

CHAPTER 10

Sign Language Legislation as a Tool for Sustainability

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The legislative landscape has distinctly changed in the past years with regard to the recognition of sign languages across Europe and the world, resulting in an advanced realization of deaf citizens' positive economic, cultural, and social contribution to wider society (Turner & Napier, 2014). It is the Deaf community that has brought forward sustainable legislative recognition of their sign languages, and, in turn, sign language legislation has sustained and emancipated that linguistic and cultural minority.¹

Yiftachel and Hedgcock's (1993) definition of a sustainable city can be applied to the microsystem that the Deaf community encompasses within the majority: Sustainability is "the continuing ability of a city to function as a long-term, viable setting for human interaction, communication and cultural development" (p. 140). This chapter explores the three models of sustainability (environmental, economic, and social) and identifies the characteristics of a sustainable community that are necessary to sustain the Deaf community as a whole. It is argued that sign language legislation is a valuable tool to achieve sustainability for the generations to come.

Legislation Relevant to the Deaf Community

United Nations Convention on the Rights of Persons With Disabilities

To arrive at a comprehensive definition of sign language legislation, this chapter first explores legislation and policies affecting or concerning the Deaf community and its

members directly; that is, any legislation that would not apply to a non-deaf person to achieve equality, such as legislation in relation to reasonable accommodation or the provision of sign language interpretation in court or at an educational institution.² The United Nations Convention on the Rights of Persons with Disabilities (CRPD, 2006) is the first human rights instrument of the 21st century and entered into force on May 3, 2008. As the first international treaty mentioning sign language explicitly, it has gained importance in the daily lives of deaf people and has been hailed as a paradigm shift from a social welfare model to a human rights approach of disability (Kayess & French, 2008). Commentators refer to it as the missing piece in human rights legislation in reference to persons with disabilities because prior to this, they were not recognized as a separate and protected category in any of the binding instruments of international human rights law (De Meulder, 2014). The CRPD has changed that notion, and although not necessarily creating new rights, as such, it puts specific duties on state parties, as is clarified in the CRPD Committee's General Comment No. 2 on Article 9 (Accessibility): "The obligation to provide accessibility is an essential part of this new duty to respect, protect and fulfill equality rights" (CRPD, 2014, p. 5).

It can be inferred that the right to equality that was previously also granted to all human beings has not changed, but that the beneficiaries of the CRPD (namely people with disabilities, including deaf people) are now in a position to claim accessibility to achieve such equal rights. This conceptual shift, as noted by the Committee in the same General Comment, ensures that accessibility has become an obligation rather than being subject to goodwill. Accessibility and nondiscrimination are two of the general principles of the CRPD, as enshrined in Article 3. All previous and subsequent articles must be read in conjunction with Article 3 and Article 4 on general obligations.

In the implementation process, the adoption of appropriate legislation and abolishment of all discrimination against persons with disabilities are two key factors to the full realization of equal enjoyment of all human rights and fundamental freedoms, as proclaimed in Article 1. To achieve substantive equality, the United Nations Human Rights Committee (1989) in its General Comment No. 18 elaborated that sometimes states parties may be required "to take affirmative action [...] to perpetuate discrimination" (p. 2). In other words, the Committee under the International Covenant on Civil and Political Rights (ICCPR) rejects the notion of formal equality, favoring a concept of substantive equality that does not always equate equal treatment with identical treatment. It can be deduced that the same holds true for subsequent human rights instruments, such as the CRPD, where the

concept of reasonable accommodation forms part of the states parties' duties to achieve said substantial equality.

All articles of the CRPD are relevant for all people with disabilities, including members of the Deaf community. Five articles in particular mention sign language explicitly:

- ◆ Article 2 (Definitions): "Language includes spoken and signed languages"; (CRPD, 2006, p. 4)
- ◆ Article 9 (Accessibility): "To provide forms of live assistance and intermediaries, including [. . .] professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public"; (CRPD, 2006, p. 9)
- ◆ Article 21 (Freedom of expression and opinion, and access to information): "Accepting and facilitating the use of sign languages" and "Recognizing and promoting the use of sign languages"; (CRPD, 2006, p. 14f)
- ◆ Article 24 (Education): "Facilitating the learning of sign language and the promotion of the linguistic identity of the Deaf community" and "States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language"; (CRPD, 2006, p. 17)
- ◆ Article 30 (Participation in cultural life, recreation, leisure and sport): "Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture." (CRPD, 2006, p. 23)

As mentioned above, all articles of the CRPD are equally applicable, such as, for example, Article 13 regarding access to justice or Article 10 on the right to life.³ For the sake of completeness, it must be noted that other human rights instruments, such as the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women also have relevance to persons with disabilities, including deaf sign language users. This has manifested itself, for instance, in the General Comments of the United Nations Committee on Economic, Social and Cultural Rights (1995), the previously mentioned United Nations Human Rights Committee (1989), and the United Nations Committee on the Rights of the Child (2006), which have firmly established the concept of disability rights in their respective conventions. It has yet to be seen how the CRPD Committee will interpret the sign language provisions in the CRPD convention in view of legal and practical implementation at all levels.⁴

European Union Antidiscrimination Law

EU treaty law and other sources of law have undergone a transition to an antidiscrimination model that includes protection on more than one or two grounds.⁵ EU antidiscrimination law traditionally focused on the equality of men and women, most famously contested in the *Defrenne v. Sabena* (1976) case, where the court declared the right not to be discriminated against on the grounds of sex as part of the general principles of European law (Meenan, 2007). The amended Treaty on European Union reinforces the principles of nondiscrimination and equality in its Articles 2 and 3, establishing that the European Union has a responsibility to combat discrimination. Article 10 of the Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) states, “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” (The Member States, 2012, p. 53).

The prohibition of discrimination on the basis of nationality is incorporated in a number of articles, most notably Article 18—“Any discrimination on grounds of nationality shall be prohibited”—(The Member States, 2012, p. 56) and Article 45—“1. Freedom of movement for workers shall be secured within the Union. 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment” (The Member States, 2012, p. 65f). The Charter of Fundamental Rights in the EU extends these grounds further, prohibiting discrimination also on the basis of political or any other opinion, membership in a national minority, and birth (Article 21):

Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. (European Union, 2012, p. 396)

The two antidiscrimination directives at the European level implement TFEU Article 19, creating a legal set of obligations to prohibit discrimination in certain areas. The so-called Racial Equality Directive (The Council of the European Union, 2000a) covers discrimination on the ground of racial or ethnic origin and covers a range of areas such as “education, social protection including social security and healthcare, social advantages and access to and supply of goods and services” (Article 12, p. 22). While the Employment Equality Directive (The Council of the European Union, 2000b), which, among other measures, forms the basis for providing reasonable

accommodation for persons with disabilities, provides discrimination protection on all grounds mentioned in TFEU Article 19, it only covers the area of employment.

The first notable judgment in relation to disability discrimination is the Chacón Navas (2006) case. It aimed to clarify the concept of disability that is not defined in the Employment Directive itself. Although case law has suggested that the scope of the Directive has been widened considerably to include, for instance, discrimination by association in the sense that the Directive also applies to the careers of disabled relatives (*Coleman v. Attridge Law and Steve Law*, 2008), the Grand Chamber has acknowledged its limitations in Case C-363/12 (*Z v. A Government Department and the Board of Management of a Community School*, 2014), where a woman's condition did not constitute a disability within the meaning of the Directive because it did not impact her ability "to access, participate in or advance in employment" (paragraph 81) in any way.

The EU's ratification of the CRPD constitutes an unprecedented implementation obligation of an international human rights treaty. While the CRPD's scope is much wider than that of the previously mentioned Employment Directive, Joined Cases C-335/11 and C-337/11 (*Jette Ring v. Dansk Almennyttigt Bol-igselskab* and *Lone Skouboe Werge v. Dansk Arbejdsgiverforening*, 2013) have clarified that the CRPD forms an integral part of the EU legal order and that secondary legislation, including the Employment Equality Directive, must be interpreted consistently. Not only does this judgment give renewed support for the adoption of a general EU antidiscrimination directive,⁶ it also mainstreams disability in all interpretation and implementation of secondary EU legislation, possibly creating a spillover effect for national CRPD implementation legislation.

Joined Cases C-335/11 and C-337/11 (*Jette Ring v. Dansk Almennyttigt Bol-igselskab* and *Lone Skouboe Werge v. Dansk Arbejdsgiverforening*, 2013) are a further development of the concept of disability as first defined in the previously mentioned Chacón Navas case. The concepts of *sickness* and *disability* are contrasted, and disability is defined as "a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life" (paragraph 43). For any limitation to be regarded as a disability, "it must be probable that it will last for a long time" (paragraph 45).⁷ It can thus be concluded that European legislation, unlike international human rights law, offers—at least in its jurisprudence—a definition of disability.

Disability Law

Disability law and antidiscrimination law have been intertwined since the European Union and its nation states have opened their antidiscrimination legislation to include

disability. Disability legislation as such is any legislation that specifically applies to persons with a disability, whereas antidiscrimination legislation may be aimed at a number of issues. A shift away from the disability-specific legislative landscape can be seen, for example, in the former UK Disability Discrimination Act 1995, now joined with the Sex Discrimination Act 1975 and the Race Relations Act 1976 and renamed Equality Act 2010, providing general protection against discrimination. Waddington and Lawson (2009) review disability discrimination legislation and conclude that most countries, except Denmark, Greece, and Poland, have some form of disability discrimination protection outside the scope of employment. Wheatley and Pabsch (2012) determine that at least 10 EU countries include sign language in their disability-specific legislation.

Sign Language Legislation

Specific laws on sign language have only started to emerge since 1995 (Lithuania and Slovakia); as of today 10 European countries have a separate, stand-alone sign language law. Sign language legislation as an academic term has been in widespread use only since 2010, when Wheatley and Pabsch published the first comprehensive book on the legal status of national sign languages in Europe. They utilize a narrow definition of sign language legislation, including only those pieces of legislation that explicitly mention the word(s) *sign language*, albeit without further specification as to the legal status of the sign language in question.⁸ A broader definition of sign language legislation could include any legislation that affects the Deaf community. This could include employment laws or antidiscrimination legislation that does not explicitly mention sign language but provides, for example, reasonable accommodation for a deaf person in the employment sector or sign language interpretation in court.

The express legal recognition of sign languages has thus far not been readily defined. Timmermans (2005) uses the terms *recognition* and *official status* interchangeably. Wheatley and Pabsch (2012) avoid a clear definition, using both *recognition* and *mentioning*. In some countries, such as Austria, where the Federal Constitution in its Article 8(3) recognizes Austrian Sign Language as an independent language, the legal status is unambiguous.⁹ Other countries might mention sign language in the laws recognizing the profession of sign language interpreters (Bulgaria, for example) or in an educational law, such as in Ireland, where support services to achieve quality education must be made available to individual students (including sign language interpreters).¹⁰

Legislation such as that in Bulgaria or Ireland is widespread and allows for a wide range of interpretations as to whether the sign language is recognized or

not. Using a strict legal approach, a sign language would only be recognized if the law itself somehow accords the national sign language a status akin to that of the national spoken language or of national minority languages, including all the same deducible rights, such as the right to education in sign language, the right to an interpreter in court proceedings, etc. It follows that the highest form of legal recognition of a language is the status of an official state language. Article 6 of the New Zealand Sign Language Act (2006) states, “New Zealand Sign Language is declared to be an official language of New Zealand” (p. 4). A legal approach from a language perspective creates a somewhat precarious situation for affirmative action policies, such as reasonable accommodation in the form of a sign language interpreter, which are commonly enshrined in the local disability law.

In this chapter, I have adopted a newly formed, broad definition of sign language legislation, in line with the human rights principles proclaimed in the CRPD:

Sign language legislation is any supranational, national, and regional legislation, recommendation, or policy that mentions, recognizes, or relates to sign language and the Deaf Community, whereby the particular piece of legislation must be necessary to counteract barriers imposed by the environment, including attitudinal and societal barriers, and/or enabling the full and equal enjoyment of all human rights and fundamental freedoms, as well as full and equal participation in society of a particular group forming the Deaf Community and comprising deaf individuals.

Following this definition, the EU antidiscrimination legislation would fall under sign language legislation, although it does not mention sign language explicitly in any article or in the case law cited.

Models of Sustainability

The remainder of this chapter refers to sign language legislation in the above-defined sense and analyzes how it can assist and accelerate in creating and nourishing sustainable deaf communities. Sustainability as a three-fold model, and in particular social sustainability, is first defined and then contrasted with models of disability before exploring concrete sustainable examples of sign language legislation in a range of areas.

A classic definition of sustainability and the first global definition of sustainable development stems from the so-called Brundtland Commission, the World Commission on Environment and Development (United Nations), which in their 1987 report titled “Our Common Future” proclaimed that “humanity has the ability to

make development sustainable to ensure that it meets the needs of today without compromising the ability of future generations to meet their own needs" (United Nations, 1987, paragraph 27). It expresses therefore a strong affirmation of inter-generational solidarity, which is taken to mean that all actions must consider the impact they might have on future generations (Bärlund, n.d.).

This early report mainly focused on immediate and primary human needs, such as eradicating poverty by providing food and employment and "conserving and enhancing the resource base" (United Nations, 1987, paragraph 28); that is, preserving the environment and its natural resources. Since then, sustainability as a model has expanded beyond this narrow focus and developed into a holistic concept covering all spheres of life. Goodland (1995) first proposed the three-fold definition that this chapter loosely follows: (1) environmental sustainability, (2) economic sustainability, and (3) social sustainability.¹¹ This approach gives way to a broader definition, allowing analogies with the social model of disability and the internal and external sustainable development of the Deaf community as a whole. Although this chapter mainly focuses on social sustainability, it acknowledges the *triple bottom line* principle developed by Elkington in 1997, under which it is "not possible to achieve a desired level of ecological or social or economic sustainability (separately), without achieving at least a basic level of all three forms of sustainability, simultaneously" (Sutton, 2000, paragraph 6). The chapter also takes into account definitions that include full and equal participation in a just and fair society (Gilbert, Stevenson, Girardet, & Stren, 1996) to arrive at a definition of a sustainable Deaf community with sign language legislation as a catalyst for a sustainable future.

Environmental Sustainability

Environmental sustainability is probably the most researched and most readily understood area of sustainability. Goodland defines environmental sustainability as a concept that "seeks to sustain global life-support systems indefinitely" (1995, p. 6) and claims that it is a precondition for social sustainability. Gilbert et al. (1996) further state that it includes ensuring (for example, through affirmative practices) that the natural resource capital remains intact; that is, that extracting renewable resources must happen at a rate where they can be renewed. Gilbert et al. conclude that the extraction of nonrenewable resources should be kept to a minimum. The present chapter considers these three areas to be equal theoretical concerns (a triple bottom line, as mentioned earlier), although in practice both environmental and economic concerns have generally taken precedence.

Economic Sustainability

Spangenberg (2015) explores the following definition of economic sustainability: “Sustainable development is [. . .] the need to maintain a permanent income for humankind, generated from nondeclining capital stocks” (p. 48). According to Gilbert et al. (1996) and McKenzie (2004), it aims at using existing resources in such a manner to achieve a profitable outcome. In a business context, this means operating over a number of years while consistently returning profit, which is measured in monetary or growth terms. Growth is equaled with social improvement, although “empirically employment is correlated to economic growth, distributional justice is not” (Spangenberg, 2005, p. 49).

The General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights of the United Nations Committee on Economic, Social and Cultural Rights (2009) reinforces this in the context of human rights by stating: “Economic growth has not, in itself, led to sustainable development and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination” (paragraph 1). McKenzie (2004) notes that companies’ reporting on social indicators occurs “infrequently and inconsistently across organizations” (p. 6), and although social considerations are gaining momentum, the baseline concern often remains economic. He further notes that companies with a positive environmental reputation can benefit from a considerable market advantage; social and also ethical reputations of a company and their impacts have not been well documented.

Economic factors are not only of importance to commercial entities. In particular, governments and their political stakeholders also draw on the models of sustainability to advance their political agenda. A prominent example is the advancement of the European Union’s legal framework, which developed from a purely European Economic Community (EEC) to a European Union that promotes “economic, social and territorial cohesion, and solidarity among Member States,” as well as sustainable development (Article 3 of the Consolidated Version of the Treaty on the Functioning of the European Union; The Member States, 2012, p. 17). Despite these ambitious aims, social concerns seem to be secondary in the current legislative climate: The EU’s CRPD implementation efforts, as manifested in the proposed European Accessibility Act, fall short of its high expectations by most likely employing an internal market base (European Commission, 2011) rather than a general human rights or antidiscrimination approach, as has been demanded by civil society (European Disability Forum, 2013).¹²

Social Sustainability

“Social Sustainability is: a positive condition within communities, and a process within communities that can achieve that condition” (McKenzie, 2004, p. 23). Social sustainability as a whole considers individuals, communities, societies and how they live with each other. It includes the full range of social rights, including human rights and employment rights, but also corporate governance, also referred to as corporate social responsibility (CSR) or corporate citizenship. Intergenerational equity and solidarity is a main factor in ensuring future generations’ access to the same or more resources than current generations enjoy. At the same time, intragenerational equity is a defining factor in ensuring a just and fair society or community at any given time. Sustainably healthy social communities favor integrated solutions rather than fragmented policies that do not aid the community as a whole. They take a long-term approach beyond election cycles and single generations.

Generally speaking, all sustainable communities seek and ensure

- ◆ A sense of community ownership;
- ◆ An improved quality of life (including personal well-being) without compromising other communities’ well-being;
- ◆ Equality of opportunity;
- ◆ Equity of access to information and services;
- ◆ Equitable resource allocation;
- ◆ Preserving of cultural heritage;
- ◆ Sharing of knowledge and open and transparent communication;
- ◆ Political participation of all members, fostering diversity (in the community and in wider society);
- ◆ Realization of personal potential in all areas of life, including employment and education;
- ◆ Justice; and
- ◆ Economic security. (Compiled and adapted from Duxbury & Jeannotte, 2012; McKenzie, 2004; President’s Council on Sustainable Development, 1997; Sustainable Communities Online, 2014)¹³

On an individual level, personal needs such as health, education, shelter, and freedom of cultural expression should be met by a sustainable society (Gilbert et al., 1996). Success of a sustainable community highly depends on the level of commitment and involvement of its individual members in conjunction with a collective vision for the future. Active and informed citizenship, as well as effective leadership, are two further main characteristics of a successful and sustainable community (President’s

Council on Sustainable Development, 1997). To further the aims of a long-term sustainable community, attainable goals and the celebration of short-term successes must be set (Sustainable Communities Online, 2014). The continued analysis of the group's needs and strengths can also be a defining factor in long-term development (McKenzie, 2004).

Sustainability in the community is therefore a process that constantly evolves and requires responsive members to ensure the community as a whole can benefit from implementation measures. This social capital ensures that “[s]ocially sustainable communities are equitable, diverse, connected and democratic and provide a good quality of life” (McKenzie, 2004, p. 18) or, in other words, achieve social justice.

Sustainability and the Deaf Community

Identifying the Strengths and Needs of the Deaf Community

Sustainability, social sustainability in particular, is a constant process that can only be monitored if certain indicators or measurable actions are in place. Much work on social sustainability has focused on developing indicator sets so that improvement can be examined in terms of implementation. As outlined by McKenzie (2004), identifying the strengths and needs of a community are one factor in determining and collectively assessing the progress of sustainable community development. Following the previously established list of what sustainable communities seek and ensure, the (perceived) strengths and weaknesses of the Deaf community are elaborated to then identify legislation as a necessary, though not the only, tool to achieve and monitor the community's long-term aims.

A Sense of Community Ownership

The Deaf community has long discussed its membership criteria and posed questions as to whether there is one Deaf community or several communities, or even a deaf ethnicity (Ladd, 2003; Leeson & Sheikh, 2010). Written evidence of the Deaf community concept can be found as far back as 150 years, and while historical accounts portraying a sense of solidarity between deaf persons date back at least 7,000 years, a Deaf presence could even be older (Woll & Ladd, 2003). The initial sign of Deaf World (in contrast to hearing society) and the emergence of the idea of a deaf culture, in conjunction with the historical and academic evidence, show a strong understanding of deaf identity and ownership.

While this identity and, in particular, the sense of ownership play a large role in the recognition of contemporary deaf associations and sporting events, such as the regular Deaflympics,¹⁴ deaf education has traditionally been in the hands of hearing educators who have banned sign language in the classroom and advocated mainstream education in a hearing environment (Ladd, 2003; Leeson & Sheikh, 2010). The same holds true for sign language research that is all too often conducted by hearing researchers not aware of the subtleties of the Deaf community, or sign language teaching that is offered without consultation with the local deaf association or community.

It can therefore be concluded that the sense of community as such is a strength that can be used to maintain and advance its sustainability. However, there are other factors such as education and language ownership that must be addressed using the strong solidarity that exists among the Deaf community, even across countries and continents.

An Improved Quality of Life Without Compromising Other Communities' Well-Being

A second factor for sustainable communities to thrive and excel is the constant striving for an improved quality of life, including the individual person's well-being. While the overall quality of life has been increasing at a rate previously unimaginable, deaf people were and are excluded from many mainstream health services, including basic medical support and mental health facilities (Kyle & Allsop, 1997; Leeson & Sheikh, 2010; Marschark, 1993). Although the Deaf community might be at a disadvantage in accessing health services and in ensuring its personal well-being to the same standard as other members of society, the community as such is not in danger of compromising other communities' well-being. Rather, they form a *subaltern* culture (Ladd, 2003) that co-exists peacefully within wider society.

Equality of Opportunity

The political ideal of *equality of opportunity* can be divided into formal and substantive equality, as elaborated above in relation to reasonable accommodation. Although a number of countries have affirmative action policies in place in the employment sector, substantive equality has not been fully achieved in most workplaces. As has been noted in the European Union of the Deaf (EUD) UNCRPD Survey Report (EUD, 2013), what is most striking is the heterogeneous nature of the provision in the different countries: While the United Kingdom and Denmark both report very

little problems with the provision of reasonable accommodation (11.11% and 5.4% respectively), countries such as Greece and Luxembourg declare up to 100% of denial of reasonable accommodation in the workplace.

Both the employment sector and the educational sector in particular fail to provide the equal opportunities necessary to ensure later employment for deaf children and the sustainability needed for the coming generation. The most prominent example is the low level of reading that deaf children attain after having gone through the compulsory school system (Marschark et al., 2005; Marschark & Spencer, 2009). Levels that are consistently below that of their peers result in fewer opportunities at the job market later (Leeson & Sheikh, 2010). It can be concluded that equality of opportunity poses a vital weakness of the Deaf community that must be addressed to further sustainable processes.

Equity of Access to Information and Services

With regard to access to information and services, the Deaf community is at a distinct disadvantage in comparison to the wider society. As outlined above, educational systems fail to provide young deaf children with literacy skills to be able to fully understand all written information that is available both online and offline. Furthermore, information on audio-visual media channels, such as television, is often not accessible. The European Federation of Hard of Hearing People in its 2011 report and the EUD UNCRPD Survey Report (2013) conclude that subtitling access varies greatly, with the United Kingdom leading with 100% and countries such as Bulgaria lagging behind, providing 0% subtitling.

Barriers in access to information are not only visible in the public domain. Deaf children born into hearing families—which holds true for about 90% to 95% of deaf children (Ladd, 2003)—face large information gaps in their daily family life for a variety of reasons, including the inability of parents to sign to the child from birth and the unavailability of learning and early intervention programs.

Access to information and access to services go hand in hand. Kyle, Reilly, Allsop, Clark, and Dury (2005) analyzed the access of public services at airports, passport offices, and banks, among others, in Scotland. Deaf respondents overwhelmingly reported negative experiences and were “surprised” (p. 22) when discovering that a staff member could sign. The lack of information is most visible in interactions with health services, as exemplified by several comprehensive UK studies (Earis & Reynolds, 2009; Reynolds, 2007; SignHealth, 2014). This lack of information has more than once resulted in deaf patients taking prescribed medications without being aware of the potential side effects or in signing consent forms to operations

they did not fully understand. A lack of deaf awareness and unwillingness to book appointments through means other than phone on the side of medical staff prevents deaf persons from fully benefitting from health systems and using family members (most often the mother) to interpret at health appointments. Undiscovered and untreated mental health issues are at the core of an inaccessible health system that does not provide either sign language interpretation or deaf health professionals to tend to the unique needs of the Deaf community. This disproportionately high lack of access to both information and services is one of the greatest weaknesses that a sustainable society must address to ensure the well-being of all of its members.

Equitable Resource Allocation

In this context, *resource* is equated with *funding* or *public money*. Although there are a number of deaf associations that employ a large amount of staff and have consistent funding, more often than not, national associations of the deaf (NADs) suffer from a lack of funding. Nongovernmental organizations (NGOs) in general and disability NGOs in particular often are not aware of the procedures and the jargon that must be used when applying for government funding. Deaf associations are disproportionately disadvantaged in applying for funds due to the language barrier posed by the written word. Many grassroots organizations do not have the necessary lobbying experience to successfully convince governments to release disability-specific funds or provide permanent and sustainable funding. Furthermore, although funds might be available for one disability umbrella organization, disintegrated funding for distinct NGOs, such as national deaf associations, is not always seen as a necessity. Notwithstanding the fact that general disability organizations must receive appropriate funding to be able to carry out their important work, this can be detrimental for specific topics and groups, such as deaf sign language users. While there are a number of barriers and subjects that are common to more than one disability group, certain specific issues might be overlooked and not included if not lobbied separately by expert groups, such as deaf associations.

Sharing of Knowledge and Open and Transparent Communication

The sharing of knowledge within a group, including transparent communication, can be a decisive factor in the long-term sustainability of a community. A disconnect with the community leaders, as can be seen in wider society with regard to their political representatives, can create a divide in a small community that must appear united on the outside to lobby effectively for their rights.

Traditionally, the Deaf community has been known as a group that shares information among their members more avidly than the surrounding society. This characteristic has been attributed to the information deficit and the barriers to accessing vital public communications (Mindess, 2011). This strength has recently been overshadowed in countries where the deaf association has a strong leader who fails to communicate with the community directly and liaises with government representatives without consultation. Elected boards of local, regional, or national deaf organizations may therefore be a step away from the traditional community idea. Deaf community leaders must reflect on their relationship with the community and redefine their understanding of transparent communication in order to be able to sustain the local community. A strong change in leadership behavior can be seen in the transparent communication of the President of the World Federation of the Deaf (WFD), Colin Allen, whose approach to social media shows a distinct comprehension for the need to access to information.

Political Participation of All Members

Approachable and accessible leadership, transparent communication, access to information, and political participation are interlinked and cannot be analyzed in isolation. Members of the Deaf community are less likely to become involved in mainstream politics, mostly due to communication access restrictions, although there have been some notable changes with a number of deaf politicians being active at the regional, national, and European levels (Pabsch, 2014a). Although fostering diversity is economically viable (Ashraf & Galor, 2011), not only within companies, the Deaf community is still lagging behind when it comes to political participation and representation.

Inside the Deaf community shared information and communication are, as mentioned above, critical virtues. Although the establishment of boards and leadership groups has possibly led to a more diverging community, the information gap between the leaders and the ordinary members is possibly not as wide as can be seen with, for example, European Union representatives and policies.

Realization of Personal Potential in All Areas of Life

The realization of personal potential is closely linked to the provision and ensuring of equal opportunities. A society that ensures that access to university education is based on merit—rather than those who can afford to do so or those who are able to follow a university lecture without reasonable accommodation—will allow

more gifted students to realize their potential. For deaf students and those seeking employment, those equal opportunities are not readily available. Deaf community members oftentimes must limit their choices according to the opportunities available at any given time. Not every country has an equal and sufficient number of sign language interpreters available, leading to substantial inequalities at all levels (De Wit, 2012; Wheatley & Pabsch, 2012).

A sustainable society puts the realization of personal potential at the core of its policies. In most countries, the Deaf community is far from being a sustainable part of a society that provides equal opportunities for all its citizens.

Justice

Access to justice for the Deaf community has not been systematically researched or documented. Official EU data do not include deaf-specific information due to the fact that there are no disintegrated disability data available (European Union Agency for Fundamental Rights, 2011). Miller (2001) gives examples of no access to justice in the United States, and Vernon and Miller (2005) elaborate further on the critical factor of literacy and general communication skills in relation to deaf people's lack of awareness of their legal rights. The 2013 UNCRPD EUD survey notes that although a large number of deaf people have never been in contact with courts or the police, the biggest factor regarding access is the provision of professional sign language interpreters. It becomes clear that the Deaf community is at a critical disadvantage when it comes to accessing the justice system and more generally in being aware of their legal rights.

Economic Security

Deaf people, although by and large not as often unemployed as other disability groups, are often underemployed, taking on jobs well below their skill levels. According to Leeson and Sheikh (2010), deaf citizens are three to four times more likely to be underemployed than their hearing counterparts. Improving employment-related skills is key to overcoming this weakness. This can take many forms, including vocational training, traineeships for young graduates, second-chance opportunities, or other accessible lifelong learning programs (European Disability Forum, 2010).

There is also an indication that deaf people will prefer to not work in order not to lose certain social benefits. This so-called *benefit trap* is strongly opposed by the European Disability Forum, which calls for structural reforms and proactive investments that ensure the distinction of "income as such on the one hand, and

the provision of services such as personal assistance and the coverage of disability related expenses on the other” (European Disability Forum, 2010, p. 5).

While the past several years have seen a surge in youth unemployment due to a less than favorable economic climate (Eurostat, 2013), this could also have a detrimental effect on the provision of reasonable accommodation in employment and education, for example in the form of sign language interpreters.

Internal Sustainable Development (Within the Deaf Community)

Sustainable development of the Deaf community can be divided into two types: internal and external. Internal development concerns the Deaf community itself, and external development also takes into account the wider society.

The factors analyzed above in relation to the community (such as community ownership) and those relating to individuals (such as realization of personal potential) can be included in the internal sustainable development category. Other factors may have an internal and external component, such as political participation and employment. Employment in particular brings forward the Deaf community internally but also contributes to society in the form of taxes and the actual labor itself. In a demographically changing Europe, using all potential workforces available is crucial.

External Sustainable Development (Wider Society)

External sustainable development of the Deaf community can in turn be seen as two-fold. On the one hand, the Deaf community contributes to the sustainability of wider society; on the other hand, the wider society can also support the Deaf community in its internal sustainability.

The Deaf community, when campaigning for equal rights for their own members, may at the same time influence policies that affect a larger group of people that form part of wider society. Whether this may be intentional or not, a larger target group is beneficial for positive campaign outcomes. The subtitling campaigns carried out in many countries can serve as an illustrative example.¹⁵ An Ofcom (2006) review in the United Kingdom indicated that of the 7.5 million television viewers who used subtitles, 6 million had no hearing impairment at all. This means that 80% of the beneficiaries of subtitles are not those who originally campaigned for subtitles. To stay with the subtitling example, access to television, which encompasses access to a vast range of information, can largely contribute to the sustainability of a community, including improving literacy skills and second language learning.

Wider society also plays a role in advocating the rights of the Deaf community. So-called *hearing allies* (Ladd, 2003), which can be individuals but also disability or equality organizations, among others, can be an asset for the Deaf community given they do not claim to be the sole experts or work without consulting the members.

Sign Language Legislation and Sustainability

Sign Language Recognition

After analyzing the situation of the Deaf community with regard to the factors that can play a decisive role in ensuring sustainability, a number of those aspects are taken to exemplify the potential practical impact of sign language legislation. Although not all areas and countries have sufficient research and data available to assess the exact practical impact and compare pre- and post-legislation situations, legislation gives organizations and individuals leverage to continue lobbying or take cases to court. A precedent can be a trigger for more homogenous provision of accessibility.

The recognition of sign languages has progressed exponentially in the past 20 years (Wheatley & Pabsch, 2010, 2012). Recognizing and explicitly mentioning sign language in legislation carries great intangible value for the Deaf community, albeit not always having the desired practical effect. Finland, for example, has repeatedly voiced concern that the existing recognition in the constitution must be followed by a separate sign language law covering all areas of life (Wheatley & Pabsch, 2012). By contrast, (sign) language planning and the standardization of sign languages should not be seen as a form of genuine recognition (World Federation of the Deaf, 2007, 2014).

To contribute to the sustainability of the national sign language(s) as such, they must be explicitly recognized in a way that guarantees their safeguarding. The mere mentioning of sign language will not be sufficient to guarantee the diverse measures necessary for sustainability. This includes academic sign language research and adequate recording, for example in the form of corpus projects.

Access to Information and Services

Access to a range of services and to public information is a must for sustainability of both the community and the individual. The following are examples from a few sectors that can be used to illustrate the role of legislation: health, online and website accessibility, and government.

Health providers and insurers may not prioritize accessible health care and health information if it is not legislated. Considering, however, that a growing

ageing population with increased medical needs requires responsive and accessible health care for not only the Deaf community, legislative action now will serve to ensure the sustained and continuous provision of health care. This must apply to countries where health care is publicly funded and/or owned, but also to those countries with a largely private sector.

Web accessibility is an excellent example of a legislated area that has shown marked improvement in the past years. This does not only hold true for the national level, but also at the European level—the European Commission has proposed a Web Accessibility Directive aimed at the websites of public services (European Commission, 2012). Public websites in Germany, for example, have steadily improved accessibility after the introduction of a national Web accessibility law. National ministries have included sign language videos, subtitles, and also an innovative contact form where deaf citizens can send requests and questions in German Sign Language (and get an answer in sign language as well).

Contacting the government or local authorities has traditionally been difficult, especially when certain services are only available following a phone conversation. With the introduction of more online services, this has become less problematic. However, deaf citizens (as well as their hearing counterparts) are still often at a loss regarding the forms and jargon used. Legislative measures that ensure the accessibility of services will be a long-term investment in ensuring equality for all citizens. There are a number of positive initiatives across the continent. However, national or European legislation would be beneficial in the sense that local initiatives could become nationwide and large-scale permanent solutions, rather than staying short-term community projects.

The provision of sign language interpreters, especially in rural areas, is frequently problematic. Accessibility legislation in all its forms must include provisions for the training of professional interpreters to be sustainable.

Political Participation

The participation of deaf people in the political sphere has improved over the years, although it is still at a level that cannot be characterized as equal. For example, legislating voting rights has improved the accessibility of voting booths. However, regarding full political participation for deaf citizens, there are still considerable obstacles. For instance, 34.1% of the respondents of the 2013 EUD survey answered that they would like to vote but did not have enough accessible information (Pabsch, 2014b). This goes to show that political participation for deaf citizens (and persons with a disability) is not only related to the accessibility of the process of voting, but

entails much more. Here, legislation would have a large role to play to ensure that all areas of participation are included. For example, local council meetings or political party gatherings would be included in this category. Thus far, most legislation focuses more on the voting process than on the accessibility of websites. Without binding legislation, political parties will continue to miss out on voters and also exclude those persons who are genuinely interested in becoming politically active. Current *soft law* and policy measures have not had the desired inclusive effect, leaving ample opportunity for legally binding measures.

Education and Lifelong Learning

Education is the precondition for a successful career, teaching skills that will be valuable in the employment market. Although educational policies are decided and implemented at the national and regional levels, there must be a common legal standard ensuring and safeguarding the rights of those using sign language in education. The current policies are—as it stands—not sufficient to, for example, require teachers to have a certain level of sign language to be able to teach deaf children adequately.

Considering that the educational system still fails many deaf children, it is of utmost importance to improve lifelong learning (LLL) possibilities for deaf citizens. Legislation that mainstreams disability and ensures that those second chances can be used by all citizens is crucial and not yet in place. The legislative framework for such programs is already regulated, also at European level; therefore, the inclusion of reasonable accommodation can have a positive effect on a large number of LLL projects and policies.

Employment

Employment is largely linked to the equality of opportunities and the provision of reasonable accommodation. However, positive or affirmative action strategies have become increasingly important, as have CSR policies.

Reasonable accommodation, although not sufficiently defined in the CRPD or in European legislation, is nonetheless legislated at almost all levels. By contrast, the European Commission (2014) defines CSR as the responsibility of enterprises and companies for their impacts on society. For CSR to become a deciding factor in the sustainability of a society and a business entity, it must become a legally binding requirement rather than voluntary commitment.

Positive or affirmative action strategies are similarly phrased, lacking legal preciseness in the form of real obligations rather than recommendations. As such, positive action aims at redressing inequalities and discrimination using active measures that ensure equal opportunities.

Discrimination in the area of employment is regulated by the Employment Equality Directive (Council Directive, 2000b). Directives at the European level are legally binding with regard to the overall result that is to be achieved by the member states; however, the national authorities may choose the form and methods for implementation (Consolidated Version of the Treaty on the Functioning of the European Union, Article 288; The Member States, 2012). This means that while the principles are legally binding, there will still be great heterogeneity between the different states with regard to actual provision. Legislation in the area of employment has a strong positive effect on the members of the Deaf community and therefore also on their long-term sustainability. While such employment legislation might not automatically lead to the provision of reasonable accommodation, it is nonetheless a decisive factor for deaf associations to lobby for sign language interpreter programs at the university or vocational training level.

For instance, the first UK Disability Discrimination Act (1995, now the consolidated Equality Act 2010) had great influence on the provision of reasonable accommodation in the workplace, making the United Kingdom a leading example of equality in employment.

UN and European Levels

McKenzie (2004) points out that a sustainable society or community must have certain mechanisms in place that foster political advocacy. This aims to ensure that needs are met that cannot be achieved by community action alone. At the national level, this translates into organized activities and strategies usually carried out by the deaf association. However, coordinated actions at the European and international (UN) level are critical in ensuring that legislation includes the Deaf community at all levels. Organizations such as EUD and WFD are the link between the Deaf community and supranational law, as well as relevant stakeholders.

Although not all areas can and are legislated at the EU or international level, those that are can have a large impact on national policies. Even recommendations and other nonbinding instruments may exert a so-called spill-over effect, influencing legislation at the national or regional level. This can already be seen with the mainstreaming of the CRPD and with European-level equality legislation. Involvement at the UN and EU level is therefore indispensable for the sustainability of the Deaf community.

Deaf Associations

As has been argued, deaf associations play a large role in the sustainability of the Deaf community. They are responsible for most coordinated action at the national and regional levels and, although not always as networked as other organizations, form the backbone of legislative and attitudinal change.

In this context, sign language legislation can ensure the sustainability of the Deaf community and the deaf associations in general. While most associations are dependent on project funding, a sustainable and permanent disability fund would ensure that they could shift their focus to their actual lobbying work rather than worrying about more funds.

General calls for projects can also be potentially detrimental to the Deaf community if the ones managing the awarded deaf-related projects are not deaf association members or deaf experts. This is closely linked to community ownership, which is a main factor in securing sustainability. Again, legislative measures could be a potential solution, mainstreaming disability and deafness in calls for projects, but also sustainable long-term funding must be regulated. Governments are already obliged to take into account nondiscrimination and, where applicable, also the CRPD, but they are unable to implement all facets of the obligations. This is where disability and deaf associations are the ideal partners to support, complement, and criticize governments to look beyond the election cycle and enact long-term measures.

Parallels of the Social and the Medical Models of Disability and Sustainability

Disability research, as well as disability legislation (e.g., CRPD), has recently changed its understanding of disability as a social construct rather than an inherent *problem* of the disabled person. The implied understanding is that the environment produces barriers that can be overcome, such as by reasonable accommodation (Kayess & French, 2008). For instance, deaf sign language users would not face communication barriers if everyone spoke sign language or if there were a sufficient amount of sign language interpreters available, facilitating all kinds of conversations. Hallam (2014, p. 23) describes sustainability as a social process and the environment as the “outcome of generations of human interaction with the environment.”

The medical model aims at *curing* the individual rather than embracing diversity. Similarly, the economic model of sustainability is concerned with measurable profit. It could therefore be argued that legislation aimed at fostering the medical model would, in a sense, be part of the overarching economic model rather than

the environmental or the social sustainability model. Such legislation could include forced implantations without the provision of sign language or educational policies that are shortsighted, not taking into account the long-term positive effects of certain educational models. As previously outlined, those long-term investments are crucial for the next generation of a sustainable society.

Conclusion: Sign Language Legislation as a Catalyst for Sustainable Communities and Equal Opportunities

This chapter has explored sign language legislation and the concept of sustainability to analyze the role of sign language legislation with regard to the sustainability of the Deaf community. It has become clear that although legislation might not be the answer to everything, it may well be a catalyst for further change and improvements of the status quo. Furthermore, the intrinsic value of having a sign language recognized cannot be underestimated in nurturing the community's own understanding and motivation to continue having a sense of community ownership. Legislation that expressly benefits deaf people might not be necessary; however, a case that clarifies the legal uncertainties of certain concepts, such as reasonable accommodation or affirmative action, can be an even stronger catalyst for change than legislation alone. Legislation, unlike political stakeholders, is durable and goes beyond an election cycle, ensuring sustainability at all levels.

Notes

1. This chapter refrains from defining who is or is not a member of the Deaf community. According to the author, an exhaustive definition is not necessary for the purpose of understanding the relationship between sustainability, Deaf communities, and sign language legislation. The definition as adopted by Baker and Padden (1978, as cited in Ladd, 2003, p. 41) may serve as a starting point for further discussion: "The Deaf Community comprises those deaf and hard of hearing individuals who share a common language, common experiences and values, and a common way of interacting with each other, and with hearing people." The author will further not distinguish between *deaf* and *culturally Deaf*, as this is commonly not an accepted norm in legislation, and rights are accorded independent of the cultural status of a person.
2. This chapter outlines international and EU legislation and case law as a basis to develop a rationale for sign language legislation as a tool for sustainability. Further analysis of national and regional policies is necessary to fully understand the impact of the implementation of these measures.

3. For an in-depth analysis, see De Meulder (2014).
4. The CRPD Committee has thus far issued only two general comments (on Articles 9 and 12). The jurisprudence in the form of admissible individual communications has only started to develop, with none particularly referring to sign language.
5. The former European (economic) community treaties only included sex and nationality as antidiscrimination grounds.
6. The current draft legislative proposal has not yet passed the Council: Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age, or sexual orientation.
7. For further detail, see also Quinn (2007), Waddington (2013), Waddington and Lawson (2009).
8. Timmermans' (2005) review did not include all European countries and did not utilize the term *sign language legislation*; in certain languages, *sign language* is expressed as one word (e.g., *gebärdensprache* in German and *gebarentaal* in Dutch).
9. "Austrian Sign Language is recognized as an independent language. More shall be regulated by further laws" ("Die Österreichische Gebärdensprache ist als eigenständige Sprache anerkannt. Das Nähere bestimmen die Gesetze"); this is a legal analysis and perspective that does not claim to show efficiency of legislation in practice. Austria's recognition in its constitution has not resulted in the enactment of further legislation and/or implementation of CRPD principles (Wheatley & Pabsch, 2012).
10. Ordinance No. 48 from 9 January 2012 on the acquisition of the vocational qualification "Sign Language Interpreter." The Education Act (1998). Retrieved from <http://www.irishstatutebook.ie/eli/1998/act/51/enacted/en/pdf>
11. Some researchers include a fourth dimension: institutional sustainability (Spangenberg, 2005).
12. This Act, which has not yet been proposed by the Commission, promises to facilitate access to goods and services for persons with disabilities.
13. This list is not exhaustive, but it serves as a starting point to illustrate those factors of a sustainable community that are applicable and most relevant to deaf communities.
14. For example, Article 8(1) of the EUD Statutes (2014) states "National organisations of Deaf people ('National Associations of the Deaf', NADs) active in the Member States of the European Union, with a clear majority of deaf voting members among its membership and with a governing Board with a majority of deaf persons [. . .] are eligible to apply for full membership."
15. It must be noted here that subtitling campaigns are not exclusively carried out by deaf communities or their representative organizations. Organizations of hard-of-hearing people are equally, if not more, active in this area.

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