

# **The UN Convention on the Rights of Persons with Disabilities (CRPD)**

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## **Summary**

This paper looks at the CRPD as a whole. It is not meant to be a definitive guide and readers are advised to read through the CRPD to gain the knowledge of its articles and their rights. The paper looks at the process of constructing the CRPD, moving on to look at what the terms signing, accession, ratification and the optional protocol mean. An overview of what the CRPD says is given, before moving on to look at challenges for disabled peoples' organisations. We conclude with some selected examples of the ways in which disabled peoples' organisations can do to strengthen the CRPD.

## **Introduction**

The UN Convention on the Rights of Persons with a disability (CRPD) has been welcomed by many disabled people and disabled peoples' organisations as a defining international treaty in recognising disabled peoples' human rights. At the same time the very existence of such a treaty bears witness to the fact that on an international basis disabled people have also failed to secure full and basic human rights in the 21<sup>st</sup> century. So are our celebrations justified, premature or just overly optimistic? How far do we and other actors need to go to turn the words of the CRPD into a workable reality?

This paper reviews:

- a) The process of constructing the CRPD
- b) What signing, accession, ratification and the optional protocol mean for nations
- c) What the CRPD says
- d) Challenges of the Convention for disabled peoples' organisations
- e) What disabled peoples' organisations can do to strengthen the CRPD

## **Constructing the CRPD**

The UN General Assembly adopted a resolution calling for the establishment of an Ad Hoc Committee to consider proposals for a new international convention on the human rights of 'persons with disabilities' in December of 2001. The negotiation process was unique amongst human rights negotiations because of the inclusion of disabled peoples' organizations in the negotiations and in the drawing up of the convention. The Ad Hoc Committee established a Working Group, a temporary body with the task of putting together the first draft which would form the basis of all further negotiations. The Working Group included governmental, non-governmental and National Human Rights Institution representatives. The International Disability Caucus (IDC)<sup>1</sup> which was formed at the first meeting of the ad hoc committee in which delegates of international and

nation disabled peoples' organizations were involved: 'In 2006 about 300 NGO's of which many were disabled peoples' organizations (DPOs) were in New York to represent civil society' (Radtke 2009)

The inclusion of disabled peoples' organizations in this process was the result of strong campaigning by disability activists, as well as the recognition of governments that disabled people and their organizations offer the best source of expertise on issues relevant to their lived experience. It was the first time that members of civil society had participated on an equal basis with governmental representatives in a treaty negotiations process..

The Convention was adopted by the United Nations General Assembly on December 13, 2006. It is the 8th Universal Convention on Human Rights. It has had legal status since May 5, 2008 after the 20th ratification. At the time of writing there were 143 signatories to the convention, 71 ratifications of the Convention, 87 signatories to the Optional Protocol and 45 ratifications of the Protocol See link for a list of those that have ratified the CRPD and the optional protocol <http://www.un.org/disabilities/countries.asp?id=166>

### **1. What Signing, Accession, Ratification and the Optional Protocol mean**

Countries, states or Regional Integration Organizations (hereafter defined as state parties) may sign the convention or optional protocol at any time, by signing they agree to refrain from acts that would defeat the object and purpose of either the convention or optional protocol.

Ratification is a process that follows signing and signifies that state parties are bound by law to the immediate legal requirements of the convention. In contrast accession requires a party to express its intent to be bound by the convention or optional protocol through an act of accession. This requires one step depositing the instrument of accession- it has the same legal obligations for countries, states or Regional Integration organisations that have signed and ratified.

As noted, ratification of the convention is carried out after a party signs the convention. Ratification ensures that a nation, its governments and successive governments fully accept the immediate legal requirements of the convention and agree to its implementation and monitoring in the country concerned.

### **1.2 Reservations**

A states party can make reservations when ratifying. For example the UK, in the face of strong protest and criticisms from disabled peoples' organisations made reservations against a) employment in the armed forces: military service is exempt b) immigration: reserves right to control entry to and departure from the

UK c) social security: review of appointees d) education: reserves the right for disabled children to be educated outside their home community. Reservations are allowed as long as they do not undermine the value of the convention. Reservations can be withdrawn at any time. Other parties to the convention may object to any reservation that they feel undermines the value and purpose of the convention and this has happened in the case of objections and clarity needed to reservations made by El Salvador<sup>2</sup>.

### **1.3 Optional Protocol**

The signing of the optional protocol and its ratification (or accession) by a states party means that it agrees to individual and group petitions from disabled people to the UN Committees (after all national legal mechanisms have been exhausted), again reservations can be made and again they may be objected to by other parties to the convention. The signing of the optional protocol therefore offers two procedures which can strengthen the convention's implementation:

1. an individual procedure allowing individuals to bring petitions to the committee with breaches of their rights
2. an inquiry procedure giving the authority to the committee to make inquiries into violations of the convention

(Source:: United Nations (2007) From Exclusion to Equality: realizing the Rights of Persons with Disabilities)

## **2. What the CRPD Says**

Purpose of the Convention: article 1 states

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Thus it develops a social model perspective on interactions with disabling barriers and their on full participation in society.

Article 2 explains some of the terms in the convention including communication, language, disability discrimination reasonable accommodation and universal design, While Article 3 outlines eight general principles from the basis of the legal

rights of disabled people; article 4 explains the obligations of nations in which the convention has become law: through ratification or accession-these are immediate rights

States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

In 4:3 The inclusion of disabled people is stated:

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

Article 5 focuses on equality and non-discrimination and sets the scene for the following articles (8-32) whilst article 6 and 7 recognises the importance of the inclusion and views of disabled women and disabled children.

Articles 8-32 deal with specific issues for example

Article:

8- Awareness raising

9- Accessibility,

10-The right to life

11, Situations of risk and humanitarian aid

12- Equal protection before the law

13-Access to Justice,

14 –Liberty and security of the person,

15-Freedom from torture, cruel intentions, degrading treatment or ?,

16 –Freedom from exploitation,

17-Protection of the integrity of the person,

18-Liberty of movement and nationality,

19-Living independently and being included in the community,

20-Personal mobility,

21-Fredom of expression,

22-Respect for privacy,

23-Respect for the home and family

24-Education

25-Health

26-Habilitation and rehabilitation

27-Work and employment

28-Adequate standard of living

29-Participation in political and public life

30-Participation in cultural life, recreation, leisure and sport

31-Statistics and data collection

32-International cooperation

Articles 33-40 deal with implementation of the CRPD by national governments that have ratified the convention. Article 33 states that there must be at least one government grouping focusing on the responsibilities of implementation, also an independent disability focused non-government body, if such an organization doesn't exist then a national human rights commission or disability discrimination body (although the responsibility can be shared between NGOs and Human Rights commission bodies). They are charged with examining how the country has incorporated the CRPD into national legislation. In addition 33.4 states that disabled peoples' organisations must be fully involved in the monitoring process.

Article 35 outlines the process of reporting by parties, it says that reports shall be made within two years of the entry of the convention in a particular country, such reports shall outline comprehensive measures taken to the framework of the convention, and thereafter reports will be made every four years.

Articles 41-50 deal with issues of entry into force, reservations and other measures.

See the full text of the authenticated UN language versions and national language translations at

<http://www.un.org/disabilities/default.asp?navid=12&pid=150>

### **3. Challenges for Disabled Peoples' Organisations**

While the objectives of the CRPD reflect the strong commitment and voice of those disabled peoples' organisations involved in the preparation and construction of the CRPD, the CRPD also brings many challenges for its successful implementation and realisation in all countries that have accepted its content through ratification or accession.

#### **3.1 Progressive Realization of Economic, Social and Cultural Rights**

The CRPD like other international human rights treaties provides the states parties with the option of 'progressive realization', this means that countries are given time to apply some of the articles within the framework of economic, social and cultural rights, but this does not apply to civil and political rights. Thus while certain rights remain immediately enforceable for example the right to life, others may take a longer time to establish. In addition, all articles which do not include the civil and political rights are subject to the existence of 'available resources' of states parties while this does not mean that they will not be expected, it presents a familiar story to the implementation of equal rights for disabled people. This may be especially so in so-called third countries where such articles need to come into play sooner rather than later and where basic disability civil rights infrastructures may be absent. Disabled Peoples' International (DPI) CRPD guide says:

Economic, social and cultural rights obligations only to the extent that they have the resources available to do so. For countries with very limited resources this allows them to more time to implement their economic, social and cultural rights and obligations. Progressive realization cannot be used as a delaying tactic if resources (such as international aid) are actually available, nor can it be invoked in a way that discriminates against particular groups. When invoked progressive realization requires States Parties to continually take what action they can, to show how they are implementing economic, social and cultural rights (DPI Guide 6 undated pages unnumbered)

Thus it will be a task of disability organisations to ensure that 'progressive realisation' does not translate to a lack of realisation. The United Kingdoms' Disabled Peoples' Council UKDPC (formally the British Council of Disabled People BCODP) are providing monitoring in the UK. Julie Newman (acting chair) presented on the issues at a parliamentary seminar on June 8<sup>th</sup> 2009. See <http://www.enil.eu/elib/a... Parliamentary Seminar by Julie Newman.doc>

### **3.2 Timing of Monitoring Reports by States Parties**

While States Parties who have ratified or provided accession documents they must monitor the progress of the CRPD in their countries the timing of the reports may be too few for disabled peoples' organizations to gauge real change. The States Parties must provide an initial monitoring report two years after ratification or accession, and every four years after the initial report. The Office of the UN High Commission for Human Rights (OHCHR) has a collection of initial country reports on line

See <http://www2.ohchr.org/english/issues/disability/submissions.htm>

One of the solutions to the timing issue could be that organisations provide their own shadow monitoring reports at regular intervals (see section 4)

### **3.3 The lack of National laws on Disability Discriminations**

Legal measures alone are often not enough to combat discrimination effectively. Yet a lack of any national identifiable law on discrimination provides even less basis for disabled people to tackle and fight for their rights. For Belli

[D]isabled people can enjoy basic freedoms only if the parliament (national or regional) passes one or more laws on affirmative actions for disabled people with the allocation of enough funds. Moreover, **if the parliament does not pass any law on this item, no court may oblige the**

**parliament to pass a law.** In fact it means that basic freedoms of disabled people have no legal protection if the parliament does not pass enough legislation. As I know no legal system is able to solve this basic problem properly. And the UN Convention on disabled people cannot solve this problem.

(Beli 2009:7 original emphasis)

While the CRPD article 2a says that States Parties should adopt legislation 'for the implementation of the rights recognized in the present Convention' it is not clear how long this will take for some areas, nor how well such laws will be enforced or monitored. Therefore it will be a task of disability organizations to develop monitoring systems as far as possible in their own countries.

### **3.4 The Coming Together of the Social, Economic, Cultural and Civil and Political Rights of Disabled People**

The CRPD clearly represents a new paradigm for disabled peoples' rights how far and how soon these can be realized remains to be seen. The shift to a social and rights based view of disability and the various barriers in place for disabled women, men and children must be welcomed, but the real test will be the implementation of these rights at all levels and the shift in the overt actions of decision makers and policy makers at national, European and international levels. As Collingbourne (2009) argues: 'The implementation and monitoring opportunities the Convention offers will need to be powerfully activated for independent living and the other Convention rights to avoid being diffused and deflected by alternative agendas and become a reality for disabled people around the world'.(Collingbourne 8:2009)

## **4. What Disabled Peoples' Organisations can do to strengthen the Convention?**

### **4.1 Lobby for signature, ratification or accession of your governments**

If your government has not signed or ratified inquiries should be made to identify the body responsible, often the ministry of Foreign Affairs will be able to tell you which government body is responsible. However, different countries have different processes- a look at other human rights treaties that have been signed and ratified will help to identify the country process and who best to lobby. See <http://www.icrpd.net/ratification/en/toolkit/section3.htm> for a guide on how to lobby for ratification. Also see DPIs Treaty Intervener Timeline Tool <http://v1.dpi.org/lang-en/resources/details.php?page=952>

Note that if a country has signed it is obliged to ratify (article 43 CRPD), yet lobbying may need to take place for ratification to proceed faster in some

countries. See the Disability Rights Convention Ratification Handbook by the Landmine Survivors Network for further advice  
See [http://www.enil.eu/elib/a...s/Ratification Campaign Handbook FINAL.pdf](http://www.enil.eu/elib/a...s/Ratification_Campaign_Handbook_FINAL.pdf)

#### **4.2 Using the Optimal Protocol**

For those whose States Parties have ratified the Optional Protocol Organisations will be able to present individual complaints and special inquiries as 'communications' to the Committee for the Convention on the rights of Persons with Disabilities

See <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

#### **4.3 Collaborate with other disabled peoples' organisations and national human rights organisations**

The CRPD depends on strength of voices to achieve national and global changes. One obvious way to do this is to join together with other organisations to make a stronger impact. This can include disabled peoples organisations; other human rights based organisations and local and national government bodies. A coalition of organisations is always stronger than a lone organisation and much can be gained from collaboration in terms of learning and developing new frameworks and perspectives. Many human rights organisations have already developed their own tools and strategies for specific international human rights treaties dealing with a specific social group. Disabled people represent a large group facing multiple discriminations incorporating issues of race, gender, sexuality, age, and poverty. Therefore building coalitions with other human rights groups can develop useful gains on a number of different levels. In addition, wider alliances can promote new funding opportunities to raise greater awareness of the complexity of disability issues.

#### **4.4 Lobby for twin reporting guidelines**

As noted, the CRPD is not the first human rights treaty as a result those working to achieve human rights for women, different racial groups, children, migrant workers and their families have often developed ways to strengthen human rights treaties which can be applied to the CRPD. For example in 2008 the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) adopted new reporting guidelines that could be significant for disabled peoples' organizations. In relation to the elimination of discrimination against women they suggest:

The State party reports should consist of two documents: the treaty-specific report and a common core document (CCD). The CCD is an account of the State party's geography, economy, population, political system, and most importantly, describes the laws, policies, institutions, and remedies relating to human rights and specifically to discrimination. The treaty-specific report addresses the

substantive articles of the Convention and should indicate the impact of policies to implement the Convention.

This idea provides not only strengthened monitoring, it opens up areas for debate and developing targeted shadow reports (see 4.5). Lobbying the commission for twin reporting guidelines on the CRPD would greatly strengthen the national reporting systems.

see [iwrw.org/shadow.htm](http://iwrw.org/shadow.htm)

#### **4.5 Compile Shadow Reports**

Even when disabled peoples' organisations have been actively involved in the completion of a monitoring report, governments may not always produce a report that is felt to properly identify the situations. It is a useful to develop shadow or alternative reports. Once written national government reports should be available from your government, or may be posted on-line. Keep looking for news of this or find out the contacts of those independent bodies who will be contributing to the report and write to them once the process is underway to urge them to make the national report easily available. As soon as the national report is available a shadow report should be drawn up.

The section below is adapted from the CEDAW Convention and NGO Shadow Reporting document. It provides useful guidelines in preparing shadow reports. (see [iwrw.org/shadow.htm](http://iwrw.org/shadow.htm))

Shadow reports should be organized to meet the CRPD Committee's guidelines. It is especially important for organizations to emphasize at the beginning of their report the structural issues that perpetuate discrimination or fail to address it. These matters should be covered in a common core document which should include issues addressing:

- Constitutions
- Laws
- Overarching policies that indicate the government's will or lack of will
- Judicial infrastructure, including [disability] fairness in the courts and judicial independence
- Internal processes for monitoring human rights and discrimination issues
- Existence of national human rights institutions, their mandate and their activities relating to discrimination against [disabled people]
- Remedies for [disability] discrimination

Preparing a separate report section that addresses these issues demonstrates attention to the Committee's guidelines and allows for submitting the same information, in the form of a CCD shadow report, to other treaty monitoring

bodies when your government is reviewed by them. The resulting Concluding Observations can add considerable weight to NGO advocacy.

#### **4.6 Compile Alternative Reports**

These may be a more practical option at the present time. The Child Rights Information Network (CRIN) suggests using alternative reports to monitor how the Convention on the Rights of the Child is being implemented, via child rights coalitions. Such documents could include questioning on what they think is happening to children in their country, what needs to happen and how to present this to the Committee on the Rights of the Child. Indeed this process could be used now to raise issues on the rights of disabled children.

However such reports work better if they are presented by a coalition of national organizations or are coordinated by a European network or Umbrella organization such as ENIL or ECCL. It would be useful to begin preparing such reports or at least setting a base-line of issues now so that improvements or otherwise could be monitored in preparation for a shadow report. The impact of such a document would be more powerful if it reviewed cross –disability issues rather than concentrating on one particular impairment group, at the same time people with learning difficulties, psychiatric survivors, children and women’s issues should be included and these groups must have representation in any coalition.

#### **4.7 Monitor legal and policy frameworks and their implementation**

The existence of a law or policy does not guarantee rights nor does it guarantee successful implementation, similarly redress through the national legal system or the opportunities at European levels may not result in successful outcomes. Key steps in monitoring involve the collection of examples of cases where rights enshrined in the CRPD have been violated through the lack of application or a lack of laws or policies in place at the national level. Careful monitoring of systems by disability organisations can produce a set of materials that can be publicised to raise media awareness of the CRPD and the application of rights in particular countries and on a wider basis.

#### **4.8 Monitor government practices and applications**

Do governments ensure that all material is accessible to all people? Do their offices ensure that information is provided in easy read, Braille, large print or other formats to make it accessible? Do they ensure that public bodies and companies apply the rule of accessible information? If not then these practices need to be highlighted. Use the articles of the CRPD to target any practices and policies in areas that may not have been considered by governments: provision of accessible information is just one of many options.

#### **4.9 Develop training materials**

Disabled peoples' organisations are the organisations with a wealth of knowledge on the situations of disabled people and this should be exploited. The UN Convention represents an opportunity to spread that knowledge and to develop key knowledge transfers into other civil society and human rights organisations as well as government bodies at the local, national, European and international levels of the processes of discrimination and the barriers that disabled people face to achieving dignity, equality and autonomy.

#### **4.10 Use Media to Raise Awareness**

The media is a powerful resource in developing awareness of the importance of the CRPD and the importance of disabled peoples' human rights. In addition, internet resources can be used to develop systems of news stories and to recruit allies to the cause of monitoring or examples of the injustices that are happening to disabled people on a global and local basis. See also 4.12 in combating unfair or prejudicial representations by the media.

#### **4.11 Partner with Universities in Collecting Statistical and other relevant Data**

Universities have access to a range of databases and knowledge of statistical resources as well as resource databases for funding opportunities. Therefore partnering with a local university could prove beneficial in a number of ways.

#### **4.12 Monitor Media and new media**

Examples can often be found in the media, newspapers, T.V and via the internet of national examples where disabled peoples' rights or dignity have been violated by prejudiced representations. In addition the ways media can represent disabled people can be problematic for example as tragic individuals needing care, as burdens or even as inspiring heroines and heroes overcoming tragedy. All such representations concentrate on the individual rather than on the social barriers which need to be removed and which the CRPD treaty seeks to change. Keep a dossier of examples for making complaints to the relevant bodies, for research and for potential training purposes.

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[www.ipu.org/english/handbks.htm#disabilities](http://www.ipu.org/english/handbks.htm#disabilities)  
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## Endnotes

<sup>1</sup> See Radtke for information on the women's IDC  
[http://www.enil.eu/elib/a.../files/FD\\_conf\\_Dinah\\_Radtke\\_strasbourg.pdf](http://www.enil.eu/elib/a.../files/FD_conf_Dinah_Radtke_strasbourg.pdf)

<sup>2</sup> See UN Enable web site for further explanation and a list of reservations by country <http://www.un.org/disabilities/default.asp?id=257>

*Prepared for European Network on Independent Living by Debbie Jolly.  
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