an ethnic, religious or linguistic minority and therefore be covered by the Declaration.

²⁵ See Communication No.24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981, para.16; and Communication No.197/1985, *Kitok v. Sweden*, Views adopted on 27 July 1988, para.9.8.

Applying this Article 27, deaf people (including deaf people in a particular country or community) who identify themselves and/or are identified by others as members of a minority have the right to enjoy their own culture and use their own language in community with other members of their group by virtue of their shared language and culture. Deaf children and adults who have not yet learnt a sign language should have the opportunity to do so, in order to be able to participate in deaf communities.

Article 30 of the CRC similarly provides that:

“In those States in which - linguistic minorities - exist, a child belonging to such a minority - shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture - or to use his or her own language.”

The Minorities Declaration sets the standards and offers guidance to States in adopting appropriate legislative and other measures to secure the rights of persons belonging to minorities.

Article 4(3) of this Declaration requires that:

“States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.”

In line with the general requirement in Article 1 that States shall encourage the promotion of the linguistic identity of the minority concerned, measures are required for persons belonging to minorities to have instruction in their mother tongue as a subject (which is a minimum), or to learn their mother tongue, i.e. have it as the main medium of instruction (which goes further).²⁶

Before proceeding further, it is important to understand the situational and definitional complexity related to the language experience that is perhaps unique to the Deaf and signing community because of how language experience intersects with disability oppression. “Mother tongue”, which by definition means the “language usually spoken in the individuals’ home or in his or her early childhood,”²⁷ is not always understood in a consistent way for children who are born deaf. The most consistent and least complex example of this for deaf children is when a deaf child is born into a Deaf signing family. In this situation the child’s mother tongue is the same as that of the family. The majority of deaf children, however, are born into families that use spoken language. If they cannot “hear” a language (bringing out the bias with the phrase “mother tongue”), what is their mother tongue if their family primarily uses spoken language and the child and family learn sign language as the child grows to connect, engage and teach their child? In this case, sign language can become the mother tongue of the whole family with a deaf child. This experience is unique to deaf children and stands in stark contrast to the experience of most children in the world.

The complexity of language development through sign language within the family is amplified by language bias in society. Throughout the world, and especially in medicine/health care, there is bias against sign language that contradicts what we know about the benefits of sign language in the development of the brain in babies. Research has shown that people discriminate against language, not the brain.²⁸ Brains seek patterns of language regardless of whether language development

²⁶ E/CN.4/Sub.2/AC.5/2005/2.

²⁷ See <https://unstats.un.org/unsd/demographic/sconcerns/popchar/popcharmethods.htm>

²⁸ President Cordano’s statement.

emerges through sign language or spoken language and children often thrive when exposed to more than one language.²⁹ Finally, research shows that if a deaf child is not exposed to sign language in the critical years after birth, there can be permanent harm in brain development.³⁰

For deaf people, who use sign language, whether they acquire sign language after birth or later in life, the uniqueness of their identity with, and their use of, sign language means that sign language is their “mother tongue”, and in the cases where they are born into families that use spoken language, their “mother tongue” is adopted by their family instead of being transmitted over generations. This complexity of this construct, which separates the language of choice for a linguistic minority from the language used by the parents or family, is essential to understand.

The WFD has argued that being allowed to develop their cultural and linguistic identities – including in educational settings - is a key right of deaf children. And that methods of education which best promote the development of such identities are full sign language/bicultural models of education where education is *delivered* in national sign language (not just interpreted into sign language which has been suggested as a reasonable accommodation) in an environment where all people can/are competent in and use sign language.³¹ This is a strong form of what multilingualism research calls a mother-tongue-based multilingual education (where the “multilingualism” in the case of deaf children means reading and writing in another language or languages).

Denial of the right to learn and use sign language (including from birth) in any environment is arguably a breach of Article 27 of the ICCPR and/or (where it relates to children) of Article 30 of the CRC.

The CRPD clarifies further the areas in which the right to use sign language applies, including in official interactions, in accessing information and communication, in education, and in the Deaf community (Articles 2, 9, 21, 24 and 30). These are discussed in section 4.

The combined effect of CRPD Article 21 (Freedom of expression and opinion, and access to information), Article 2 (definition of language) is to provide that deaf people have the right to give and receive information as a fundamental human right, including official interactions (with government agencies) using the language of their choice (usually their national sign language). Thus, failing to allow deaf people to give and receive communication in sign language, including in official interactions is consequently a failure/violation to realise these rights.

Being required to access information and services which are provided only in spoken languages, means that in the absence of sign language skills and a professional sign language interpreter for example, deaf people are often prevented from exercising their right to fully participate in their country’s affairs and access its services on an equal basis with others. The mere *physical presence* of a deaf person does not guarantee accessibility for a deaf person because an environment without the use of sign language makes the environment inaccessible and leads to *mental absence*.

The CRPD explicitly responds to and clearly articulates this right as well - Article 9 provides that all information must be accessible (i.e. including to deaf people). For many people this means that information/it must be provided in sign language. This right can be progressively realised (i.e. improved over time/incrementally progressed). However where information is not accessible,

²⁹ See, e.g. President Cordano’s statement.

³⁰ Pettito et al <http://vl2.gallaudet.edu/news/announcements/references-president-cordanos-statement/>

³¹ WFD 2016.

‘reasonable accommodation’ must be provided (i.e. support or practical changes must be made so that the deaf person can exercise and enjoy their rights to access information and services, in a way that is not difficult or too expensive for the person or organisation who has to provide access. In many cases the provision of sign language interpreters fulfils this right, but not exclusively – there may be other forms of other provision that enables access, for example provision of information in a sign language environment). Accessibility should be guaranteed for any person using a service whereas reasonable accommodation is targeted at an individual to ensure that she or he can participate fully. For example, ‘reasonable accommodation’ can include the provision of information in text, or pre-video recorded information in sign language or through the use of sign language interpreter.

The CRPD also clarifies the right to use sign language in education, in article 24 and especially 24.3(b) and (c) that require States Parties to enable the full and equal participation of deaf people including by “facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community”; and that education is delivered in the most appropriate languages in environments that maximize academic and social development.³² Most recently, the Committee on the Rights of Persons with Disabilities adopted a general comment on CRPD Article 5 stating that the lack of sign language learning environments, deaf peers, deaf adult role models and teachers qualified in sign language is considered discriminatory toward deaf children.³³

Article 30 of the CRPD clarifies further the right to use sign language in cultural life.

So the CRPD itself contains provisions which recognise the Deaf Community as having cultural and linguistic rights, and couches the realisation of these rights in terms of reducing barriers to the inclusion of deaf people in society, alongside the reduction in many other barriers faced by people with a wide range of other disabilities.

5. Viewing the Deaf Community as part of the Disability Movement

The CRPD is one of the most recent human rights treaties. It spells out how governments can better implement human rights in a manner that meets the needs and priorities of people with disabilities. It is legally binding on States which choose to ratify or accede to it, and where that State is also a party to the CRPD’s Optional Protocol, individual communications about alleged breaches of rights in the CRPD may be brought to the attention of the CRPD Committee.

The CRPD defines disability according a human rights model of disability.³⁴ Under the social model of disability that precedes the human rights model, it is the interaction between an individual’s ‘impairment’ and barriers in society that creates ‘disability’. In other words, it is the environment that is disabling, not the ‘impairment’ itself. To give a practical example – a person with a physical disability is only disabled when there is a barrier in place, for example a lack of a ramp or step-free access is not available. When a deaf person (i.e. a person who has reduced or no hearing) is in an environment that requires him or her to hear to be able to access or exercise a right, this is a barrier and creates ‘disability’. It is important to note that there are also deaf people who have a physical, mental or other sensory disability, and so it does not work to say that deaf people are ‘not disabled’. If the social model works for one, it works for all. The social model says that the response to disability is not to ‘fix’ the impairment (require that the deaf person hear in order to participate like everyone

³² CRPD Article 24.3(b) and (c).

³³ CRPD/C/GC/6 paragraph 65.

³⁴ Degener 2016 and Jones 2011.

else) but rather to reduce or eliminate the barriers that a deaf person faces in an often hostile and inaccessible environment. Reducing barriers may mean providing information or the relevant services in sign language, or through people who are able to use sign language (accessibility) or providing a sign language interpreter to facilitate communication (reasonable accommodation). It may mean ensuring technology assists deaf people to communicate - e.g. through video relay, internet based video communication or alternatively in some cases, provision of live captioning. When such barriers are reduced society is non-disabling. The human rights model of disability advanced by the CRPD allows people with disabilities and deaf people to participate in the discourse of rights on an equal basis with others by requiring systemic changes that enable all people to enjoy their human rights.³⁵

Importantly the CRPD contains strong provisions around the recognition of sign language. It commits governments to recognising the importance of sign languages and promoting their use.³⁶ The CRPD also entitles deaf people, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

The CRPD requires governments to recognise the right of all persons with disabilities – including deaf people - to many areas of life: for example information, safe water, education, health, sports, employment, family life, property ownership, justice - without discrimination and on the basis of equal opportunity.

Importantly in the area of **education** it recognises the need to provide lifelong education for all, which includes deaf people and which facilitates:

- a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and of human diversity;
- b) the development by deaf people of their language through sign language acquisition, in a deaf cultural environment, and Deaf identity with Deaf adults and Deaf peers;
- c) the development by deaf people of their personality, talents and creativity, as well as their mental and physical abilities, *to their fullest potential*; and
- d) enabling deaf people to participate *effectively* in a free society.³⁷

The CRPD also explicitly requires that to enable [deaf people to] learn life and social development skills to facilitate their full and equal participation in education and as members of the community, States Parties must take appropriate measures including:

- Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community; (Art 24(3)(b)) and
- Ensuring that the education of persons, and in particular children, who are - deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development. (Art 24(3)(c)).

³⁵ Jones 2011.

³⁶ CRPD Article 21(e).

³⁷ CRPD Article 24.

The broader principles and Articles in the CRPD are also very powerful – and incorporate and better articulate the rights contained in Article 27 of the ICCPR for example. They require State Parties to

- recognise the equivalency of sign language to spoken language (Article 2, definition of ‘language’);
- respect and promote sign languages (Article 21(e));
- recognise and support the cultural and linguistic identity of the Deaf Community - including sign languages and deaf culture (Article 30(4);
- recognise the importance for deaf people of their individual autonomy and independence, including the freedom to make their own choices (Preamble (n));
- recognise deaf people should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them, (Preamble (o));
- respect the evolving capacities of deaf children and respect the right to preserve their identities (Article 3(h)); and
- require governments and stakeholders to consult organisations representing the Deaf Community (for example national associations of the deaf) on matters affecting them (Article 4(3)).

The CRPD integrates both the language minority view of deaf people and their status as “persons with disabilities” and seeks to support. This is a critical development for the Deaf Community throughout the world.

6. Discussion

The above discussion shows that there is much overlap between the rights that deaf people consider precious and those espoused by disability groups - whether they are couched as being rights of minority groups or the rights of persons with disabilities or indeed, as has occurred in the CRPD - as both, not to mention that some deaf people may have rights applicable to being both a member of a disability and a minority group, which shows that this paradigm is much more complex than is generally understood.

The dominant interpretation of the Deaf Community as “people with disabilities”, has excluded this community from the benefit of qualifying as a language minority under the Minorities Declaration applies only to national, ethnic, religious and *linguistic* minorities. Persons with disabilities also constitute “minorities”, even if not recognised as such in the Declaration, and although persons with disabilities who belong to a national, ethnic, religious or linguistic minority may have multiple identities. The experience of the Deaf Community as described above reveals how the Deaf Community’s experience transcends these socially and legally constructed definitions. In addition, these definitions preclude recognising intersectionality (as a language minority AND a disability community) within the Deaf Community, Deaf people thus effectively have multiple identities- they are a group of persons with disabilities AND linguistic and cultural minority groups, and they are recognised at international law as belonging to a class of persons with disabilities and language and cultural groups.

However, deaf people differ from other linguistic minorities in one important way – while many users of minority languages are able to learn and function in majority languages, deaf people are usually unable to fully access the spoken languages of their surrounding environment because of their auditory-oral transmission. Therefore, sign languages are not only culturally important, they can be

the sole means of language development and accessible communication for deaf people.

Under the CRPD and other international instruments, deaf people have the right to access. Put another way, this is the right for deaf people to demand their right to interact with others in sign languages. The CRPD also further recognises their right to have their linguistic and cultural identity recognised, protected and promoted at the national level.

In this way, WFD calls for an interpretation of these declarations as a whole to recognise and combat discrimination faced by the Deaf community related to both language rights and the right to have access.

As outlined in the introduction, human rights are indivisible and interconnected, meaning any one human right cannot be separated out as independent of other rights. In this way, it is important to recognise both the collective linguistic human rights of the Deaf Community and the disability-related rights of deaf people.

7. What does this mean for Article 24 CRPD (right to education)

The rights of deaf people and deafblind people to education thus are an amalgam of their rights as persons with disabilities to inclusion, accessibility and reasonable accommodation (disability rights constructs), and their rights as a cultural and linguistic minority to learn through the medium of their mother tongue (constructs from minority rights).

No other disability or language/cultural group, can claim a similar intersectionality of rights.

There should indeed be a continued focus on according the full range of rights to these languages and their signers as are found for other majority and minority languages and their speakers. This requires policymakers to see beyond a deficit frame, perhaps adopting a dual category frame in order to protect existing rights related to access. Achieving this in countries with existing legislation will require a shift from relatively simple recognition legislation to a focus on implementation.

Readings of CRPD Article 24 which undermine the right of deaf people to learn through the medium of their mother tongue cannot be in compliance with broader human rights laws and principles, and thus must be robust and flexible enough to accommodate them as a unique group. For example, if the rights of deaf people to learn in their mother tongue is undermined, this is in breach of broader human rights. Other instruments can also be read to support the rights of deaf people. The UNESCO Convention against Discrimination in Education for example indicates that separate educational systems are not inherently discriminatory and the Committee on the Rights of the Child notes the need to support families with deaf children in learning sign language as the family's common language.³⁸

Deaf children, as a linguistic minority, have the right to learn through the medium of their 'mother tongue' - sign language, to develop their linguistic and cultural identity and to maximise the social, emotional, economic and academic outcomes of their education. The schooling options open to them within education systems under single education ministries responsible for all education in a nation or region, must include those options which are conducive to them exercising these rights fully. This means that these children need to have contact with Deaf educators and Deaf peers

³⁸ Murray, De Meulder, & le Maire 2018.

throughout their education years.

When open to all who share the same language, regardless of ethnicity or race, the use of minority languages as medium/languages of instruction/education is neither discriminatory nor impermissible segregation.³⁹ The same principle should also hold where education is provided in sign language to any child wishes to learn in that medium regardless of disability or other status.

Studies from the World Bank⁴⁰, UNESCO⁴¹ and in various countries⁴² affirm that the use of the language of minorities in education, combined with quality teaching of the official language is more cost effective, reduces drop-out and class repetition rates, leads to noticeably better academic results, particularly for girls,⁴³ and improves level of literacy and fluency in both mother tongue and official or majority language. These benefits of education through the ‘mother language’ are now well established scientifically through studies in different parts of the world with emphasise on minority children.⁴⁴

8. Conclusion

Article 1(1) of the ICCPR makes clear that peoples have a right to self-determination, and can decide how they wish to be characterised:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

There are powerful international legal frameworks that protect the rights of deaf people and indeed further their cause for self-determination, and the exercise of their full social, economic, political and cultural rights. The rights contained in the CRPD are a legally binding force on Governments which are States Parties to it.

Whilst the label of ‘disability’ is only one aspect of the protection needed by the Deaf Community, it is incontrovertible that they often face disabling environments, attitudes and policies, and that the CRPD contains extremely powerful provisions which advance the rights of deaf linguistic AND access rights people and can – and should be used strategically and forcefully in our advocacy to:

- Argue for the formal and legislative recognition of sign languages - it recognises the equivalence of sign languages to spoken languages, and it requires governments to respect sign languages, and promote the use of sign languages.
- Argue for the right to give and receive information in sign language (it recognises the right to give and receive official communications in the language of one’s choice (e.g. sign language)).
- Argue for sign language immersion schools and programs and bicultural education under the country’s inclusive education portfolio - under seeking the right of accessibility (Article 9) (environments where all aspects of communication are provided in sign language), promotion of deaf culture and identity (Article 30), the environments where deaf children can maximise their academic and social potential (Article 24), as well as other legal

³⁹ A/HRC/10/11/Add.1, recommendations 10 and 27.

⁴⁰ Dutcher in collaboration with Tucker 1997 and World Bank 2005.

⁴¹ UNESCO 2010.

⁴² UNESCO Bangkok 2008; Kosonen & Person 2013 and) US State Department 2013.

⁴³ Benson 2005.

⁴⁴ UNESCO Bangkok 2008; Kosonen & Person 2013; UNESCO 2010, 36 and Dutcher in collaboration with Tucker 1997.

frameworks (which may for example be government legislation recognising sign languages on their own or as legislation which recognises sign languages along with other indigenous languages).

- Argue for qualified professional sign language interpreters to be provided for equal access to all services (the provision of 'reasonable accommodation' where full sign language environments cannot be created) is an immediately applicable right (Article 5(3)), which also includes state funded sign language interpreter training programmes.
- Argue for professional deaf educators using sign language to be provided for Deaf children's education.
- Argue for the recognition, support and promotion of deaf culture and identity (Article 30).
- Demand that international development programmes prioritise deaf persons and sign language as one of the key focus of these programme interventions to strengthen deaf leadership (Article 32).
- Demand that deaf leaders of organisations of the deaf (national, regional and international levels) be consulted on matters of policy formulation, design of programs and development of new legislation that will benefit deaf persons at national, regional and international frameworks that affect them (Article 4(3)).

Rather than seek to create a hierarchy of rights, or preference one instrument over the other, or say that linguistic rights apply in certain circumstances and disability rights in other circumstances, the Deaf Community must be able to avail itself of all the powerful tools available to it under each of the international legal frameworks. Far from being irreconcilable or diametrically opposed, they are complementary, and as a whole, can assure that every deaf person can thrive as citizens and learners in their communities.

Indeed, we have noted that human rights are indivisible and interdependent - they cannot be traded off against each other, and where one right is denied, all other rights are affected. They can exist as mutually reinforcing and complementary, and can be applied simultaneously.

The fact remains that linguistic rights are more contentious for many States than disability rights. This does not mean that linguistic rights are not important for deaf people and should be granted within a disability paradigm. Deaf Communities sometimes need linguistic rights as linguistic rights and not as a part of a disability construct. Deaf people should seek to join with a/the wide range of vibrant coalitions with whom we share many and rich identities- the culturally and linguistically diverse minorities to argue/demand for recognition of our language rights, and the broader disability movement to demand for full access and reasonable accommodation, and by which we have the bargaining power to demand that society itself needs to address, reduce and eliminate barriers to our full inclusion in society as fully participating citizens.

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About the World Federation of the Deaf

The World Federation of the Deaf (WFD) is an international non-governmental organisation representing and promoting approximately 70 million deaf people's human rights worldwide. The WFD is a federation of deaf organisations from 135 nations; its mission is to promote the human rights of deaf people and full, quality and equal access to all spheres of life, including self-determination, sign language, education, employment and community life. WFD has a consultative status in the United Nations and is a founding member of International Disability Alliance (IDA). (www.wfdeaf.org) Email: info@wfd.fi