

# E.MA AWARDED THESES

2011/2012



**EIUC**  
HUMAN RIGHTS VILLAGE

E.MA  
European Master's Degree in  
Human Rights and Democratisation

**The dilemma in the deaf community: linguistic minority or persons with disability?**  
Author: **Chatzopoulou Anastasia**  
University of Cyprus (Cyprus)



EIUC gratefully acknowledges  
the contribution of the European Commission  
which made this publication possible.

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First edition: April 2014  
DOI 10.7404/eiuc.ema.20112012.01

[www.eiuc.org](http://www.eiuc.org)

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## FOREWORD

The *European Master's Programme in Human Rights and Democratisation* (E.MA) is the first Master's course in human rights and democratisation launched and financed by the European Commission that later served as model for establishing other Regional Master's around the world. Since January 2013 these are all connected and managed by the *European Inter-University Centre for Human Rights and Democratisation* (EIUC) under the *Global Campus of Regional Master's Programmes* (GC).

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Each year the E.MA Council of Directors selects five theses which stand out not only for their formal academic qualities but also for the originality of topic, innovative character of methodology and approach, and potential usefulness in raising awareness about neglected situations or issues and capacity for contributing to the promotion of the values underlying human rights and democracy.

The E.MA Awarded Theses of the academic year 2011/2012 are:

- CHATZOPOULOU, Anastasia, *The Dilemma in the Deaf Community: Linguistic Minority or Persons with Disability?*. University of Cyprus (Cyprus).

- DARTS, Rebecca Thérèse, *The Interplay between Human Rights and Translation in Multilingual Newborn Kosovo*. University of Seville (Spain).

- GIÃO, De Brito Rita, *New Governance Mechanisms and International Human Rights Law: Moratoriums in Law and Practice*. Central European University in cooperation with Eötvös Loránd University, Budapest (Hungary).

- GRUYAERT, Laura, *Safeguarding the Right to Water for Basic Human Needs in the Context of Transboundary Watercourses: Analysis of the Combined Use of Two Legal Regimes: International Water Law and International Human Rights Law*. Université de Montpellier (France).

- MINCHEVA, Ioanna, *Beyond Equality and Non-Discrimination: Escaping Narrow Human Rights Framings in the Context of Sexual Orientation and Gender Identity*. Masaryk University, Brno (Czech Republic).

This volume includes the thesis *The Dilemma in the Deaf Community: Linguistic Minority or Persons with Disability?* by Chatzopoulou, Anastasia, and supervised by Dr. Aristotelis Constantinides, University of Cyprus (Cyprus).

## ABSTRACT

This thesis examines the dominant construction of deaf people as persons with disability, and contrasts it with the suggested construction of deaf people as linguistic minority, with the view to resolving the dilemma regarding their classification.

The principal objective is to provide deaf people with the best legislative option for the protection of their rights.

An interdisciplinary approach is followed, analysing the medical and the sociocultural perspective, in order to provide the reader with a holistic view of the situation. Both legislative options are assessed and their implications are examined, whereas special emphasis is given in areas such as health, education, culture and language. It is demonstrated that both options apply. Thus, the thesis concludes by bridging the two options and by suggesting a common approach.

Several recommendations are provided calling for cohesion and mutual respect, inclusion of deaf peoples' preferred point of view with a view to empowering their position. Last but not least, emphasis is placed on their right to choice, their right of self-determination and on the development of understanding and respect of diversity.

Like past editions, the selected theses amply demonstrate the richness and diversity of the E.MA programme and the outstanding quality of the work performed by its students.

On behalf of the Governing Bodies of EIUC and E.MA and of all participating universities, we congratulate the author.

PROF. FLORENCE BENOÎT-ROHMER  
EIUC Secretary General

PROF. RIA WOLLESWINKEL  
E.MA Chairperson

ANASTASIA CHATZOPOULOU

THE DILEMMA IN THE DEAF COMMUNITY:  
LINGUISTIC MINORITY OR PERSONS WITH DISABILITY?

*I wish to express my sincere gratitude and my greatest appreciation to Assistant Professor, Dr. Aristotelis Constantinides, for the kind co-operation to the completion of my thesis, for the valuable guidance, support, advice and assistance. In addition, I take immense pleasure in thanking my E.MA Director, Dr. Kalliopi Agapiou-Josephides for providing me an opportunity to do my thesis work on this subject, for her willingness to motivate me, for all the support, assistance and encouragement during the semester. I would also like to express my thanks to Dr. Stamatoula Panagakou and Dr. Antis Loizides, for the several stimulating discussions, for sharing literature, and for providing necessary information and food for thought for my thesis. Special thanks to the authority of Cyprus University for providing me with a good environment and facilities. Undoubtedly, the completion of this thesis would not have been possible without the kind support and help of many individuals and organisations and I would like to extend my sincere thanks to all of them. Last but not least, I am forever indebted to my parents, but also to Angelos and Giota for their understanding, endless patience, support and encouragement when it was most required.*

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
LON	League of Nations
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WHO	World Health Organisation
WFD	World Federation of the Deaf

## GLOSSARY

*Audism*<sup>1</sup>: A negative discriminatory attitude against deaf people due to the notion that somebody is superior because of his/her ability to hear.

*Cochlear implant*<sup>2</sup>: A small, complex surgery implanted electronic device that can help to provide a sense of sound to a person who is profoundly deaf or severely hard of hearing.

*deaf*: (Please note the “d” is lowercase) A persons unable to hear (general definition); A person who has a specific decibel loss across a continuum from mild to profound (medical definition)<sup>3</sup>; A person who usually use oral speech and residual hearing, who do not identify himself/herself as being part of the cultural Deaf and who choose to socialise mainly with hearing people (sociocultural definition)<sup>4</sup>.

*Deaf*: (Please note the capital “D”) A person who do not identify deafness in regard to audiological ability, but in relation to the common social identity, culture and language he/she shares with other members of Deaf culture or Deaf community<sup>5</sup>. Deaf people use some form of sign language, they develop a strong kinship with one another and experience oppression by the hearing world.

*Deafness*: The inability to hear (general definition); A medical abnormality/disorder that should be fixed (medical definition)<sup>6</sup>; A state of being characterising certain people who perceive the world through an emphasis on visual and kinesthetic input (sociocultural definition).

*Deaf identity*<sup>7</sup>: An abstract sociocultural construct that portrays the collective view that deaf people have of themselves. Its formulation depends on D/deaf peoples’ way of communication, self-identity or cultural affiliation.

*Deaf community*<sup>8</sup>: A community that comprises those Deaf people who do not identify deafness in regard to audiological ability, but in relation to the

<sup>1</sup> Bauman, Simser & Hannan, pp. 12-17.

<sup>2</sup> Quittner, Leibach & Marciel, 2004, pp. 547-548.

<sup>3</sup> Zieziula, pp. 1-11.

<sup>4</sup> International Federation of Hard of Hearing People.

<sup>5</sup> Oregon.gov.

<sup>6</sup> Council of Europe, 2008, pp. 9-10.

<sup>7</sup> Kuntze, 2010, p. 1.

<sup>8</sup> Cleveland Hearing & Speech Center.

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common social identity, culture and language they share. Emphasis is put in the use of sign language, while deafness is not perceived as deficit, but as a gain.

*Deaf culture*<sup>9</sup>: A unique culture that Deaf people have developed based on their shared or common experiences, consisting of values and beliefs, customs, art, literary traditions, history and shared institutions.

*Eugenics*<sup>10</sup>: A study that supports the improvement of the genetic constitution of the human species by discouraging reproduction by persons having genetic defects (selective breeding).

*Hard of hearing*<sup>11</sup>: A person presenting mild or moderate losses.

*Natural language*: Any language arising naturally as a means of communication between people.

*Oralism*<sup>12</sup>: A theory supporting that deaf persons should communicate by means of spoken language.

*Pre-lingual deafness*<sup>13</sup>: Hearing loss that characterises persons who were born deaf.

*Post-lingual deafness*<sup>14</sup>: Hearing loss that describes persons who have lived for most of their life as hearing people after the acquisition of speech.

<sup>9</sup> Deaf Independent Living Association.

<sup>10</sup> Bauman, Simser & Hannan, p. 12.

<sup>11</sup> Zieziula.

<sup>12</sup> Oxford Dictionaries.

<sup>13</sup> Bartha, p. 3.

<sup>14</sup> Zieziula.

## INTRODUCTION

The definition and classification of deafness is still a matter of controversy. Under the medical approach, deafness is considered as a pathological condition and thus, deaf people are qualified for benefits and legal protection under the disability status. However, according to a sociolinguistic and cultural approach, deafness is not perceived as impairment, but as a special physical characteristic. From this point of view, deaf peoples' treatment as persons with disability does not conform with their self-identification; on the contrary, it fosters stereotypes, raises prejudice and hinders the full enjoyment of their rights and their full participation in society. Deaf people believe that despite the fact that the framework of disability provides special benefits to deaf, it threatens the existence of sign languages, deaf culture and identity, and hence they claim the status of a linguistic minority in order to ensure the protection of their human rights. In an attempt to assess and resolve the debate between deaf people who adopt the medical model of disability and those who are inclined towards adopting the sociolinguistic and cultural view, the thesis will critically present an assessment of the implications of the two different options on the protection of deaf peoples' human rights, but also of their effect in society. The main aim is to examine to what extent the implementation of each option achieves its goals, to analyse their impact on deaf people's human rights and based on the assessments, to offer some suggestions on how to move forward.

The research methodology is based on an interdisciplinary approach that examines impacts from a sociolinguistic, medical and legal point of view. By combining all these disciplines – not usually addressed jointly – bridges will be built between the different bodies of knowledge and their associated frames of reference, gaps between disciplines, following

a holistic view on the issue and equally encompassing all the different perspectives. The thesis will try to clarify several different aspects of a complex issue, to facilitate a better understanding between the hearing and the deaf people, and present logical and operational connections between disciplines and intellectual perspectives. These will allow us to suggest some recommendations with the view to strengthen the rights of deaf people.

Thus, the first chapter (I) provides an overview of the deaf experience, by addressing the diverse perspectives on the definition of deafness but also on deaf peoples' language, cultural, cognitive and psychological experiences. The aim is to provide the reader with some insights on the Deaf community, in order to enable a better understanding among deaf and hearing people, to dissolve stereotypes and thereby to encourage heterogeneity and mutual respect. The second chapter (II) raises awareness about the problematic situation regarding deaf peoples' full participation in society and enjoyment of their rights, examining its causes and introducing the two legal options as an answer to the problem. Then, a critical assessment of the two legal options will follow. The third chapter (III) assesses the legal framework for the protection of deaf peoples' rights under relevant instruments of international human rights law on disability with the aim to identify any gaps in their content, to address any challenges in their implementation, and to evaluate their positive and negative implications. In the fourth chapter (IV), the concept of linguistic/cultural minority is analysed in reference to the concept of deafness under current law theories. The various criteria for the classification of deaf people as linguistic minority are examined, and the legal protection offered is evaluated. Furthermore, an assessment of the positive and negative implications of the classification of deaf as linguistic minority is provided. The final chapter (V) offers some short remarks on the achievements as well as a critique of each legal option, and concludes with the reconstruction of the current situation by bridging these two options as a proposed solution to the problem. A further set of recommendations is proposed, projecting the right of choice as an answer to the current challenges, rather than suggesting specific measures for implementation.

I.

SEEING IN DEAFNESS:  
AN OVERVIEW OF THE DEAF EXPERIENCE

Scarce data and statistics have been collected in the past 20 years in terms of deaf-population metrics, mainly due to the lack of efficient planning by state and non-state actors<sup>15</sup>. However, it is estimated that there are more than 70 million deaf people around the world<sup>16</sup>. 80 per cent of these people live in developing countries, where authorities do not stress the need for further measures that will properly protect deaf people's rights, and deaf people themselves are unaware of their fundamental rights, as in most cases they are not provided with access to information or proper education. Nonetheless, as it is demonstrated by the gap in efficient planning and in the collection of data, even in developed countries deaf people's rights are marginalised, and there is space for further progress.

Undoubtedly, the lack of knowledge concerning the deaf society makes awareness and action planning problematic, underpins discriminatory practices and hampers any further progress in the protection of their rights. Hence, in this chapter, an overview of the deaf experience will be provided through the conceptual analysis of the terms *deaf* and *deafness*. In addition, some insights on deaf society will be critically presented in order to introduce the hearing society to the deaf world, but also in order to familiarise them with the context of deafness and its two dominant approaches – the medical and socio-cultural one. The ultimate aim is to forestall phenomena of over-generalisation of the term, to eliminate and chastise stereotypes, but

<sup>15</sup> Hauland & Allen, 2009, p. 10.

<sup>16</sup> World Federation of the Deaf, *About Us*, available at <http://www.wfdeaf.org/> about (consulted on 24 April 2012).

also to ameliorate and empower an understanding among deaf and hearing people, which will gradually lead to the acknowledgement and respect of their human heterogeneity and diversity. Such an accomplishment will later facilitate the recognition of the crucial need to take action and adopt the most suitable model for deafness, with a view to strengthening the rights of deaf people.

### 1. DEFINING DEAFNESS:

#### THE MEDICAL AND THE SOCIOCULTURAL-LINGUISTIC MODEL

The definition and classification of deafness is still a matter of controversy in the circles of academics, linguists, psychologists and audiologists, as the term itself leaves wide space for different approaches to flourish. Several definitions of the concepts *deaf* and *deafness* have been formed, depending on the purposes they are designated for, i.e. focusing on different perspectives or on specific characteristics of deafness. Generally speaking, however, the wide apprehension of the term *deafness* is summarised as “the inability to hear” and it includes a clear distinction between *pre-lingual deafness*, which characterises people who were born deaf, and *post-lingual deafness*, which describes those persons who have lived for most of their life as hearing people, but lost their hearing somehow<sup>17</sup>. Nonetheless, this general definition can only be considered as an umbrella interpretation of deafness, because in actuality the apprehension of deafness differentiates among the medical-pathological and the anthropological-linguistic view. As a result, controversy grows and questions are raised over whether deafness should be considered, on the one hand, as a pathological condition to be treated by medical science as a disability – a view that hinders the risk of fostering stereotypes or prejudice and does not overlap with their self-identification – or, on the other hand, as a natural variation, as an “innate physical characteristic, such as race, or skin color<sup>18</sup>” to be treated in a special way.

<sup>17</sup> Bartha.

<sup>18</sup> Parasnis, 1996, p. 8.

### 1.1. *The Medical Model*

According to the interpretations provided by the pathological model, *deafness* is considered as a medical abnormality that should be cured or fixed<sup>19</sup>, while the *deaf* is defined as a person who “has a specific decibel loss across a continuum from mild to profound<sup>20</sup>.” The persons presenting mild or moderate losses are identified as *hard of hearing*. The majority of persons hard of hearing use sound to communicate, because in most cases they were not born deaf but progressively lost their hearing due to accidents, illnesses, noise pollutants, or for genetic reasons. The above-mentioned medical definitions regarding deaf people’s audiological ability focus on “the origin, the degree, the type of loss, the onset, and the structural pathology of deafness<sup>21</sup>,” treating them as people with disability and suggesting that medical treatment should be provided to them, surgeries should be granted and electronic devices, such as cochlear implants or other hearing aids should be utilised, so as to eliminate the problem and integrate them into the “normal” hearing community to be achieved<sup>22</sup>.

However, this view could be considered as equivocal and problematic, as it forces deaf people to perceive their deafness as a deficit, thus suggesting that its cure is the prerequisite required for their assimilation into the “normal” world. As a matter of fact, it implies that it is imperative for deaf people to “adapt to society, to conform to normality, and to be like a hearing person<sup>23</sup>.” Consequently, they are forced to renounce their identity, to deny their unique features and to accept the technological advancements, in order to avoid instances of prejudice and discrimination, or to avoid to be characterised as obsolete or as deniers of the medical achievements, and to accomplish their assimilation in the “normal” world.

Although the pathological construction of deafness offers new opportunities and benefits to deaf people and opens the door to the hearing world, it seems that this kind of construction does not share their beliefs, nor does it consider or respect the way they identify

<sup>19</sup> Council of Europe, 2008.

<sup>20</sup> Zieziula.

<sup>21</sup> Munoz-Baell & Ruiz, 2000.

<sup>22</sup> Padden, 1996, pp. 79-98.

<sup>23</sup> Council of Europe, 2008.

themselves, by sidelining the fact that deaf people do not emphasise on the level of hearing, but on the value of the language, culture, and collective identity they obtain as a result<sup>24</sup>. Hence, for the Deaf community, the medical definition of deafness as “impairment” is rejected, and any medical intervention is considered as ideologically, politically, and ethically offensive<sup>25</sup>.

### 1.2. *The Sociolinguistic and Sociocultural Model*

As a social, cultural and linguistic phenomenon, deafness is not defined as an impairment to be eradicated, but as a state of being which characterises “a group of people who share a perception of the world through an emphasis on visual and kinesthetic input<sup>26</sup>.” According to this model, deafness is perceived as a characteristic that deaf people possess, rather than a feature they lack<sup>27</sup>. The emphasis is put on the unique language, the distinct values, the feeling of a community, the behavioural norms and the political and social structures they share.

More particularly, according to linguists the term *deaf* describes a heterogeneous group<sup>28</sup>, the members of which are described as *Deaf* (with a capital D) when they use some form of sign language and they represent a cultural identity, whereas they are described as *hard of hearing, hearing impaired or adventitiously deafened* when they use the same language with the rest of the hearing world<sup>29</sup>. As the distinction between the use of a capital or small “d” has been causing genuine confusions in the wider society, linguistics have been trying to find different alternatives. However, until nowadays, any solution proposed, as for example “seeing people,” “signing people,” “signing community,” “deaf signing people,” has been judged as problematic and has caused a wave of protestations from D/deaf people who do not identify themselves in that way<sup>30</sup>.

As far as sociologists are concerned, they define deafness “from the

<sup>24</sup> Obasi, 2008, p. 458.

<sup>25</sup> Ibidem.

<sup>26</sup> Bartha, p. 4.

<sup>27</sup> Obasi, 2008.

<sup>28</sup> Lane, 2005, p. 291.

<sup>29</sup> Zieziula.

<sup>30</sup> Obasi, 2008, pp. 461-462.

perspective of a self-concept<sup>31</sup>.” They put the emphasis on the way that deaf people choose to identify themselves and they conclude that their self-determination relies primarily on their communication needs and social preferences.

## 2. UNDERSTANDING DEAFNESS: INSIGHTS OF THE DEAF SOCIETY

### 2.1. *The Deaf Identity*

One of the most important aspects of people’s emotional development is the formation of their self-concept, or personal identity – namely “their sense of who they are and what their relation to other people is<sup>32</sup>.” According to the social theory, the formation of their identity relies on the collective shapes they choose, on the social groups and categories of which they feel members<sup>33</sup>. That is because, as social human beings, people do not perceive themselves merely as individuals, but also as members of a social group or a collective. This specific sense of belonging to a group is defined as *collective identity* and at times, it is so powerful that tends to supersede other aspects of the person’s personal identity and to mould people’s self-esteem and self-image<sup>34</sup>.

The tendency for a collective identity has been explained by several theories. According to the sociobiological theory, human beings have “a genetic predisposition to bond with others and form groups in order to survive,” while according to the conditioning perspective “from infancy we learn to depend on others, see the benefits of joining together and aim for social approval<sup>35</sup>.” However, regardless of the reasons why this sense of belonging to a group is created to people, the collective identity brings positive effects to them. It enhances their self-esteem and ensures a dynamic collective action (i.e. in processes of mobilisation, organisational structure, and models of leadership) for their rights to be massively asserted and better protected<sup>36</sup>.

<sup>31</sup> Zieziula.

<sup>32</sup> Encyclopedia Britannica.

<sup>33</sup> Smeulers & Grünfeld, 2011, pp. 243-266.

<sup>34</sup> Lee, pp. 2-7.

<sup>35</sup> Smeulers & Grünfeld, 2011.

<sup>36</sup> Lee.

The notion of *deaf identity* has been developed between deaf as an abstract sociocultural construct that portrays the collective view that they have of themselves<sup>37</sup>. This view, however, differs from deaf to deaf depending on the vehicle of communication he/she chooses, his/her cultural affiliation, his/her various social experiences, as well as on the environmental context or the societal framework he/she has been living in. As Leigh suggests, it is a “product of the enculturation process: learning about the self through the family and the community one is a part of<sup>38</sup>.”

When it comes to deaf, this process of socialisation is quite idiosyncratic and it depends, on the one hand, on whether the person is born deaf or later on has a hearing impairment severe enough to leave him/her deaf and, on the other hand, on whether the deaf person is born by deaf parents who have the possibility to pass him/her the values, the language and the culture of Deaf community, or whether he/she was born by hearing parents who lack in shared language and identity and, most of the times, reject the values of the Deaf community and support the medical model of deafness. In cases that the acquaintance with the norms, the values and the language of the Deaf community occurs late and mainly through peer socialisation – as for example for deaf people coming from hearing parents, or of people left deaf later on in their lives – the acculturation into this new social community depends on the nature of self-identity they have already formed at that point, on the age of immersion, as well as on the depth of immersion they have an opportunity or desire for, and in most cases requires redefinition of that prior identity<sup>39</sup>.

Hence, depending on their way of communication, their self-identity or cultural affiliation, two dominant constructs of deafness and deaf identity have been developed inside the society of deaf. On the one hand, there is a part of deaf people who recognise themselves as persons with disability, and they perceive their deaf identity based on the medical and pathological construction of deafness, while on the other hand, there is another part that views their deaf identity from a

<sup>37</sup> Kuntze, 2010.

<sup>38</sup> Ibidem.

<sup>39</sup> Ibidem.

linguistic and cultural perspective and claims to be considered as a cultural and linguistic minority<sup>40</sup>.

The first group consists of deaf people who share the belief that it is not their condition that defines who they are, and therefore they reject any common values, any cohesion between them or any feelings of community; they support conventional schooling and they pursue their acculturation with the hearing society<sup>41</sup>. In fact, these people perceive their hearing loss as an obstacle that prevents their full participation in the hearing society and therefore they focus on ways to minimise these obstacles, based on new technological advancements. They claim to be considered as people with disability, as they feel that they need to define themselves “not as a common identity, but as a common interest group, as a constituency that speaks out and represents their welfare<sup>42</sup>.” Under the political identity of disability, it becomes possible for them to exercise influence and to employ pressure on matters which directly affect them on a local, provincial, or national level, but as well as to be provided with benefits.

The second group forms the so-called Deaf community, and the members of this group do not identify deafness in regard to audiological ability, but in relation to the common social identity, culture and language they share<sup>43</sup>. As Anna Mindess states, “it is not the extent of hearing loss that defines a member of the Deaf community but the individual’s own sense of identity and resultant actions<sup>44</sup>,” while according to Baker and Padden, the Deaf community includes any person who “identifies him/herself as a member of the Deaf community, and other members accept that person as a part of the community<sup>45</sup>.” Hence, not only Deaf but also their family members, or sign-language interpreters who identify with Deaf culture, form part of the Deaf community. They premise that the main differential element between them and the hearing world is the language they use and their visual mode of communication, while the physiological capability to hear is perceived as a difference of less significance<sup>46</sup>. More particularly,

<sup>40</sup> Lane, 1992.

<sup>41</sup> International Federation of Hard of Hearing People.

<sup>42</sup> Ibidem.

<sup>43</sup> Oregon.gov.

<sup>44</sup> Lumaban.

<sup>45</sup> Cleveland Hearing & Speech Center.

<sup>46</sup> Bartha, pp. 3-4.

inside this community, deafness is not apprehended as a deficit or as a condition to be repaired, but as the inability “to hear or comprehend speech and language through the ear<sup>47</sup>.” The importance of visual communication via the sign language and of their distinct culture is capitalised, as it is also done with the letter D<sup>48</sup> of the word deaf, as a way to distinguish themselves from the wide society of deaf people<sup>49</sup>. For all these special characteristics, further discussed and analysed in the next chapter, they demand for their protection as a linguistic minority.

As it occurs, the deaf identity is characterised by heterogeneity, but as Melluci states, it is a common phenomenon for collective actors to be plural and equivocal, rather than homogeneous; and goes on by emphasising that the most important concept of collective identity is “the plurality of analyses, along different axes<sup>50</sup>,” which operates as “continuums along three axes such as solidarity and aggregation, maintenance of limits and breaching of limits, and consensus and conflict<sup>51</sup>.”

## 2.2. *The Deaf Culture*

Several definitions have been developed for *culture* throughout the years, which have been focusing on different aspects of the term in regard with the perspective of the analysis and the purpose assigned for. However, the great majority of them encompasses some standard notions, elements, or patterns, such as the possession of shared beliefs, values and behaviours of common history and social structures, of a unique language and distinctive art, with which the members of a culture group are identified and it is possible for them to be distinguished by another group. In addition, these elements form the criteria in establishing whether or not a group constitutes a culture<sup>52</sup>. More particularly, as Kroeber and Kluckhohn state, “culture consists of patterns, explicit and implicit, of and for behavior acquired and

<sup>47</sup> World Federation of the Deaf, *Visions and Goals for Access to Adult Education for Deaf People*, available at <http://www.wfdeaf.org/databank/policies/policy-visions-and-goals-for-access-to-adult-education-for-deaf-people> (consulted on 24 April 2012).

<sup>48</sup> Obasi, 2008, p. 463.

<sup>49</sup> Ibidem.

<sup>50</sup> Lee, p. 3.

<sup>51</sup> Ibidem.

<sup>52</sup> Sparrow, 2005, p. 140.

transmitted by symbols, constituting the distinctive achievements of human groups, including their embodiments in artifacts<sup>53</sup>,” while as Bans argues, “it is the values, symbols, interpretations, and perspectives that distinguish people one from another in modernised societies<sup>54</sup>.”

Deaf people have found their own distinct ways “to define and express themselves through their rituals, tales, performances, and everyday social encounters<sup>55</sup>” and they have developed a unique culture consisting of values and beliefs, customs, art, literary traditions, history and shared institutions.

### *Feelings of Community/Distinct Values*

Deaf people feel a strong identification with their community, which works as a surrogate family and provides them with a positive and nondiscriminatory environment<sup>56</sup>. Inside this community, they have the chance to interact with other people with whom they happen to share the same reality and to face common difficulties. As a result, they develop strong bonds and ties. In a research carried out by Eckert, in which Deaf people were asked to describe their meeting with a hearing person for the first time, in comparison with their meeting with a Deaf person, the participants responded that they had felt an instant connection with the Deaf person while, on the other hand, they reported a lack of intimacy with the hearing person<sup>57</sup>. This strong sense of solidarity and of belonging in a family among the members of the Deaf community<sup>58</sup> derives from the same values and beliefs that they share, which play an important role in the self-recognition and recognition by others. A value that appears to be fundamental in Deaf community is the perception of deafness as a declaration of identity and culture rather than as an indicator of hearing ability<sup>59</sup>. Therefore, its members reject the idea of medicalisation of deafness, and perceive any attempt for deafness to be fixed, via hearing-aids and cochlear implants, oral training and speech-language therapy, as offensive. Instead, they prem-

<sup>53</sup> Center for Advanced Research on Language Acquisition (CARLA).

<sup>54</sup> Ibidem.

<sup>55</sup> Deaf Independent Living Association.

<sup>56</sup> Lane, 2005, p. 292.

<sup>57</sup> Eckert, 2005, pp. 108-110.

<sup>58</sup> Lane, 2005, p. 293.

<sup>59</sup> Deaf Linx.

ise the value of their visual language which they feel committed to preserve and pass to the next generation. Accordingly, the values and beliefs of the Deaf community subscribe to the “ideal of equality” and support that “all languages and cultures are equal as they are adaptations to the conditions of life<sup>60</sup>.” In general, the members of Deaf community value the importance of the group, prioritise the needs of the community and tend to be collectivists rather than individualists<sup>61</sup>. More particularly, while in the hearing world individuals are usually encouraged to be self-reliant and the emphasis is put on personal opinions and choices, in the Deaf community members feel the inner obligation to help one other, to pool resources and share information, to express their loyalty and obligation to the group.

### *Norms of Behaviour*

The Deaf community has developed its own rules of social interaction, in order to function in an appropriate way within their environment<sup>62</sup>. Hence, they have their own ways of doing introductions and departures, of organising a conversation, of speaking in a polite way. More particularly, they are engaged in long departures, the eye contact with the interlocutor is considered crucial and any avoidance is possible to be taken as offense, while directness, physical proximity and touch are more than welcome.

### *History, Customs and Arts*

Deaf people have their own history which includes their struggles over the centuries<sup>63</sup>. Ancient Greek philosophers were the first to have a claim recorded for deaf, at times when deaf people were deprived of their fundamental rights. During the Renaissance though, progress was noticed, as Geronimo Cardano supported that learning does not require hearing and the first attempts to educate deaf started. The creation of the first manual alphabet system by Juan Pablo de Bonet, the foundation of the first social and religious associations for deaf people by Abbot Charles-Michel de l’Epée, as well as of the first public

<sup>60</sup> Parasnis, 1996, pp. 85-87.

<sup>61</sup> Bauman & Murray, pp. 1-4.

<sup>62</sup> The Deaf Society of New South Wales.

<sup>63</sup> Start ASL.

free deaf school in 1771 were the steps forward. Their history proceeds with their long disputes with the oralists for the recognition of their sign language and continues until today. But, besides history, Deaf have unfolded their own traditions, as for example storytelling in sign language, sharing folklore, or giving name signs that reflect something about the person, as well as arts which address their culture and experience.

### *Language*

One of the most important components of Deaf people's culture is the use of sign language<sup>64</sup>. As the linguist Edward Sapir argues "language is not only a vehicle for the expression of thoughts, perceptions, sentiments and values characteristic of a community; it also represents a fundamental expression of social identity and culture<sup>65</sup>." Indeed, what at first site is perceived as a visual iconic mode of communication, for the Deaf people becomes a medium for personal expression that permits them to cultivate a feeling of connection, of a shared understanding, of a common history, of a common culture; and it is valued as the instrument that enables Deaf people to maintain and safeguard their culture, and it is the way to bequeath this culture to the next generations.

### *Social Structure*

Deaf people have constructed an advanced organisational system, which consists of local, national or international networks of social, political, athletic, religious, literary, dramatic associations, so as to better advocate their rights and achieve further socialisation easily<sup>66</sup>. These organisations operate as a network for support, camaraderie and socialisation concerning any aspect of Deaf people's life, from Deaf Olympics to Deaf churches.

Although all the above-mentioned elements are common in Deaf culture and are considered as its vital components, it should be clarified that at the same time, it is characterised by diversity and heterogeneity, as numerous distinct Deaf communities have been developed around

<sup>64</sup> Eckert, 2010, p. 318.

<sup>65</sup> Kilgour.

<sup>66</sup> Hands & Voices.

the world, exhibiting variation in the cultural norms and in the sign language they use. However, whether exhibiting differences or not, all these shared patterns of behaviours and interactions, cognitive constructs, affective understanding and shared set of experiences relating to the consequences of deafness, make the claim of Deaf culture a particularly strong one. Undoubtedly, Deaf people's membership to their own distinct culture contributes not only to their self-esteem and self-respect<sup>67</sup> – as they feel that the value of choices and activities they are engaged in are recognised and affirmed by culture – but also to their mobilisation. As a result, the protection of their culture becomes an element of further action which empowers the whole spectrum of their rights.

### 2.3. *The Deaf Language: Sign Language*

The development of language co-exists with the need of people for communication. In an attempt to bridge the gap and to achieve social interaction, Deaf people have substituted speech by developing a distinct visual, gesture-based language, the *sign language*. The message in this language is communicated not with acoustically conveyed sound patterns, but with coded signals which are reinforced through manual and non-manual components such as facial expressions, hand movements and body postures<sup>68</sup>. Records of several variations of sign languages, including even dialects, exist around the world that are not mutually intelligible, confirming the fact that sign language is not a single universal language<sup>69</sup>.

Nonetheless, as far as the roots of sign languages are concerned, scientists have an obscure image. The earliest record of sign languages dates back in the 5th century BC, in Plato's *Cratylus* where Socrates clearly states: "If we hadn't a voice or a tongue, and wanted to express things to one another, wouldn't we try to make signs by moving our hands, head and the rest of our body, just as dumb people do at present?"<sup>70</sup> However, despite the fact that evidence for sign languages

<sup>67</sup> Sparrow, 2005, p. 142.

<sup>68</sup> National Institute on Deafness and Other Communication Disorders.

<sup>69</sup> The existence of the international sign language "Gestuno" should not cause confusion as it is an artificial language created in 1975 with a status analogous to that of Esperanto regarding spoken languages today.

<sup>70</sup> SignLanguage.org.uk.

being used is possible to be found throughout history, it was only after centuries during the 18th century, that they were first systematised by Abbot Charles-Michel l'Épée in France and that the first school of deaf was established.

The slow progress in their recognition can be explained by the prevailing prejudice against deaf people and the existing societal barriers, which have led to their marginalisation by society and to the deprivation of their rights. But even when the sociopolitical context changed during the Renaissance, no particular progress was achieved due to the dispute triggered by the supporters of oralism, over the use of sign language in education. According to them, “oral methods should be preferred to that of signs in education and instruction of deaf-mutes<sup>71</sup>,” a statement that was also affirmed by the International Congress on the Education of the Deaf in Milan<sup>72</sup>. As a result, the status of a real language has for a long period of time been denied to sign language. In fact, steps towards the recognition of sign languages as real languages was made only in the 1960s, when the findings of the linguistic research carried out by William C. Stokoe, Dorothy S. Casterline and Carl Croneberg demonstrated that sign language has linguistic parameters, such as phonology, morphology and syntax.

Besides the progress mentioned, for several years there was still a prevalent misconception that sign languages do not fulfill the criteria of natural languages, because they lack in linguistic, sociolinguistic and biological parameters<sup>73</sup>. However, the scientific research on the field has rebutted this argument. More particularly, as far as the linguistic requirements are concerned, it was demonstrated that sign languages have arisen spontaneously, contrary to the fallacy that they were artificially-invented teaching codes. It was shown that they are not concrete but abstract, and that they are characterised by expressive capacity. In addition, the findings have shown that – given normal exposure and interaction – sign languages’ evolution occurs naturally and that they are transmitted from one generation of language users to another, as is the case for natural languages. More particularly, children acquire sign language without instruction; just like the hearing children

<sup>71</sup> Start ASL.

<sup>72</sup> Ibidem.

<sup>73</sup> Pettito.

learn a spoken language by attending to grammatical properties. In fact, they decompose and over-generalise them as they advance through the system<sup>74</sup>. Moreover, although iconicity is systematic in sign languages, it was recognised that they are not a visual rendition of a spoken language, and that not only concrete but also abstract ideas can be communicated. As mentioned before, they have grammatical, syntactical, morphological and phonological regularities<sup>75</sup>, which allow sign languages to organise elementary, meaningless units into a meaningful semantic unit<sup>76</sup>. In fact, the hand shape, the orientation, the location, the movement and the expression of the body, the head, the eyebrows, the eyes, and mouth, as well as several combinations of these elements, determine their lexical distinction, grammatical structure, adjectival or adverbial content, and discourse functions.

However, the definition of languages is not exclusively based on linguistic parameters, but on sociolinguistic as well. Language is described by Fishman as an aspect of the soul of people and as the light of the mind by John Stuart Mill. In fact, the essence of sociolinguistics depends on two facts about language, as Ralph Fasold puts it: “first, that language varies, which is to say that speakers have more than one way to say more or less the same thing; and, second, that language serves a broadly encompassing purpose, just as critical as the obvious one of transmitting information and thoughts from one person to another<sup>77</sup>.” This cultural use of natural languages, along with their sociolinguistic patterns, is identified in sign languages as well; because, for Deaf people, sign languages become the medium for social expression, the vehicle for communicating their values, beliefs and customs, contributing to the cultivation of a strong kinship as a group. Actually, sign languages undergo the same patterns of change and variation, like those observed in natural languages, as for example they exhibit sign loans, regional accents, lexical variation, depending on socio-economic status, and lexical variation depending on the language user’s age, sex, and educational background, while users of distinct signed languages abide by “language-specific rules of politeness, turn

<sup>74</sup> Sandler.

<sup>75</sup> *Ibidem*.

<sup>76</sup> SignLanguage.org.uk.

<sup>77</sup> Lucas.

taking, and other discourse patterns found in spoken languages<sup>78</sup>.”

Furthermore, concerning the misconception that sign languages are biologically inferior to spoken languages, the findings of the studies have shown that “the biological mechanisms in the brain that underlie early human language acquisition do not appear to differentiate between spoken versus signed language input<sup>79</sup>.” Based on the above-mentioned findings, scientists have concluded that sign languages demonstrate all the features of the spoken languages and that they meet the criteria for natural languages. Therefore, they should not be excluded from the family of languages used by human beings. Hence, this assumption advocates for further measures to be taken that will contribute to the better protection of sign languages and will empower deaf peoples’ rights.

<sup>78</sup> Pettito.

<sup>79</sup> Ibidem.

II.

LISTENING TO DEAFNESS

Although human rights are considered interrelated, interdependent, indivisible and inherent to all human beings regardless of sex, national or ethnic origin, colour, religion, language, or any other status, deaf people have been denied the full and equal enjoyment of their fundamental rights as a result of prejudice and stereotyping<sup>80</sup>. Indeed, over the years, several physical and social barriers have been imposed to deaf people by the hearing society leading them to social and economic marginalisation and hindering their full participation in society. In an effort to protect and promote the realisation of deaf people's human rights and to eliminate any discriminatory practices against them, international, national and provincial acts, declarations and policies have been enacted. There are two main legislative options protecting deaf people's rights: either under the provision of disability/equal opportunities acts based on the medical definition of deafness, or under the legal framework that protects linguistic minorities.

This chapter offers an overview of the problematic situation with regard to the physical and social barriers imposed to deaf by the hearing society. More particularly, the roots/causes of the problem are analysed, as well as their impact and negative consequences on the enjoyment of deaf people's rights, with the view to determining the existing challenges in the protection of deaf people's rights. In addition, an introduction to the legal options for the protection of deaf peoples' rights is offered as an answer to the problem.

<sup>80</sup> Griffin, 2008, pp. 9-27; UN Doc. A/CONF. 157/23, 12 July 1993.

## 1. LIVING IN SILENCE: AN OVERVIEW OF THE PROBLEMATIC SITUATION

Historically, deaf people have been oppressed, stigmatised and marginalised by the hearing world; they have been denied equal opportunities, and have suffered human rights abuses. The roots of this phenomenon lies, to a great extent, in a prejudicial premise which suggests that deaf people should be considered as inferior human beings, unable to be educated or to contribute to society<sup>81</sup>. In fact, deaf people were perceived as “nonpersons, incapable of reason and unworthy of rights or respect” in ancient times, whereas, even nowadays, in some developing countries they are seen as subhuman or as incarnation of the evil<sup>82</sup>. However, this form of discrimination against deaf people “based on lack of accommodation of physical difference” is also observed in the developed countries, known as *audism*<sup>83</sup>. The term was introduced in 1975 by Tom Humphries in order to describe the discrimination or the stereotypes that deaf or hard of hearing people face due to the notion that somebody is superior because of his/her ability to hear. This kind of discrimination is manifested in continual judgment of “deaf people’s intelligence and success on the basis of their ability in the language of the hearing culture,” but also by proclaiming normalisation as beneficence or by limiting deaf people’s self-determination<sup>84</sup>. Like racism or sexism, audism judges, labels, and limits deaf people’s possibilities affecting their participation in society in a negative way<sup>85</sup>.

No evidence though of such a “hearing superiority” has been proved by any linguistic, mental, psychological, physiological research carried out in the field. In fact, according to sociologists, the formation of such artificial and discriminatory beliefs arises due to the tendency that traditional communities develop in denouncing, rejecting or even eradicating anything different of what they perceive as normal<sup>86</sup>. Moreover, lack in education, information and awareness makes people vulnerable to unfounded and irrational fears, prompts prejudices and increases the

<sup>81</sup> Bauman, Simser & Hannan, pp. 12-17.

<sup>82</sup> Canadian Association of the Deaf.

<sup>83</sup> Bauman, Simser & Hannan, pp. 12-17.

<sup>84</sup> Deaf Linx.

<sup>85</sup> Ibidem.

<sup>86</sup> Gordon.

influence that folklore, superstition and informal belief systems have on the explanations of the causes of deafness<sup>87</sup>. In actuality, the only rational challenge that the hearing and deaf people share is linguistic, due to the communication barrier that naturally exists between the two worlds. However, considering that this obstacle results from “social lack of knowledge about the different available languages or communication mechanisms, but as well as of the way that they work in conjunction with culture<sup>88</sup>,” it should be easily overcome. However, recognition of sign languages is still pending in the most of the countries, as a result of a new wave of hostility and prejudice that has burst regarding their status as real natural languages. Thus, further social and physical barriers are imposed to deaf people and block their equal and full participation in society.

Undoubtedly, this vicious cycle of prejudice, discrimination, stigma and hostility creates additional restrictions for deaf people in the fields of employment, education, housing, transport, cultural life and access to public places and services. Having no legal recognition or no access to information, deaf people do not gain all the appropriate services or benefits required in the equalisation of opportunities and for the full enjoyment of their rights. More particularly, deaf people do not have access to equal and quality education, even though they are born with the same basic capacities for learning as the rest of the hearing world<sup>89</sup>. According to statistics, approximately 80 per cent of the world’s 70 million Deaf people are deprived of any access to education<sup>90</sup> – especially the vulnerable groups such as women and children – while only about 1-2 per cent of the Deaf have the possibility to be educated in sign language. Thus, they are confronted with high rates of illiteracy and unemployment, low status jobs and incomes. Furthermore, as a result of the non-recognition of sign languages, obstacles are created to deaf people concerning their access in information, while at the same time Deaf people’s cultural and linguistic identity is overlooked. Not being provided with interpreters in their official interactions, and having access to a limited number of sign language news and pro-

<sup>87</sup> Multicultural Disability Advocacy Association (MDAA).

<sup>88</sup> Munoz-Baell & Ruiz, 2000.

<sup>89</sup> Ibidem.

<sup>90</sup> World Federation of the Deaf, *Human Rights*, available at <http://www.wfdeaf.org/human-rights> (consulted on 3 May 2012).

grammes in mass media, they experience difficulties with the formation of well rounded opinions and well informed decisions.

All these barriers facing the deaf people may lead to their social rejection, alienation or exclusion from the larger hearing community and definitely affect the recognition and enjoyment of the whole spectrum of deaf people's rights (autonomy, accessibility and solidarity rights). Furthermore, deaf people's victimisation may have as a result the adoption of a passive attitude towards their situation. Indeed, according to psychologists, the transformation of deaf people to social victims is possible to cause their psychic stagnation and dissullusionment<sup>91</sup>. As Kopp argues, it may perpetrate socially unaccepted behaviour and an endless cycle of desperation – a situation for which victims often blame others or society because they are seldom accountable for their actions<sup>92</sup>. Thus, deaf people tend to accept the stigma, manipulate their inferior social status for perceived gain, and face the situation passively. In most of the cases, they reject their ability to change the situation and they do not take any positive action in claiming their rights. Hence, by not undertaking an energetic role in claiming their equality, accessibility, culture and identity or full participation in the society, the formation of their future but also the protection of their rights is left to the will of societies, which makes them vulnerable to discrimination practices or to higher risks of abuse.

As it occurs, state actors have the obligation to provide deaf people with a clear legal, moral and political roadmap for change as there is a crucial need to take measures in order to protect deaf people's civil, political, economic, social and cultural rights, to eliminate discrimination and to empower human diversity.

## 2. BREAKING THE SILENCE:

### LEGISLATIVE OPTIONS FOR THE PROTECTION OF DEAF PEOPLE'S RIGHTS

Regardless of their political, economic and cultural systems, states have the duty to promote and protect human rights and fundamental

<sup>91</sup> Kopp, 1971.

<sup>92</sup> Ibidem.

freedoms of all people; to provide them with equal rights, equal responsibilities and equal opportunities for their equal participation in the society<sup>93</sup>. A powerful tool in the realisation of this goal is law. Indeed, associated with command, duty and sanction, law plays an important role in the promotion of effective measures for the protection of human rights, for the prevention and elimination of any equality, and for the rehabilitation and the realisation of the goals of full participation through legislation, administration, adjudication, policies and programmes.

From the very beginning, the principles of equality and non-discrimination have been encompassed in human rights systems as safeguards for the full and equal promotion, protection and realisation of all human rights and fundamental freedoms. "All human beings are born free and equal in dignity and rights... [a]ll are equal before the law, and [all] are entitled without any discrimination to equal protection of the law"<sup>94</sup>, states the Universal Declaration of Human Rights (UDHR) underlining the importance of equality and non-discrimination, whereas equivalent statements are also included in other two instruments comprising the International Bill of Rights, that is the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The relevant provisions of obligatory character for the states parties raised great expectations for their implementation leading to the equal realisation of human rights. However, it was soon realised that there was need of taking additional measures in order to properly address human rights abuses experienced throughout the world by individuals belonging to social, ethnic, religious, linguistic, cultural and other vulnerable groups. Therefore, since the mid-1960s, several specialised human rights instruments have been adopted to fill any gaps in the law and to establish permanent mechanisms<sup>95</sup>, such as permanent treaty-monitoring bodies composed of recognised experts in the field of human rights with mandate to scrutinise and promote state party

<sup>93</sup> Cotter, 2007, p. 11.

<sup>94</sup> Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III), 10 December 1948.

<sup>95</sup> Center for International Rehabilitation, 2003.

compliance with treaty provisions, for more effective monitoring of violations against the socially, psychologically, economically and politically vulnerable people. These include, among others, the UN Convention on the Elimination of All Forms of Racial Discrimination<sup>96</sup>, the UN Convention on the Rights of Persons with Disabilities<sup>97</sup>, the UN Convention on the Elimination of All Forms of Discrimination Against Women<sup>98</sup>, the UN Convention on the Rights of the Child<sup>99</sup>, etc.

The term vulnerable encompasses populations, who experience poor physical, psychological or social conditions, who are susceptible to serious physical or emotional hardship, and are confronted with many risks, either natural or as result of human activity, due to their social, economic or personal characteristics or group membership<sup>100</sup>. Moreover, vulnerable groups are restricted from opportunities as a result of discriminatory practices. Unequal treatment in education and in the work environment, limited access to services or resources and high dependency constitute some of the negative consequences of discrimination against vulnerable groups. In that context, it is possible for deaf people to be considered as vulnerable group and to claim extra administrative, legislative and judicial measures under several specialised human rights instruments. However, deafness is a complex phenomenon which encompasses, as analysed in the first chapter, not only pathological but also sociolinguistic notions and interpretations. Thus, their legal classification under one of these specialised human rights systems becomes equivocal; the dilemma arises whether deaf people should claim benefits and legal protection for their human rights under the status of persons with disability or that of linguistic minority. An assessment of the two legal options will follow in order to address any gaps, to identify current challenges and to draw conclusions which will contribute to the formation of accurate, concrete and genuine recommendations.

<sup>96</sup> Convention on the Elimination of All Forms of Racial Discrimination, concluded 21 December 1965, entered into force 4 January 1969, 660 UNTS 195.

<sup>97</sup> Convention on the Rights of Persons with Disabilities, concluded 13 December 2006, entered into force 3 May 2008, 46 ILM 447 (2007).

<sup>98</sup> Convention on the Elimination of All Forms of Discrimination Against Women, concluded 18 December 1979, entered into force 3 September 1981, 1249 UNTS 13.

<sup>99</sup> Convention on the Rights of the Child, concluded 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3.

<sup>100</sup> Cooke-Hubley & Maddalena, 2011, pp. 117-125.

### III.

## DEFENDING THE RIGHTS OF DEAF AS PERSONS WITH DISABILITY

### A. DEFINING DEAF PEOPLE AS PERSONS WITH DISABILITY

#### 1. *The Concept of Disability*

Disability, like deafness, is a complex, dynamic, and multidimensional phenomenon which encompasses several interpretations depending on the perspective of the observation (medical, social, legal, etc.). In this chapter, an analysis of these definitions will follow, in order for them to serve as a basis for the explanation of the classification of deaf as persons with disability. This is because, the criteria for the disability status are found in these different interpretations. However, generally speaking, disability as an umbrella term is perceived as the “dynamic interaction between health conditions and contextual factors, both personal and environmental,” and it covers the notion of impairment, of activity limitations and participation restrictions<sup>101</sup>.

#### 1.1. *The Medical Model of Disability*

In medicine, disability is perceived as a distinct pathology, as a medical condition in which a bodily system presents a physical, sensory or cognitive failing in its physiological or psychological functions<sup>102</sup>. Based on guidelines from the World Health Organisation (WHO) McCloughry and Morris have identified three dimensions to the way

<sup>101</sup> World Health Organisation.

<sup>102</sup> Bauman, Simser & Hannan, pp. 6-8.

disability is understood by the medical model<sup>103</sup>: i) as *impairment*, which is any loss or abnormality of psychological or anatomical structure or function; ii) as *disability* which is defined as any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being; iii) as *handicap* which is perceived as a disadvantage for a given individual resulting from an impairment or disability, that limits or prevents the fulfillment of a role (dependent on age, sex, social and cultural factors) for that individual. In this view, disability is a biological condition and necessitates medical intervention and rehabilitation in order to fix the problem and to ameliorate patients' quality of life.

### 1.2. *The Social Model of Disability*

While traditionally, disability was perceived as a medical condition, over the past thirty years, a paradigmatic leap was achieved from the medical conceptual framework to a social one and a new vision of disability was offered in terms of sociology and social policy<sup>104</sup>. The social model of disability recognises the existence of impairment, but maintains that it is not the impairment which disables people, but the socially constructed barriers that are imposed to them and the social equalities that they are confronting because of their impairment<sup>105</sup>. Thus, it is argued that the inability of persons with disabilities to participate in the society derives, not from their specific characteristics, but from the physical, social and environmental barriers that the society imposes to them. Therefore, the emphasis is not put on the medical condition but on the causes of exclusion through social, economic, political, cultural, relational and psychological barriers. Accordingly, while the medical model intends to fix the impairment, the social model focuses on fixing the society which creates unfounded social and environmental barriers<sup>106</sup>. Based on the social model of disability, McCloughry and Morris have redefined impairment as “a lacking part or all of a limb or having a defective limb, organ or mechanism of the body<sup>107</sup>” and disability as “the disadvantage or restriction of activity

<sup>103</sup> Morris, 2008, pp. 4-8.

<sup>104</sup> Goodley, 2011.

<sup>105</sup> Center for International Rehabilitation, 2003.

<sup>106</sup> Bauman, Simser & Hannan, pp. 6-8.

<sup>107</sup> Morris, 2008, p. 6.

caused by a contemporary social organization which takes no or little account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities<sup>108</sup>.”

### *1.3 The Legal Model of Disability*

Official legal definitions of disability have also been developed in order to reflect the organisational requirements of governments, their institutions and key welfare professionals<sup>109</sup>. These administrative definitions individualise the problems of disability and allow nation states to identify those persons who qualify for welfare. Their aim is to offer further protection for their rights, as well as equal opportunity structures. The legal definitions of disability vary between the different countries and the majority of them are based on the WHO's international classification of impairment, disability and handicap, and approach disability on a medical rather than social perspective<sup>110</sup>. However, the Convention on the Rights of Persons with Disabilities (CRPD) constitutes a “paradigm shift,” as its preamble recognises disability as an evolving concept that “results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others<sup>111</sup>.”

## *2. The Medical Concept of Deaf as Persons with Disability*

From a medical perspective, deaf people are recognised as disabled, because they fulfill the medical criteria determined by the definition of disability. Specifically, disability is defined as impairment in the bodily system, which prevents individuals from performing a substantially gainful activity; deaf are identified with such an impairment (loss of hearing) hindering their functions; thus, they are considered as persons with disability<sup>112</sup>. As it occurs, the connecting point between the concepts of disability and deafness is the medical condition of the individual. However, an additional common element between

<sup>108</sup> Ibidem.

<sup>109</sup> Goodley, 2011.

<sup>110</sup> Center for International Rehabilitation, 2003, pp. 39-40.

<sup>111</sup> World Health Organisation.

<sup>112</sup> Obasi, 2008, p. 458.

these two concepts is the view they share in regard with the negative implications that the impairment bears on person's development of literacy and social interaction. According to the medical model, it is the impairment that disables deaf people; the loss of one of the six human senses transforms them incapable of performing tasks and it is the source of their difficulties. Therefore, the medical view advocates for the elimination of this impairment and encourages the recourse to medical solutions.

It has to be clarified that the medical perception of deafness as impairment and, thus as disability, is judged only in relation to the hearing world, without taking into account other environments, communities or parameters such as the language, culture and identity. This occurs because the medical model of deafness and disability is based on the frame of normalcy<sup>113</sup>. The idea of normalcy first appeared in the nineteenth century when scientists, in an attempt to measure different traits, applied statistical principles to human populations, and noticed that the majority of the people cluster around the mean<sup>114</sup>. This kind of people around the mean, gradually and over the years, has been classified as "normal," whereas any others falling not within a range clustered around the mean, have been assigned as abnormal, as deviating from normalcy standards. Within this context, the concept of disability arose, encompassing all those outliers, including deaf who as well, present statistical anomalies and deviate from the normal standards due to their hearing loss. In addition, medical technology, genetic tests, etc. were introduced in order to purge the society from this unwanted burden and to achieve normalcy.

As far as the various attitudes towards the medical concept of deaf as persons with disability is concerned, the majority of hearing people are found positive. Their support to the medical model, however, is also justified by the frame of normalcy, which encourages "normal people" to perceive deafness as a flaw, as aberration of the norm causing great difficulties to deaf. Then, the medical concept of deaf as disabled prevails among the parents of deaf people, because as Knight explains the "medical scenario is the first experience of deafness for most

<sup>113</sup> Lane, 2005, pp. 358-369.

<sup>114</sup> Bauman, Simser & Hannan, pp. 12-16.

parents<sup>115</sup>.” Indeed, 90 per cent of deaf children are born by hearing parents, who having no knowledge about deafness, address themselves for advice to the medical experts. On the other hand, there are a number of people which criticise the medical model, arguing that the classification of deaf as persons with disabilities leads to perception of deafness as an impairment to be fixed, and as a result, threatens the existence of deafness, of deaf culture, identity and language. Furthermore, they support that it is not deafness that creates difficulties to deaf people but, the barriers that the society poses to them. Consequently, the efforts should focus on eradication of the physical and social barriers and not of deafness.

As far as deaf people’s attitude towards the medical classification of deaf people as disabled is concerned, there are two main flows. On the one hand, there is a part of deaf people who perceive their deafness as a flaw, as a void, support the medical idea of deaf as persons with disability as it allows them to claim disability benefits, and therefore to afford the medical intervention in order to fix the problem. However, there is a great number of Deaf people who view their lives through a frame that is diametrically opposed to the frame of hearing loss. For them, deafness as a form of sensory and cognitive diversity has the potential to contribute to the greater good of humanity<sup>116</sup>. Thus, the medical approach of deaf as persons with disability threatens the positive contributions of deafness.

Consequently, from a medical point of view, deaf people can be constructed as persons with disabilities due to their sensitive audio logical position which is perceived as a loss or as impairment to be fixed by medical interventions. However, this perception is criticised for offering not a holistic, but incomplete view of deafness, as it offers only the perspective of deafness in relation to the hearing world and does not take into account other parameters, as the environment, the culture, language and identity.

<sup>115</sup> Morris, 2008, p. 8.

<sup>116</sup> Bauman & Murray, pp. 6-8.

### 3. *The Social Concept of Deaf as Persons with Disability*

The social model accepts the classification of deaf as persons with disabilities, but based on a different context than the one proposed by the medical model. It acknowledges the presence of hearing loss, it perceives it as a benefit and not as a lack or as impairment to be cured. It argues though that it turns out as impairment (disability) as result of the physical and social barriers that the society imposes to deaf and not due to any biological cause. More particularly, deaf people are considered as the possessors and protectors of a great cultural heritage and language, of numerous art forms and an eloquent history<sup>117</sup>, however they are transformed to a disability group because of institutionalised social oppression and of challenging normative world-views<sup>118</sup>. Hence, according to this model it is not deafness itself that hinders the functions of deaf people, but the society's norms, labels and discriminatory practices towards deafness. In other words, disability does not lead to exclusion, but exclusion lead to disability.

The social concept of deaf as persons with disability is based on their examination not in regard with what they lack, but with how they contribute to the larger diversity of humanity<sup>119</sup>. Indeed, according to the social model, deafness is perceived as gain or as a form of "sensory and cognitive diversity that has the potential to contribute to the greater good of humanity<sup>120</sup>." As sociologists suggest, "variation is the primary indicator of health, whether of an ecosystem or a society<sup>121</sup>." Based on this approach, deafness contributes to the greater understating of humanity and adds to cognitive, cultural and creative diversity, while notions such as collectivism and inclusion, socio-cultural integration are encouraged and new achievements and contributions in areas such as architecture, literature, culture are marked.

In contrast to the medical model, the social one takes into consideration not only the hearing world but the entire social and political influences which shape the course of human development<sup>122</sup>. In this

<sup>117</sup> Lane, 2005, pp. 357-365.

<sup>118</sup> Corker.

<sup>119</sup> Bauman, Simser & Hannan.

<sup>120</sup> Bauman & Murray.

<sup>121</sup> Ibidem.

<sup>122</sup> Bauman, Simser & Hannan, pp. 6-8.

context, diversity is the real norm rather the statistical normalcy. The value of the Deaf culture, sign language and Deaf identity is emphasised and it is interpreted as contributing to diversity, while any normalising surgery is perceived as aiming not to eliminate the differences that cause physical suffering but all those that underpin ways of life with which the involved people are happy but the hearing world considers as abnormal<sup>123</sup>.

The social model takes into account Deaf peoples' view which suggests that it is perfectly possible to lead a happy and productive life without hearing<sup>124</sup>. Deaf people focus on the capacities they possess rather on those they lack, put the emphasis on the positive aspects of their condition and treasure the merits deriving from it. Thus, they perceive their hearing loss as benefit which offers them an opportunity for further self-development. The gap in familiar ways of functioning is bridged by the development of new or enhanced sensory modes. Hence, the loss of capacities in a certain area is counterbalanced by the gain in another field. In that context, Deaf people tend to develop extra skills and qualifications of which hearing people may lack. However, the hearing society, based on the frame of normalcy, tends to underestimate the value of these skills. In an attempt to clarify the reason for that, sociologists use the example of the half empty or half full glass<sup>125</sup>. In this expression two perspectives are provided; the optimistic when the glass is perceived as half-full and the pessimistic when it is perceived as half-empty. However, this does not provide a holistic approach. Nonetheless, people's beliefs, perceptions and interpretations of the world are influenced in such a degree by certain frames that become myopic in any alternatives. For example, if somebody could step back from his/her narrow view, he/she would realise that perception of the glass as half empty should not be perceived automatically as pessimistic, because in a different framework, the half empty of liquid could be interpreted as half full of oxygen. Accordingly, the hearing world based on the frame of normalcy perceives deafness as disability and as impairment to be fixed without taking into account the benefit deriving from it. However, the social model adopts a holistic view and takes into

<sup>123</sup> Lane, 2005.

<sup>124</sup> Sparrow, 2005, p. 142.

<sup>125</sup> Bauman & Murray.

account many parameters. For this reason, the perception of deaf people as disabled becomes problematic for sociologists who value deaf peoples' contribution to the society. In fact, the attachment to their condition is so strong that they even argue that they would not want to be granted hearing even if it was possible, while several cases of Deaf couples asking for genetic counseling and testing in order to ensure that their children will be born deaf have been reported.

However, the social model does not ignore the difficulties that arise because of deaf people's hearing condition and, based on these, understand their classification as persons with disability. It clarifies though that any disadvantage occurs because of social and institutional causes and not the biological ones.

#### B. THE LEGAL PROTECTION OF DEAF AS PERSONS WITH DISABILITY

As mentioned above, people with disabilities including deaf have always been the subjects of *de jure* and *de facto* discrimination in a daily basis; they have been denied benefits and rights unjustly and have received unequal treatment without rational justification. Although some efforts have been done to provide legislative measures for equality to end discrimination, historically people with disability have had "no input in the Constitution and the laws of the land<sup>126</sup>." For years, the protection of their rights was based on the safeguards provided by the principles of equality and non-discrimination enshrined in domestic and international human rights law. In international level, their rights were included under the umbrella of the International Bill of Rights<sup>127</sup>, while on the national level few governments have adopted a social inclusion and rights-based approach to disability issues, while the majority has been relying "on narrow and paternalistic charity and medical models of assistance<sup>128</sup>." Moreover, the principles and standards set forth in the International Bill of Rights were not fully reflected on the national level.

<sup>126</sup> Cotter, 2007, p. 83.

<sup>127</sup> Center for International Rehabilitation, 2003.

<sup>128</sup> Ibidem.

However, in an attempt for meaningful protection and promotion of the human rights of persons with disabilities, new mechanisms were enforced, and several international, national and provincial acts, declarations and policies have been put in place focusing only on persons with disability. The basic premise of these documents is to ensure the protection of the rights of persons with disabilities and to offer them equality of opportunity. They include effective measures for prevention of disability, as well as for the rehabilitation and the realisation of the goals of “full participation” of disabled persons in social life and development<sup>129</sup>. In general, the legal protection of persons with disabilities is based on the adoption of affirmative action plans and measures which remove the physical and social obstacles imposed to disabled people and provide them with benefits in areas of education, health, employment, health care and social welfare with the aim to create a non-discriminatory and disability sensitive legal environment in which persons with disability will fully enjoy their human rights.

## *1. Legal Framework*

### *1.1. Overview of International Rules Regarding Disability*

#### *1.1.1. Antecedents to Specific International Rules on Disability Rights*

The first safeguards for persons with disabilities are provided by the Universal Declaration of Human Rights (1948). More particularly, Article 1, stating that all human beings are recognised as free and equal, and Article 2, clarifying that human rights are inherent to all people regardless of their status, encompass the principle of equality and non-discrimination contributing to disability equality, which is further ensured before the law by Article 7. Discriminatory practices are to be redressed by Article 8 advocating for everyone’s right to effective remedy, whereas employment rights and equality in work are protected under Article 23. Disability is referred in Article 25 as one of several grounds for the right to security, aiming at preserving an adequate standard of living. Article 26 states that everyone has the right to

<sup>129</sup> Cotter, 2007, p. 83.

education, while at the same time it stresses the contribution of education in the promotion of understanding. Although there is no explicit mention of discrimination on the ground of disability, it is very important that emphasis is put on the principle of equality in the UDHR as it is considered the starting point for any consideration of the content of modern international human rights law<sup>130</sup>. In addition, while the UDHR is a declaration and not a legally binding instrument, it has legal force as it is widely recognised as part of customary international law<sup>131</sup>.

The right to work for all people and the importance of equal opportunity is stated by the Discrimination (Employment and Occupation) Convention (International Labour Organisation (ILO) No. 111)<sup>132</sup>, adopted during the General Conference of the International Labor Organisation, which also offers a definition for discrimination in Article 1, while in Article 2 stresses the members commitment to equality of opportunity and treatment. In addition, members' responsibilities are stated in Article 3, whereas in Article 5 special measures are provided. Then, in 1964 the Employment Policy Convention (ILO No. 122)<sup>133</sup> was adopted which restates some of the equality principles referred in the Discrimination (Employment and Occupation) Convention and in Article 1 advocates for the freedom of choice of employment and the equal opportunities towards that for all people.

In 1966, the International Covenant on Civil and Political Rights<sup>134</sup> was adopted which requires states parties to ensure equality and non-discrimination and to provide victims of violations with remedies, whereas at the same time it states the civil and political rights which are applicable to all people, thus also to persons with disabilities. In the Preamble, the inherent dignity and equal rights for "all members of the human family" are recognised; while Article 2 highlights that member states' obligations should apply to all individuals without distinction. Equality of all before the law is recognised in Article 26, in which discrimination not only in law, but also in any area regulated by public

<sup>130</sup> Hannum, 2009, pp. 61-78.

<sup>131</sup> *Ibidem*.

<sup>132</sup> Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation, concluded 25 June 1958, entered into force 15 June 1960, 362 UNTS 31.

<sup>133</sup> Convention (No. 112) concerning Employment Policy, concluded 9 July 1964, entered into force 15 July 1966, 569 UNTS 65.

<sup>134</sup> International Covenant on Civil and Political Rights, concluded 16 December 1966, entered into force 23 March 1976, 999 UNTS 171.

authorities is prohibited. The Covenant also guarantees that any person whose rights are violated should be provided with effective remedies. The Covenant is the most comprehensive legally binding document for the protection of everyone's civil and political rights.

Safeguards to persons with disability are also provided by the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>135</sup>. Adopted also in 1966, it requires states to take steps for achieving progressively the full realisation of the rights recognised in the Covenant (such as the right to favourable conditions of work, the right to social security and assistance, the right to the highest attainable standard of physical and mental health, etc.). According to Article 2 all rights protected in the Covenant should be exercised without discrimination based on any kind of status. Furthermore, the Covenant Article 6 recognises the right to work, which includes "the right of everyone to the opportunity to gain his living by work he freely chooses or accepts" and adds that special guidance, programmes, policies, etc. should be developed in order to enable the realisation of the right. Moreover, guarantees for equal pay and access to employment are offered in Article 7, while as far as education is concerned, Article 13 recognises the right to education for everyone and highlights the value of education in promoting understanding between people.

In addition, certain conventions provide specific protection to particular groups such as women or racial and ethnic groups. These instruments equally apply to persons with disability who at the same time belong to one or to the other group, experiencing double discrimination due to disability and race, or sex. More particularly, the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965 – the first human right instrument to establish a monitoring system – promotes racial equality, denounces racial discrimination and obliges states to alter and modify any national law encouraging racial discrimination. Moreover, this Convention highlights in Article 1(3) the need for special measures to be taken and affirmative action programmes to be developed for certain racial and ethnic groups requiring special protection because of their status, as for

<sup>135</sup> International Covenant on Economic, Social and Cultural Rights, concluded 16 December 1966, entered into force 3 January 1976, 993 UNTS 3.

example persons with disabilities belonging to a racial or ethnic group, however without making an explicit reference to disabled. Then, the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979, ensures equality between men and women in the enjoyment of the full spectrum of their rights. Legal, policy and programmatic measures, temporary special measures and in general affirmative action are supported in the various articles of the Convention promoting the fight against discrimination, and guarantee equality, for example in the area of employment (Article 11), or before law (Article 15).

Undoubtedly, these international instruments provide protection to persons with disability by encompassing the principles of equality and non-discrimination for each and every individual and by ensuring the respect for dignity and the enjoyment of human rights for everyone. The safeguards provided are not explicitly addressed for persons with disability, but extend to them in the context of their applicability to all people. Yet the treaty-monitoring bodies (which supervise the implementation of the above-mentioned human rights treaties) only marginally address the routine human rights violations to which people with disabilities are subjected and there is a notable lack of jurisprudence on the rights of people with disabilities as a matter of international human rights law. Besides, several countries and regions of the world have either failed to develop laws in which these principles and standards apply also in the case of persons with disability, or have failed to implement them regarding persons with disability due to various cultural and social perceptions<sup>136</sup>.

### *1.1.2. Disability-Specific International Norms and Standards*

In an attempt for further and more targeted protection of the rights of persons with disabilities, several disability-specific standards have been developed within the United Nations system. The aim was to provide disabled people with a legal framework which takes into account several special parameters deriving from disabled people's status, in order to address the existing gaps in the law and to provide them with specialised and effective measures.

<sup>136</sup> Center for International Rehabilitation, 2003, pp. 55-56.

The first international human rights instrument to embody human rights principles relating specifically to people with disabilities was the Declaration on the Rights of Mentally Retarded Persons (1971)<sup>137</sup>. Although the document contributes to the further protection of the rights of mentally retarded persons and to the affirmation of their special needs, it does not cover the whole spectrum of disability status, but one single category. Indeed, disability is not characterised by homogeneity, as it involves mentally ill or mentally retarded people, visually, hearing and speech impaired persons, those with restricted mobility who in general experience different problems and obstacles<sup>138</sup>. For this reason, in 1975, a document with wider content was adopted, the Declaration on the Rights of Disabled Persons. In this document, the necessity of protecting the rights of persons with disabilities was emphasised, as also the importance of prevention and rehabilitation. More particularly Article 2 highlighted the equality of persons with disability, while Article 3 recognised the respect for dignity of disabled people. Autonomy of persons with disability was proclaimed under Article 5, whereas Article 6 advocates for disabled people's rights to rehabilitation and Article 7 recognises the necessity for economic benefits and social security for persons with disability. In addition discriminatory practices against persons with disability were condemned (Article 10) and the need for qualified aid to persons with disability for the protection of their property was stated in Article 11.

Undoubtedly these instruments contributed in addressing the problem and the gap in law, but also in raising awareness about the human rights of people with disabilities and to advocate for special measures. However, they were severely criticised for the language used and their approach to disability, as their expression of "outmoded medical and charity models of disability serve to reinforce paternalistic attitudes about people with disabilities<sup>139</sup>." More particularly, the Declaration on the Rights of Mentally Retarded Persons was criticised for qualifying the scope of rights for people with intellectual disabilities both in providing that "the mentally retarded person has, to the

<sup>137</sup> Declaration on the Rights of Mentally Retarded Persons, UN General Assembly Resolution 2865 (XXVI), 20 December 1971.

<sup>138</sup> Cotter, 2007, p. 83.

<sup>139</sup> Center for International Rehabilitation, 2003.

maximum degree of feasibility, the same rights as other human beings” and in terms of its goal for societies which is to promote “their integration as far as possible in normal life<sup>140</sup>.”

Protection is also provided for children with disabilities by the Convention on the Rights of the Child (CRC) (1989). In particular, Article 23 is specifically devoted to the rights of mentally and physically disabled children. This provision advocates for their equality, the respect for their dignity, and their full participation in society, while at the same time highlights the necessity for medical and social care, for the prevention and the rehabilitation of their disability.

With a view to a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities, “based on the holistic approach in the work done in the field of social development, human rights and non-discrimination,” the Convention on the Rights of Persons with Disabilities (CRPD) was adopted in 2006<sup>141</sup>. Being the first legally binding instrument for the protection, promotion and realisation of all human rights of all persons with disabilities, it provides a clear legal, moral and political roadmap for change. Although all international human rights treaties extend to persons with disabilities and offer protection for their human rights, the Convention on the Rights of Persons with Disabilities defines with greater clarity and detail the applicability of human rights law in the specific context of disability, taking into consideration the specific circumstances and obstacles experienced by persons with disabilities.

The Convention reiterates civil, political, economic and cultural rights, ensures respect for dignity and diversity, condemns discrimination and pursues equality of opportunities, accessibility and individual autonomy with the aim to achieve the full participation of persons with disability in the society and to fully promote, protect, and ensure the enjoyment of their fundamental rights. For this reason, it represents an international milestone, as it confirms a radical shift of approach regarding disability, from a medical/charity model to a human rights/social model where persons with disabilities are perceived as

<sup>140</sup> *Ibidem*, p. 57.

<sup>141</sup> Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, 56 Sess., Third Committee, Agenda Item 119(b), UN Doc. A/C.3/56/L.67/Rev.1 28 Nov. (2001).

equal holders of rights, as equal and autonomous members of society<sup>142</sup>. In a fight against the marginalisation of disabled people and towards the elimination of the physical and social barriers opposed to them, the Convention pursues the mainstreaming of disability issues and supports the inclusion of persons with disability in all the fields as for example in education, employment, politics, etc. It seeks to maximise function through rehabilitation.

Furthermore, it establishes a Committee on the Rights of Persons with Disabilities in order to monitor compliance, and establishes a conference of the states parties in order to assess the implementation of its provisions. In an effort to promote the equality of opportunity and equality of results of persons with disabilities, states are required to provide reasonable accommodation; this “consists of the modifications or adjustments that are necessary and reasonable in a particular case to ensure that a person with a disability is able to exercise a certain right<sup>143</sup>.” Furthermore, states should take affirmative action (e.g. quota systems), to ensure and empower the inclusion of persons with disabilities in areas such as education, economy, politics and employment. Furthermore, measures are required in order to mainstream service delivery and to ensure accessibility to the physical environment, to transportation, to information and communication, including information and communication technologies and systems.

As far as its structure is concerned, the Convention contains 25 preambular paragraphs and 50 articles. Article 3 states the general principles upon which the UN CRPD is based (respect for individual dignity, autonomy, and independence; respect for difference and acceptance of disability as human diversity; non-discrimination and equality of opportunity; full and effective participation; accessibility; gender equality; and respect for children’s rights and support of their evolving capacities), while Article 4 requires states parties to give effect to CRPD obligations within their domestic legal orders and Article 5 enumerates obligations relating to equality and non-discrimination and to reasonable accommodation. Then, Articles 6 and 7 focus on women and children and ensure that states take measures for their equal rights,

<sup>142</sup> European Foundation Centre, 2012.

<sup>143</sup> United Nations Development Group, 2010, p. 3.

while the need for awareness raising is stressed in Article 8. Moreover, Article 9 ensures accessibility, whereas Articles 10 to 30 enumerate the specific substantive rights. All the spectrum of human rights are covered in the Convention as it recognises the necessity for measures to be taken concerning dignity rights (Articles 16-17), autonomy rights (Articles 12 and 19), specific accessibility rights (Articles 13 and 29) and solidarity rights (Articles 24 and 27). Emphasis is also put on the necessity for habilitation and rehabilitation services and affirmative action concerning their health (Articles 25 and 26). Finally, a system of monitoring and implementation (Articles 31 to 40) is established and final provisions that govern life and operation of the Convention are included (Articles 41 to 50).

As the first international legal instrument representing official recognition of disability as a human rights issue on the international stage, the provisions of the CRPD reflect “global consensus and an authoritative commentary on the manner in which countries should fulfill their obligations towards persons<sup>144</sup>.” However, as at 11 July 2012, 153 states have signed the Convention, and 117 are parties, whereas 90 states have signed and 71 are parties. At the EU level, all 27 member states have signed the Convention, and 22 are parties, whilst 22 are parties to the Protocol<sup>145</sup>.

### *1.2. Implications of the Protection of Deaf under the Legal Framework for Persons with Disability*

As it was mentioned before, the majority of deaf people are deprived of opportunities, equal treatment or access to a certain number of areas because of the discriminatory practices and the physical and social barriers imposed on them by the hearing world. However, under the label of legal framework for disability, they may acquire important protection and benefits. The several instruments include provisions that require states to take certain measures which contribute to the highest protection of the rights of persons with disabilities which

<sup>144</sup> The World Bank, *Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank*, June 2007, available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf> (consulted on 5 May 2012).

<sup>145</sup> United Nations Treaty Collection.

guarantee the full and equal enjoyment of the whole spectrum of rights of deaf people, their full participation and equal access to services. More particularly, the Convention on the Rights of Persons with Disabilities provides safeguards about family, education, employment, housing, financial and personal security, and participation in social political groups. It creates societal conditions that respect difference, it condemns discrimination, recognises deaf as equal before the law and ensures their full access to physical and cultural environment, housing and transportation, social and health services, educational and work opportunities. These measures involve for example the creation of programmes in sign language in public media, and the development of affirmative action plan to fight deaf people's unemployment. However, as it will be further analysed in the following chapter, the legal framework for persons with disability bears dubious benefits or encloses risks for deaf people.

### *1.2.1. Health*

As far as health is concerned, international human rights law provides for measures for the prevention and rehabilitation of the medical aspect of disability and for the elimination of any discriminatory practices towards disabled people in the health sector; these measures may be introduced through domestic legislation as well as through domestic courts in reliance upon international norms and standards as authoritative guides to the interpretation of constitutional provisions, treaties or domestic law statutes<sup>146</sup>. For example, Article 25 of CRDP requires states to take measures in order to provide disabled persons with the highest standards of health, to ensure free and affordable health care programmes and equal access to health services, to promote ethical standards of practice by health workers in the public and private sectors, and to prevent any denial of health care on the basis of disability. In addition, Article 26 is equally significant as it requires states to provide persons with disabilities with rehabilitation services for prevention of secondary disabilities, early identification and intervention as appropriate, but also provisions of appropriate, affordable and accessible assistive devices. Moreover, it requires capacity-building/training of personnel in the health sector, pre-service and in-service.

<sup>146</sup> Center for International Rehabilitation, 2003.

Thus, except of the general provisions for equal and special health care to persons with disabilities, action towards their health protection involves prevention and rehabilitation measures. More particularly, prevention involves measures aiming at preventing the onset of mental, physical and sensory impairments<sup>147</sup>. When it comes to deaf people, prevention becomes possible through genetic research and counseling, surgery and reproductive control, neonatal and infant hearing screening programmes, pre-implantation genetic diagnosis, and genetic therapies in the testing phases<sup>148</sup>. From a medical point of view, all these medical prevention means aim to correct the abnormality, to minimise the condition of deafness or to achieve its elimination. Actually, research carried out by scientists contributed to the mapping of a great number of genes related to deafness<sup>149</sup>. When the so-called genetic error responsible for a common type of hereditary deafness was identified in 1992 by researchers at Boston University, the National Institute of Deafness and Other Communication Disorders considered this achievement as “major breakthrough that will improve diagnosis and genetic counseling and ultimately lead to substitution therapy or gene transfer therapy<sup>150</sup>.” In fact, the gene transfer therapy and the development of prenatal tests offering the opportunity of an early identification of the embryos carrying deaf genes has as a result a decrease in the number of deaf newborn babies. Although in the circle of medicine it was conceived as a worthy and laudable pursuit contributing to the normalisation, it was also considered as a new form of medical eugenics applied to Deaf. Thus, a new wave of reaction has emerged as it was judged that the existence of the Deaf world is put in risk due to these practices.

Rehabilitation measures aim at “enabling an impaired person to reach an optimum mental, physical or social level by providing him/her the tools to change his/her life<sup>151</sup>” and involve services for the detection, the diagnosis and intervention. In the case of deaf, this is translated for example as covering the expenses of medical care and treatment, providing deaf people with technical aids and devices, but as well as with

<sup>147</sup> Cotter, 2007, pp. 7-20.

<sup>148</sup> Bauman, Simser & Hannan.

<sup>149</sup> Bauman & Murray.

<sup>150</sup> Lane, 2005, p. 303.

<sup>151</sup> Cotter, 2007, p. 83.

specialised services within the health structures of life. One of the most common rehabilitation measures is cochlear implant surgeries.

A cochlear implant is a small, complex surgery implanted electronic device that can help to provide a sense of sound to a person who is profoundly deaf or severely hard of hearing<sup>152</sup>. Contrary to hearing aids that amplify sounds so they may be detected by damaged ears, the cochlear implant “bypasses damaged portions of the ear and directly stimulates the auditory nerve<sup>153</sup>.” However, it does not restore hearing but allows for the perception of sound sensation. In fact, the quality of sound is different from natural hearing, but the person develops gradually the ability to understand speech, but as well as different types of sounds, such as footsteps, slamming of doors, sounds of engines, ringing of the telephone and so on. Moreover, the constant improvements in technology of cochlear implants led to an improved perception of music, to the enjoyment of the sound of certain instruments and to the possibility to have phone conversations or perceive sounds on television. However, the outcome varies between several persons who undergo the cochlear implant surgery; it depends on various parameters, as for example how long they have lived with hearing loss, the capacity of their brain to adapt to new stimulus, their belief that the device will improve the quality of their lives, the assistance they get from various disciplines (speech therapists, psychologists, etc.) during their cochlear implant rehabilitation.

The supporters of cochlear implants argue that the surgery brings a large positive impact on recipients’ lives as speech perception and speech production becomes possible. All physical, psychological, and social aspects of their lives, but their everyday functions as well, are affected in various constructive ways, a different quality of life is offered and a different perception of the world is achieved. Except of the auditory competence and the enjoyment or safety provided by it, their cognitive, behavioural, and social development is also affected. The interaction within their environment and with other people is easier achieved, while the communication with the hearing world is improved, and as a result isolation is reduced. The positive effect in the interaction

<sup>152</sup> National Institute on Deafness and Other Communication Disorders.

<sup>153</sup> International Encyclopedia of Rehabilitation.

of deaf people with the hearing world has special significance for the relationships that deaf people develop in their early age. The mismatch between the hearing status of deaf child and its parents, make the ability to engage, direct, and disengage attention difficult, and as a result obstacles are imposed for the development of a really close relationship. The cochlear implants though, permit the perception of sound, and as a result, improvements in the parent-child relationship and a richer context of communicative experiences are achieved<sup>154</sup>. Not only are children more perceptive but also parents are able to respond more sensitively to their child's affective and communicative behaviours. In addition, according to surveys deaf children are vulnerable to behaviour problems, emotional difficulties and delays in academic achievement<sup>155</sup>. Thus, cochlear implants contribute to the improvement of their social competence as well as their school adjustment. Thus their academic performance is ameliorated, a fact that may lead to better employment opportunities later on.

Hence, from one point of view, cochlear implants, and in general, the prevention and rehabilitation measures dictated by several international instruments, have as a result the elimination of the abnormality, of deafness, or to the development of the communication skills of deaf people in a way that guarantees success in both the deaf and hearing communities. In addition, deaf people's sense of safety, self-esteem and self-reliance is further cultivated and their autonomy is empowered, whereas their social interaction and general functioning are improved. The physical and social obstacles imposed by society are overcome, social connectedness is developed and their happiness and wellbeing are achieved. The quality of their life is improved, their full integration and participation in society is made easier, and the equal enjoyment of their rights becomes possible.

However, on the other hand, the Deaf community is against this kind of prevention and rehabilitation measures as they are considered to bring needless medical and surgical risks for deaf people, while at the same time they endanger the future and the existence of the Deaf world<sup>156</sup>. More particularly, cochlear implants – which are the most

<sup>154</sup> Quittner, Leibach & Marciel, 2004.

<sup>155</sup> *Ibidem*.

<sup>156</sup> Lane, 2005, pp. 297-305.

common measure of rehabilitation – have been criticised for entailing risks in the surgical implant procedure, but also for bearing dubious benefits in the life of the person after the surgery<sup>157</sup>. The surgery requires general anesthesia and hospitalisation from two to four days and, as a matter of fact, many complications may occur during the process. There is a risk of injury to the facial nerve, as it lies close to where the surgeon needs to place the implant, causing a temporary or permanent weakening or full paralysis to face muscles. In addition, the possibilities of bacterial meningitis in implanted persons are 30 times higher than in age-matched persons without implant<sup>158</sup>. According to medical reports, complications such as cerebrospinal fluid leakage, perilymph fluid leak, loss of vestibular function, damage to the carotid artery, anesthesia risk, can lead to irreversible damages or may even have fatal consequences. Other minor complications such as infections of the skin wound, blood or fluid collection at the site of surgery, attacks of dizziness or vertigo, tinnitus, which is a ringing or buzzing sound in the ear, taste disturbances, numbness around the ear are common after the surgery.

However, even if there are no direct complications because of the surgery, the benefits of cochlear implants are still considered as dubious, because their outcome depends on various parameters, most critically on the age of the recipient but also on the technology used<sup>159</sup>. Although cochlear implants restore physical ability to hear, there are several reports describing the sound as mechanical, technical and synthetic. Furthermore, while a sense of sound is perceived, there are no safeguards that the recipient will manage to distinguish speech, especially if he/she has passed the critical period of adolescence. Additionally, fluency in spoken language is not guaranteed and requires the cooperation of several disciplines, in addition to time, patience and expenses as long as habilitation continues to be essential. Then, despite the linguistic aspect, the cochlear implant may affect the psychological and social development of the recipient in a negative way, which will also affect his/her educational achievements or social identity. For example, several recipients, and especially those who were not born

<sup>157</sup> US Food and Drug Administration.

<sup>158</sup> Lane, 2005, p. 299.

<sup>159</sup> US Food and Drug Administration.

deaf but lost their hearing, form high expectations about the outcome and when they realise that the sound is perceived in a different way, more artificial than natural, they grow feelings of disappointment, pessimism and depression, and thus all the aspects of their lives are affected in a negative way. Moreover, other recipients support that after having the surgery they were faced with frustration and their identity faltered as they had feelings of belonging neither in the Deaf community nor in the hearing one. As a result, they became more introverted than social and there was greater risk of isolation.

At the same time, ethics questions arise, since in most of the cases it is the parents who have to take the decision and make the choice instead of the child itself<sup>160</sup>. Consequently, its future is based on its family that usually tends to follow the medical model in order to reduce difference. The situation is compared to those children with ambiguous genitalia or dwarfs that are subjected to bone-breaking surgery for limb lengthening. When parents are taking the decision for the children to undergo the surgical normalisation, it is quite likely that children will condemn this decision. On the other hand, according to bioethicist Dena Davis, withholding a perfect implant for a deaf child leads to the reduction of his/her possibilities in life and violates the child's right to an "open future"<sup>161</sup>. However, the Deaf community argues that the introduction of an individual in a community should not depend only on one characteristic. In addition, they find this assumption offensive as their members do not feel that their opportunities in life are reduced because of their difference but because of the mentality of societies towards them. Furthermore, they argue that audiologists do not offer a holistic view about deafness to the parents, but only the medical point which reaffirms the need of their services, and emphasise the necessity of parent's exposure and interaction with member of the Deaf community. However, according to surgeons, the child's right to choice is in fact not undermined, as infants belong to no culture, and they are not yet a member of any community. Hence, the challenge/dilemma is whether the children should acquire the culture of their parents or whether they should have the choice to decide about their cultural affiliation later on.

<sup>160</sup> Lane, 2005, pp. 300-302.

<sup>161</sup> Davis, 1997, p. 256.

Furthermore, Deaf people reject any protection offered by measures of prevention or habilitation, as they do not perceive deafness as a medical condition, as an abnormality to be erased, but as a benefit. Therefore, they see no logic in measures of prevention but consider them as products of social oppression and of techniques of normalisation. As a matter of fact, these measures are considered as a new form of medical eugenics applied to deaf<sup>162</sup>. Historically, the eugenics movement sought to eradicate deafness and other undesirable groups, with the aim to improve the race<sup>163</sup>. Thus, measures were taken in order to reduce Deaf childbirth by regulating Deaf marriages, by forced abortions and sterilisations, whereas at the same time sign language was banished and residential schools were closed<sup>164</sup>. Nowadays, this is achieved by genetic testing, pre-implantation genetic diagnosis, and genetic therapies in the testing phases. Under international law, an activity that has the foreseeable effect of diminishing or eradicating a minority group is guilty of genocide<sup>165</sup>, but by recognising deaf as persons with disability and not as a minority group offers protection to these genocidal programmes as they are characterised by the Deaf community.

Consequently, while the measures taken for the prevention or rehabilitation of disabled people, from a medical point of view, may solve many current problems and offer new opportunities to deaf people, when applied to Deaf people who appreciate their difference, their culture and language, not only entail risks for their health, but are perceived either as offensive, or dangerous for the elimination of deafness and consequently of their identity.

### 1.2.2. *Education*

As far as the education of persons with disability is concerned, the fight against discrimination brought a change in international and national policies and statutes. Based on the Convention on the Rights of the Child (Articles 28 and 29) the Salamanca Statement and Framework for Action on Special Needs Education<sup>166</sup>, and the Conven-

<sup>162</sup> Lane, 2005, p. 303.

<sup>163</sup> Bauman, Simser & Hannan.

<sup>164</sup> DeCorte.

<sup>165</sup> Lane, 2005.

<sup>166</sup> The Salamanca Statement and Framework for Action on Special Needs Education,

tion on the Rights of Persons with Disabilities (Article 24), the majority of national laws support the idea of an inclusive education for the persons with disability on the basis of equal opportunity and the full potential of every individual<sup>167</sup>. According to this model, students with disability are introduced in the same classroom with non-disabled students, regardless of their strengths or weaknesses in any area, with the aim to maximise their potential and to offer them greater opportunities for their academic and social achievement. According to the United Nations Educational, Scientific and Cultural Organisation (UNESCO), inclusive education is seen as “a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion from education and from within education<sup>168</sup>.” By bringing together students of diverse backgrounds and abilities, inclusive education provides them with the opportunity to cultivate values such as equality, tolerance and pluralism, to learn to accept diversity and difference and to deploy social skills, while at the same time it contributes to the fight against stigmatisation and labeling which was a negative consequence deriving also from their separation to special schools.

However, while inclusive education is appropriate for many disabled learners who can hear and interact with their peers and teachers, when it comes to deaf, certain adaptations or considerations are required in order to successfully achieve their inclusion alongside their hearing peers. Full inclusion for a deaf student requires a totally supportive, signing and student-centered environment<sup>169</sup>. For these reasons, both the Salamanca Statement in Article 21, and Article 24(3) of the Convention on the Rights of Persons with Disabilities recognise the importance of sign language for deaf people in the classroom, and emphasise the necessity to provide them with access to it, in order to make possible their full and effective inclusion in the classroom. These documents

adopted by the World Conference on Special Needs Education: Access and Quality (Salamanca, Spain, 7-10 June 1994).

<sup>167</sup> Centre for Studies on Inclusive Education.

<sup>168</sup> Interview with Clementina Acedo UNESCO-IBE Director, UNESCO and International Bureau of Education.

<sup>169</sup> World Federation of the Deaf, *Policy – Education Rights for Deaf Children*, available at <http://www.wfdeaf.org/databank/policies/education-rights-for-deaf-children> (consulted on 5 May 2012).

share the belief that successful education requires the teaching “in the most appropriate languages, modes and means of communication for all persons with disabilities, and in environments that maximize their academic and social development<sup>170</sup>.” In order to realise these rights in practice, Article 24(4) of CRPD requires states parties to ensure that appropriately qualified teachers and trained staff are employed, who are able to understand the needs of deaf people. They should be able to effectively use alternative means of communication, or adapt their educational techniques and make use of materials appropriate for deaf people. Inclusion may involve an assortment of services including interpreters, teacher aides, consultants provided within the context of the regular classroom. Only under these safeguards may the inclusion of deaf students bear positive results for the full and equal development of their academic and social skills.

Inclusion in education offers deaf people the opportunity to interact and socialise with the hearing students, and thereby to develop their ability to communicate with the hearing people and to be prepared for operating in the hearing world in the future. In other words, inclusive education provides deaf people with the possibility to learn the standards of the hearing world and to master the norms of the hearing society<sup>171</sup>. In addition, through daily association with their non-disabled peers, the social competence of deaf students is enhanced, while at the same time the access to academic, vocational and extracurricular programmes offers them the chance to develop academically, emotionally and socially. Furthermore, the interaction between deaf and hearing students encourages the development of positive attitudes and perceptions of persons with disabilities, as well as the enhancement of social status with nondisabled peers which can contribute later in diminishing the barriers imposed to deaf people by the hearing world.

On the other hand, many risks are identified for deaf people. Despite the progress noticed in the majority of states parties<sup>172</sup>, there still remain challenges to the effective and full implementation of Article 24 of CRPD. One of the most common gaps in the implementation of CRPD is the lack of resources for the provision of individualised services and

<sup>170</sup> European Foundation Centre, 2012, p. 125.

<sup>171</sup> Nowell & Innes.

<sup>172</sup> European Foundation Centre, 2012, p. 123.

support to learners with disabilities, as well as the lack of specialised training for teachers in supporting learners with disabilities<sup>173</sup>. When it comes to deaf, this lack of interpreters or teachers qualified in sign language bears severe negative consequences for their full and effective inclusion, as their interaction and communication are hindered and therefore their academic and social development is damaged in an irreversible way. Their academic progress is not possible without individualised attention to their educational needs. However, even if the full implementation becomes possible, there are still some limitations and counter effects of inclusive education on deaf students.

Cohen argues that while “communication among peers is crucially important to the cognitive and social development for all children,” for deaf it occurs in hugely different settings<sup>174</sup>. Not all of the deaf children have the possibility to lip-read or speak effectively and the presence of an interpreter is unavoidable in their associations with the hearing students. Thus, direct and independent interaction and communication with peers cannot be achieved, whereas their social, emotional, and even academic developments are not facilitated when informal communications and friendships, or participation in extracurricular activities require the presence of an interpreter<sup>175</sup>. As a result, students run a high risk of isolation either because their hearing classmates reject them or because they do not feel comfortable during their associations. In fact, according to reports, several deaf students state that they feel happier and more confident in an educational environment where they make direct use of their sign language or share common culture, rather than in an inclusive one. In such an environment they share a sense of belonging and they have more opportunities to interact with peers. Provided that deaf children share a common vehicle for communication, they are capable to form full, purposeful, intimate relationships with their peers, so they feel more comfortable in an environment where sign language is used, whereas they reject any “tolerated relationships that are patronizing, subordinating, or superficial<sup>176</sup>,” regardless of the honourable intentions.

<sup>173</sup> Ibidem.

<sup>174</sup> Cohen.

<sup>175</sup> SEDL.

<sup>176</sup> Cohen.

Consequently, while on the one hand these measures offer equal opportunities and full potential for deaf students, they also enclose some risks that should be carefully addressed. Last but not least, these measures have also been criticised for their motives; according to an extreme point of view, these measures support inclusive education for cost-saving reasons and not out of a concern for what is really best for students<sup>177</sup>.” However, this argument is judged problematic as when the measures concerning inclusion are properly and fully implemented they require more expenses than those of special education.

### 1.2.3. *Work and Employment*

In terms of work, many deaf people are denied employment or are offered only menial and poorly remunerated jobs due to discrimination, stigma, and prejudice that they lack in the capacities to perform successfully the tasks required. Hence, deaf people experience severe economic problems that affect in a negative way the enjoyment of the whole spectrum of their rights, while at the same time they are marginalised by the society. For these reasons, Article 27 of CRPD confirms the right of persons with disabilities to employment on an equal basis, prohibits discrimination, requires states parties to provide them reasonable accommodation in the workplace, and to take measures in order for persons with disabilities to “have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training” (Article 27 (1.d)). In addition, the affirmative action and positive measures such as, *inter alia*, tax reliefs, provision of financial subsidies to employers, or the establishment of employment quotas for the recruitment of persons with disabilities are encouraged. The aim is to eliminate social barriers, and to provide deaf people with access to further education and vocational training which will contribute to their further academic development that will allow them an independent living.

### 1.2.4. *Accessibility*

A major obstacle for the full enjoyment of deaf people’s rights is the

<sup>177</sup> Idibem.

numerous social barriers imposed to deaf that limit their access to services and opportunities. For this reason, the CRPD in Article 9 seeks to dismantle barriers imposed due to discriminatory attitudes, and to ensure disabled people's full access to physical and cultural environment, housing and transportation, social and health services, educational and work opportunities. In fact, the key factor to achieve accessibility of deaf people to all the above-mentioned fields and services is the access to sign language interpreters. The CRPD is the first international instrument to take into account the needs of deaf people, providing them with suitable protection under Article 9(2)(e). According to this article, states are required to "provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public."

Undoubtedly, the inclusion of such a provision is of high importance for deaf people who are confronted with accessibility problems on a daily basis, either as a result of interaction with people that have no knowledge of the sign language or because the majority of sources are designed to reach hearing people, as for example the mass media<sup>178</sup>. The quality of their lives is improved as they are provided with new opportunities and equal chances. Consequently, they are transformed to equal participants and the equal and full enjoyment of their rights becomes possible. However, some parameters that will be explained later on, hinder the full implementation of these measures and as a result the full participation of deaf to society.

As far as access to mass media is concerned, under Article 21 of CRPD on freedom of expression and opinion, state parties are required to take appropriate measures in order to provide "[...] information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost" (21a); accept and facilitate the "[...] use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions" (21b); and encourage "[...] the mass media,

<sup>178</sup> Haualand & Allen, 2009, pp. 111-120.

including providers of information through the Internet, to make their services accessible to persons with disabilities” (21d). Thus, these measures call for the use of sign language on television, which results in all these positive implications that the access to information bears and contributes to deaf peoples’ social and physical development.

According to reports, the protection provided by CRPD concerning the accessibility of disabled person to mass media led to an overall improvement and increase in the number of TV programmes conveyed either directly in sign language or presented with a sign language interpreter<sup>179</sup>. However, their quantity is judged quite limited (usually 10 minutes per day) and therefore steps should be taken for further improvements in the length and frequency of the programmes. Compared to the total broadcast hours in all countries, the portion of programmes with sign language is unacceptably low. In, addition, few countries provide deaf people with the choice of captioning. Consequently, while the provisions of CRPD have managed to ensure deaf people’s access to mass media in the majority of countries, they have not achieved this in an equal basis with the hearing world, whereas in some countries deaf people are still not provided with any access to mass media.

As far as access to government services is concerned, according to the above-mentioned provisions of Article 9(2)(e) of CRPD, states are required to provide deaf people with sign interpreters in order to facilitate any relevant process and to demolish the barriers in communication. However, small steps have taken place by states in this area, and only few states provide deaf people with equal and *de facto* access to government services<sup>180</sup>, whereas the majority have a very limited number of sign interpreters that cannot cover the needs of deaf people all over the country; their presence could be judged ostensible as they cannot provide the required services in all situations. Thus, there is a gap in the full implementation of the CRPD concerning the equal access to sign language interpreters, while at the same time reports show that there are no provisions concerning the quality of the services provided from the current sign interpreters<sup>181</sup>. Although theo-

<sup>179</sup> Ibidem.

<sup>180</sup> Ibidem.

<sup>181</sup> Ibidem.

retically the protection offered to deaf under the legal framework of disability takes into account their needs, in practice their full implementation is hindered mainly because of the high expenses required for its full implementation.

The CRPD also provides for access to justice in Article 13, which requires states parties to ensure that persons with disabilities enjoy effective access to justice on an equal basis with others, which means that states parties should provide reasonable accommodation for persons with disabilities. More particularly, Article 13(1) requires procedural and age-appropriate accommodations in order to facilitate the participation in judicial proceedings. When it comes to deaf, these measures require states to provide them with sign interpreters in order to remove the communication barriers at all stages of the legal process. As a result, communication with justice system officers and administrative personnel, but also throughout the procedures, such as investigation methods and interview techniques can be achieved and full and equal enjoyment of deaf people's right concerning justice may become possible.

#### *1.2.5. Equality and Participation*

Historically, deaf people were considered as second class citizens, had limited legal and civil rights, less economic opportunities, and they were mistreated by the hearing world. Article 5(1) of CRPD affirms that "all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law," confirming their recognition as equal citizens and condemning discrimination. In the case of deaf, Article 5 should also be read in conjunction with specific measures, as for example in issues related to parenthood, standard of living, health, participation in public and political life. With regard to equality in parenthood, Article 5 in conjunction with Article 23 provide safeguards to deaf people in regard with their right to marry and have children, whereas according to the reports in most countries they are provided with the right to adopt children<sup>182</sup>. Such a measure is especially important, since in the past deaf people have been victims of eugenics measures depriving them of their

<sup>182</sup> Ibidem, pp. 54-63.

right to get married with another deaf. Furthermore, based on the same article, steps have been taken to enable deaf people to get a driver's license. For years, deaf people were denied the opportunity to gain such licenses due to prejudices presenting them as threat because of their inability to hear sounds. However, the protection provided to them by the CRPD offers them equal chances and opportunities also in this field. Last but not least, deaf people were considered in the past as second class citizens and were denied their right to vote, a practice that can still be found in some countries, such as Egypt<sup>183</sup>. Article 29 of CRPD guarantees persons with disabilities the right to participate in political and public life, including the right to vote. As a result, deaf people are now recognised as equal citizens who have the opportunity to enjoy their rights on an equal basis with the hearing world.

### *1.3. Conclusion*

The recognition of deaf as persons with disability qualifies them for protection under the legal framework of disability. This fact bears several legal, social and economic implications for their lives. On the one hand, under these specialised human rights instruments that take into consideration the specific needs of disabled people and provide for positive measures in favour of this group, deaf people not only gain important protection for the whole spectrum of their rights, but also benefit from personalised support and services that broaden their opportunities and guarantee their autonomy as well their full participation and equal access in all areas. Discriminatory practices are condemned and the elimination of social barriers may become possible by affirmative action, while the full implementation of special measures ensures equality, non-discrimination and dignity, and provides access to the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities. As a result, interaction with the hearing world may become possible, along with their full integration and participation in society.

On the other hand, however, Deaf people do not identify themselves as disabled. Although they recognise their difference with the hearing

<sup>183</sup> Ibidem.

world, they perceive deafness not as disability to be fixed, but as part of their Deaf identity. Any attempt to categorise them as disabled is considered as product of social oppression exerted by the hearing world which do not respect or value the notions of difference and diversity and therefore pursues their normalisation. Although they acknowledge that their construction as persons with disability provides them with important benefits such as, for example, access to information, transportation, etc., they support that it also encloses medical and surgical risks, endangers the Deaf community, and impinges on their self-determination and self-identification. In that context, they support their recognition as a linguistic minority to gain protection for their rights, as their construction as linguistic minority respects every aspect of their identity, culture and language.

IV.

DEFENDING THE RIGHTS OF DEAF  
AS LINGUISTIC MINORITY

A. DEFINING DEAF PEOPLE AS LINGUISTIC MINORITY

1. *The Concept of Minority*

As far as the concept of linguistic minority is concerned, no authoritative, binding and universally-accepted definition has been developed in international human rights law, whereas any attempt to define its meaning – or the groups that constitute part of it – has generated long scholarly and political debates<sup>184</sup>. The difficulty in forming a single definition lies in the complexity and the diversity of the minority phenomenon which allows the examination of the concept from two different perspectives, the constructionist and the essentialist one<sup>185</sup>. In fact, the difference of these two views is based on whether the emphasis is given on the more or less “essential” nature of traits used in the definition of a minority group<sup>186</sup>.

However, although several definitions have been developed for the concept of linguistic minority, the definition provided by Francesco Capotorti has become a standard point of reference on the issue. According to Capotorti, minority is a “group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the popu-

<sup>184</sup> Schulte-Tenckhoff, 1995, pp. 15-81.

<sup>185</sup> Grin, 2003, p. 19.

<sup>186</sup> Ibidem, p. 20.

lation and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language<sup>187</sup>.” The same characteristics are also mentioned in the definition provided by Deschênes who also emphasises the importance of nationality and defines minority as “a group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity, with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law<sup>188</sup>.”

The existence of common elements between the above-mentioned definitions demonstrates that there are some basic components, certain essential objective and subjective factors included in the definition of the concept of minority<sup>189</sup>. These factors in fact form the criteria for the minority status and entail, apart from the numerical inferiority, some additional distinctive features, such as a shared language, religion, or culture. In addition, the non-dominance requirement remains important, whereas the nationality criterion is nowadays challenged and criticised as problematic. This is because there are cases of “population groups without fixed abode, such as the Roma, or cases that the borders of existing states change due to secessions or associations<sup>190</sup>.” Then, as far as the subjective criteria are concerned, they include the desire of the members of the group to preserve their own identity in community with the rest of the members of the group. Consequently, considering that the recognition of minority status is based on both objective and subjective criteria, it becomes apparent that it is not only the State’s responsibility to decide about the minority status, but it also depends on the self-identification of the group<sup>191</sup>. In this context, deaf people claim for their recognition as a linguistic minority rather than as persons with disabilities.

<sup>187</sup> Capotorti, 1991, p. 12.

<sup>188</sup> Commission on Human Rights, 1999, p. 3

<sup>189</sup> Henrard, 2003, pp. 37-53.

<sup>190</sup> *Ibidem*.

<sup>191</sup> Kymlicka, 1995, pp. 43-45.

## 2. *The Concept of Linguistic Minority*

When it comes to the definition of linguistic minorities, the criteria of minority status are applied in the context of language. Hence, the concept of linguistic minority describes numerically inferior groups of people, who use a language that differs from the official language spoken by the rest of the population of the state, who are in non-dominant political position and who desire to hold this linguistic identity<sup>192</sup>.

An even more precise definition of the concept of linguistic minorities is provided in Article 1 of the European Charter for Regional or Minority Languages<sup>193</sup>, the closer examination of which is considered necessary, in order to delve into the characteristics and features of minority languages and to draw some useful conclusions concerning the case of Deaf. The Charter, apart from the general definition of the concept of minority languages as “languages that are traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and different from the official language(s) of that State,” provides useful explanations about the concept of territory, as well as about non-territorial languages. In particular, it clarifies that a language traditionally used within the territory of the state fulfills the criteria for minority status even when this language is not identified with a particular area in a state. Thus, the protection provided for regional and minority languages includes also non-territorial languages<sup>194</sup>. This clarification eliminates any obscurity and ambiguity over the terms and enables the protection of languages of non-territorial communities, such as the Roma, or non-territorial languages such as sign languages under the linguistic minorities status.

## 3. *The Criteria of Minority Status and Their Application to the Case of Deaf People*

As it was mentioned before, the criteria that should be fulfilled in

<sup>192</sup> Hogun, & Wolf, 2003, p. 9.

<sup>193</sup> European Charter for Regional or Minority Languages, concluded 5 November 1992, entered into force 1 March 1998.

<sup>194</sup> Grin, 2003, p. 21.

order for a group to be considered as minority consist of numerical threshold, non-dominant position, certain ascribed traits by which group members can be recognised and a sense of solidarity and awareness of shared identity that the members try to preserve<sup>195</sup>. These criteria apply clearly to Deaf people in the Deaf community.

As far as the numerical threshold is concerned, it is apparent that deaf people are numerically inferior to the rest of the population of every state. Although there is a lack of concrete data in terms of deaf-population metrics (as mentioned in the first chapter), it is estimated that there are more than 70 million of deaf people in the world; this fact confirms their numerical inferiority in regard with the hearing people. In addition, the non-dominance criterion also applies in their case, as deaf people have been historically oppressed and marginalised by the hearing community or have been denied opportunities and their full participation in society. Moreover, the recognition of deaf people as minority, and specifically as linguistic minority, lies in the fulfillment of the linguistic criterion. The linguistic trait that differentiates deaf people from the rest of the population of the state is no other than the sign language. Encompassing all the grammatical, syntactical, morphological and phonological characteristics, but also all the linguistic and sociological requirements, sign languages can be considered as natural languages, whereas at the same time their numerical inferiority and non-dominant position allows their recognition as *minority* language. Consequently, all the objective criteria are fulfilled for the minority status of deaf. Questions could arise, though, concerning the subjective criteria, as deaf people are divided into those who embrace the Deaf identity, language and culture and feel part of the Deaf community and those who share no feelings of community and pursue their acculturation with the hearing society.

As far as the members of the Deaf community are concerned, they perfectly fit into the subjective criterion for the minority status as they share a strong feeling of a common Deaf identity which is determined by a unique language, common culture, norms, traditions and other distinct values that they are proud of (as emphasised in the first chapter) and try to preserve. In fact, their attempt to hold their separate identity is manifested in various ways, including the organisation of their whole self-image around their identification, the development of

<sup>195</sup> Emerton, 1996, pp. 136-159.

strong bonds and ties with the community, the rejection of the disability label and their claim for protection under the minority status, even the realisation of endogamous marriages. In fact, according to statistics, deaf people present the highest endogamous marriage rates, while numerous are the cases of Deaf couples wishing for a Deaf child-bearing<sup>196</sup>. In this context, the subjective criterion is fulfilled as Deaf people admire their unique characteristics and the value of their language and pursue the preservation of their separate identity.

On the other hand, the deaf people who identify themselves in relation to their audiological ability use sign languages, but they perceive them only as a means of communication and not as a means of expressing and symbolising the community in which they belong. They acknowledge their importance but only for practical reasons and not as part of their identity. However, even though they do not pursue the preservation or the development of a linguistic identity, they would not feel offended from recognition as linguistic minority as happens with Deaf people under the label of persons with disability.

#### B. THE LEGAL PROTECTION OF DEAF AS LINGUISTIC MINORITY

It was during the 18th and 19th centuries that the first efforts for the preservation of cultural, linguistic, religious or ethnic features appeared in parallel with the creation of the first nation states. However, the official recognition and protection of minority rights under international law began with the adoption of certain “minority treaties” by the League of Nations (LON)<sup>197</sup>. In the post-World War II era new norms, procedures and mechanisms were incrementally adopted.

Hence, over the next years, several specialised documents for the protection of minorities were developed focusing on the recognition of their existence, on the principles of non-discrimination and equality, and on the promotion of measures for their protection in the areas of education, communication, public services, media, culture, economic and social life. Regardless of their legally or non-legally binding nature, such norms and principles set standards, provide safeguards and create

<sup>196</sup> Lane, 2005, p. 298.

<sup>197</sup> Symonides, 2005, pp. 201-225.

conditions in which minorities can express, preserve and develop their distinct identities<sup>198</sup>.

## *1. Legal Framework*

### *1.1. Overview of International Standards Regarding Minorities*

#### *1.1.1. Antecedents to International Minority Rights Standards*

Although minority rights are not explicitly addressed either in the United Nations Charter or in the Universal Declaration of Human Rights due to the conceptual complexity and the political sensitivity of the issue, protection was provided to them under the general non-discrimination and equality provisions. As a matter of fact, an explicit provision was included in the first draft of the UDHR, recognising their right “to establish and maintain, out of an equitable proportion of any public funds available for the purpose, their schools and cultural and religious institutions, and to use their own language before the courts and other authorities and organs of the state and in the press and in public assembly<sup>199</sup>,” but it was removed because of the high level of divergence in relevant state practice.

As it was proved in practice, the above-mentioned provisions of non-discrimination and equality were insufficient for safeguarding the rights of individuals belonging to minorities and therefore the issue was (partially) redressed under Article 27 of the International Covenant on Civil and Political Rights. More particularly, this article provides specific safeguards in regard with the recognition and preservation of the national, ethnic, religious or linguistic identity of persons belonging to minorities by stating 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 practice their own religion, or to use their own language.” In other words, states parties are legally bound to ensure that all persons belonging to minorities under their jurisdiction enjoy their cultural and linguistic rights.

However, no specific measures are proposed to eliminate the in-

<sup>198</sup> Hogun, & Wolf, 2003, pp. 1-6.

<sup>199</sup> Glendon, 2001, p. 274.

equalities to which minorities are subjected and there are no provisions for action in areas such as education, communication, etc. For this reason, the Human Rights Committee has provided some additional explanations in General Comment No. 23 (1994)<sup>200</sup>, which clarifies that Article 27 recognises the existence of diverse groups within a state, but also the need of affirmative action to be taken by states in order to protect the identity of the existing minorities.

As far as the International Covenant on Economic, Social and Cultural Rights is concerned, it does not include any explicit reference with regard to minority rights; protection is provided to minorities under the general context of non-discrimination and equality, as for example in Article 2(2), which states that “the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In addition, minority rights are also protected under the non-discrimination and equality provisions provided in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Additional safeguards for children belonging to minorities are given by the Convention on the Rights of the Child. Protection is not provided only in the context of non-discrimination (Article 2), but by specifically addressing minority rights in Article 30, which states that “in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.” In addition, the right to expression in the mode of preference of the child – oral, signed, spoken, or a text-based alternative, etc. – is further protected under Article 13, which is of particular importance for the rights of Deaf children; combined with Articles 28 and 29 which focus on the right to an accessible education for all children, these provisions ensure the accessibility of deaf children in schools for Deaf.

As to the education of persons belonging to minorities, protection is

<sup>200</sup> United Nations Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5.

also provided by the UNESCO Convention on the Elimination of Discrimination in Education<sup>201</sup>, under Article 2(b), which allows the establishment of separate educational institutions because of linguistic reasons or, in the case of minorities, under Article 1(5)(c), but under certain conditions and restrictions<sup>202</sup>.

### *1.1.2. Minority-Specific International Norms and Standards*

The first universal instrument devoted to the protection of minority rights is the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in 1992<sup>203</sup>. Although it does not exhaustively define minority rights, it moves from a negatively formulated focus on non-discrimination to the more positive sounding language of protection and promotion. According to Spiliopoulou-Akerman<sup>204</sup>, it can be perceived as further specification of Article 27 of ICCPR, as it describes minority rights in more detail, and encourages states to make certain steps and adopt affirmative measures. More particularly, the Declaration encourages states to adopt the appropriate legislative and other measures in order to promote minority identities (Article 1), while at the same time it addresses their rights, such as right to enjoy their own culture, and to use their own language in private and in public (Article 2), the right to participate in cultural, religious, social, economic and public life (Article 2(2)) and in decisions which affect them on the national and regional levels (Article 2(3)); the right to establish and maintain their own associations (Article 2(4)) as well as the freedom to exercise their rights, individually as well as in community with other members of their group, without discrimination (Article 3). Furthermore, it requires states to take appropriate measures for the protection and the promotion of the rights of persons belonging to minorities, in order to ensure their equality before the law and achieve the enjoyment of their rights and fundamental freedoms without any discrimination (Article 4(1)). In addition, states are encouraged to create favourable conditions for the

<sup>201</sup> Convention on the Elimination of Discrimination in Education, concluded 14 December 1960, entered into force 22 May 1962, 429 UNTS 93.

<sup>202</sup> Thornberry, 1991, p. 199.

<sup>203</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN General Assembly Resolution 47/135, 18 December 1992.

<sup>204</sup> Spiliopoulou-Akerman, 1997, p. 181.

development of their culture, language, religion, traditions and customs (Article 4(2)); and to offer them the choice to study in their mother tongue (Article 4(3)), etc. Consequently, the Declaration has an elaborative character; it affirms the existence of minorities, states their rights, and encourages states to take certain measures in order to achieve the protection and the promotion of the minority rights, but requires no concrete ways and allows states a wide margin of appreciation.

*1.2. Implications for the Protection of Deaf under the Legal Framework for Linguistic Minorities*

*1.2.1. Promotion and Protection of Deaf Identity, Culture and Language*

One of the most important advantages provided to Deaf people under their legal recognition as persons belonging to a linguistic minority is the promotion and protection of their Deaf identity, culture and language. Undoubtedly, these elements are essential for the general improvement of Deaf people's well-being and enjoyment of their rights, but also for the benefit of the hearing society. More particularly, the protection of Deaf identity, culture and language enables the preservation of all these distinctive characteristics and aspects that define Deaf people, express and symbolise their community, and contribute to the diversity and richness of the world. The value of Deaf people is emphasised, whereas "specific cognitive, creative, and cultural gains that have been overlooked within a hearing-centered orientation"<sup>205</sup> are brought to fore.

Furthermore, the protection and the promotion of these elements, and especially of language, provide them with diverse choices, perspectives, and abilities for their social, economic development and equality. For example, they ensure their access to education, information, health and justice, qualify them for future employment or enable their participation in society. Then, they also offer them the opportunity to enjoy the gains deriving from their membership in a community, provide them with an anchor "for self-identification and the safety of effortless secure belonging," and as a result boost their self-esteem<sup>206</sup>.

<sup>205</sup> Bauman & Murray, p. 10.

<sup>206</sup> Kymlicka, 1995, p. 5.

In addition, being familiarised with the Deaf identity, culture and language, the hearing community starts to acknowledge Deaf people's equal competence, as well as to appreciate their contributions to society. This encourages them to be more perceptive, to respect, accept, and appreciate diversity. As a result, the social and physical barriers start to diminish, prejudice gradually fades away and Deaf people's integration into society becomes possible.

As it occurs, under the legal framework of linguistic minorities, Deaf people's integration does not require the assimilation of their distinct characteristics, as proposed by the techniques of normalisation and the medical model of disability. This constitutes an important shift and achievement, because besides the general protection provided for their language, culture and identity, it shows that integration of Deaf people can occur as a result of the acknowledgment of their value and equality, of appreciation of their contributions to the society, and not as a consequence of normalisation. Thus, it constitutes one of the most important steps in ensuring Deaf people's dignity.

### *1.2.2. Education*

The recognition of deaf people as linguistic minority provides them with extra safeguards in the field of education. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities gives emphasis not only on the fact that they should receive instruction in their language, but also on the encouragement of knowledge of their history, traditions, language and culture. Hence, under this particular legal framework, the "subtractive approach" to language and education, which proposes a monolingual approach to learning, is rejected. On the contrary, states are required to take measures towards an "additive approach" to education of Deaf, where bilingualism is perceived "as a cultural and human right, as a social, cultural and cognitive resource," and Deaf culture and sign language are valued as assets to the student's overall education<sup>207</sup>.

This approach advocates for the development of specialised education programmes for deaf people, or for their education in special schools or classes and units in mainstream schools, as proposed by the

<sup>207</sup> Bauman, Simser & Hannan, p. 18.

Salamanca Statement and Framework for Action. While inclusion encourages the interaction with the hearing world, in the case of deaf people it may lead to an overall weakening of cultural identification. This is because the majority of deaf students come from families with hearing parents, and therefore it is not possible for the transmission of Deaf culture to automatically occur. Hence, school becomes a major socialising agent for deaf children, and it is through specialised education programmes and residential schools that their acculturation is possible to be achieved. Indeed, in such visual-spatial environments Deaf children are acculturated “through language immersion as well as social interactions with others who share the same language and a similar world view<sup>208</sup>.” Hence, the model of inclusion does not permit their social and academic association with other deaf students, and limits their opportunities in understanding and identifying Deaf culture.

Furthermore, the construction of their self-esteem is also affected in an inclusive environment. Not having the opportunity to communicate or to approach their peers directly and without the help of interpreter, Deaf students confront difficulties in establishing close relationships with hearing students, as well as in experiencing fully closeness and acceptance. As a matter of fact, lacking in verbal, casual and spontaneous interactions in inclusive environments, they are confronted with negative social experiences, with loneliness and social isolation. On the contrary, they report that in schools for deaf they have more opportunities to develop social competence, strong relationships, a strong kinship, and a sense of belonging, as the communication barrier does not exist and a sense of connectedness is possible to be achieved through informal interactions or involvement in school-sponsored activities<sup>209</sup>. In such visual-spatial environments, Deaf people, having the opportunity to get involved with their peers, tend to develop a healthy and positive self-identity, which ameliorates their academic achievements.

<sup>208</sup> Hands & Voices.

<sup>209</sup> Foster, 1996, pp. 117-135.

### 1.2.3. *Participation*

The physical and social barriers imposed to Deaf, such as the barrier in communication, the limited access to information, or the lack of support by the hearing world, hinder their ability to become politically involved. For this reason, Article 2(2) of the 1992 Declaration emphasises the right of persons belonging to national or ethnic, religious and linguistic minorities “to participate effectively in cultural, religious, social, economic and public life.” This provision, by using the word “effectively,” emphasises that the participation must be meaningful and not merely symbolic. Hence, it implies that while the recognition of their underrepresentation is important, it should be also combined with affirmative action in order for their participation to have a substantial influence on the decisions which are taken<sup>210</sup>. The full implementation of this provision could provide Deaf people with the possibility of full participation and representation in important decision-making institutions in a substantive and effective way, such as national parliaments, the civil service sector, including the police and the judiciary, while at the same time the respect of their identity is guaranteed. The equal participation of Deaf people in the various aspects of the political, economic, social and cultural life of their state, including the political process and leadership, offers them the possibility to advocate for their own rights and to exercise them at every opportunity, while at the same time it shows that the dominant majority provides space for minority voices to be heard. In addition, the participation of Deaf in political, social and economic life bears high importance for the whole society, as it boosts the civic capacity of the society, increases the cohesion of the country and, as a result, enhances democratic development<sup>211</sup>. However, no concrete measures are indicated, conceding a wide margin of appreciation to states, while at the same time the legal nature of the declaration imposes no legally binding obligations to states, constraining its potential.

<sup>210</sup> Symonides, 2005.

<sup>211</sup> World Movement for Democracy.

V.

ESCAPING THE SILENCE:  
THE WAY FORWARD

Undoubtedly, both legislative options share a common goal: to provide deaf people with the highest protection for the full and equal enjoyment of the whole spectrum of their rights, either by creating societal conditions that condemn discrimination or by guaranteeing their full access to physical and cultural environment, housing and transportation, social and health services, educational and work opportunities. However, in their effort to achieve this mutual objective, they follow different pathways, mainly as a result of the different ways in which they perceive deafness (medical vs social model). On the one hand, the legal protection offered to deaf as persons with disability encourages the adoption of prevention and rehabilitation measures which, as mentioned before, support access to assistive devices and aim at the early identification and intervention. Although the ambition of this option is to provide deaf people with a richer context of communicative experiences and to prepare them for performing in both hearing and Deaf communities, it has been criticised for trying indirectly to minimise the condition of deafness in the general context of normalisation, thus endangering the existence of the Deaf world. Furthermore, although it provides safeguards for sign languages, a huge gap is noticed in regard to the promotion of their use or to the communication of Deaf people's values, history and culture. More particularly, in most countries the legal recognition of sign languages is still pending, while no specific emphasis is placed on the value of the Deaf culture and identity. In most cases, parents are not counseled or provided with a holistic view of deafness and, as a result, they tend to reject the Deaf culture, language and values and to adopt the medical concept. This bears important consequences for the Deaf community's future, as in many cases it is the parents who have to take the decision

and make the choice instead of the child itself. Moreover, although the model of inclusion places special emphasis on sign languages, providing deaf students with interpreters, it does not permit their social and academic association with other deaf students, thus limiting their opportunities in understanding and identifying Deaf culture.

On the other hand, the protection offered to deaf people under the minority status, projects the significance of Deaf culture, language and identity, affecting the psychological and social development of the recipient in a positive way, and satisfying their self-determination, but at the same time it limits the interaction between the hearing world and the Deaf world, which is essential for the cultivation of pluralism and for the tolerance towards diversity in order for their full integration in society to be achieved. In addition, the fact that international instruments devoted to the protection of minority rights do not impose binding international obligations, but are only morally binding, makes them less effective. Moreover, these instruments set out general aspirations and not specific steps that states must take to create an enabling environment, so that deaf people can enjoy real equality in society, as done for example in the CRPD, which defines with much greater clarity the obligations on states to promote, protect and ensure the rights of persons with disabilities and goes into much greater depth than other human rights treaties, with regard to the steps that states should take to achieve equality<sup>212</sup>.

For this reason, a common approach should be adopted, in order for the existing gaps in both legislative options to be bridged. The linguistic view of deafness should be combined with the disability aspect, as in fact both of them apply: deaf people perceive themselves as a cultural and linguistic minority, but the barriers imposed by society disable them<sup>213</sup>. Therefore, it is proposed that deaf people should be treated within the framework of disability and, at the same time, within the framework of minority, in order for inadequacies of the one option to be covered by the other, and for both aspects (disability and linguistic minority) to be equally addressed<sup>214</sup>. Any classification that does not include both aspects would imply ignoring part of deaf people's

<sup>212</sup> Center for International Rehabilitation, 2003.

<sup>213</sup> Council of Europe, 2008, p. 17.

<sup>214</sup> *Ibidem*, pp. 14-18.

reality<sup>215</sup>. This view is also supported by Padden which suggests that “Deaf people are both Deaf and deaf and their discussions – even their arguments over issues of identity – show that these two categories are often interrelated in complex ways<sup>216</sup>,” whereas Ladd adds that in many countries deaf people are categorised merely within the framework of disability against all evidence, as there is ignorance about status of Deaf sign language users and the Deaf culture<sup>217</sup>.

Hence, based on the above-mentioned common approach and on the aforementioned findings, regarding the implications that each legal framework bears to the protection of deaf people’s rights, some recommendations follow in order to address some issues that require further action to be taken and to further empower deaf people’s rights<sup>218</sup>.

#### 1. LEGAL RECOGNITION OF SIGN LANGUAGES AND RATIFICATION AND IMPLEMENTATION OF UN CRPD

All states should recognise their national sign language in their national laws and constitutions, in order to achieve “concrete linguistic rights for Deaf people in all domains of life” and to improve access to information and services for deaf people who use sign language as their first language<sup>219</sup>. Furthermore, the recognition of sign languages as minority languages will stress the legitimacy of their use not only in community life, but also within the framework of institutions, social and economic life; this is as a pre-condition for further positive action on its behalf, which will contribute to the further preservation, promotion and empowerment of Deaf language, culture and identity. According to the survey *Deaf People and Human Rights* (2009) carried out by the World Federation of the Deaf (WFD), out of 93 countries, most of which are developing ones, only 44 countries have formal recognition of the country’s sign language(s). Hence, it is really important that states make progress in the legal recognition of sign languages, because a huge gap is still noticed. In parallel with the legal recognition

<sup>215</sup> Ibidem.

<sup>216</sup> Eckert, 2012, p. 323.

<sup>217</sup> Council of Europe, 2008, p. 18.

<sup>218</sup> Ibidem, pp. 18-37.

<sup>219</sup> Ibidem.

of sign languages, one further step that all states should take within the framework of this common approach that was mentioned before is the ratification and full implementation of UN CRPD. Undoubtedly, the implementation of the UN CRPD is an ongoing process; it is important though that the implementation is a result of efforts done by national government structures in cooperation with civil society, or as a result of international cooperation, as well as that it is accessible to – and inclusive of – Deaf people and their representative organisations<sup>220</sup>.

## 2. “NORMALISATION” OF SIGN LANGUAGES<sup>221</sup>

In order for the use of sign languages to be promoted and linguistic diversity, cultural wealth and Deaf identity to be preserved, the use of sign languages must be considered normal. According to Grin, in order for this to be achieved, three objectives should be fulfilled, which are the “broadening of the demolinguistic base, the establishment of a context of language rights and freedoms regarding the possibilities to use the language and, last but not least, an increased awareness of the population to the social relevance of the language being protected or promoted<sup>222</sup>.” The effect of this will lead to the political legitimacy and social relevance of sign languages.

## 3. NATIONAL SCREENING OF THE LEGISLATION

It is of utmost significance that states which have ratified the above-mentioned treaties undertake a screening of their national legislation and policies, in order to identify the areas that have not been reviewed yet. This will provide states with the possibility to later take all the necessary steps so as to ensure the implementation of the aforementioned documents, by adopting the appropriate legislative, administrative and other measures.

<sup>220</sup> European Foundation Centre, 2012, pp. 174-176.

<sup>221</sup> Grin, 2003, pp. 201-203.

<sup>222</sup> *Ibidem*.

#### 4. RESEARCH IN DEAF-POPULATIONS METRICS AND ON DEAF ISSUES

Scarce data and statistics have been collected in deaf population metrics all these years, a fact that hinders the assessment of the situation and makes further progress difficult. Thus, research should be carried out in order to assess the extent of the problem, to map the gaps and the needs and to designate the steps forward. In addition, research should also be done regarding the viewpoint of deaf people, so as for deaf people's desires to be taken into account when planning or taking measures. Moreover, financial incentives should be given to universities for research on deaf-population metrics and deaf studies in general. Research in sign languages is important in order to provide more information and facts regarding their recognition as natural languages, whereas the development of sign languages should be supported, so as to bridge deaf with the hearing world. However, research should be carried out not only by theoretical departments and/or on a theoretical basis, but also by technological departments because technical innovations are required to simplify deaf people's everyday life and to provide them with many opportunities.

#### 5. INCLUSION OF DEAF PEOPLE'S VIEWPOINT

Policy makers and states in general should take into account Deaf people's point of view. Having a holistic view of the situation and of their actual needs, deaf people can properly address the problems, difficulties and challenges they are confronted with. Hence, a constant cooperation between governments' services, civic society and Deaf associations, non-governmental organisations and Deaf researchers/ experts should be developed, in order for a better assessment of the problem to be achieved and for more realistic solutions to be offered. Deaf people should participate in the planning, management and evaluation of any issue related to their condition. Ladd criticises the widespread practice of non-Deaf people taking decisions about Deaf people and defining their future, adding that "the identity defined by Deaf people themselves should have greater legitimacy than ones chosen by majority groups<sup>223</sup>."

<sup>223</sup> Ladd et al., 2003, pp. 66-77.

Undoubtedly, deaf people's self-determination should play a contributory role in deciding the steps forward.

## 6. THE RIGHT TO HAVE A CHOICE

Deaf people should have the right of choice in regard to their educational setting. Based on their needs, they should be able to choose between inclusive programmes or segregated educational institutions for Deaf people. In cases of deaf children born into hearing families, it is of utmost significance that the chosen educational setting guarantees not only the provision of education in an apprehensible language (sign language), but also their cultural identification. The importance of this lies in the fact that, among hearing families, the transmission of Deaf culture to children does not occur automatically in their family circle. Thus, it is school that should encourage a bi-multilingual and multi-cultural approach, in order to ensure that deaf students acquire knowledge not only of sign language, but also of the Deaf history, culture and traditions and to expose them to the values of the Deaf community so as to understand and to identify themselves with the Deaf culture. However, it is of high importance that the curriculum of these segregated educational institutions provides deaf students with the same standards offered at regular schools which are of equal quality. It is really important that they have a curriculum of equivalent quality. In fact, the ideal educational setting for D/deaf should empower bilingual language competency, in order to prepare deaf students for acting both in the hearing and deaf society. The written language is important for dismantling the obstacles imposed by the hearing world, as it provides deaf people with an opportunity to be heard in the hearing world. Last but not least, affirmative action should be taken, in order for Deaf people to have the opportunity of higher education, a step which will later contribute to a better employment status and a better quality of life. In addition, it is important that deaf people become adult educators and interpreter trainers because, despite their expertise, they also constitute role models.

7. BETTER TRAINING OF STAFF

It is of paramount importance that teachers and interpreters are adequately qualified and have competences that are not limited just to the knowledge of sign languages and to bilingual fluency, but are also extended to the knowledge of deaf culture, history and mentality, as they are the key to deaf people's development and participation in society. For this reason, universities should create special departments or training programmes so as to prepare professional interpreters who will have expertise not only in sign language, but also in Deaf culture, while teachers that are going to work with deaf students should be specially trained or should follow a special degree course or career. In addition, affirmative action is needed to create training programmes, master degrees, etc. that will offer expertise on deaf issues to professionals from several disciplines – not only from the field of education, such as politics, communication, sociology, psychology and medicine. Any issue related to deaf (financial matters, decision-making processes, publications, etc.) should be carried out in cooperation with or solely by Deaf experts.

8. INTRODUCING SIGN LANGUAGES AS FOREIGN LANGUAGES

In an attempt to promote diversity and to cultivate tolerance and pluralism, sign languages should be introduced as foreign languages in mainstream schools. Such a step would raise awareness in the hearing society and provide it with an inner view of the situation. Moreover, emphasis should be placed on the perception of deafness not as a deficit but as a difference, as a gain. As a result, the hearing world could become more perceptive to diversity, while at the same time bridges may be built in the communication between hearing and deaf people, thus reducing the latter's isolation and alienation and dismantling the obstacles imposed by the hearing society because of the difficulties in communication. As it occurs, this will be an important step to the fight against discrimination and labelling of deaf people, which should lead to a more inclusive society.

## 9. COOPERATION BETWEEN DIFFERENT DISCIPLINES

The protection and promotion of Deaf people's rights require the use of concepts and methods from different disciplines, in order for a complete image of the situation to be offered. The cooperation between doctors, sociolinguistics, political scientists, lawyers and economists is considered essential so that the different models of deafness can be bridged and existing problems most appropriately addressed<sup>224</sup>.

## 10. PARENTS COUNSELING AND SUPPORT

It is crucial that hearing parents are provided with counselling before deciding about their child's future, in order for them to have a holistic view of their child's needs. In that way, they will have the possibility to be fully informed about all the possible solutions and perspectives. Being exposed not only to the medical perspective, but also to the values and beliefs of the Deaf community, they will be able to make a choice based on several alternatives. In addition, through counselling they will understand the importance of sign language even in the case they support the medical model of deafness and the use of cochlear implants. The early acquisition of sign language offers the child a first idea of grammatical and syntactical rules that can be very useful even for lip reading and for the easier acquisition of the written language.

## 11. RAISE AWARENESS

Awareness-raising campaigns should be launched so as to inform deaf people about their rights as persons with disability and as linguistic minority, but also about the moral and legal obligations that derive from the ratification of the aforementioned legal documents. In addition, seminars should be organised in order for awareness to be raised in the hearing society, which will result in seeing deafness in the light of difference and diversity, and not as an impairment to be erased.

<sup>224</sup> Grin, 2003, p. 193.

12. PUT EMPHASIS ON THE PROTECTION OF DEAF PEOPLE'S RIGHTS  
IN DEVELOPING COUNTRIES

Special interest, care and emphasis should be placed on the protection of deaf people's rights in developing countries, where the lack of education aggravates the situation: on the one hand deaf people ignore their rights to claim them, whereas on the other hand discriminatory practices and superstitions, resulting from illiteracy, exclude deaf people from society and provide them with no opportunities for development. Thus, measures should be taken towards recognising sign languages, whereas at the same time the establishment of deaf associations is considered as necessary, in order to put pressure on governments through cooperation with other associations at national or international level, to raise awareness between people but also in the international community, to map the situation and to offer advocacy.

## CONCLUSION

Deaf people have been denied the equal enjoyment of their fundamental rights and their full participation in the society as a result of prejudice and stereotyping. The social barriers imposed to them by the hearing society have led to their social and economic marginalisation, to their exclusion from society. "Blindness cuts people off from things; deafness cuts people off from people," Helen Keller has said characteristically. In an attempt to address the problematic situation, policies have been enacted for the protection of deaf peoples' human rights. However, a new wave of division has emerged concerning the classification of deafness under the disability or minority status based on the medical or sociocultural model. Undoubtedly, it is of high significance that the full enjoyment of deaf peoples' rights is achieved through affirmative action, whereas, at the same time it is crucial that deaf peoples' self-determination, culture, language and identity is properly protected. A common approach is necessary in order for the inefficiencies of one policy to be addressed by the other, while at the same time mutual respect, and acceptance of diversity are promoted. Special emphasis should also be given on the right of choice and their right to self-determination, while their voice should be included in any issue related to them. The ultimate aim though should be the development of mutual understanding within their community, but also between them and the hearing world in order for the barriers that disable deaf people to be dismantled, and respect of heterogeneity to be achieved. As the Indian philosopher S. Radhakrishnan has remarked "The unity of civilization is not to be sought in uniformity but in harmony [...]. Today the circle of those who participate in the cultural synthesis has become wider and includes

practically the whole world. The faith of the future is in cooperation and not identification, in accommodation to fellow-men and not to imitation of them, in toleration and not absolutism<sup>225</sup>.”

<sup>225</sup> Radhakrishnan, 1956, p. 14.

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