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THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Training Guide

No. 19

Professional Training Series

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The Convention on the Rights of Persons with Disabilities

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FOREWORD

The Convention on the Rights of Persons with Disabilities and its Optional Protocol were adopted on 13 December 2006 and entered into force on 3 May 2008. They came into existence through a forceful call from persons with disabilities around the world to have their human rights respected, protected and fulfilled on an equal basis with others.

The Convention celebrates human diversity and human dignity. Its main message is that persons with disabilities are entitled to the full spectrum of human rights and fundamental freedoms without discrimination. This is reflected in the Convention's preamble and throughout its articles. In prohibiting discrimination on the basis of disability and establishing that reasonable accommodation shall be provided to persons with disabilities with a view to ensuring equality, the Convention promotes the full participation of persons with disabilities in all spheres of life. In establishing the obligation to promote positive perceptions and greater social awareness towards persons with disabilities, it challenges customs and behaviour based on stereotypes, prejudices, harmful practices and stigma relating to persons with disabilities. In establishing a mechanism for complaints, the Convention's Optional Protocol ensures that persons with disabilities have an equal right to redress for violations of the rights enshrined in the Convention.

Importantly, the Convention and its Optional Protocol challenge previous perceptions of disability—as a medical problem or a generator of pity or charitable approaches—and establish an empowering human rights-based approach to disability.

Through this historic paradigm shift, the Convention forges new ground and requires new thinking. Its implementation demands innovative solutions. To get it right from the start, the Convention's aims, concepts and provisions must be well understood by all stakeholders: from government officials to parliamentarians and judges; from representatives of United Nations specialized agencies, funds and programmes to professionals in areas such as education, health and support services; from civil society organizations to staff of national human rights institutions; from employers to those representing the media; and from persons with disabilities and their representative organizations to the general public.

While the ratification of the Convention and its Optional Protocol has proceeded rapidly, knowledge on how to implement and monitor them has not kept pace. Conscious of this challenge, my Office has developed this *Training Guide* on the Convention and its Optional Protocol. It is complemented by eight training modules, designed to inform and empower those who are involved in ratifying, implementing and monitoring the two

instruments. While the *Training Guide* is mainly targeted at facilitators of training courses on the Convention and its Optional Protocol, it acknowledges that each and every one of us has a role to play. I recommend wide dissemination of the training package, and its use by all those who want to embark upon the essential journey towards greater awareness and effective implementation of the rights of persons with disabilities and, ultimately, the building of an inclusive society for all.



Navanethem Pillay
United Nations High Commissioner for Human Rights

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ABOUT THE TRAINING GUIDE

Background

The United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2006 as a means of improving respect for the rights of persons with disabilities, who, according to the latest figures, comprise some 15 per cent of the world's population. Since 2006, ratification of the Convention and Optional Protocol has proceeded at a rapid pace. However, knowledge about the Convention and how to implement and monitor it has not necessarily kept up. This in turn has led to an increase in requests for training courses to build capacities of national stakeholders—representatives of Government, civil society, national human rights institutions (NHRIs) and others.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has developed this *Training Guide* in response. It seeks to provide basic information on a rights-based approach to disability, on the fundamental elements of the Convention and its Optional Protocol, and on the processes and issues underlying their ratification, implementation and monitoring. Consequently, the materials are particularly appropriate for introductory courses on the Convention.

The materials were first prepared in 2010 and revised over 2011. In August 2011, OHCHR held a validation course comprising participants from United Nations human rights presences, the United Nations Department of Economic and Social Affairs and representatives of the International Disability Alliance. On this basis, the *Guide* was finalized and published.

Overview of the Training Guide

What is this Training Guide?

The *Training Guide* is for facilitators of training courses on the Convention on the Rights of Persons with Disabilities and its Optional Protocol. It can be used to develop a training course on the Convention and/or the Optional Protocol, but is also helpful as a general information resource on these instruments. The *Training Guide* promotes interactive training sessions, intended ideally for relatively small groups of maximum 20 participants, and comprises a mix of computer slide presentations and group activities intended to encourage dialogue and exchange between facilitators and participants and among the participants themselves.

Whom is the Training Guide for?

The *Training Guide* is primarily for training facilitators and others who already have knowledge of the international human rights system and are called upon to provide training on the Convention on the Rights of Persons with Disabilities. In other words, the *Guide* assumes some knowledge of human rights standards, terminology and mechanisms but

not necessarily knowledge of the Convention itself. The *Training Guide* assumes that any training course will be undertaken by a lead facilitator, who would ideally be assisted.

Who is the target audience of the training modules?

The target audience of the training modules is broad. It could be any individual or representative of an organization or institution that is involved in promoting, implementing and monitoring the Convention. The principal beneficiaries of the training courses are therefore:

- Government representatives, particularly focal points and coordination mechanisms related to the Convention
- Parliamentarians
- Judges
- Representatives of United Nations specialized agencies, funds and programmes
- Representatives of national human rights institutions
- Persons with disabilities and their representative organizations
- Civil society organizations
- Media representatives
- Professionals in related areas such as health, education, support services and so on.

How to use the Training Guide[1]

The sessions are based on the training methodology adopted by the OHCHR Methodology, Education and Training Section. Each module comprises three principal documents:

- *The note for the facilitator* explains the sequence of the training session, the documents required, background reading as well as tips for the presentation of the computer slides;
- *The computer slide presentation* provides a series of slides to help the facilitator present the various concepts in the module;
- *The group activity note* provides explanations of the group activity as well as the particular requirements for the activity, such as venue and materials.

The sessions generally follow a sequence of computer slide presentation incorporating questions and answers, followed by a group activity.

The methodology underlying the *Training Guide* is interactive and promotes a participatory approach. It is important to respect this approach throughout. Facilitators should use the computer slide presentation to encourage a discussion and exchange of information and experience with and among participants. The facilitator should avoid a one-way monologue presentation style where the facilitator imparts information and the participants take note.

The *Training Guide* seeks to fill in any knowledge gaps facilitators might face and in this sense is a support for facilitators before the session. However, facilitators should avoid using the *Training Guide* as a prop during the sessions to ensure that the presentation does not turn into a lecture rather than a discussion with the participants.

[1] The notes for the facilitator, the computer slide presentations and the group activity notes are available from www.ohchr.org.

Facilitators should adapt the materials in the *Training Guide* to suit each specific audience. Not every training course needs to cover all eight modules, nor do the modules need to be presented in a particular order or all aspects of each module covered. The important issue to bear in mind is that the facilitator provides a training course that meets the needs of the participants.

Similarly, the facilitator should prepare the course in advance with examples and materials which are relevant to the country and region where the course takes place. The facilitator therefore needs to learn about the region, identify the main advances and challenges facing the Convention's ratification, implementation and monitoring, and find locally relevant cases and situations. Sometimes materials and group activities may have to be changed completely to suit the context.

Planning your course

Carry out a training needs assessment to find out what participants need from the course[2]

A training needs assessment enables the facilitator to fully understand the needs of potential learners and the context in which they work, in order to make informed decisions related to the design of the training course. A training needs assessment will also help inform decisions about the most appropriate content, methods, techniques and time frame of the planned training course.

It should enable the facilitator to gather the necessary information to build an adequate picture of the context of disability rights; develop a profile of potential learners; and identify capacity gaps or needs of learners in relation to promoting a rights-based approach to disability.

A pre-course questionnaire should ideally be sent to the participants one month before the course. This information can help design and fine tune the course plan/agenda. The pre-course questionnaire serves multiple purposes. It:

- Informs course design and informs facilitators of their audience
- Encourages participants to engage with the course before their arrival and to do some preparatory homework
- Provides a baseline of participants' capacities, which will enable their increase in knowledge, experience and confidence to be tracked
- Contributes to the sharing of experience throughout the training course.

The pre-course questionnaire should include questions such as:

- What do participants know about disability rights and the move to a rights-based approach to disability?
- What do participants know about the Convention on the Rights of Persons with Disabilities and its Optional Protocol?
- Find out how much experience the participants have, how confident they are and how comfortable they are with the subject matter.
- How do they expect to increase their knowledge and understanding of disability rights?

[2] For more information on training needs assessment, see Equitas – International Centre for Human Rights Education and OHCHR, *Evaluating Human Rights Training Activities: A Handbook for Human Rights Educators,* Professional Training Series No. 18 (HR/P/PT/18).

- What practical skills do they want to develop?
- What have they already done, what do they want to focus on now when it comes to disability rights?
- What outputs—plans and analysis—do participants need from the course? What level of detail is required and what is achievable?
- Who will be responsible for taking the outputs forward and what is their capacity?

Select the right sessions

A training course will always comprise an opening and closing session, but the rest of the agenda should reflect the participants' specific needs.

Which modules to focus on will depend on the participants' level of understanding of disability rights and the extent to which they have already developed their strategies to ratify, implement and/or monitor the Convention. There will generally not be sufficient time to cover all eight modules so some will have to be left out. At the same time, particular aspects of some modules might be left out (if participants are already aware of the information), while in other situations, additional slides and materials might be necessary or activities adapted. The facilitator should read through all the materials first to decide what to use and what to amend or tailor, depending on the participants' needs.

Draw up a course agenda

Once the facilitator has selected the modules relevant to the participants' needs, he or she should develop the agenda. The notes for the facilitators in the *Guide* can help. They provide indicative times for the computer slide presentations and for the group activities, which the facilitator should adapt in the light of the participants' capacities as gleaned from their responses to the questionnaire. If the facilitator is working with interpreters, around 30 per cent of extra time will be necessary and should be reflected in the agenda.

Select the training team

The selection of trainers and resource persons should be based on the following criteria:

- Expertise in the subject matter and experience with the target audience
- Ability to apply the interactive training methodology of the training package
- Professional credibility and appropriate reputation among other practitioners.

In choosing the training team, consideration should be given to gender balance and to the participation of persons with different types of disability. In addition, when training a particular target audience, it is very helpful to include in the training team one of its members who is in a position to establish a good rapport with the learners. Finally, the training team should be complemented by experts in human rights and/or disability rights.

Gather additional information

The facilitator should ensure he or she has:

- Sufficient background information about specific targets, policy processes and power structures (which might include the use of local resource persons)

- Information on the status of ratification, implementation and monitoring of the Convention in the country and region
- Information on challenges and opportunities facing the rights of persons with disabilities in the country and region
- Information on domestic case law, legislation and media stories where relevant
- Information on the institutional context in which the participants work.

Specific language preparation

If the course is taking place with interpretation, the facilitator should be sure to consult people who know the local terminology related to disability and how to translate some key terms from English into local languages, as there is always a direct translation.

Context-specific preparation

This *Guide* should be adapted to different socio-political contexts, including the most pressing developmental and human rights challenges. Where possible, local resource persons who are well prepared and briefed should be integrated in the course planning process and the agenda.

Accessibility

Think about accessibility issues prior to the course. Is the venue accessible? Is the lunch area accessible? Are there accessible toilets? Are course materials accessible? And so on. When thinking about accessibility, remember to think of different disabilities so that, for example, the course is accessible not only to persons with physical disabilities, but also those with visual or hearing impairments.

Evaluation[3]

Evaluation provides the training team with information about the impact of the training in relation to the goals that the team set out to achieve. Evaluation should be incorporated throughout the training course, including during planning, design, delivery and follow-up. Evaluation can help facilitators answer some important questions about the results of their training activities, for example: Why are we offering this training? Does the content of the training respond to the needs of the learners? What did the learners learn? What actions will the learners take as a result? Will the learners apply what they have learned in their work? How will their work contribute to change in the broader community/society?

[3] For detailed practical guidance on evaluating human rights training activities, see *Evaluating Human Rights Training Activities: A Handbook for Human Rights Educators*.

MODULE 1 – WHAT IS DISABILITY?

Introduction

Module 1 explains the concept of disability, a fundamental step in understanding why the Convention on the Rights of Persons with Disabilities was necessary. The module identifies the modern concept of "how disability works" and then places this in the historical context of various approaches to disability based on charity or on the medical diagnosis of impairments. The module examines some of the latter's consequences and then introduces the human rights approach, which paves the way for module 2. There is some duplication of slides in modules 1 and 2, because module 1 could potentially be presented independently of module 2 or similar concepts could be raised in both modules to reinforce them, depending on the training course and the participants. The facilitator can always pick the slides that fit the presentation.

A. How disability works

Many people see disability as a condition that is inherent in the person—for example, a medical condition that requires the person to be in a wheelchair or to take medication. However, as becomes clear in this module, the modern concept of disability perceives disability as an interaction between an individual's personal condition (such as being in a wheelchair or having a visual impairment) and environmental factors (such as negative attitudes or inaccessible buildings) which together lead to disability and affect an individual's participation in society. For example:

- Being in a wheelchair (personal factor) combined with living in a city with accessible buildings (environmental factor) leads to participation in the community on the same terms as someone who is not in a wheelchair: there is little or no disability.
- Having an intellectual impairment (personal factor) combined with a belief in the community that persons with intellectual disabilities lack the capacity to vote (negative environmental factor) leads to exclusion from society and denial of the right to vote: there is a disability.

Personal factors are multilayered and can be both physical and socioeconomic. For example:

- *Physical factors:* gender, ethnicity, impairment (physical, visual, hearing, intellectual, mental), size and weight, and so on;
- *Socioeconomic factors:* wealth, class, inclusion in society, education level and so on.

Personal factors can interact to exacerbate disability or alleviate it. For example, someone with a physical disability who is wealthy might be able to access tertiary education and so find a job. This might increase participation in society and alleviate disability to an extent.

Environmental factors can relate to at least four sub-factors as follows:

- *Accessibility*: hilly or flat cities, accessibility of buildings (ramps, toilets, braille signs etc.), accessible information (websites, documents in easy-to-read formats), accessible public transport, etc.
- *Legal/policy*: existence of protection from discrimination compared with denial of rights on the basis of disability, pro-poor policies, policies that refer explicitly to disability rights compared to policies that ignore persons with disabilities, etc.
- *Socioeconomic*: rural/urban (present different accessibility issues), rich/poor, positive community awareness of disability, openness of society to change, etc.
- *Services*: inclusive services or segregated services (health, education, youth centres), community-based rehabilitation (CBR) services, social support services, affordability of services, etc.

Environmental factors can also combine to exacerbate or alleviate disability. With the increasing awareness of disability, there is often a mix of both positive and negative environmental factors. For example, a school might be made accessible by including ramp access. However, public transport is still not accessible, which means that a child with a physical impairment cannot make it to school, in spite of the openness of the school environment.

All these factors combine to determine the extent to which an individual can participate in society and, as a result, the extent to which disability exists.

B. Different approaches to disability

Different approaches to disability exist in the world, some being more dominant in some parts of the world than in others.

The charity approach

The charity approach treats persons with disabilities as passive objects of kind acts or of welfare payments rather than as empowered individuals with rights to participate in political and cultural life and in their development. What characterizes this approach is that persons with disabilities are not considered able to provide for themselves because of their impairment. Consequently, society provides for them. No environmental conditions are considered under this approach; disability is an individual problem. From this perspective, persons with disabilities are the target of pity and they depend on the goodwill of society. In addition, persons with disabilities depend on duty bearers: charity houses, homes, foundations, churches, to which society delegates policies on disability and responsibility towards persons with disabilities. Under this model, persons with disabilities are disempowered, not in control of their lives and have little or no participation. They are considered a burden on society. Because charity comes from goodwill, the quality of "care" is not necessarily consistent or even important.

- If society's responses to disability are limited to care and assistance for persons with disabilities through charity and welfare programmes, opportunities for advancement are very limited. The risk—as with the medical approach—is that persons with disabilities will remain at the margins of society. This approach does not support their participation.

- If persons with disabilities continue to be considered as "unfortunate", requiring compassion, depending on contributions and assistance and on the goodwill of others, their opportunities for empowerment become very limited.

The charity approach increases the distance between persons with disabilities and society rather than promoting equality and inclusion.

The medical approach

In the medical model, the focus is very much on the person's impairment, which is represented as the source of inequality. The needs and rights of the person are absorbed or identified with the medical treatment provided to (or imposed on) the patient. In the medical model, individuals can be "fixed" through medicine or rehabilitation to get back to society. Particularly for persons with mental impairments, the medical treatment can be an opportunity for a "bad" patient (persons with mental disabilities are often considered dangerous) to become a "good" patient. To be considered able to provide for themselves, persons with disabilities have to be "cured" of the impairment or at least the impairment has to be reduced as much as possible. No environmental conditions are considered under this approach and disability is an individual problem. Persons with disabilities are sick and have to be fixed to reach normality.

If disability is handled primarily as a medical problem, experts such as doctors, psychiatrists and nurses have extensive power over persons with impairments; the institution's staff take decisions for the patients, whose aspirations will be dealt with within a medical framework. If complete rehabilitation is not possible, persons with disabilities will not be able to go back to society and will remain in institutions. Achievements and failures experienced within the walls of the institution will be understood as related to the impairment and, as a result, justified. In the worst cases, such an approach can legitimate exploitation, violence and abuse.

This model is often mixed with the charity approach. For example, charities raise funds for and run rehabilitation facilities. The duty bearers in this model are the medical industry and the State. When combined with a charity approach, charity houses, homes, foundations and religious institutions also play an important role. Under this model, persons with disabilities are disempowered, not in control of their lives and have little or no participation. The medical industry, professionals and charities usually represent the interests of persons with disabilities as they are seen as possessing the knowledge of what is in the best interests of their patients.

The social approach

The social approach introduces a very different thinking: disability is recognized as the consequence of the interaction of the individual with an environment that does not accommodate that individual's differences. This lack of accommodation impedes the individual's participation in society. Inequality is not due to the impairment, but to the inability of society to eliminate barriers challenging persons with disabilities. This model puts *the person* at the centre, not his/her impairment, recognizing the values and rights of persons with disabilities as part of society.

Moving from the medical to the social model does not in any way deny the importance of care, advice and assistance, sometimes prolonged, provided by medical experts

and medical institutions. In many cases persons with disabilities require medical treatment and care, exams, constant monitoring and medicines. In the social model, they continue going to hospitals and centres providing specific treatment if required. What is different is the overall approach to treatment: it responds to the expectations of the patient, not those of the institution. The social model attributes to nurses, doctors, psychiatrics and administrators new roles and identities. Their relation with persons with disabilities will be based on a dialogue. The doctor will not be on a pedestal, but on the side of the person with disabilities. Equality starts in the hospital, not outside. Freedom, dignity, trust, evaluation and self-evaluation are all features of the social model.

With the social model, disability is not a "mistake" of society but an element of its diversity. Disability is a social construct—the result of the interaction in society between personal factors and environmental factors. Disability is not an individual problem but the outcome of a wrong organization of society. As a consequence, society should restructure policies, practices, attitudes, environmental accessibility, legal provisions and political organizations and therefore dismantle the social and economic barriers that prevent full participation of persons with disabilities. It opposes the charity and medical approach by establishing that all policies and laws should be designed with the involvement of persons with disabilities. The duty bearers under this model are the State—involving all ministries and branches of Government—as well as society. Under this model, persons with disabilities are empowered, in control of their lives and enjoy full participation on an equal basis with others. The burden of disability is not on them but on society.

The human rights approach

The human rights approach to disability builds on the social approach by acknowledging persons with disabilities as subjects of rights and the State and others as having responsibilities to respect these persons. It treats the barriers in society as discriminatory and provides avenues for persons with disabilities to complain when they are faced with such barriers. Consider the right to vote. A person who is blind has the right to vote just as anyone else in society. Yet, if voting material is not in accessible formats such as Braille and the person cannot take a trusted individual into the voting booth to help indicate her preferred candidate, the person who is blind cannot vote. A human rights approach to disability recognizes the lack of voting material and the inability to have assistance in voting as discriminatory, and places a responsibility on the State to ensure that such discriminatory barriers are removed. If not, the person should be able to make an official complaint.

A rights-based approach to disability is not driven by compassion, but by dignity and freedom. It seeks ways to respect, support and celebrate human diversity by creating the conditions that allow meaningful participation by a wide range of persons, including persons with disabilities. Instead of focusing on persons with disabilities as passive objects of charitable acts, it seeks to assist people to help themselves so that they can participate in society, in education, at the workplace, in political and cultural life, and defend their rights through accessing justice.

The human rights approach is an agreement and a commitment by persons

with disabilities, States and the international human rights system to put into practice some primary aspects of the social approach. This approach is binding on all States that have ratified the Convention on the Rights of Persons with Disabilities. States must eliminate and prevent discriminatory actions. The human rights approach establishes that all policies and laws should be designed with the involvement of persons with disability, mainstreaming disability in all aspects of political action. Following this model, no "special" policies should be designed for persons with disabilities, notwithstanding the particularities needed to comply with the principle of full participation.

The main duty bearer under this model, in which society delegates the policies on disability, is the State—involving all of its ministries and branches. There are certain provisions that involve the private sector and there is a specific role for civil society, in particular persons with disability and the organizations that represent them. Under this model, persons with disabilities have rights and instruments that can empower them to claim their rights. They have the tools to be in control of their lives and fully participate on equal terms with others. The human rights approach provides that persons with disabilities are closely involved in policymaking by law.

Which approach is dominant today?

The charity approach is the oldest of the four, followed by the medical approach. The social and human rights approaches are more recent. Yet, all continue till today. In spite of the adoption of the Convention, the charity and medical models are still very prevalent—even among the human rights community.

C. The consequences of the charity and medical approaches to disability

By approaching persons with disabilities as "objects of pity" or "problems to be fixed", the burden of disability falls on the individual and, as a result, social transformation is virtually impossible. Moreover, it can give rise to certain social norms which can make it even more difficult for persons with disabilities to participate in society and enjoy their rights.

Perception that persons with disabilities are "special"

The main difference between the medical/charity approach on the one hand and the social/human rights approach to disability on the other is reflected in the difference between "special" and "inclusive" treatment. The term "special" often arises in connection with persons with disabilities: children with special needs, special schools, special services, special institutions. Yet, "specialty" is exactly what the Convention distances itself from. Being special in the context of disability is not necessarily rewarding; it may lead to marginalization.

Take special schools for example: special schools enable persons with disabilities to interact only with other persons with disabilities or with certain "professionals". This forces them to live a situation which is not realistic since it does not reflect the diversity of society. Whom does this benefit then? Persons with disabilities? Persons without disabilities? It is difficult to see the benefits of actions/decisions aimed at keeping human beings separate. Human beings are social beings, and children have the right to study and play together. Diversity and inclusion must be the norm.

A segregated school is not a genuine mirror of society. Diversity is very limited there. Problems discussed among "special" students and "specialized" teachers are influenced by a setting focused on disability. The confrontation of ideas and opinions lacks a more diverse audience, including persons without disabilities not challenged by physical or attitudinal barriers.

The right to education is an important right, interrelated with other human rights. At school, persons with and without disabilities learn what society's expectations and opportunities are. They learn theories, skills and discipline; they elaborate values they may have developed in their circle of family and friends; and they develop new values. The school itself is a community where children share the same timetables, venues and obligations. By interacting with teachers and others, pupils learn to live in a society independently and in constant interaction with other members. School represents an embryonic opportunity for independent living that later in life will include gainful employment, participation in political and public life, home and family, access to justice, as well as business opportunities. The diversity of the classroom offers a unique opportunity to discuss human rights and opinions.

Another example of how persons with disabilities have been perceived as "special" under the medical/charity approach concerns institutionalization. Persons with disabilities—in particular persons with psychosocial and intellectual disabilities—have often been committed by force to psychiatric institutions, away from the community and without freedom to choose their medical treatments.

Under the human rights approach, persons with disabilities have the right to liberty on an equal basis with others, and deprivation of liberty cannot be justified on the basis of disability. Forced institutionalization or hospitalization on the basis of disability is prohibited. No one should be institutionalized against his/her will unless the reasons for such institutionalization apply to others in the community without disabilities (for example, imprisonment as a result of committing a crime and being sentenced by a judge).

Persons with disabilities have the right to live in the community, and to choose where and with whom to live, on an equal basis with others. Independent living does not necessarily mean living alone. Many people live in constant contact with others, including in the same house. People live with other members of the same family, with friends and with colleagues. Such cohabitation is usually seen as independent living.

Once a person can make his/her own decisions—including where and with whom to live—and to be respected for these decisions, that person is living independently. The same goes for persons with disabilities. Support is still possible while living independently. Persons with disabilities have the right to receive support if they request it. Independent living constitutes a frame for the enjoyment of several human rights: the right to adequate housing, the right to participate in public and political affairs, the right to privacy, the right to free movement, the right to vote, etc.

Perception that persons with disabilities are dangerous

Historically, persons with mental and intellectual disabilities have been mistreated and neglected in most societies. They have been subjected to such atrocities as government-sponsored hallucinogenic drug exper-

iments on unknowing individuals, forced treatment, electric as well as insulin shock therapies, and even attempted genocide during the Second World War.

Today, stigma and myths around mental illness persist and the result is often discrimination and exclusion. Stereotypes of persons with mental/intellectual disabilities make them appear unintelligent, "weird", unable to work, with no chance of recovery, unpredictable and dangerous.

News reporting on violent acts/crimes committed by "mentally ill offenders" usually has a strong impact on readers; it reinforces the belief that persons with psychological disabilities are dangerous.

Such generalizations not only sustain a sense of risk, lack of safety and general discomfort in society/the community, they also affect the self-perception of persons with mental and intellectual disabilities. Lack of self-esteem often exacerbates stigma and myths. According to organizations such as the World Network of Users and Survivors of Psychiatry, "one of the greatest losses we experience is the loss of our sense of who we are in the context of our community. An experience of forced treatment causes us to abandon our lives, and we return to a community that sees us as dangerous, vulnerable, volatile and 'ill'."[4]

Discrimination against persons with mental and intellectual disabilities has created a class of people who have been systematically disempowered and impoverished. Because of the stigma surrounding mental illness, many persons with disabilities become homeless, unemployed, undereducated and socially isolated and lack adequate health care or they are kept secluded under strong medication.

Most persons with mental and intellectual disabilities are not violent, nor are they more likely to commit violent actions or crimes than those without mental disabilities. Persons with psychological disabilities are as intelligent as everyone else and are able to function like others in a wide variety of settings.

Saying that persons with mental disabilities are not more violent than people without such disabilities recognizes the existence of violence as a social problem, not as a mental/psychological one. It also acknowledges mental illness as being caused by environmental and social factors, and not merely by genetic and/or organic ones.

Perception that persons with disabilities are superhuman

The media often portray persons with disabilities as somehow superhuman. While ostensibly attempting to promote positive images of them (which is of course welcome), the result can be the same as with other myths, namely that persons with disabilities become one-dimensional. They are courageous, powerful and somehow able to overcome a great difficulty—namely, a disability. When analysed more closely, this potentially positive image also implies that the majority of persons with disabilities have difficult and miserable lives (with most having to rely on charity). Disability becomes an (almost) insurmountable difficulty. The hero is presented as the person who was able to overcome the plight of many.

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[4] *Implementation Manual for the United Nations Convention on the Rights of Persons with Disabilities* (February 2008), p. 32.

The thing to bear in mind is that a person with a disability is a human being with strengths and weaknesses, just like anyone else. It is important that persons with disabilities are portrayed in a positive way in public, particularly through the media, and this is referred to in the Convention (art. 8, awareness-raising). This includes highlighting the lives of persons with disabilities that have achieved a significant level in politics, sport, literature or any other field of endeavour. However, overcoming a disability need not be this person's only achievement. Instead, the person has managed to overcome a whole range of barriers facing anyone seeking the spotlight, e.g., excellence in education, competition from colleagues, expectations from the community or family and so on.

Perception that persons with disabilities are a burden

In contrast to the myth of the superhuman, persons with disabilities are often portrayed as a burden—to society, to family, to friends. This is the flip side of the superhuman approach and, again, intrinsically related to the charity approach to disability. This perception persists particularly in the media. How many times have we seen an apparently sensitive documentary on television which concentrates on the parents of a child with a disability, the struggles those parents are going through, the difficulties they face due to the attitudes to their child, the way their lives have changed and so on. The focus on the parents' struggles is generally not intended to promote a negative myth about persons with disabilities, but the immediate effect is three-fold. First, in this case the child with a disability, her concerns, struggles, interests and dreams tend to melt into the background and become secondary. Second, as a result, the child appears one-dimensional and the cause of her parents' distress. Third, there seems to be little way out for the child. Consequently, negative myths and stereotypes emerge.

This can have negative implications for persons with disabilities. For example:

- They might believe that they are indeed a burden;
- They might come to expect that they are not meant to live independently;
- Parents and teachers might not expect them to be self-sufficient and accept responsibility for carrying the burden;
- The combination of the beliefs of persons with disabilities and parents, teachers and other carers might then reinforce the myth that persons with disabilities are a burden.

All of this can combine to prevent social change.

Key principles of a human rights approach to disability (general principles of article 3 of the Convention)

PRINCIPLE	DISCUSSION
Respect for the inherent dignity and individual autonomy, including the freedom to make one's own choices, and the independence of persons	Inherent dignity refers to the worth of every person. When the dignity of persons with disabilities is respected, their experiences and opinions are valued and are formed without fear of physical, psychological or emotional harm. Individual autonomy means to be in charge of one's own life and to have the freedom to make one's own choices. Respect for individual autonomy means that persons with disabilities have, on an equal basis with others, reasonable life choices, are subject to minimum interference with their private lives and can make their own decisions, with adequate support if required.
Non-discrimination	Non-discrimination is a fundamental principle of all human rights treaties and the basis of the Convention on the Rights of Persons with Disabilities. It essentially prohibits discrimination against anyone on the basis of disability, given that discrimination prevents people enjoying their rights on an equal basis with others. However, today, non-discrimination is understood as a much broader principle which encompasses not only prohibiting discriminatory acts but also taking steps to protect against potential future discrimination and hidden discrimination and promoting equality.
Full and effective participation and inclusion in society	The concepts of full and effective participation and of inclusion mean that society, both in its public and in its private dimensions, is organized so as to enable all people to take part fully. They mean that society and relevant actors value persons with disabilities and recognize them as equal participants—for example, in processes related to decisions that affect their lives or in the freedom to run for public office. Participation goes beyond consultation and includes meaningful involvement in activities and decision-making processes, the possibility to voice opinions, to influence and to complain when participation is denied. Inclusion requires an accessible, barrier-free physical and social environment. It is a two-way process that promotes the acceptance of persons with disabilities and their participation, and encourages society to open up and be accessible to persons with disabilities.

PRINCIPLE	DISCUSSION
Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity	Respect for difference involves accepting others in a context of mutual understanding. Despite some visible and apparent differences between people, all have the same rights and dignity. In relation to disability, it involves accepting persons with disabilities for who they are, rather than pitying them or seeing them as a problem that needs to be fixed.
Equality of opportunity	Equality of opportunity is closely linked with non-discrimination. It refers to a situation where society and the environment are made available to all, including persons with disabilities. Equality of opportunity does not always mean that the exact same opportunities are made available to all, as treating everyone the same might result in inequalities. Rather it recognizes difference between people and ensures that, despite this difference, everyone has the same opportunity to enjoy rights.
Accessibility	Making accessibility (and equality) a reality means dismantling the barriers that hinder the effective enjoyment of human rights by persons with disabilities. Accessibility enables persons with disabilities to live independently and to participate fully in all aspects of life. Accessibility is important in all areas of life, but in particular in the physical environment, such as buildings, roads, housing and so on, transport, information and communications, and other facilities and services open to or provided to the public.
Equality between men and women	The principle of equality between men and women indicates that the same rights should be expressly recognized for men and women on an equal footing, and suitable measures should be taken to ensure that women have the opportunity to exercise their rights. Despite the overlap with the principle of non-discrimination, the reiteration of equality between men and women is expressly included in treaties, especially because there are still many prejudices preventing its full application.
Respect for the evolving capacities of children with disabilities and for their right to preserve their identities	Respect for the evolving capacities of children is a principle set out in the Convention on the Rights of the Child. It should be seen as a positive and enabling process that supports the child's maturation, autonomy and self-expression. Through this process, children progressively acquire knowledge, competences and understanding, including about their rights. Their participation in decision-making processes that affect them, including their right to preserve their identities, should be expanded over time in step with this evolution.

D. The Convention's disability concept

The Convention's preamble states that **disability** is **an evolving concept**. Nevertheless, it does reflect a social model of disability as it clarifies that disability results from the interaction between persons with impairments and external barriers that hinders their participation in society (preambular para. (e)).

In this perspective, the framework reflected in the Convention is built on the understanding that it is the external environment, and the attitudes that are reflected in its construction, that plays a central role in creating the condition termed "disability." This contrasts sharply with the medical model of disability, which is instead built on the concept of the "broken body", with disability being the obvious result of a physical, mental or sensory deficiency of the person.

Because of this approach, **the notion of "disability" cannot be rigid** but rather depends on the prevailing environment and varies from one society to the next. While the Convention recognizes disability as an evolving concept, it clearly endorses the understanding of it as a social construct, when it states that disability "results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others".

In line with this understanding, the **Convention does not provide a closed definition of who** persons with disabilities are, but states that they "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 (art. 1, purpose).

Some important elements to consider are: [5]

(a) **Evolving v. fixed concept**. The Convention recognizes that "disability" is an evolving concept resulting from attitudinal and environmental barriers. Consequently, the notion of "disability" is not rigid and can be adapted to the prevailing environment in a particular society (the focus will be on the type of attitudinal and environmental barriers present in those societies and ways to overcome them).

(b) **Disability not as a medical problem but as an interaction between an impairment and the surrounding environment**. The focus of the Convention is not on disability as a medical problem; for the Convention, persons become disabled when they clash with an unwelcoming or inaccessible environment. Persons with disabilities do not require to be "fixed" before accessing an environment (society); it is instead the environment that needs to be uniformly open to all its members. It does so by dismantling attitudinal and environmental barriers so that everyone can actively participate and enjoy the full range of rights.

(c) **The Convention includes all disabilities**. The Convention does not restrict coverage to particular persons; rather, it identifies persons with long-term physical, mental, intellectual and sensory disabilities as its beneficiaries. The reference to "include" in article 1 could therefore extend the appli-

[5] See also module 2 below.

cation of the Convention to all persons with disabilities, e.g., those with short-term disabilities or persons who are perceived to be part of such groups.

(d) **Categorizing barriers rather than human beings**. Categorizing a person can be the first step towards excluding that person and violating his or her inherent dignity. The Convention does not preclude the use of definitions in national legislation; definitions might be particularly necessary in some sectors, such as employment or social security. What is important is that definitions informing policies and laws reflect the social model of disability where the challenge facing a person with a disability is measured in terms of the existing barriers and not on the category or percentage of the impairment.

The explicit reference to **barriers, external to the subject, as constituting factors of disability** represents an important step away from notions that equated disability with functional limitations.

E. A note on terminology

Does interaction with persons with disabilities require special skills?

Interaction with persons with disabilities is a matter of persons, not of disabilities. When interaction with persons with disabilities occurs under conditions of equality, no special skills are required; persons with disabilities are not special persons; they may feel special (or most likely discriminated) when there is no accommodation in place to facilitate their interaction with others. However, if the environment has been adjusted appropriately (e.g., assistive devices, sign language interpreters, support persons) and attitudes are in line with a social/human rights approach, interaction can be smooth. Arrangements should not be considered special but normal or, using a concept from the Convention, *universal*.

In the street, interaction with persons with disabilities requires common sense and respect; within a professional context, interaction with persons with disabilities requires professionalism. Nothing more and nothing less of what our clients or acquaintances without disabilities would expect. Interaction is easier when the rules are the same for everyone and everyone is welcome.

Depending on the person we need to meet, interview or work with, some arrangements and/or preparation might be needed. This is something we should be used to as part of our daily work and for all types of interviews and meetings. Are all physical and linguistic barriers eliminated? What about the psychological ones?

Do not assume or act as if persons with disabilities are heroic or courageous just by virtue of having a disability. This emphasizes difference. Persons with disabilities have strengths and weaknesses just as persons without disabilities.

Terminology

Terminology that is used to refer to or interact with persons with disabilities is nonetheless important. Certain words and phrases can be offensive, undermining and/or superficial. People are not definable on the basis of their disability. Appropriate terminology promotes respect and reflects deeper understanding of disability. Proper communication is important with all types of interlocutors. This skill is key for participants who develop daily

contact with persons with disabilities, intervene with authorities advocating and reaffirming their rights, carry out interviews or draft reports.

Persons with disabilities and their representative organizations have chosen certain terminology, such as "persons with disabilities", in which case it is important to use such terms. Yet, when defining acceptable terminology there is always a risk of moving towards political correctness, which in turn can be a barrier to free and fluid speech. Nonetheless, be aware of the fact that some language can reinforce stereotypes and be offensive to persons with disabilities. If we do not use appropriate language, how can we expect credible attitudinal change?

- Always think before you talk.
- Ask the person you are talking to about anything you are unsure about.
- If a person prefers one term to another, then use that term.
- There is no need to be afraid of saying "I see what you mean" to someone who is blind. This expression is perfectly understandable and conveys a clear message that goes beyond vision in the narrow sense; it is not offensive.

MODULE 2 – A SHORT INTRODUCTION TO THE CONVENTION

Background

The United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 13 December 2006. On 30 March 2007 both were opened for signature at United Nations Headquarters in New York. An unprecedented 81 countries signed the Convention on the opening day. But what led to this momentous event?

Before the adoption of the Convention on the Rights of Persons with Disabilities, other human rights instruments already addressed disability, either as part of a general focus or more specifically. Some, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights—which together constitute the **International Bill of Human Rights**—promote and protect the rights of everyone, including persons with disabilities, through the non-discrimination clause. In all three instruments, article 2 obliges States to guarantee human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or **other status**. The reference to *other status* encompasses *disability* as grounds for protection from discrimination.

Specialized human rights treaties, like the Convention against Torture, the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of the Child and others, contain provisions protecting against discrimination. The Convention on the Rights of the Child specifically recognizes the need to protect against discrimination on the grounds of disability. It also specifically recognizes the right of the child with a disability to enjoy a full and decent life.

The **authoritative statements** by the committees supervising the application of human rights treaties (the United Nations treaty bodies) are also important. The most relevant to persons with disabilities are general comments No. 20 (2009) of the Committee on Economic, Social and Cultural Rights, which includes disability among the grounds covered by "other status", and No. 5 (1994), which defines factors causing discrimination against persons with disabilities; general recommendation No. 18 (1991) of the Committee on the Elimination of Discrimination against Women, which addresses the double discrimination affecting women with disabilities (as women and as persons with disabilities); and general comment No. 9 (2006) of the Committee on the Rights of the Child on the rights of children with disabilities.

There have also been **regional** developments in Africa, the Americas and Europe, such as the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999).

Other relevant human rights instruments are the Declaration on the Rights of Disabled Persons (1975); the World Programme of Action concerning Disabled Persons (1982); and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993). Although not legally binding, these instruments, adopted by the United Nations General Assembly, symbolize the moral and political commitment of States to take measures to protect persons with disabilities, including through national legislation and policies.

So, if an international legal framework already existed, why was it necessary to have a convention on the rights of persons with disabilities?

There were different reasons:

- The Convention was necessary to reaffirm the human rights of persons with disabilities and to ensure their participation in society as equal members and subjects of rights. Persons with disabilities continued to be perceived as passive recipients of assistance rather than rights holders. Both progress and challenges related to the development agenda failed to take into account the reality of persons with disabilities. Economic growth did not always result in social equality; and subsistence economies, such as in poor countries, sometimes marginalized groups with less power and fewer means. Persons with disabilities faced numerous patterns of exclusion. While standard-setting led to some improvements, the overall situation remained very unbalanced. Generally, persons with disabilities continued to be invisible in their societies and their marginalization often increased the risk of human rights abuse.

- The Convention was necessary to **address more comprehensively the challenges facing persons with disabilities** and to better protect and promote their rights through **a legally binding instrument**. In 2001, OHCHR commissioned a study on the rights of persons with disabilities and the existing human rights system. The study concluded that existing instruments and mechanisms were not paying sufficient attention to the promotion and protection of the rights of persons with disabilities; that the absence of an explicit legal protection of persons with disabilities represented a gap; that a human rights approach required reinforcing certain concepts to replace or clarify previous standards. For example, the right to free and compulsory education for persons with disabilities means the right to an inclusive education, to be enjoyed with the other members of society. Existing treaties did not make this clear. It was therefore crucial to review some of the previous approaches and adopt a legally binding instrument that could provide clarity to human rights concepts and standards as well as set out clear legal obligations on States. The study also underlined that **persons with disabilities and their representative organizations** were not using existing human rights standards and mechanisms, such as petitions systems under human rights treaties, to protect and promote their rights. This reaffirmed the need for a disability-specific human rights treaty.

- The Convention was the result of a strong advocacy strategy put in place by organizations of persons with disabilities, civil society and States. Civil society, particularly organizations

of persons with disabilities (DPOs), international organizations and academics supporting the disability movement were at the forefront of efforts to advocate and lobby for the Convention. Their action defined the overall approach towards the Convention, making it clear from the beginning that any development in the area of disability had to be fully comprehensive, which ensured the involvement of all relevant participants rather than States only. The participation of persons with disabilities in important international forums and activities which preceded the Convention, such as the first international review of the implementation of the World Programme of Action concerning Disabled Persons, was key in preparing the path for a different approach.

A. What is the Convention?

The Convention on the Rights of Persons with Disabilities is a human rights treaty, i.e., an international agreement among States setting out human rights and the corresponding obligations on States.

- The Convention recognizes the rights of persons with disabilities—these are the same rights as everyone else—but reaffirms that persons with disabilities must also enjoy these rights. This in itself is significant as persons with disabilities are often denied their rights or are simply not aware that they have rights. The treaty underlines that persons with disabilities should enjoy those rights without discrimination and on an equal basis with others.
- The treaty sets out obligations on States to promote and protect the rights of persons with disabilities. While persons with disabilities have the same rights as persons without disabilities, sometimes States must take different or additional steps to ensure the realization of those rights. The Convention sets out these obligations in considerable detail.
- The treaty also sets out the national and international institutions necessary for implementing and monitoring the Convention. At the national level, these could be government focal points and coordination mechanisms as well as independent implementation and monitoring mechanisms. At the international level, the Convention establishes the Committee on the Rights of Persons with Disabilities to assist States in implementing the Convention and a Conference of States Parties to consider any aspect of implementation.

B. What is the purpose of the Convention?

The purpose of the Convention is set out in its article 1: *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.*

Several elements merit further examination:

- *Promote, protect and ensure rights*: this underlines the multiple layers of State obligations under the Convention which are to promote (e.g., raise awareness about the rights of persons with disabilities), protect (e.g., adopt laws and policies that recognize the rights of persons with disabilities and provide remedies for violations) and ensure rights (e.g.,

promote physical and informational accessibility to services).

- *Full and equal enjoyment of all human rights*: this asserts that persons with disabilities have the same rights as others and that they should be able to enjoy those rights on an equal basis with everyone in society.
- *Respect for inherent dignity*: this underlies all aspects of human rights as it emphasizes the notion that respect for human rights is the bottom line which in many ways defines our humanity. A failure to respect rights is a failure to respect an individual's dignity and this is the experience of many people with disabilities around the world.

Article 1 also explains what is meant by "persons with disabilities", which is examined below.

C. Why is the Convention important?

The Convention:

✓ Clarifies the rights of persons with disabilities. As noted already, many persons with disabilities are unaware of their rights and these rights are often neglected. The Convention recognizes that persons with disabilities have the same rights as everyone else and that they should enjoy them on an equal basis with people without disabilities.

✓ Sets out responsibilities to respect those rights. It recognizes that asserting rights is not enough on its own and that it is equally important to identify the various steps that States (and others) should take to respect those rights. In this sense, the Convention is very comprehensive as it sets out in some detail the responsibilities to respect, protect and fulfil the rights of persons with disabilities.

✓ Recognizes disability as a social construct and society should dismantle the barriers preventing persons with disabilities from participating fully in society.

✓ Promotes inclusive and accessible development. It is often described as a human rights treaty and a development tool. This continues a trend in human rights law that recognizes the need for States to take positive steps to guarantee rights and highlights the role of the international community in helping States to achieve those rights. Indeed, development is essential if the Convention is to be implemented properly. For example, many provisions require improvements in access to goods and services which rely, in part, on having effective development strategies and policies. Importantly, development should be inclusive of and accessible to persons with disabilities (art. 32). This requires a twin-track approach: specific programmes for persons with disabilities coupled with mainstreaming their rights into development projects, programmes and other interventions.

✓ Ensures national and international monitoring of rights. While this is not the same as ensuring legal enforceability, the fact that the Convention establishes national and international mechanisms to support implementation and monitoring is a way to support rights as well as the implementation of the Convention.

D. "Disability" and "persons with disabilities"

The Convention does not provide a closed definition of disability. Its preamble

states that **disability is an evolving concept**. Nevertheless, the Convention does reflect a social model of disability as it clarifies that disability results from the interaction between persons with impairments and external barriers that hinders their participation in society.

In this perspective, the framework reflected in the Convention is built on the understanding that it is the external environment, and the attitudes that are reflected in its construction, that plays a central role in creating the condition termed "disability". This contrasts sharply with the medical model of disability, which is instead built on the concept of the "broken body", with disability being the obvious result of a physical, mental or sensory deficiency of the person.

Because of this approach, **the notion of "disability" cannot be rigid** but rather depends on the prevailing environment and varies from one society to the next. While the Convention recognizes disability as an evolving concept, it clearly endorses the understanding of it as a social construct, when it states that disability "results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others".

In line with this understanding, the **Convention does not provide a closed definition of who** persons with disabilities are, but states that they "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 (art. 1, purpose).

Some important elements to consider are: [6]

(a) **Evolving v. fixed concept**. The Convention recognizes that "disability" is an evolving concept resulting from attitudinal and environmental barriers. Consequently, the notion of "disability" is not rigid and can be adapted to the prevailing environment in a particular society (the focus will be on the type of attitudinal and environmental barriers present in those societies and ways to overcome them).

(b) **Disability not as a medical problem but as an interaction between an impairment and the surrounding environment**. The focus of the Convention is not on disability as a medical problem; for the Convention, persons become disabled when they clash with an unwelcoming or inaccessible environment. Persons with disabilities do not require to be "fixed" before accessing an environment (society); it is instead the environment that needs to be uniformly open to all its members. It does so by dismantling attitudinal and environmental barriers so that everyone can actively participate and enjoy the full range of rights.

(c) **The Convention includes all disabilities**. The Convention does not restrict coverage to particular persons; rather, it identifies persons with long-term physical, mental, intellectual and sensory disabilities as its beneficiaries. The reference to "include" in article 1 could therefore extend the application of the Convention to all persons with disabilities, e.g., those with short-term disabilities or persons who are perceived to be part of such groups.

[6] See also module 1 above.

(d) **Categorizing barriers rather than human beings**. Categorizing a person can be the first step towards excluding that person and violating his or her inherent dignity. The Convention does not preclude the use of definitions in national legislation; definitions might be particularly necessary in some sectors, such as employment or social security. What is important is that definitions informing policies and laws reflect the social model of disability where the challenge facing a person with a disability is measured in terms of the existing barriers and not on the category or percentage of the impairment.

The explicit reference to **barriers, external to the subject, as constituting factors of disability** represents an important step away from notions that equated disability with functional limitations.

For example, the United Nations *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* define disability as the "different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness". The Convention upgrades this approach.

The Convention does not deny the existence of physical, mental, intellectual or sensory impairments (art. 1); what it rejects is an approach which limits or deprives persons with disabilities from fully participating in society because of such impairments.

The impairment (limit or restriction) has instead to be found in the various barriers, which might include physical barriers, but also attitudes leading to discriminatory legislation and policies. Ignorance about disability can be deleterious and that is why wide awareness-raising is one of the main goals of the Convention.

The Convention identifies two categories of persons with disabilities who might be particularly vulnerable to discrimination and abuse of rights: women with disabilities and children with disabilities (arts. 6 and 7).

Women with disabilities

The Convention recognizes that women with disabilities often face multiple forms of discrimination on the basis not only of disability but also of sex (art. 6). Consequently, specific attention might be needed to develop programmes taking into account gender aspects as well as the rights of persons with disabilities, e.g., to boost the percentage of girls or women with disabilities enrolled in the school system in view of their right to education.

One area where women and girls are vulnerable is gender-based violence. The United Nations Population Fund (UNFPA) estimates that persons with disabilities are up to three times more susceptible to physical and sexual abuse and rape. Women and children with disabilities are more likely to be victims of violence than their male counterparts.[7]

The Convention on the Elimination of All Forms of Discrimination against Women is the specialized human rights treaty on women's rights. It can be read together with the Convention on the Rights of Persons with Disabil-

[7] For more information, see Department of Economic and Social Affairs, UNFPA, Wellesley Centers for Women, *Disability Rights, Gender and Development: A Resource Tool for Action*. Available from www.un.org/disabilities/documents/Publication/UNWCW%20MANUAL.pdf (accessed 8 October 2012).

ities to understand more fully the responsibilities of States to prevent discrimination and promote equality for women with disabilities.

Children with disabilities

Disability itself cuts across all aspects of a child's life and can have very different implications at different stages in life. It is very important to ensure that the rights of children with disabilities are taken into account in laws, policies, programmes and other interventions in a way that no child is left out.

Article 7 of the Convention on the Rights of Persons with Disabilities requires State parties to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. It borrows the term "the best interests of the child" from the Convention on the Rights of the Child and requires that this be a primary consideration in all actions concerning children with disabilities.

The Committee on the Rights of the Child's general comment No. 9 (2006) on the rights of children with disabilities provides comprehensive guidance on the rights of children with disabilities in the context of the Convention on the Rights of the Child. Adopted at the time of negotiations on the Convention on the Rights of Persons with Disabilities, its guidance is relevant to article 7.

Others

Other persons with disabilities might also be subject to multiple forms of discrimination, such as indigenous persons with disabilities or older persons with disabilities.

E. A rights-based approach to disability

The main concept behind the Convention is the move away from a charity or a medical approach to disability to a social/human rights approach. If you understand this concept, you are in a position to understand the entire Convention and what it seeks to achieve. For a full explanation of the charity, medical, social and human rights approaches, see module 1.

F. The structure and content of the Convention

The Convention contains 50 articles, which can be broken down as follows: [8]

[8] Make sure that training participants have the Convention in front of them and actually go through the text while you speak about this slide.

Preamble		Sets the general context and identifies important background issues, such as the relation between disability and development.
Art. 1	**Purpose**	Sets out the goal of the Convention, which 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. Article 1 also explains who is included in the term "persons with disabilities".

Art. 2	**Definitions**	Defines the Convention's key terms, namely communication, language, discrimination on the basis of disability, reasonable accommodation and universal design. When in doubt, it is useful to refer to the definitions. The terms "persons with disabilities" and "disability" are not defined as such, because there was a conscious decision to treat them as evolving concepts.
Art. 3	**General principles**	Principles are very important for interpreting and implementing the rights and other articles in the Convention. When in doubt about the meaning of an article, you can refer to the principles and use them as guides, e.g., when building supported decision-making services, policymakers should be guided by respect for the autonomy of the person to ensure the individual has maximum autonomy in decision-making.
Art. 4	**General obligations**	Apart from recognizing the rights of persons with disabilities, the Convention also identifies who is responsible for meeting those rights and what they have to do and when (e.g., immediately or progressively). All the obligations are important. They are discussed in more detail below. Here are two examples: State parties must progressively take measures to realize economic, social and cultural rights to the maximum extent of their available resources. This is an important recognition that a country's development level can affect the rate at which it implements some articles in the Convention. It serves as a built-in reality check. Note that the Optional Protocol to the Convention rendered economic, social and cultural rights justiciable, even before the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on 10 December 2008. There is also an obligation to consult persons with disabilities closely and actively involve them in the development and implementation of legislation and policies to implement the Convention and in other decision-making processes that concern them. This reflects the general principle of participation and inclusion in article 3 and makes it stronger by placing an obligation on the State to respect it. Questions for discussion are: How can it be measured? When did effective consultation occur?

Arts. 5–30	**Cross-cutting issues**	The Convention comprises a robust non-discrimination and equality framework, which applies across all its rights, civil, cultural, economic, political and social. Article 5 requires State parties to ensure the equality of individuals with disabilities, as well as prohibit any discrimination because of disability. This general prohibition is further detailed in the context of specific rights, which explain both what amounts to discrimination on the basis of disability in their respective contexts as well as measures, including positive measures, to achieve de facto equality. The Convention further stipulates that such measures may not be deemed discriminatory. Following article 5 are thematic articles of general application to be integrated across the Convention. These include article 6 on women with disabilities and article 7 on children with disabilities. Questions arise such as: Why have children and women been referred to expressly? Are there other cross-cutting issues that could be relevant? Are there other individuals or groups that are relevant, e.g., older persons, indigenous peoples?
	Specific rights	The Convention covers the full spectrum of human rights. In a clear expression of the interdependence and equal status of all human rights, it mixes civil and political with economic, social and cultural rights. Its substantive articles clarify the content and scope of the human rights to which all persons are entitled, as applicable to persons with disabilities. The Convention is novel in that it sets out a range of measures that place obligations on States to do something which is necessary to guarantee rights; however, these measures are not directly related to any one right in particular. They include: Awareness-raising Accessibility Situations of risk and humanitarian emergencies Access to justice Personal mobility Habilitation and rehabilitation Data and statistics International cooperation

Art. 32	**International cooperation**	Underlining the importance of international cooperation, including development cooperation, to meet the rights set out in it, the Convention has a stand-alone article on this subject. This builds on the practice of previous human rights treaties which referred to international cooperation, normally in articles related to the progressive realization of economic, social and cultural rights. Article 32 also spells out in greater detail the sorts of actions through which international cooperation can help promote the Convention (e.g., cooperation in research, ensuring that development cooperation is inclusive of and accessible to persons with disabilities). Note that the article on international cooperation and the other articles are interrelated and interdependent. In other words, international cooperation, including development cooperation, is a way to realize rights and improve the Convention's implementation; development and human rights are not separate parts of the Convention but interrelated.
Arts. 31 and 33	**Implementation and monitoring measures**	These articles set forth implementation and monitoring measures. Article 31 requires State parties to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention. Article 33 sets forth the various measures that State parties have to adopt to establish national implementation and monitoring frameworks.
Arts. 34–39	**Committee**	Starting from article 34, the Convention details its institutional structure. It establishes the Committee on the Rights of Persons with Disabilities with authority to receive and review periodic reports from State parties.
Art. 40	**Conference of States Parties**	The Convention establishes a Conference of States Parties to meet regularly to consider any matter with regard to the Convention's implementation.
From Art. 41 onwards	**Final clauses**	The Convention sets out the procedures for signature, ratification, entry into force and other relevant requirements.

Under the **Optional Protocol to the Convention**, individuals and groups of individuals may submit allegations of breaches of any of the provisions of the Convention to the Committee. The Optional Protocol also permits the Committee, with the countries' consent, to undertake inquiries in countries where there has been reliable evidence of grave or systematic violations of the rights of persons with disabilities.

G. Principles

Article 3 of the Convention identifies a set of general principles to assist States in understanding and implementing its provisions effectively. For a fuller overview, see the table in module 1.

H. Human rights in the Convention

Article 10 – Right to life

Article 12 – Equal recognition before the law

Article 14 – Liberty and security of the person

Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment

Article 16 – Freedom from exploitation, violence and abuse

Article 17 – Integrity of the person

Article 18 – Liberty of movement and nationality

Article 19 – To live independently and be included in the community

Article 21 – Freedom of expression and opinion, and access to information

Article 22 – Respect for privacy

Article 23 – Home and family

Article 24 – Education

Article 25 – Health

Article 27 – Work and employment

Article 28 – Adequate standard of living and social protection

Article 29 – Participation in political and public life

Article 30 – Participation in cultural life, recreation, leisure and sport

While the Convention does not create new rights, it does define with greater clarity the application of existing rights to the specific situation of persons with disabilities.

For example, some appropriate measures to ensure **freedom of expression and opinion, and access to information** are:

- Providing information in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost; and
- Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means of communication in official interaction.

An **adequate standard of living and social protection** require, among other things:

- Access to appropriate and affordable services, devices and other assistance for disability-related needs; and
- Access by persons with disabilities and their families living in poverty to assistance from the State with disability-related expenses.

The Convention also includes a series of obligations on States in relation to a range of issues which are necessary for the full enjoyment of human rights. These are:

Measure	Explanation
Awareness-raising (art. 8)	Awareness-raising involves both increasing understanding of disability rights as well as combating stereotypes through public campaigns, education, encouraging responsible media reporting and training.
Accessibility (art. 9)	To enable independent living, accessibility is important in relation to the physical environment, transport, information and communications, and other facilities and services open or provided to the public.
Situations of risk and humanitarian emergencies (art. 11)	In recognition of the particular vulnerabilities of persons with disabilities during situations of risk and humanitarian emergencies, States undertake to ensure their protection and safety.
Access to justice (art. 13)	A fundamental part of ensuring the enjoyment of rights is access to justice to enjoy the right to a remedy. This requires accommodations in the legal system as well as training for legal professionals.
Personal mobility (art. 20)	Personal mobility promotes independence and States can foster this by facilitating access to mobility aids and assistive technologies, providing training to specialist staff, encouraging producers of mobility devices to take into account the needs of persons with disabilities and so on.
Habilitation and rehabilitation (art. 26)	Again, to attain maximum independence, States undertake to strengthen and extend comprehensive habilitation and rehabilitation services, which go beyond health services and include employment, education and social services.
Statistics and data collection (art. 31)	In order to help formulate and implement policies for the implementation of the Convention, States should collect disaggregated information in a way that respects human rights and ethical standards of data collection and analysis.
International cooperation (art. 32)	The Convention recognizes that most States will benefit from international cooperation to meet their commitments. For instance by ensuring that development cooperation is inclusive and accessible, through information exchange and training, through research and technology transfer, and technical and economic assistance.

These measures focus on actions that States must take to ensure an environment conducive to the fulfilment of specific rights of persons with disabilities.

I. Obligations

Obligations appear at two levels: article 4 sets out *general* obligations and each subsequent article sets out obligations in relation to *specific* rights.

A first question to ask is **who** is responsible for meeting these commitments? As with all human rights treaties, the Convention places obligations on States. However, several articles also highlight the role of private enterprises in realizing the rights of persons with disabilities. While it is up to States to ensure that private enterprises respect the Convention (i.e., obligations are not placed directly on private enterprises), it is important to acknowledge the role of private enterprises and underline the need to engage this part of society in partnerships to promote disability rights. Other human rights treaties mention the private sector as well and the responsibility of business enterprises in relation to human rights is an area that has attracted considerable attention in recent years. However, the Convention certainly goes further than other treaties in identifying specific areas for action by the private sector. The private sector or private entities/enterprises are mentioned in the articles on: general obligations (art. 4 (1) (e)); accessibility (art. 9 (2) (b)); personal mobility (art. 20 (d)); freedom of expression (art. 21 (c)); health (art. 25 (d)); and work (art. 27 (1) (h)).

In addition to private enterprises, it is possible to identify other actors, beyond States, with responsibilities to respect the rights of persons with disabilities. For example, article 25 refers to health professionals. Several articles refer to support services and community services (for example, art. 12 in relation to support for exercising legal capacity and art. 19 on independent living). Article 24 refers to the employment of qualified teachers to promote inclusive education. So even though the legal responsibility to respect the Convention lies with the State, many other actors have a role to play.

What then are the obligations on States? Here is a summary of these obligations, which are discussed in greater detail in later modules:

- *Review existing laws and policies*—to ensure that they respect the Convention and do not set out inconsistent rules and standards—and adopt new ones to ensure that the legal and policy framework supports the Convention's implementation. Such laws could be anti-discrimination laws and comprehensive disability laws (if they exist—it is not a requirement), but also guardianship laws, education laws, mental health laws and so on. Secondary legislation and regulations are also covered. Policies could be national development strategies, national disability strategies or social inclusion strategies, as well as departmental and ministerial strategies to improve disability rights.
- *Provide funding*—it is not enough simply to pass legislation. While some prohibitions on discrimination might not have financial implications, others will require funding (e.g., making public spaces accessible for persons with disabilities). Laws and policies which are not funded are unlikely to be fully implemented.

- *Make goods and services accessible*—much of the Convention relies on access to goods and services, such as assistive technologies and health care and education. Such services must be accessible to persons with disabilities if these persons are to enjoy their rights on an equal basis with others. This may require disability-specific services, while at other times it may require mainstream services (e.g., education) to be accessible to persons with disabilities.
- *Awareness-raising*—many of the barriers facing persons with disabilities are negative attitudes. Raising awareness of the rights of persons with disabilities, as well as the capabilities of persons with disabilities, is important to reduce such negative attitudes.
- *Training*—training on the Convention for professionals, such as teachers and health professionals, is important to realize many of the rights of persons with disabilities, in particular those related to access to services. For example, teachers need to have the knowledge necessary to support inclusive education and health professionals need to understand the shift to a social/human rights approach so that persons with disabilities can access health services on an equal basis with others.
- *Data collection*—good data are necessary to develop good laws and policies to implement the Convention. Consequently, States should undertake research and collect data so that the situation of persons with disabilities and the barriers they face to enjoy their rights are better understood.
- *Build capacity*—in keeping with a human rights approach to disability, building the capacity of States to meet their obligations under the Convention and that of persons with disabilities so that they can claim their rights is essential for the full implementation of the Convention.

There are several ways to present State obligations in relation to human rights treaties. The international human rights system is based on the identification of two broad obligations:

- *Negative obligations*—the obligation to refrain from doing something or *freedom from the State*
- *Positive obligations*—the obligation on the State to take steps to promote rights or *freedom through the State*

It is increasingly popular to rely on the formula "respect, protect and fulfil" to present obligations on States. This is the formulation proposed to explain obligations here:

- *The obligation to respect*—States must refrain from interfering with the enjoyment of rights;
- *The obligation to protect*—States must prevent violations of rights by third parties such as private enterprises, medical professionals and so on;
- *The obligation to fulfil*—States must take appropriate legislative, administrative, budgetary, judicial and other action to realize rights.

It is possible to go back to the general obligations and fit each one into one of these three categories. For example:

- Respect—refrain from any act that is inconsistent with the Convention;
- Protect—take steps to eliminate discrimination in the private sector;

- Fulfil—introduce legislation that is compatible with the Convention; take steps to achieve the progressive realization of economic, social and cultural rights.

J. National and international monitoring mechanisms

The Convention explicitly provides for *national* and *international* monitoring mechanisms.

At the *national* level, the Convention proposes three mechanisms:

- The establishment of a focal point or focal points within the Government to ensure coordination among different branches of the Government and different ministries and levels, i.e., local, provincial and federal, to progress on the implementation of the Convention;
- The establishment or designation of a coordination mechanism within the Government to facilitate action in different sectors and at different levels;
- The establishment of a framework, such as a national human rights institution or ombudsperson's office, to promote, protect and monitor the Convention. This framework should conform to the Paris Principles, which set out the standards for independence as well as the functions for such monitoring institutions as agreed by the General Assembly.

Focal points and coordination mechanisms potentially have strong and transformative roles in the promotion of the Convention. Traditionally, disability issues have been within the remit of one ministry, such as the health or social affairs ministry. At times, this has meant that some issues have been placed outside the ministry dealing with the general issue. This has created parallel approaches and segregation. For example, the social affairs ministry might deal with the education of children with disabilities and not the ministry of education, thus placing children with disabilities outside the general education system. The cross-cutting nature of disability rights means that they involve many other issues, including justice, education, labour, foreign affairs, housing, finance, sports and culture. The focal points and coordination mechanisms provide a means to ensure that:

- There is one governmental body, or several, with *responsibilities* for disability rights (focal points);
- Various ministries and departments (and others) are coordinating their work (coordination mechanism).

The Convention provides significant flexibility as to the form of these mechanisms and States can adapt them to national circumstances. For instance, a coordination mechanism might also have civil society participation, as is already the case of many disability councils.

A national framework for implementation and monitoring that is compliant with the Paris Principles is very important as it provides an independent means of assisting and also verifying the implementation of the Convention. Independent national human rights institutions can play many roles:

- Monitoring the Government's implementation of its commitments under the Convention;
- Making recommendations to the Government on steps to improve implementation;

- Reviewing and promoting the harmonization of national laws related to disability;
- Submitting opinions on legislative bills and proposals related to disability to ensure they are consistent with the Convention;
- Encouraging the ratification of disability-related instruments, for example, encouraging the Government to ratify the Optional Protocol to the Convention if it has not yet done so;
- Raising awareness about disability rights and about combating disability discrimination;
- Receiving complaints from individuals and groups alleging breaches of the Convention;
- Formulating human rights education programmes;
- Contributing to reports to the Committee on the Rights of Persons with Disabilities;
- Cooperating regionally and internationally with other NHRIs.

There are other ways of monitoring and enforcing the Convention, beyond those outlined in it, such as courts, consumer tribunals and so on. Courts provide legal protection of the rights of persons with disabilities. In other words, they provide legally enforceable remedies when abuse has been proven. They can be particularly relevant when an individual, a group of individuals or a civil society organization decides to bring a test case. The court's decision can then have wide-ranging repercussions such as changes in the law or in attitudes. However, courts can be slow and costly, and potential litigants might have to decide whether their case is worth the time and cost.

At the *international* level, the Convention envisages two mechanisms:

- The establishment of an independent treaty-monitoring body (the Committee on the Rights of Persons with Disabilities) composed of 18 members, whose primary function is to review implementation reports from State parties together with parallel reports from civil society, and to enter into a constructive dialogue with State parties to strengthen implementation of the Convention. The Committee can also receive complaints under the Optional Protocol and launch investigations into possible grave and systematic violations of the Convention.
- The Conference of States Parties meets at least biennially to consider any matter related to the implementation of the Convention.

Other training modules will focus on these mechanisms. However, it could be useful to discuss the reporting process and how the process as well as the Committee's review of reports can help implementation. Such a discussion might have to be tailored to the audience at hand. For example, if participants are principally government representatives, the discussion could focus on ways that reporting can help them with implementation. Preparing the report can help State representatives to:

- Review national legislation and policies to ascertain their compatibility with the Convention as well as their impact on persons with disabilities;
- Identify gaps in the legal and policy framework;
- Ensure that focal points and coordination mechanisms have been appointed

within the Government and are functioning adequately;

- Identify funding gaps in ministries and programmes that might be delaying implementation;
- Build partnerships with other actors such as DPOs through the drafting process.
- Other …

If the participants are principally from civil society, the discussion could focus on how civil society can influence the State report as well as how it can prepare a parallel report for the Committee which can provide a broader view of the situation of persons with disabilities and the enjoyment of their rights than is available in the State report.

If participants are from the United Nations, the participants can discuss how the United Nations country teams might prepare information for the Committee. United Nations participants might not be aware that information can be sent on a confidential basis to the Committee. Discussion could focus on how the Committee's recommendations can strengthen United Nations programming and also feed into future United Nations programming, including future country analyses and country programmes.

K. Participation and inclusion of persons with disabilities and representative organizations

Effective participation and inclusion of persons with disabilities is only one of the general principles of the Convention. However, it is particularly significant given the traditional invisibility of many persons with disabilities in decision-making that affects them. Therefore, it can be valuable to elaborate on this principle, time permitting.

The concepts of full and effective participation and inclusion promote a reality where all people are able to take part fully in the public and private dimensions of their society and in decisions that affect their lives.

Participation. To be effective, participation must go beyond just consultation before moving along a predetermined path or with a predetermined decision. Effective participation should be as active as possible so that persons with disabilities are involved in decision-making processes and activities. It also involves an element of accountability. Decision makers should take account of the proposals and ideas put forward by persons with disabilities, either by modifying their action, activity or decision or, if that is not possible, explaining why they cannot do so.

Inclusion is not simply about physically placing persons with disabilities in the same space as persons without disabilities (for example, in the classroom). It is about mainstream society changing and adapting so that persons with disabilities can participate on an equal basis with others. For example, in the classroom, it could involve changing the syllabus to accommodate persons who are deaf or changing activities so that they strengthen the abilities and capacities of each pupil, with or without a disability.

Through participation and inclusion:

- The needs and concerns of persons with disabilities become clearer and solutions can be more effective;

- Persons with disabilities have the opportunity to raise issues and hold decision makers accountable;
- Persons with disabilities become more visible and have the opportunity to learn and change from the experience of others and vice versa.

Participation and inclusion are not one-off experiences; they are lifetime experiences.

Furthermore, **persons with disabilities should also have the opportunity to make decisions not necessarily related to disability or related to persons without disabilities**. Sometimes, accessibility arrangements are made in relation to activities relating specifically to persons with disabilities (for example, a meeting on disability rights). However, persons with disabilities have many interests just as anyone else in society. For example, a person with a disability might wish to participate in meetings unrelated to disability and accessibility should extend to these activities as well. In this sense, the principle of participation and inclusion should be applied broadly.

Since the beginning, the participation of a vibrant civil society, including persons with disabilities, and representatives of organizations of persons with disabilities (DPOs), general NGOs and NHRIs, inspired the drafting process of the Convention.

In keeping with practice in human rights-related discussions, NGOs, including DPOs, were accredited to the Ad Hoc Committee that drafted the Convention and participated in the related sessions and meetings. The General Assembly constantly supported the active involvement of disability organizations in the Ad Hoc Committee's work.

A broad coalition of DPOs and allied NGOs formed the International Disability Caucus (IDC), the unified voice of organizations of people with disabilities from all regions of the world. One of its members stated that its goal was "to open doors for positive change that will end discrimination and ensure our freedom and rights".

The level of participation of DPOs and NGOs in the drafting process was probably unprecedented in United Nations human rights treaty negotiations. By the Ad Hoc Committee's final session, some 800 DPO members were registered. Beyond the negotiations, DPOs have been actively involved in the "life" of the Convention. They were closely involved in the signing ceremony on 30 March 2007 and have been involved in the work of the Committee on the Rights of Persons with Disabilities, the Conference of States Parties and the Human Rights Council's annual debates on the Convention.

What role then did DPOs play? The International Disability Caucus was a key presence throughout and brought the concerns of international, regional and national civil society to the negotiating table. DPOs had a crucial role in the drafting of the working group text, the basis for negotiations on the final Convention, which was the result of the work of 27 Governments, 12 NGOs/DPOs and 1 NHRI.

The final text of the Convention was the product of truly inclusive negotiations. Many positions taken and suggestions provided by civil society, especially DPOs and mainly through IDC, were integrated in the text. Substantive proposals made by IDC, e.g., on the need to ensure that persons with disabilities are consulted in policymaking and decision-making, are integral parts of the Convention.

The role of IDC and NHRIs in the negotiations was also key to ensuring the inclusion of a provision on national implementation and monitoring requiring States to establish some form of independent national mechanism to protect, promote and monitor the Convention.

Nothing about us without us!

The motto "Nothing About Us Without Us" relies on the principle of participation and is used by DPOs as part of the global movement to achieve full participation and equalization of opportunities **for, by and with** persons with disabilities. The main message is that persons with disabilities must always be directly involved when strategies and policies are being planned that will directly affect their lives.

As an NHRI representative stated before the adoption of the Convention, "**especially** the active involvement of civil society has helped to give this Convention a sustained focus and relevance as well as bring its drafting to a speedy conclusion (…) This openness and inclusiveness has ensured that the fairly lengthy text of the Convention nevertheless possesses a powerful electric current."

The key role of civil society did not stop with the adoption of the Convention; it continues with its implementation. Persons with disabilities are key in ensuring promotional activities and information about the Convention. The new approach of the Convention is very much about understanding and sharing the perspectives of persons with disabilities. These persons are also crucial in the process of reviewing and proposing national measures.

L. What can different actors do to promote the Convention?

State actors

- ✓ Ratify the Convention
- ✓ When the Convention has been ratified, publicize this fact
- ✓ Translate the Convention into local languages and make it available in accessible formats
- ✓ Ensure that a national focal point within the Government is appointed
- ✓ Consider establishing a coordination mechanism
- ✓ Designate an independent monitoring and implementation mechanism
- ✓ Review and reform laws and policies and take other initial steps to begin implementing the Convention (see further in module 4).
- ✓ Other?

Organizations of persons with disabilities (DPOs)

Persons with disabilities and their representative organizations can play many roles in promoting the Convention, for instance:

- ✓ Using the Convention as a benchmark to assess national laws, policies and activities of the Government and other actors to ensure compliance with the Convention and its progressive implementation
- ✓ Using the Convention as a benchmark to record and report on the current enjoyment of rights by persons with disabilities
- ✓ Using the Convention as a tool for advocacy. For example, using the signing, ratification and reporting to the Commit-

tee as media moments to attract attention to the situation of persons with disabilities nationally

✓ Using the Convention as an objective and internationally recognized standard to alert States to their responsibilities towards persons with disabilities, underlining the fact that disability rights are first and foremost the responsibility of States, although others (private sector, international community, NGOs and so on) also play an important role

✓ Using the Convention as a tool to ensure the establishment of adequate national promotion and monitoring mechanisms as required under article 33, so that there is a better chance that implementation will be successful and sustainable

✓ Working with the Government to encourage it to report to the Committee in time and also participating in drafting the report

✓ Providing parallel reports to the Committee so that it has the fullest possible view of the situation of persons with disabilities in the country, as well as the areas where clear recommendations are most needed and are likely to be most effective

✓ Other …

Civil society organizations (other than DPOs)

Civil society organizations such as human rights or development NGOs have important roles to play in promoting and monitoring the Convention. They can:

✓ Consider mainstreaming disability rights within their own programmes

✓ Examine whether they should establish a stand-alone programme on disability rights

✓ Build the capacity of DPOs

✓ Include information on the rights of persons with disabilities in their alternative reports to United Nations treaty bodies

✓ Other …

National human rights institutions

National human rights institutions can:

✓ Clarify which institution(s) will be designated as the national implementation and monitoring framework

✓ Publicize the Convention

✓ Undertake research related to disability rights

✓ Include the Convention in its annual activities and reports

✓ Include information on the rights of persons with disabilities in their alternative reports to United Nations treaty bodies

✓ Other …

United Nations country teams

United Nations country teams can also play a role in promoting the Convention and can:

✓ Mainstream the Convention in country programmes

✓ Establish a stand-alone programme to support the State in the ratification and implementation of the Convention

✓ Build the capacity of DPOs

✓ Provide information to the Committee at the time of reporting

✓ Consider establishing a programme and applying for funding through the Multi-donor Trust Fund established under the United Nations Partnership to Promote the Rights of Persons with Disabilities.

The United Nations Partnership to Promote the Rights of Persons with Disabilities and its Multi-donor Trust Fund were established in 2011 to support United Nations-led programmes, principally at the country level, but also at the regional and global levels, relating to the Convention's ratification and implementation. The founding agencies were the International Labour Organization (ILO), OHCHR, the United Nations Department for Economic and Social Affairs (UNDESA), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO).[9]

[9] For more information, see http://mdtf.undp.org/factsheet/fund/RPD00 (accessed 8 October 2012).

MODULE 3 – RATIFICATION

Introduction

The Convention has been widely ratified in only a few years. By 1 October 2013, the Convention had 137 contracting parties and its Optional Protocol 78. This means that over half the world has indicated its consent to be bound by the Convention. Yet, there is still work to be done to achieve universal acceptance. Module 3 introduces the main concepts and processes underlying ratification, which should help train and motivate representatives of States, civil society and national human rights institutions in countries that have not yet ratified the Convention.

In delivering a training session on ratification, it is important to highlight that ratification of an international treaty is a complicated process which varies from country to country. First of all, the term ratification is used in different ways and can cause some confusion. For example, ratification can refer to the adoption of a treaty at the national level (such as adoption by the national parliament), but it can also refer to the international act of adhering to a treaty. Furthermore, some countries accede to a treaty rather than ratify it, so the term ratification might be less relevant than accession. At the same time, the treaty is subject to formal confirmation by regional integration organizations such as the European Union. While the term ratification tends to be used as a catch-all phrase, strictly speaking it might be more relevant to some jurisdictions than others.

Second, the process underlying ratification tends to differ from county to country. Some countries have comprehensive national discussions prior to international ratification, while others ratify the treaty first and undertake national discussions later. Some countries simply ratify the Convention internationally and do not take any further step at the national level.

Consequently, in presenting module 3, the facilitator should be aware of the relevant national processes and adapt the module accordingly.

A. National measures for ratification

Constitutional law and practice regulate the various aspects of the ratification process that generally, although not always, takes place at national level prior to ratification or accession at the international level. It is relevant to note that the Convention does not indicate any specific national process that States should undertake with regard to ratification.

Overall, there are two approaches to national ratification, which are defined by the role of the legislative branch. First, in civil law countries, ratification takes place through the approval of the treaty by the legislative branch. After the vote of approval,

the act of ratification is sent to the executive for its promulgation, publication and deposit with its depositary. For example, Argentina, Chile, Croatia, Ecuador, Hungary, Mali, Niger, Panama and Spain ratified the Convention through an act of parliament. Mexico ratified it through approval by one of its legislative chambers.

Second, in most countries with a common law tradition, as well as in other legal systems, ratification of the Convention can take place through an act of the executive. If parliament is involved, it is in a consultative capacity. In other words, a formal vote by parliament is not necessary. For example ratification through executive decisions took place in Bangladesh, New Zealand and Thailand.

Regardless of the differences between the two approaches, and of the specificities of national systems, these domestic processes offer important opportunities for raising awareness and promoting understanding of the treaty under consideration. Indeed, the processes leading to and following ratification can influence the next step, i.e., implementation, for instance by identifying legal and other gaps and galvanizing support.

Some States assess the benefits and challenges of ratification with national analyses. Such reports follow a review of the national legislation and policies for compliance with the Convention, and highlight issues such as the reasons and implications, in terms of obligations and costs, of becoming a party to a treaty and implementing it. National analyses accompany the proposal for ratification internally. Any pre-ratification review should be part of the process that continues in the implementation phase to review existing and proposed legislation. Ideally, the findings of the national interest analysis carried out by the Government should eventually be made public.

Similarly, States should engage in adequate consultation prior to ratification. Indeed, support for this can be found in the Convention itself. Its article 4 (3) states:

> *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.*

While the State is not yet bound by article 4 (3), as it has not ratified the Convention, undertaking public consultations on ratification is a good practice that could influence implementation at a later stage. Through consultation, the act of ratification may become more than a political act directed towards the international community and actually improve standards on the ground.

If consultations take place, they should take into account the full range of actors that have a role to play in ratification. Government representatives should be consulted. However, many parts of the Government have a role to play in ensuring disability rights and consultations can include different levels, such as central, provincial and municipal government. Similarly, consultations can occur across the Government, not only ministries of social affairs and health, which often have the disabilities portfolio, but also other ministries, such as education, justice, the interior or finance, that will be involved in implementing the Convention.

Persons with disabilities should have a voice in the discussions about ratification, both directly and through their representative organizations (DPOs). Such consultations should reflect the diversity of disabilities. Persons with

disabilities are not a monolithic group, but comprise persons with different impairments (including psychosocial, intellectual, physical, sensory) and also different people (men and women, children with disabilities, indigenous peoples, older persons and so on). Consultations should attempt to reflect this diversity as much as possible.

The need to support the participation of organizations of persons with disabilities in consultations, including financially, should be carefully considered. States engaged in ratification processes sometimes find it difficult to ensure wider consultation owing to a lack of funds, for example, developing countries or those facing crises. In such cases, consultation processes have to make the most of scarce resources. However, consultation should nonetheless take place, not only to ensure the participation and inclusion of persons with disabilities, but also because these persons might have proposals relating to the most effective use of scarce resources to ensure the progressive realization of the Convention.

Other civil society actors, such as human rights or development NGOs, should also be consulted. If there is a national human rights institution, it should be consulted and could also have a role in undertaking research on the rights of persons with disabilities and in analysing laws and policies.

The ratification process should be inclusive and representative of society as a whole, including minority groups and political opposition, and not be guided by a political agenda. Such a genuine and inclusive process is in line with the principle of international law according to which a country's subsequent Governments are equally bound by an international treaty previously ratified. The risk is that a Government in power might exclude certain actors, such as the political opposition, so as to ensure freer action in decision-making. Yet, in the longer term, this might thwart implementation and make it unsustainable when there is a change in government.

The Australian ratification process offers a good example of the steps involved. Australia signed the Convention in March 2007 and ratified it in July 2008. The national exercise involved a comprehensive review of all Commonwealth, State and Territory legislation to ensure that Australia could comply with all the articles of the Convention. The Departments of Families, Housing, Community Services and Indigenous Affairs, and of the Attorney-General, in consultation with national DPOs, disability advisory councils and the disability legal services network, presented a report on the impact of ratification to the Government. The report identified both the benefits and the disadvantages of ratifying the Convention and its Optional Protocol; verified whether Australian laws complied with Convention obligations; described the economic, environmental, social and cultural impact of ratification; established an appropriate means of directly incorporating the Convention; and audited national laws, policies and programmes.

Preparing for ratification is not only a government-led process. Civil society can also advocate ratification. Indeed, this can be one of the most effective triggers for the Government to take action. To this end civil society and others can:

- Know the facts

✓ Learn how the Convention becomes part of national law

✓ Learn about the effects and costs of ratification

✓ Identify ways in which ratification can respond to the needs of persons with disabilities

- Educate others

✓ Including decision makers through meetings, e-mails, letters, telephone calls and visits, stressing disability as a human rights issue

✓ Including the community through encouraging national debates and talks in schools and the community

- Mobilize partners and allies, such as other disability groups and human rights organizations and social movements

✓ Highlight the importance of the issue

✓ Create a joint ratification campaign

✓ Suggest concrete actions for them to become involved

✓ Build a network, including ways to exchange information and communicate (such as creating a website)

- Lobby

✓ Write to the Government, urging it to sign and ratify

✓ Discuss the Convention with Members of Parliament

✓ Meet your contacts in ministries, local and national agencies, etc.

- Follow-up

✓ Send thank you letters to officials and other partners

✓ Assess the success of strategies and messages

The United Nations Mine Action Service and OHCHR prepared an *Advocacy Kit* to help mine action centres advocate ratification of the Convention. The box below reproduces a sample letter that could be sent to relevant stakeholders to promote ratification.

[*YOUR ADDRESS*]

[*RECIPIENT'S ADDRESS*]

[*DATE*]

Dear [*NAME OF GOVERNMENT OFFICIAL*],

The Convention on the Rights of Persons with Disabilities entered into force on 3 May 2008. When it was opened for signature on 30 March 2007, there were 82 signatories to the Convention, the highest number of signatories in history to a United Nations convention on its opening. For the full text, please see www.un.org/disabilities. This Convention:

- Establishes international standards regarding the rights and freedoms of persons with disabilities;
- Clarifies human rights principles of inclusion, non-discrimination, accessibility and participation in the context of persons with disabilities;
- Provides an authoritative model for Governments to use in shaping national law and policies;
- Creates more effective mechanisms for monitoring the rights of persons with disabilities; and
- Prescribes national implementation and monitoring mechanisms.

The Convention marks a paradigm shift in attitudes and approaches to persons with disabilities. It represents the movement from viewing persons with disabilities as "objects" of charity, medical treatment and social protection towards viewing persons with disabilities as "subjects" with rights, who are capable of making decisions and being active members of society.

This is the first major human rights treaty of this century and it is a historic achievement for the 650 million persons with disabilities around the world. It certainly offers [*NAME OF COUNTRY*] an important opportunity to fulfil its obligations towards citizens. We look forward to working with you on these matters and are available to provide support should you so require.

Yours sincerely,

[NAME OF PERSON / ORGANIZATION]

B. International measures for ratification

At the international level, States or regional integration organizations (such as the European Union) that intend to become parties to the Convention must express their consent to be bound by it. Article 43 establishes that such consent can be expressed through ratification, accession or formal confirmation. A regional integration organization is an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention (art. 44).

At this stage, it is important to define certain terms. For many States, expressing this consent comprises signature and ratification:

(a) **Signature** of the Convention is an act by which a State or regional integration organization expresses its interest in the treaty and its intention to become a party. States and organizations are not bound by their signature. However, they must refrain from acts that would defeat the object and purpose of the Convention, according to the Vienna Convention on the Law of Treaties (art. 18);

(b) **Ratification** consists of the deposit, through a formal letter, of the instrument of ratification with the Secretary-General of the United Nations as the depositary of the Convention, in accordance with article 41.

With the deposit of the act of ratification, the State establishes at the international level its consent to be bound by a treaty. Ratification, like other acts of consent, makes the international human rights norms guaranteed in the treaty legally effective vis-à-vis the State and obliges it to report to the international community on measures adopted to align its legislation, policy and practice with international standards. The significance of this differs from country to country and will be discussed below.

Some States have a one-step process to express their consent to be bound, namely **accession**. It consists of the deposit of an instrument of accession with the depositary and has the same legal effect as ratification; however, unlike ratification, it is not preceded by signature.

For regional integration organizations, the process is similar to the two-step process referred to above, with signature by the organization followed by **formal confirmation**.

States and regional integration organizations can decide to ratify and/or accede to both the Convention and its Optional Protocol or to the Convention only. Such intention needs to be reflected in the instrument executed and deposited. A precondition for signing and ratifying the Optional Protocol is having signed and ratified the Convention, although the two may occur simultaneously at the same signing ceremony.

C. Reservations, understandings and declarations

At the moment of signature, ratification or accession of the Convention, States and regional integration organizations may wish to adjust the application of the treaty by means of lodging a reservation. The Vienna Convention on the Law of Treaties (art. 2, para. 1 (d)) defines a reservation as follows:

> *a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.*

States can also lodge declarations at the moment of signature, ratification or accession. Declarations are statements of understanding of a matter contained in the Convention or an interpretation of a particular provision.

In some cases reservations and declarations could be the symptom of a State's lack of will to implement the Convention fully, e.g., a State may mask its lack of will by invoking conflicting cultural principles. In other cases reservations and declarations could be the expression of a State's legitimate and serious concern related to the inadequacy of its national resources to cope with the obligations derived from the Convention. States may be tempted to lodge reservations to gain more time for implementation. States may decide to modify or limit some of the tougher provisions to avoid being blamed by the international community for not implementing the Convention properly. If reservations are inevitable, it is important to limit their impact to the absolute minimum. Both vague and specific reservations deserve attention when monitoring a treaty. For example, through its authoritative interpretations, the Committee on the Rights of Persons with Disabilities can circumscribe reservations of apparent general and indeterminate scope.

In any case, reservations are not to be encouraged and the facilitator should find ways to make this clear when presenting this module, taking into account the audience.

Article 46 of the Convention allows parties to lodge reservations provided that these are not incompatible with its object and purpose. A State that objects may notify the United Nations Secretary-General. The Secretary-General circulates any objection received. Objections to declarations generally focus on whether the statement is merely an interpretative declaration or is, in fact, a reservation that would modify the legal effects of the treaty. An objecting State sometimes requests that the declaring State should clarify its intention. If the declaring State agrees that it has formulated a reservation instead of a declaration, it may withdraw its reservation or confirm that its statement is only a declaration.

After a reservation is circulated, other State parties have 12 months in which they can object to the reservation, beginning on the date the notification of reservation was deposited or the date on which the State or regional integration organization expressed its consent to be bound by the treaty, whichever is later. When a State lodges an objection to a reservation with the Secretary-General after the end of the 12-month period, the Secretary-General circulates it as a "communication." Lodging a complaint does not force a State to withdraw it. However, it does put political pressure on the State making the reservation and could lead to the voluntary withdrawal of the reservation either immediately or over a period of time. Furthermore, as a result of objecting to a reservation, a State might regard a treaty as not being in effect between itself and the State making the reservation—or at least not in relation to the provision to which the reservation has been made.

Treaty-monitoring bodies have consistently sought to restrict the scope of reserva-

tions and encourage their withdrawal. The Human Rights Committee, for example, has set out its position in its general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant. Relying on the test that reservations incompatible with the object and purpose of the treaty are not permitted, the Committee indicates areas where it believes reservations are inadmissible. These include articles considered peremptory norms. The Committee queries whether reservations to non-derogable rights are permissible. Similarly, the Committee holds that reservations to measures that create the supportive machinery for the enjoyment of rights, such as the right to a remedy, are not acceptable. The Committee considers that it falls on itself to determine whether a reservation is incompatible with the object and purpose of the treaty, partly because the Committee indicates that the nature of a human rights treaty makes it inappropriate for States parties to make the decision and partly because the Committee cannot avoid making such an assessment in the performance of its functions.

Stakeholders involved in supporting treaty bodies, enhancing the universal periodic review (UPR) and/or interacting with national authorities that are embarking on or completing the ratification process should advocate ratification without reservations.

Finally, it is important to note that existing reservations may be modified. Such a modification may result in a partial withdrawal or could create new exemptions from, or modifications to, the legal effects of certain provisions (resulting in a new reservation). A State or regional integration organization may withdraw any reservation it has made to the Convention or Optional Protocol at any time. The withdrawal must be in writing and signed by the Head of State, Head of Government or minister for foreign affairs, or a person having full powers for that purpose issued by one of those authorities. As with reservations, it is possible to modify or withdraw declarations.

State parties to the Convention have lodged a range of reservations and declarations, some of which have attracted objections from other State parties.

- With regard to the concept of "consent" and its implications, Australia declared "its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards". Both France and the Netherlands declared their understanding of the term "consent" and its application: (1) consent given by a person who is able to consent; and (2) in the case of persons who are not able to give their consent, permission given by their representative or an authority or body provided for by law.
- Malta, Monaco and Poland made reservations and declarations stressing that the Convention shall not be interpreted in a way conferring an individual right to abortion.
- The Syrian Arab Republic "understands" that being a signatory of the Convention "does not in any way imply recognition of Israel or entry into relations with Israel, in any shape or form, in connection with the Convention."

- Azerbaijan declared that "it is unable to guarantee the application of the provisions of the Convention in the territories occupied by the Republic of Armenia until these territories are liberated from occupation."

- France and several other States objected to the declaration made by the Islamic Republic of Iran to exclude the application of those provisions of the Convention that are deemed incompatible with Iranian laws. According to France, the Islamic Republic of Iran made a "reservation of general and indeterminate scope. This reservation is vague, failing to specify the relevant provisions of the Convention or the domestic laws to which the Islamic Republic of Iran wishes to give preference. Consequently, it does not allow other States parties to know the extent of the commitment of the Islamic Republic of Iran and could render the Convention ineffective."

- Austria, the Czech Republic, the Netherlands, Portugal, Slovakia and Sweden objected to a reservation made by El Salvador to sign the Convention "to the extent that its provisions do not prejudice or violate the provisions of any of the precepts, principles and norms enshrined in the Constitution of the Republic of El Salvador, particularly in its enumeration of principles." By not specifying the extent of the derogation, the reservation was incompatible with the object and purpose of the Convention, according to these States.

- The Czech Republic, Portugal, Spain and Sweden objected to Thailand's interpretative declaration subjecting article 18 of the Convention to conformity with Thai laws, regulations and practices. The reservation makes it unclear to what extent Thailand considers itself bound by the obligations of article 18, putting in question Thailand's commitment to the object and purpose of the Convention as regards the rights associated with liberty of movement and nationality.

D. Incorporation into the legal system of the ratifying State

Once international ratification has taken place, the State has expressed its consent to be bound by the treaty and the Convention has entered into force for it. However, it should not be assumed that the Convention has automatically become part of its national law.

There are two main approaches to incorporating treaties within the domestic legal system, usually as a result of legal traditions and often reflected in national constitutions.

Monist countries assume that domestic law and international law form one system of law. International law does not need to be translated into national law. The act of ratifying an international agreement immediately incorporates it into national law. International law can be directly applied by a national judge and directly invoked by citizens, just as if it were national law. A judge can declare a national rule invalid if it contradicts international rules. In some States, international law always has priority while others adopt the *lex posteriori* rule. In some State parties to the Convention, such as Argentina, Chile, Costa Rica, Croatia, Hungary, Mali, Niger, Qatar, Slovenia and Spain, the provisions of the Convention have direct legal effect on the national legal framework and are in principle directly applicable, including in courts of law. In relation to other human rights treaties, such as the International

Covenant on Economic, Social and Cultural Rights, individuals have gone to court with allegations of breaches of treaty rights and won compensation or reparation.

In *dualist* countries, the international and national legal systems are seen as separate. The international human rights treaties to which these States are a party have no force, as such, within their domestic legal systems and domestic legislation must be adopted to incorporate the treaty into the domestic legal order. While some State parties have made amendments to their legislation to ensure compliance with the Convention, it appears that the steps taken so far fall short of giving direct effect to the Convention in the domestic system.

If a dualist country does not translate an international treaty into domestic law, for example, out of negligence or because the purpose of the ratification/accession was merely political, its implementation will remain uncertain. If the State does not translate the Convention into national law once it has ratified it, those in most need of having its provisions applied might not be protected by it. Examples of dualist countries are Australia, Canada, India, Kenya, Malawi, South Africa, United Kingdom and Zambia.

Human rights treaty bodies have often recommended incorporation of their treaties into the domestic legal order so as to realize their full potential. For example, in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the Human Rights Committee, while noting that the International Covenant on Civil and Political Rights does not explicitly require States parties to incorporate the Covenant, expressed the view "that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order" and invited States parties to proceed accordingly.

The Committee on Economic, Social and Cultural Rights expressed similar views in its general comment No. 9 (1998) on the domestic application of the Covenant: "legally binding international human rights standards should operate directly and immediately within the domestic legal system" and "while the Covenant does not formally oblige States to incorporate its provisions in domestic law, such an approach is desirable".

Even in countries where it is necessary for legislation to refer to or reproduce the content of a treaty, judges have in some cases developed innovative ways of making use of international standards. For example, although South Africa is not a party to the International Covenant on Economic, Social and Cultural Rights, its Constitutional Court has used general comments of the Committee on Economic, Social and Cultural Rights to interpret the context of economic, social and cultural rights in the South African Constitution.

E. Hierarchy of the Convention in the legal system of States

In States where the Convention is directly applicable, it has been assigned different levels within the domestic hierarchy of laws. Costa Rica, for example, recognizes conventions as being on the same level as the Constitution. In Argentina, a bill was presented to parliament so that

the Convention would be recognized as being at constitutional level, similar to other human rights treaties. In several States, such as Croatia, Mali, Mexico and Niger, international human rights treaties to which they are a party are regarded as standing above national laws.

Human rights treaty bodies have often requested clarity regarding the place of their treaties in the domestic legal hierarchy. They have also consistently expressed appreciation to States that have recognized human rights treaties as holding constitutional status, which is not always the case.

In its general comment No. 31 (2004), the Human Rights Committee explicitly noted the important status of international human rights treaties, which "flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'". It noted that this principle "operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty".

Reservations lodged by States that do not recognize the predominance of the Convention on the Rights of Persons with Disabilities if there is a conflict between it and their constitutional or national laws might present challenges in view of article 27 of the Vienna Convention. Consequently, even a State with a dualist system should at the very least not invoke national law as a reason not to respect the Convention, even if the Convention cannot be directly invoked in national courts without an additional act of parliament.

F. Promoting ratification: roles of different actors

Executive

- ✓ Consult with line ministries
- ✓ Identify a focal point for ratification
- ✓ Hold a national consultation
- ✓ Review laws and policies
- ✓ Identify any gaps in protection
- ✓ Undertake a national interest analysis
- ✓ Make ratification a national objective
- ✓ Identify good practices in the region
- ✓ Request assistance from the United Nations
- ✓ Other steps?

Parliament

- ✓ Check if the Government intends to ratify
- ✓ Use parliamentary procedure to encourage ratification, such as questions to the minister
- ✓ Submit a private member's bill
- ✓ Encourage parliamentary debate
- ✓ Mobilize public opinion
- ✓ Discourage reservations and declarations
- ✓ Raise awareness of the Convention and the ratification process
- ✓ Encourage ratification of the Convention and its Optional Protocol
- ✓ More?

Civil society

- ✓ Form a coalition to support ratification
- ✓ Contact international civil society organizations
- ✓ Set out a timeline and lobbying strategy
- ✓ Launch a media awareness campaign
- ✓ Hold a national conference
- ✓ Develop and seek funding for a programme on ratification
- ✓ Meet representatives of parliament, line ministries, national human rights institution, etc.
- ✓ Raise ratification with the donor community
- ✓ Ask what the United Nations is doing
- ✓ More?

National human rights institution

- ✓ Undertake research on the rights of persons with disabilities
- ✓ Raise ratification in annual reports to parliament
- ✓ Issue press releases supporting ratification
- ✓ Raise awareness in the community
- ✓ Cooperate with DPOs on ratification
- ✓ Ensure own capacity related to the Convention
- ✓ More?

United Nations country team

- ✓ Discuss ratification with government partners
- ✓ Compile good practice from the region
- ✓ Raise awareness about the Convention
- ✓ Provide expert advice to the Government and civil society partners
- ✓ Provide technical assistance to national focal points and NHRIs
- ✓ Raise ratification with the international community
- ✓ Support ratification through media communications
- ✓ Develop a programme to support ratification
- ✓ Support and promote the participation of civil society organizations, in particular DPOs
- ✓ More?

MODULE 4 – MEASURES FOR IMPLEMENTATION

Introduction

What implementation measures does the Convention require?

Article 4 (1) (a) indicates in broad terms the implementation measures needed for the full realization of the rights of persons with disabilities, without discrimination. It requires States:

> *To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.*

At least three aspects of this subparagraph need to be highlighted. First of all, the article refers to adopting "**all**" appropriate measures. This suggests that implementation should be comprehensive, in that it should cover all possible measures relevant to the Convention. Article 4 sets out some of these measures, which will be explored in greater detail below. Furthermore, much of the Convention sets out specific implementation measures in relation to specific rights. It is worth looking at any article to understand the types of measures necessary to put the Convention into practice. The reference to "all" appropriate measures can also be understood as a flexibility device: in other words, no options are left out and different States might identify different options for implementation, in keeping with their legal and cultural contexts.

Secondly, the article refers to all "**appropriate**" measures. In other words, the measures must be appropriate in the light of the principles and obligations in the Convention. They must respect the Convention and promote its principles. They must be consistent with it. Thirdly, the article refers explicitly to legislative and administrative measures, but it also refers to "**other**" measures. This is in keeping with the other human rights treaties. While legal and administrative measures are important to implement an international treaty, measures to implement human rights treaties fully go far beyond legal and administrative measures and cover education, funding, development, social programmes, institution-building, judicial measures and more. Consequently, such measures must be broad if implementation of the Convention is to be effective. A narrow understanding of the treaty as requiring only legal measures (e.g., without funding measures) risks leading to good laws that are not applied.

A whole range of implementation measures might be relevant, such as:

- Identifying focal points, coordination mechanisms and other institutions within the Government to support implementation
- Ensuring that laws and budgets are in line with the Convention
- Making sure that laws, policies and institutions are fully funded

- Delivering services that are inclusive of persons with disabilities
- Raising awareness about the Convention
- Training professionals
- Undertaking research, data collection, analysis, surveys on disability rights
- Researching and developing accessible technology
- Ensuring that effective remedies exist when rights are not respected.

This module examines a range of implementation measures, such as law reform to ensure that laws and policies respect the Convention through to the provision of adequate services and institution-building.

Many of the implementation measures examined in this module take time and resources. Many participants will want to know what practical steps they could take immediately after ratification or even after the training. Consequently, before examining each implementation measure in greater detail, it is worth considering some more immediate steps that can be taken to start the implementation process. These include:

✓ Identify a Convention focal point in the Government

✓ Identify focal points in line ministries

✓ Make or join civil society coalitions for the Convention, including DPOs

✓ Issue a press release on the Convention's ratification

✓ Make the Convention available in local languages and in accessible formats

✓ Advocate for implementation at the national, regional and local levels

✓ Review laws, policies and budgets

✓ Raise awareness with professionals (service providers, lawyers, judges, public servants, parliamentarians, …)

✓ Review the accessibility of public facilities/services

✓ Undertake a baseline study of the situation of persons with disabilities in the country

✓ Identify gaps in understanding of or capacity related to the Convention.

A. Institution-building for implementation

Institutions required under the Convention (art. 33)

Before examining various implementation measures more closely, it is worth referring briefly to article 33, which sets out three particularly relevant ones (see also module 6): focal points, coordination mechanisms and independent monitoring mechanisms.

Focal points: Article 33, paragraph 1, requires a focal point or focal points within the Government with responsibility for matters relating to the implementation of the Convention. The Convention does not specify who could act as focal point (a ministry, a department in a ministry, a single person and so on).

Coordination mechanisms: The same paragraph requires States parties to give due consideration to the establishment or designation of a coordination mechanism within the Government to facilitate action related to the implementation of the Convention. Although optional, such a coordination mechanism could be beneficial by ensuring that all ministries and all levels of government

(central, provincial and local) are working together to implement the Convention and disability issues do not remain stuck in one ministry (such as health or social affairs).

Focal points and coordination mechanisms ensure that there is an authority in the country with ongoing responsibility for implementation. By itself, this might not necessarily lead to effective implementation: the focal point and/or coordination mechanism also has to have financial backing to follow up on implementation, as well as have the relevant expertise. Effective participation of persons with disabilities and their representative organizations should also help make focal points and coordination mechanisms effective. Without effective focal points and/or coordination mechanisms, the risk is that no one will be responsible for moving the Convention's standards from the international level to the national level so that they have real meaning.

Some issues to bear in mind:

- ✓ Ensure that the focal point and/or coordination mechanism is clearly established, e.g., in law
- ✓ Ensure that the focal point and/or coordination mechanism is sufficiently staffed
- ✓ Ensure that the focal point and/or coordination mechanism has funding to carry out its tasks
- ✓ Ensure that the focal point and/or coordination mechanism is sufficiently close to decision makers with authority so that advice on implementation and coordination is acted upon
- ✓ Ensure that the focal point and/or coordination mechanism is not relegated to a ministry or department with relatively little authority, and if it is, ensure that the focal point is sufficiently high up so that it has authority to act and is connected through an effective coordination mechanism with other relevant ministries so that Convention-related action cuts across the Government
- ✓ Clarify in the focal point's terms of reference that it is there to facilitate implementation but not to be the sole government institution responsible for the Convention (the effect of which could be to sideline the Convention and implementation rather than mainstream disability rights)
- ✓ Provide the focal point and coordination mechanism with terms of reference so that their roles are clear.

Some likely initial tasks of the focal point might be:

- ✓ Map laws and strategies as a first step in the legal reform
- ✓ Ensure that other parts of government are aware of the ratification (other ministries, parliament, etc.)
- ✓ Alert organizations of persons with disabilities and broader civil society as a first step towards holding effective consultations on implementation
- ✓ Establish an interministerial task force on the Convention
- ✓ Make contact with other levels of government, such as local or State
- ✓ Draw up a list of actions and identify which ministries are responsible for which actions
- ✓ Ensure that a budget is allocated to its work in next year's workplan
- ✓ Hold a national conference or consultation

- ✓ Contact media organizations to highlight what the Government is doing to put the Convention into practice
- ✓ Translate the Convention into local languages
- ✓ Be aware of the Committee's reporting guidelines.

Independent monitoring mechanisms: Article 33, paragraph 2, on the other hand, focuses on establishing a structure to oversee the implementation of the Convention. It requires States to maintain, strengthen, designate or establish one or more independent mechanisms to promote, protect and monitor implementation of the Convention. Importantly, in setting up such mechanisms, States have to take into account "the principles relating to the status and functioning of national institutions for protection and promotion of human rights", otherwise known as the Paris Principles. In other words, the mechanisms must meet internationally agreed standards of independence, plurality and operating.

Other institutions relevant to implementation

Courts: State parties are also required to promote appropriate training on the Convention for the judiciary in accordance with article 13. "In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff." Training should include training for judges and lawyers on the rights of persons with disabilities and on the international commitments of States under the Convention so that cases are dealt with in accordance with international law. In addition, courts should be physically accessible to persons with disabilities and their information must also be accessible (documents in Braille, websites using screen-readable formats, sign-language interpretation in court and so on).

Parliaments: Parliaments have a crucial role to play in implementing the Convention, by adopting legislation but also by holding the executive accountable for policies and strategies as well as service delivery. Parliaments also have an important role in the budget process. While the Convention does not refer to parliaments, strengthening them, by making them accessible and raising awareness among parliamentarians about disability rights and persons with disabilities as key constituents, can have a potentially strong impact on the Convention's implementation.

Participation of civil society

The Convention also stipulates that **civil society**, particularly persons with disabilities and their representative organizations, should participate fully in all aspects of this monitoring process, just as they are to be involved in the development and implementation of policies, programmes and legislation to implement the Convention, in line with article 4.

This reference to civil society raises at least two issues:

(a) Civil society, in particular persons with disabilities and their representative organizations, should be involved in the monitoring process undertaken by the independent monitoring mechanism established under article 33 (and ideally also in the work of focal points and coordination mechanisms);

(b) Civil society itself has a role to play in monitoring the Convention, independently of the other mechanisms established under article 33.

B. Laws, policies and budgets

Law reform

A duty to reform laws

Article 4 (1) (b) of the Convention obliges State parties to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities".

In addition, States undertake to adopt appropriate legislative and administrative measures and, in article 4 (1) (c), to take into account the protection and promotion of the human rights of persons with disabilities in all policies.

Consequently, an important step in implementing the Convention is to review the national legislation and policy framework comprehensively so as to:

- Modify or abolish discriminatory laws
- Adopt new legislative measures to ensure future implementation.

A review of existing laws (and policies) is a duty that applies to all State parties. Even in States where the Convention is automatically applicable, there will still be a need to ensure that all relevant domestic law, including regional or customary law, is brought into compliance with the Convention.

Ingredients for compliance

Aspects of article 4 and other provisions in the Convention identify some of the factors to bear in mind when reviewing and reforming laws:

✓ Make explicit references to the Convention in domestic legislation so that there is a clear link between the international and national standards, and the various standards in the Convention become part of national law

✓ Make sure the understanding of "disability" is in line with the social/human rights understanding of the term set out in the Convention. In other words, ensure that "disability" is seen as the result of the interaction between an individual's "impairment" and an unwelcoming environment

✓ Define "discrimination" in keeping with the Convention. Article 2 defines "discrimination on the basis of disability" in broad terms. It includes distinctions, exclusions or restrictions which have the purpose or the effect of impairing or nullifying the rights of persons with disabilities. This is a very broad understanding of discrimination which requires at the very least the prohibition of discrimination on the ground of disability in all areas but also legal measures that prevent discrimination in the first place as well as measures to promote equality between persons with and without disabilities

✓ Review all relevant legislation, not just legislation specifically or only related to disability rights. This is important, as many areas of law and policy can have an impact on the enjoyment of the rights of persons with disabilities, even when

disabilities or persons with disabilities are not referred to. Consider the following areas of law:

- The constitution
- Non-discrimination laws and regulations
- Comprehensive disability law and regulations
- Guardianship rules
- Criminal law
- Education laws and policies
- Health laws and policies
- Social protection laws and policies
- Construction laws and regulations
- Labour laws and policies
- Privacy laws and policies
- Election laws and regulations
- Immigration laws and policies
- Child protection laws and policies
- Intellectual property laws

✓ Identify rights-holders; in particular, make sure that the diversity of disability is respected so that disability legislation does not exclude any "rights-holders". Consequently, it should be clear that domestic legislation and policy protect persons who have physical disabilities, mental or psychosocial disabilities, intellectual disabilities or sensory disabilities (such as persons who are deaf, blind or deaf-blind)

✓ Identify duty-bearers, including different levels of government, and private actors and their clear responsibilities. Two aspects deserve to be underlined here:

- Ensure the reform covers all levels of government: local, provincial as well as central. Article 4 (1) (d) requires States to ensure that public authorities and institutions act in conformity with the Convention. Public authorities include not only central authorities but also provincial and local authorities, which often have important roles in areas such as service delivery for persons with disabilities
- Ensure that the private sector is regulated. Article 4 (1) (e) requires States to take all appropriate measures to eliminate discrimination on the basis of disability by any *person, organization or private enterprise*. Private individuals as well as organizations/enterprises have duties in relation to persons with disabilities, at the very least, not to discriminate against them

✓ Identify the institutional framework for promoting and protecting the rights of persons with disabilities. Article 33 sets out three mechanisms for implementation and monitoring: focal points in the Government, coordination mechanisms in the Government and independent mechanisms for the promotion, protection and monitoring of the Convention. Other institutions, such as parliamentary committees and the judiciary, also have roles which legislation can identify

✓ Make provision for secondary legislation, administrative measures and budgetary measures. This is fundamental to the success of law reform. Primary legislation without directives on how to implement it or without financial or human resources will, in many cases, be difficult if not impossible to implement.

It is relevant to note that higher standards of protection should prevail: if the Convention's provisions are weaker on certain issues than the law currently applicable in the State, then the national standard should of course be applied. During consultations with DPOs in Australia, it was stated that the Convention potentially establishes a different standard of compliance between State and non-State actors (i.e., a lower standard for non-State actors). Given the extensive role of the private sector in the provision of public goods and services in Australia, such as in the development and provision of disability-specific services, aids and appliances, and in the shaping of social attitudes, DPOs called on the Australian Government to declare that Australia would not limit itself to "fostering" or "encouraging" or "promoting" or "encouraging" non-State actors to observe the rights set out in the Convention, but might in some situations require the private sector to take on responsibilities on a basis equivalent to that of State actors.

Ensuring effective remedies

For rights to have meaning, effective remedies must be available to redress violations, and legislation should ensure that courts and other tribunals have the authority to receive complaints of non-compliance with rights. This requirement is implicit in the Convention and consistently referred to in the context of the other major human rights treaties. Importantly, persons with disabilities who suffer discrimination in any field should have access to justice. Consequently, remedies should cover all human rights—civil and political rights as well as economic, social and cultural rights. The right to a remedy in the event of abuse of rights should be established in law and legislation should identify the means through which remedies are provided.

When discussing remedies, judicial remedies are often the first that come to mind. Monist approaches may have advantages in this respect. By ratifying the Convention, a monist State will automatically be bound by its principles and objectives. Individuals in that State, including persons with disabilities, who have been denied specific rights for example because domestic legislation is weak on the matter can invoke the Convention in a national courtroom and ask the judge to apply the Convention and decide that the national law is invalid. The judge does not have to wait for the Convention to be translated into national law: the treaty has been ratified and its provisions are, in principle, directly applicable. Of course, the monist approach will have an advantage so long as the national judges are competent and familiar with international standards and human rights.

Even in States where the Convention is not directly applicable, ratification of or accession to it encourages the judiciary to apply domestic law in a manner that is consistent with it. By translating the Convention into national law, dualist States enable their courts to apply the Convention in their judgements.

However, it is important to consider other remedies, too. First, other remedies might be more appropriate. For example, problems arising in service delivery might be better dealt with by consumer tribunals or through administrative remedies, national human rights commissions, ombudsmen, equality commissions, disability commissioners and so on. These can be much easier to access, even without a lawyer, and can be cheaper and less intimidating. Similarly, mediation and arbitration might be preferable in some cases as they can be less confrontational and rely on solutions

(remedies) that are agreeable to all parties. Labour inspectors and school inspectors might provide a means of holding employers and education professionals accountable and, as a result, provide solutions (remedies) that are quicker, cheaper and ultimately more effective than judicial remedies.

Second, other remedies might be shorter and more certain. In some countries, the judiciary is dysfunctional or insufficiently resourced to ensure access to justice. In such situations, individuals might have little faith in the court system and be put off from filing a complaint for the denial of their rights. Remedies which are easier to access might provide alternatives to processes uncertain to bring relief.

Third, traditional forms of justice might be preferable, particularly in poor, rural areas. In many countries there is a lack of tribunals and courts in the areas outside the capital district and main urban centres. This situation is particularly critical for persons with disabilities living in remote areas. Poverty or extreme poverty can affect these areas, making it impossible to move around freely and reach urban areas for legal or other support. Nevertheless, for persons with disabilities, traditional systems are not always a panacea because of stigma and prejudice. Decisions could then reflect traditional approaches that isolate persons with disabilities or give them unequal treatment. Programmes to raise awareness should therefore involve traditional authorities, including elders and community leaders, integrating elements of non-discrimination and participation in local remedies.

Relevant actors

Who should be involved in law review and reform? This is a non-exhaustive list:

- ✓ Parliamentary committees, such as human rights committees
- ✓ Ministry of justice or attorney-general's office
- ✓ Sectoral ministries, such as social affairs, health, education, labour, interior, etc.
- ✓ Focal points and coordination mechanisms
- ✓ National human rights institution, equality commission, ombudsman, etc.
- ✓ Organizations of persons with disabilities
- ✓ Other civil society organizations, such as human rights NGOs, development NGOs, etc.
- ✓ United Nations agencies, regional human rights organizations, such as the Council of Europe, the African Commission, Inter-American Commission, etc.
- ✓ International experts on the Convention
- ✓ Academics
- ✓ International development agencies.

Process

Each State will have its own process for undertaking law and policy reform. However, following certain principles will ensure that the process is inclusive of persons with disabilities and other relevant actors and is also effective.

Importantly, article 4 (3) stresses that States should consult and actively involve persons with disabilities, through their representative organizations, in the development of legislation and policies to implement the Convention and in other decision-making processes concerning them. Their participation should therefore underpin the entire law and policy reform.

Some **steps** in law review and reform are:

- ✓ Identify all laws directly or indirectly relevant to the Convention (see next section)
- ✓ Review laws for consistency with the Convention
- ✓ Undertake a national interest analysis, including an open consultation
- ✓ Hold a public hearing in parliament
- ✓ Assess the types of legislation needed, e.g., comprehensive disability law and/or non-discrimination law and/or sectoral laws including disability rights provisions
- ✓ Draft amendments to legislation
- ✓ Debate amendments in parliament
- ✓ Consider drafting a national human rights action plan for implementation
- ✓ Adopt secondary legislation/regulations
- ✓ Ensure funding of new provisions
- ✓ Include process and amendments in the initial report to the Committee on the Rights of Persons with Disabilities.

Policies

Laws translate international commitments into the domestic legal framework and often lead to real improvements in the human rights situation on the ground.

However, in many cases, policies can be important to accelerate implementation. While laws set out rights and obligations, policies can set out steps to achieve time-bound goals so that obligations are met. Policies are particularly relevant to the progressive realization of economic, social and cultural rights. However, policies are also relevant to civil and political rights (for example, improving the administration of justice). Many policies are relevant to the Convention, such as:

- ✓ The national development strategy (or poverty reduction strategy)
- ✓ Sectoral development strategies (health, education, social protection, vulnerable communities, etc.)
- ✓ National human rights strategy and action plan
- ✓ Disability rights strategy and action plan
- ✓ Disaster preparedness and response plan.

Policies are not a one-off; they have a lifespan:

- **Diagnosis:** A diagnosis is required to identify strengths, weaknesses, opportunities and threats. For example, a national development strategy should be analysed to identify whether development programmes take into account the rights of persons with disabilities, whether development is accessible to them, whether development programmes unintentionally create additional barriers (e.g., by building inaccessible schools) and so on.

- **Formulation:** On the basis of the diagnosis, the policy should be formulated. Achievable benchmarks and indicators should be identified. The formulation should be such that there are as many connections as possible with specific provisions of the Convention. An education policy should refer to article 24 so that it explicitly recognizes the right to inclusive education and provides for training for teachers on inclusion as well

as specific education services to persons with disabilities such as support in the classroom or materials in Braille and the teaching of sign language. Persons with disabilities and their representative organizations should be involved at all stages of the policy formulation.

- **Adoption:** Policymakers should adopt the policy and publish it. Transparency is very important. It enables civil society, including persons with disabilities, to identify the extent to which consultative processes have actually influenced the policy, and it encourages implementation because everyone is aware of it and can support it.

- **Implementation:** The policy should be implemented according to the strategies and action plan. Implementation should respect the Convention's principles: it should avoid discrimination (include persons with disabilities, not create new barriers, respect the diversity of disability, e.g., physical, sensory, mental and intellectual), it should be as participatory as possible; it should be transparent and accountable; it should promote equality between men and women and so on.

- **Evaluation.** Implementation should be reviewed to examine whether benchmarks have been met. Evaluation is important in and of itself to see what worked and what did not work so that the policy can be fine-tuned. Moreover, evaluation can feed into the State's reporting process to the Committee.

In many ways, this corresponds to what is known as a human rights-based approach. This approach has three main elements:

✓ It stresses participation, non-discrimination, transparency and accountability. The Convention reinforces these principles and adds others (see art. 3), such as inclusion, respect for autonomy, accessibility, respect for difference and respect for the evolving capacities of children.

✓ It explicitly links policies to meeting human rights standards (e.g., promoting inclusive education, free and compulsory primary education).

✓ Its aim is that policies should strengthen the capacity of rights-holders to claim their rights and duty-bearers to meet their obligations.

The *World Report on Disability's* recommendations on national strategies and plans of action

The *World Report on Disability*[10] makes nine recommendations. They are reproduced here to illustrate how the Convention could be implemented around the world. However, they are not the only steps that States should take to implement the Convention.

Some recommendations are relevant to law and policy reform.

Recommendation 3: Adopt a national disability strategy and plan of action

[…] A national disability strategy sets out a consolidated and comprehensive long-term vision for improving the well-being of persons with disabilities and should cover both mainstream policy and programme areas and specific services for persons with disabilities.

The development, implementation, and monitoring of a national strategy should bring together the full range of sectors and stakeholders […].

The strategy and action plan should be informed by a situation analysis, taking into account such factors as the prevalence of disability, needs for services, social and economic status, effectiveness and gaps in current services, and environmental and social barriers. […] The plan of action operationalizes the strategy in the short and medium terms by laying out concrete actions and timelines for implementation, defining targets, assigning responsible agencies, and planning and allocating needed resources.

Mechanisms are needed to make it clear where the responsibility lies for coordination, decision-making, regular monitoring and reporting, and control of resources.

Recommendation 4: Involve people with disabilities

People with disabilities often have unique insights about their disability and their situation. In formulating and implementing policies, laws, and services, people with disabilities should be consulted and actively involved.

Disabled people's organizations may need capacity-building and support to empower people with disabilities and advocate for their needs. […]

People with disabilities are entitled to control over their lives and therefore need to be consulted on issues that concern them directly – whether in health, education, rehabilitation, or community living. Supported decision-making may be necessary to enable some individuals to communicate their needs and choices.

[10] World Health Organization and World Bank, *World Report on Disability* (Geneva, 2011).

Budgetary measures in the context of law and policy reform

Budgetary measures are essential aspects of most laws and policies. While some laws and policies—such as those prohibiting certain conduct, e.g., discrimination or torture—do not require funding, most laws and policies related to human rights do, particularly in relation to economic, social and cultural rights. Key factors to bear in mind are:

- ✓ Some provisions do not cost anything to implement
- ✓ Implementing some provisions can save money (e.g., universal design saves money on retrofitting later)
- ✓ Some provisions can be implemented by using existing funding differently (funding inclusive education rather than segregated education could simply involve reallocating budgets)
- ✓ Some provisions can be implemented by using existing funds better (here, budget planning that is transparent and ensures accountability is important)
- ✓ Some provisions can be implemented through the dedication of relatively few additional funds (awareness-raising through public campaigns is relatively inexpensive but can be very effective)
- ✓ Implementing some provisions requires additional funds (for example, rehabilitation services, home care services and so on).

State duty to provide budgets

Decision makers must consider whether laws and policies have financial implications and then they must foresee adequate budgets. As noted above, before adopting laws and policies, parliament and the executive should explicitly indicate the sums that will be provided for implementation. When budgets (and human resources) are made available, other measures have a much higher likelihood of success.

The Convention's key provision on funding is article 4 (2) (general obligations): *With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.*

This obligation is often misunderstood. It does not mean that aspects of economic, social and cultural rights that require resources/funding can be put off indefinitely. Indeed, the Committee on Economic, Social and Cultural Rights has stated that economic, social and cultural rights comprise core obligations which must be implemented immediately, irrespective of the costs involved. One example is the duty to provide affordable essential medicines as part of the right to health.

However, where resources are required and progressive realization applies:

- The State must take steps immediately to draw up the budget and a time-bound action plan
- Time-bound benchmarks should be set so as to guide progressive implementation

- Indicators should be identified to measure whether those benchmarks have been met or not
- Funding should be committed so that the measures necessary to meet those benchmarks can be taken
- The action plan should be monitored, using the indicators, to assess whether implementation is on track or not.

In the light of the difficulties that poorer States have in implementing the Convention (as a result of resource requirements), article 4 (2) as well as article 32 highlight international cooperation as a means of helping States. Article 32 (1) (d) requires States to undertake appropriate and effective international cooperation measures including by *providing, as appropriate, technical and economic assistance*.

Disability rights budgeting

Increasing attention is being placed on "human rights budgeting" and related issues such as gender budgeting. The experience from these areas will be important to guide budgeting for the Convention. The following questions can help to decide whether budgets are aligned with laws and policies to implement it:

- How are national development policies aligned with the Convention?
- What is the alignment between policy and budget processes?
- To what extent are budgets aligned with the Convention's priorities, standards and goals, including their desired and real impact (tied to the progressive realization of rights and maximum available resources)?
- To what extent are budgets aligned with both the Convention and nationally set priorities?
- To what extent are budgets aligned with inclusive, transparent and accountable processes?
- To what extent does the budget process reflect the differing roles of rights-holders, civil society and the State as well as the dynamic relationship among them?

One problem facing the alignment of budgeting with law and policy processes is the asymmetry of ownership. For example, the asymmetries between ministries of finance, ministries of planning, sectoral ministries, parliament and civil society can have an impact on the ways in which budgets are aligned with policies as well as the extent to which policies and budgets incorporate human rights principles (e.g., of the extent to which civil society is involved).

The *World Report on Disability's* recommendation on funding

The *World Report on Disability* provides some illustrations of funding measures that could be relevant as well as the areas where funding is needed.

Recommendation 6: Provide adequate funding and improve affordability

[…] Adequate and sustainable funding of publicly provided services is needed to ensure that they reach all targeted beneficiaries and that good quality services are provided. Contracting out service provision, fostering public-private partnerships, […] and devolving budgets to persons with disabilities for consumer-directed care can contribute to better service provision.

During the development of the national disability strategy and related action plans, the affordability and sustainability of the proposed measures should be consider and adequately funded […].

To improve the affordability of goods and services for people with disabilities and to offset the extra costs associated with disability, […] consideration should be given to expanding health and social insurance coverage, […] ensuring that poor and vulnerable people with disabilities benefit from poverty-targeted safety net programmes, and introducing fee-wavers, reduced transport fares, and reduced import taxes and duties on assistive technologies.

C. Inclusive services

Service delivery as a complement to law, policy and budget reform

Law and policy are very important elements in ensuring that the Convention is translated into the national legal and political order. However, they should be accompanied by practical measures to turn standards into reality for persons with disabilities. Through service delivery, State and non-State service providers can ensure that persons with disabilities have access to the facilities, goods and services that they are entitled to, according to the Convention.

Relevant sectors

Service delivery relates to many of the Convention's articles, including:

- ✓ Situations of risk and humanitarian emergencies (art. 11)
- ✓ Supported decision-making (art. 12)
- ✓ Administration of justice (art. 13)
- ✓ Support for victims of violence and abuse (art. 16)
- ✓ Support for independent living (art. 19)
- ✓ Facilitation of access to mobility aids, devices, technologies and live assistance (art. 20)

- ✓ Provision of information in accessible formats (art. 21)
- ✓ Provision of reproductive health services (art. 23)
- ✓ Support, including individualized support, within the general education system (art. 24)
- ✓ Provision of health services and health care (art. 25)
- ✓ Provision of habilitation and rehabilitation services and programmes (art. 26)
- ✓ Support for inclusive employment and vocational training (art. 27)
- ✓ Provision of access to services, devices and other assistance to ensure an adequate standard of living and social protection (art. 28)
- ✓ Support for political participation, including voting (art. 29)
- ✓ Access to recreational, tourism, leisure and sporting activities (art. 30).

Service delivery in the light of the Convention

Service delivery existed well before the adoption of the Convention. However, it needs to comply with the principles and standards laid down in the Convention if it is to contribute to the Convention's effective implementation. This means that service delivery must meet the general principles in article 3 of the Convention: for example, services should not discriminate on the basis of disability, they should respect the equality between men and women, promote individual autonomy as well as ensure the participation and inclusion of persons with disabilities. Service delivery which reinforces the segregation of persons with disabilities would, on the face of it, not be in compliance with the Convention.

In addition, service delivery should comply with the specific standards in the Convention's substantive articles. For example, under article 25 on the right to health, health professionals should provide health care to persons with disabilities on an equal basis with others, including on the basis of free and informed consent. Forced treatment for example, where this occurs on the basis of disability, would not be in compliance with the Convention.

Achieving inclusive services for persons with disabilities

Achieving inclusive and non-discriminatory services for persons with disabilities in compliance with the Convention does not necessarily mean that the same services are necessary for everyone at all times. As with other aspects of the Convention, service delivery requires a two-track approach. At times, the Convention requires access to mainstream services on an equal basis with others. At other times, specific support might be needed for persons with disabilities so that they can enjoy the same rights as persons without disabilities.

Three forms of services are needed to implement the Convention:

- **Mainstream services:** these refer to services that are used by and designed for the whole population. In such cases, it is important that the services are inclusive of and accessible to persons with disabilities. Indeed, accessibility is crucial: by ensuring that facilities, goods, services, transport, information and technology are accessible, many persons with disabilities can enjoy their rights and live independently in the community in the same way as persons without disabilities. Some examples of mainstream services are:

  - Inclusive education
  - Primary health care made fully accessible (information, communication and physical environment).

- **Support services:** these refer to services that contribute directly to overcoming barriers facing persons with disabilities and are meant to strengthen their participation in mainstream society. In other words, while access to mainstream services ensures that the same services are accessible to all persons with or without a disability, access to support services requires services tailored to persons with disabilities (but not persons without disabilities). Examples include:
  - Provision of wheelchairs and mobility aids to enable a person with a mobility impairment to access the community
  - Personal assistance to support someone in his or her daily tasks
  - Support for legal decision-making to help persons with disabilities enter into contracts, write wills, etc. on an equal basis with others.
- **Specific services:** these services either prepare persons with disabilities for inclusion into mainstream society or at times replace mainstream or support services if the person cannot be fully accommodated in the community. In such cases, the services should always target inclusion and not isolation. For example:
  - Day care for people with severe intellectual disabilities.

Actors involved in service delivery

Many actors are involved in delivering services—mainstream, support or specialized—to persons with disabilities:

- ✓ Government service providers, including at the local or municipal level
- ✓ Those working in the administration of justice, including lawyers, judges, prison staff, the police, public interest litigators, etc.
- ✓ Private enterprise service providers
- ✓ Non-governmental service providers, e.g., not-for-profit organizations/NGOs
- ✓ The media
- ✓ Health professionals
- ✓ Education professionals
- ✓ Labour inspectors
- ✓ Trade unions
- ✓ Employers' associations.

The role of the State

For law and policy reform, the State clearly has the lead role, but in service delivery the private sector, national and international civil society as well as the State are involved. At the level of the State, the central Government has a regulatory role and also a service provision role, but other levels of government, particularly municipal/local, have a role to play, too.

What then is the role of the State?

The duty of the State is paramount: Human rights law identifies the State as the primary duty-bearer to promote, protect and ensure the implementation of the Convention.

The State must:

1. **Fulfil its duties as primary duty-bearer:** The duties under the Convention fall first and foremost on the State. The entire Convention establishes duties on the State to promote, protect and ensure the rights of persons with disabilities. This does not mean

that the State must provide services itself. For this reason, the Convention uses terms such as the State undertakes "to promote" or "to encourage" or "to facilitate" the provision of services. However, at times, the State must provide services—for example, in outlying regions or unprofitable areas where private business might not be active or which the not-for-profit sector might be unable to reach.

2. **Regulate the private sector:** Where private actors supply services, the State need not duplicate these services, however, it still has a duty to regulate the private organizations that supply services. The Convention recognizes this, especially in article 4 (1):

   States Parties undertake … (e) to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.

   The broad understanding of "discrimination" in the Convention means that the State duty to regulate the private sector (including private individuals) goes beyond regulating only direct discrimination. It should also regulate indirect discrimination (for example, where persons with disabilities are effectively excluded because facilities are inaccessible or relevant services are not offered).

   The Convention also refers to specific areas where the State should regulate the private sector:

   ✓ **Accessibility** (art. 9): *States Parties shall also take appropriate measures to: Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;*

   ✓ **Freedom of expression and access to information** (art. 21): *States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion by urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;*

   ✓ **Health** (art. 25): *States Parties shall require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;*

   ✓ **Employment** (art. 27): *States Parties shall promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.*

3. **Regulate different levels of government:** The central Government must also regulate its own service provision and that of other levels of government. Article 4 (1) (d) requires the State *to ensure that public authorities and institutions act in conformity with the present Convention*. Public authorities should be understood in broad terms to include authorities across different ministries in the central Government but also, as noted previously, to all parts of the State, including the provincial and local levels.

The *World Report on Disability's* recommendations on services

The *Report* includes two recommendations relevant to service delivery:

Recommendation 1: Enable access to all mainstream systems and services

People with disabilities have ordinary needs – for health and well-being, for economic and social security, to learn and develop skills […]. These needs can and should be met in mainstream programmes and services. Mainstreaming not only fulfils the human rights of persons with disabilities, it is also more effective.

Mainstreaming is the process by which Governments and other stakeholders ensure that persons with disabilities participate equally with others in any activity and service intended for the general public, such as education, health, employment, and social services. Barriers to participation need to be identified and removed, possibly requiring changes to laws, policies, institutions, and environments.

Mainstreaming requires a commitment at all levels, and needs to be considered across all sectors and built into new and existing legislation, standards, policies, strategies, and plans. Adopting universal design and implementing reasonable accommodations are two important strategies. Mainstreaming also requires effective planning, adequate human resources, and sufficient financial investment – accompanied by specific measures such as targeted programmes and services to ensure that the diverse needs of people with disabilities are adequately met.

Recommendation 2: Invest in specific programmes and services for people with disabilities

In addition to mainstream services, some people with disabilities may require access to specific measures, such as rehabilitation, support services, or training. Rehabilitation – including assistive technologies such as wheelchairs, hearing aids […] – improves functioning and independence. A range of well-regulated assistance and support services in the community can meet needs for care, enabling people to live independently and to participate in the economic, social, and cultural lives of their communities. Vocational rehabilitation and training can open labour market opportunities.

While there is a need for more services, there is also a need for better, more accessible, flexible, integrated, and well-coordinated multidisciplinary services, particularly at times of transition such as between child and adult services. Existing programmes and services need to be reviewed to assess their performance and make changes to improve their coverage, effectiveness, and efficiency. The changes should be based on sound evidence, appropriate in terms of culture and other local contexts, and tested locally.

D. Awareness-raising and training

Awareness-raising, including training, is another important implementation measure. As disability is the result of the interaction between impairment and an unwelcoming environment—environment refers not only to the physical environment but also to unwelcoming attitudes and negative or inaccessible information in society—awareness-raising and training about the Convention are essential if the environment is to be changed.

Awareness-raising

Article 8 is specifically devoted to awareness-raising, setting out a whole range of measures that State parties should take, in particular to:

- ✓ Raise awareness throughout society, including the family, to foster respect for rights
- ✓ Combat stereotypes, prejudices and harmful practices
- ✓ Promote awareness of the capabilities and contributions of persons with disabilities.

This can be done through public awareness campaigns, the education system, the media and awareness-training programmes.

Other articles require State parties to provide information to persons with disabilities, which is also a form of awareness-raising. For example, States undertake to:

- ✓ Provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies as well as other forms of assistance, support services and facilities (art. 4);
- ✓ Provide to persons with disabilities information and education on how to avoid, recognize and report instances of exploitation, violence and abuse (art. 16);
- ✓ Ensure access to age-appropriate information, reproductive and family planning education (art. 23);
- ✓ Provide early and comprehensive information to children with disabilities and their families to ensure that children with disabilities have equal rights with respect to family life (art. 23).

Training

Article 4 underlines the importance of training. The State is required to **promote the training** of professionals and staff working with persons with disabilities in relation to the rights in the Convention so as to provide better assistance and services.

The Convention promotes training in the broader community, for instance of professionals as well as of persons with disabilities. For the former, it promotes:

- ✓ Training for stakeholders on accessibility issues (art. 9)
- ✓ Training for those working in the field of administration of justice, including police and prison staff (art. 13)
- ✓ Training in mobility skills to specialist staff working with persons with disabilities (art. 20)
- ✓ Training to professionals and staff who work at all levels of education (including disability awareness and the use of appropriate augmentative and alternative modes of communication, educational techniques and materials to support persons with disabilities) (art. 24)

- ✓ Training of health professionals and the promulgation of ethical standards for public and private health care (art. 25)
- ✓ Training for professionals and staff working in habilitation and rehabilitation services (art. 26)
- ✓ Training through international cooperation (art. 32).

Training for the latter—beyond the right to education itself—is referred to as follows:

- ✓ Training in mobility skills (art. 20)
- ✓ Vocational and continuing training (arts. 24 and 27)
- ✓ Training to ensure access to assistance by persons with disabilities and their families living in situations of poverty (art. 28)
- ✓ Training so that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities (art. 30).

The *World Report on Disability*'s recommendations on awareness-raising

The *Report* identifies two recommendations which are relevant to implementing the Convention's provisions on awareness-raising and on training.

Recommendation 5: Improve human resource capacity

[…] Human resource capacity can be improved through effective education, training, and recruitment. A review of the knowledge and competencies of staff in relevant areas can provide a starting point for developing appropriate measures to improve them. Relevant training on disability, which incorporates human rights principles, should be integrated into current curricula and accreditation programmes. In-service training should be provided to current practitioners providing and managing services. For example, strengthening the capacity of primary health-care workers, and ensuring availability of specialist staff where required, contribute to effective and affordable health care for people with disabilities.

Many countries have too few staff working in fields such as rehabilitation […]. Developing standards in training for different types and levels of […] personnel can assist in addressing resource gaps. […] Measures to improve staff retention may be relevant in some settings and sectors.

Recommendation 7: Increase public awareness and understanding of disability

Mutual respect and understanding contribute to an inclusive society. Therefore it is vital to improve public understanding of disability, confront negative perceptions, and represent disability fairly. […]

Collecting information on knowledge, beliefs and attitudes about disability can help identify gaps in public understanding that can be bridged through education and public information. Governments, voluntary organizations, and professional associations should consider running social marketing campaigns that change attitudes on stigmatized issues such as HIV, mental illness, and leprosy. Involving the media is vital to the success of these campaigns and to ensuring the dissemination of positive stories about persons with disabilities and their families.

E. Research and development

Research has had an important impact on the lives of persons with disabilities. Technological innovations based on the principle of universal design are helping them lead independent lives in the community. Statistics and data collection are helping the State and others to understand the barriers facing them so that implementation measures can be better targeted.

The Convention refers to research-related measures in several areas:

- ✓ **Universally designed goods, services, equipment and facilities:** article 4 requires States to undertake or promote research and development of universally designed goods, services, equipment and facilities, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities. The obligation extends to promoting the availability and use of universally designed goods and services and the promotion of universal design through the development of standards and guidelines;
- ✓ **New technologies, including information and communication technologies, mobility aids, devices and assistive technologies:** article 4 also requires States to undertake or promote research and development of new technologies and to promote their availability and use;
- ✓ **For policy formulation:** article 31 (statistics and data collection) requires States to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention.

Finally, at the international level, State parties collectively have a duty to facilitate cooperation in research and access to scientific and technical knowledge (art. 32).

The *World Report on Disability's* recommendations on research

The *World Report on Disability* includes two relevant recommendations in this regard:

Recommendation 8: Improve disability data collection

Internationally, methodologies for collecting data on people with disabilities need to be developed, tested cross-culturally, and applied consistently. Data need to be standardized and internationally comparable for benchmarking and monitoring progress on disability policies, and for the implementation of the [Convention] nationally and internationally.

Nationally, disability should be included in data collection. Uniform definitions of disability, based on the [International Classification of Functioning], can allow for internationally comparable data. […] As a first step, national population census data can be collected in line with recommendations from the United Nations Washington Group on Disability and the United Nations Statistical Commission. A cost-effective and efficient approach is to include disability questions – or a disability module – in existing sample surveys […]. Data need to be disaggregated by population features […] to uncover patterns, trends, and information about subgroups of persons with disabilities.

Dedicated disability surveys can also gain more comprehensive information on disability characteristics, such as prevalence, health conditions associated with disability, and use of and need for services including rehabilitation.

Recommendation 9: Strengthen and support research on disability

Research is essential for increasing public understanding about disability issues, informing disability policy and programmes, and efficiently allocating resources.

[The World Report on Disability] recommends several areas for research on disability including: the impact of environmental factors (policies, physical environment, attitudes) on disability and how to measure it; the quality of life and well-being of people with disabilities; […] what works in overcoming [barriers] in different contexts; […].

[…] A critical mass of trained researchers on disability needs to be built. Research skills should be strengthened in a range of disciplines, including epidemiology, disability studies, health and rehabilitation, […] education, economics, sociology, and public policy. International learning and research opportunities, linking universities in developing countries with those in high-income and middle-income countries, can also be useful.

F. Monitoring

While not always thought of as an implementation measure, monitoring too has a key role. Through monitoring, it is possible to see which implementation measures have worked and which have not. It helps to refine laws and policies and other implementation measures, and ensure that budgets are used optimally. It also helps to uncover human rights breaches so that remedies can be granted to victims and, it is hoped, further breaches prevented.

Paramount is the process of State parties reporting to the Committee on the Rights of Persons with Disabilities. Civil society and national human rights institutions can also provide information to the Committee through what are called alternative reports. Module 7 examines State reports and alternative reports in detail.

In addition to monitoring at the international level, monitoring can also be national. According to the OHCHR *Manual on Human Rights Monitoring*,[11] "human rights monitoring" is a broad term describing the active collection, verification, analysis and use of information to assess and address human rights concerns. Monitoring takes place over a protracted period of time. The term "monitoring" also includes the collection, verification and use of information to address human rights problems raised in relation to laws, policies, programmes and budgets and other interventions.

Several aspects of this definition are worth highlighting:

- Monitoring is a *process*: from collection to verification to the use of information.
- Information collection can relate to many *situations*: one-off situations, such as incidents or events; or ongoing situations, such as service delivery in psychiatric hospitals, schools, an inaccessible workplace and so on.
- Monitoring is not just about situations, but also about *laws, policies and budgets*. Given that the ratification of a human rights treaty requires changes to laws and policies, it is important that monitoring also includes the review of laws, policies and strategies as well as budgets to identify the extent to which they reflect the norms and standards in the treaty.
- Monitoring involves several *actors*. Human rights monitoring concerns both the situation of rights and rights-holders, as well as the respect for duties and the situation of duty-bearers. Consequently, monitoring should involve not only persons with disabilities whose rights might be affected, but also government actors (staff at ministries, local authorities and others) so that: (a) the level of respect for duties is understood; and (b) all sides of the story are examined and information is verified.
- Monitoring has a *purpose*. The information gathered through monitoring should be used to improve the respect for rights and duties. If there has been a breach of a right, the information should seek to provide solutions and remedies for the vic-

[11] Professional Training Series No. 7/Rev.1 (United Nations publication, forthcoming).

tim and help government actors fulfil these rights in the future.

– Monitoring can occur at different *stages*. Monitoring generally starts with the collection of primary information or information direct from the source. However, monitoring can also occur through the use of secondary sources. For example, the Committee on the Rights of Persons with Disabilities undertakes monitoring on the basis of State parties' periodic reports and the alternative reports submitted by civil society and national human rights institutions.

Monitoring focuses mainly on:

– **Laws, policies, budgets, programmes**. The Convention requires the review and, generally, the reform of a range of laws, policies and strategies: for example, ensuring that anti-discrimination laws protect against discrimination on the basis of disability and that other laws, such as those on health, education or construction, do not discriminate on the basis of disability. In addition, given that the Convention requires the appropriate allocation of resources, budgets can also be monitored. In addition, programmes and strategies, such as national development strategies or strategies related to humanitarian emergencies, have great potential to affect the rights of persons with disabilities, depending on the extent to which they mainstream disabilities. All of these may be monitored.

– **Incidents and events** can lead to individual violations of human rights and it is important that these should be monitored. Such data might come directly from victims. Data might also come from media accounts and other sources, including legal proceedings. This is a traditional focus of human rights monitoring.

– **Situations and places**. At times, there are particular situations, such as service provision, or places, such as institutions, which could give rise to human rights problems. The level of accessibility of schools might be monitored to identify the principal barriers to inclusive education. Surveys of employers might identify the issues that need to be addressed to ensure inclusive employment and the provision of reasonable accommodation in the workplace. Even where allegations of individual violations have not emerged (events), monitoring might uncover violations or help prevent them.

Anyone can monitor the situation of the rights of persons with disabilities. However, certain actors have particular responsibilities:

- **States**. As noted above, the State has an obligation to report to the Committee on the measures it has adopted to implement the Convention.
- **NHRIs**. Under article 33, NHRIs have a role to promote, protect and monitor the provisions of the Convention. This function is discussed in greater detail in module 6. Here, it is important to underline that these institutions have to conform to the Paris Principles, which means that they have to have competency to submit reports to the Government, parliament and others on issues such as: conformity of laws to human rights standards; any situation where a human rights violation

has occurred; the national human rights situation; its opinion on government reactions to reports on the human rights situation. National preventive mechanisms under the Optional Protocol to the Convention against Torture should consider including the rights of persons with disabilities within the scope of their monitoring activities.

- **Civil society/DPOs**. According to article 33 (3), civil society, and particularly persons with disabilities and their representative organizations, shall be involved and participate fully in monitoring the Convention. This means that they should be involved in the monitoring organized, for instance, by the independent mechanism or by the Government. In addition, civil society, particularly persons with disabilities and their representative organization, should, in its own capacity, monitor and defend the rights of persons with disabilities.

- **Other civil society actors**. Article 33 (3) refers to civil society generally. Civil society organizations that are not DPOs also have a role in monitoring. For example, when monitoring the broader human rights situation, human rights NGOs should ensure that they also monitor the rights of persons with disabilities. A failure to do so could result in the exclusion of persons with disabilities from the post-monitoring phase as solutions and remedies are identified and implemented.

- **Intergovernmental organizations**. Some intergovernmental organizations have a monitoring role. This is particularly the case for stand-alone OHCHR field offices and human rights components of peace missions. Several field presences, such as those in Timor-Leste and Sierra Leone, are actively involved in monitoring aspects of the Convention. In addition, regional organizations, such as Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, monitor elections and it is important to ensure that these activities also take into account the rights of persons with disabilities.

As set out in article 31 on data collection and statistics, by collecting appropriate information, including statistical and research data, States are enabled to formulate and implement policies to give effect to the Convention. The Convention's implementation can be stepped up through evidence-based policy implementation, based on domestic monitoring and reporting, as well as on reports to the Committee and the Committee's concluding observations.

MODULE 5 – DISCRIMINATION ON THE BASIS OF DISABILITY

Introduction

Discrimination refers to the act of treating someone or something differently and is not necessarily negative. To say that someone is discriminating can mean that the person has good taste or judgement. However, discrimination can also mean that someone treats certain people unfairly because of those persons' characteristics. It is this second meaning of discrimination which concerns human rights law.

The Universal Declaration of Human Rights recognizes that: *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.* This simple statement has been repeated in national laws and constitutions and regional and United Nations treaties. But what does it mean in practice? Discrimination can occur in many forms: very open, laid down in law or hidden. It is often the result of prejudices, economic and social disparities, and religious and cultural misconceptions. If we are to combat discrimination, we have to combat these negative attitudes.

Discrimination on the basis of disability today affects a large portion of the world's population. It is one of the main problems persons with, or associated with, disabilities face. It manifests itself in different forms and can have disastrous effects on their lives and, by extension, on the rest of society. According to the Committee on Economic, Social and Cultural Rights, in its general comment No. 5 (1994):

> […] **discrimination against persons with disabilities** [has] a long history and [takes] various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more "subtle" forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. […] Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. **The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services**. (emphasis added)

While the general comment focused specifically on economic, social and cultural rights, the same is true for civil and political rights. For example, in many countries, some persons with disabilities are still denied the right to vote as well as legal capacity to

marry or enter into contracts to buy or sell property.

It is difficult to discuss discrimination without also considering the concept of equality. In human rights law, non-discrimination and equality are really two sides of the same coin. By combating discrimination, we hope to combat the underlying factors in society that lead to inequality. And if we deal with the factors leading to inequality, we hope to prevent discrimination.

However, the relationship between non-discrimination and equality raises confusion over what is meant by "equality". When we refer to the term "equality", we often think of things that are the same, identical or equivalent. However, when we talk about equality in the context of human rights, we are not necessarily saying that all people are identical or the same. Rather, we are saying that everyone has the same rights. In order to ensure that everyone has the same rights, two people might at times have to be treated differently because of their inherent difference (such as different sex, different linguistic heritage, different minority status or different impairments).

Treating two people differently in this way can lead to confusion and also to claims of discrimination. But this is not discrimination. It is merely an acknowledgement that people are different but that they have the same rights; to make equality a reality, different strategies might be needed for different people.

A. Forms of prohibited discrimination

There is a range of concepts that underlie non-discrimination law which are important to understand.

De jure and de facto discrimination

De jure discrimination (discrimination in law)

Human rights law prohibits discrimination in law. In some countries, electoral legislation sets out that persons with mental disabilities placed under guardianship are not allowed to vote. Under international human rights law, this is an example of discrimination on the basis of disability. It is a distinction, in law, made on the basis of mental disability that has the purpose as well as the effect of nullifying the recognition of the right to vote for some persons with disabilities.

De facto discrimination (discrimination in practice)

Protection against discrimination goes beyond only prohibiting discrimination in law and includes protection from discrimination in practice. For example, it protects against the actions of employers who make decisions based on stereotypes or assumptions about the abilities or performance of staff with disabilities. An employer who refuses to promote a person with a disability because of a belief that the disability will prevent the person from fulfilling the duties of the post without any evidence that this is in fact the case is, on the face of it, discriminating de facto. It is a distinction on the basis of disability which has the purpose and effect of impairing the right to work (including career advancement).

Direct and indirect discrimination

Direct discrimination

Direct discrimination occurs when an individual is treated less favourably than

another person in a similar situation for a reason related to disability. Thus, a refusal to accept a student with a disability in the general education system amounts to direct discrimination. Imagine the following scenario: a company has a policy of not hiring anyone with a history of back problems irrespective of the duties of a position. The policy unlawfully discriminates against people with a disability who can meet the inherent requirements of the job. They are being treated less fairly than other job applicants on the basis of a disability.

Indirect discrimination

Indirect discrimination refers to laws, policies or practices which appear neutral, but fail to take into account the particular circumstances of persons with disabilities—which therefore causes direct harm or has a disproportionate impact on the exercise of their rights. For example, an inflexible requirement in the workplace that all employees have lunch at the same time might constitute discrimination against a person with a disability who has to take medication at a certain time or take periodic rests during the day. While the requirement, on the face of it, applies to all staff and does not refer to persons with disabilities, its effect is discriminatory. Combating indirect discrimination helps get to the underlying biases within society that cause discrimination and exclusion in the first place. It is important to note that indirect discrimination can sometimes be hard to prove.

Multiple forms of discrimination

The Convention's preamble recalls the "difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status". For example, a woman with disabilities might experience discrimination on the basis of sex as well as disability.

Imagine an internally displaced woman fleeing a war. She is very poor, belongs to an ethnic minority and has a physical disability. In many countries affected by conflicts and humanitarian crises this scenario is familiar. The woman could be subject to multiple forms of discrimination owing to her sex and social conditions as well as her disability. Women are often vulnerable to sexual violence during conflict. Persons with disabilities are also often subject to sexual violence because they are hidden or ignored and might face greater challenges in communicating. As a result, women with disabilities might face multiple risks of sexual violence during conflict, particularly if preparedness strategies fail to take them into account.

Systemic discrimination

Unfortunately, much discrimination is systemic. The charity and medical approaches to disability are still very entrenched in all societies and at all levels. Systemic discrimination takes time to change. Partly as a means of tackling systemic discrimination, article 8 of the Convention requires States to raise awareness about persons with disabilities and to foster respect for their rights and dignity.

Discrimination by association

Persons without disabilities "associated" with a person with disabilities can also be victims of discrimination on the basis of disability. Consider the case of a woman who was dis-

missed from her job when her employer discovered that she had a hearing-impaired son. The employer assumed that she would need time off work to look after him. Even though she does not have a disability herself, she suffers discrimination on the basis of her son's disability. In other words, there was a distinction on the basis of disability which had the effect of nullifying the woman's right to work.

Harassment

Harassment occurs when an individual is subjected to comments, ridicule or any other demeaning conduct on the basis of disability. Legislation should protect against harassment. Article 27 (b) of the Convention refers expressly to protection against harassment related to work and employment. For example, a supervisor who consistently makes someone with a disability do menial tasks at work while others with the same qualifications without a disability have more complicated and interesting tasks could be subjecting the staff member with a disability to harassment.

Justified differential treatment

While all discrimination is prohibited, in some cases, it is permissible to treat two people differently on the basis of disability. Consider the following case: a man who has severe back pain and is unable to bend is rejected for a job as a carpet fitter as he cannot carry out the essential requirement of the job, which is to fit carpets.

Not every differentiation of treatment constitutes discrimination. The criteria for assessing *justified* differential treatment are found in other areas of human rights law:

(a) The criteria for such differentiation must be *reasonable and objective*; and

(b) The aim of the differential treatment must be to *achieve a legitimate purpose*, in other words, a purpose that is consistent with human rights principles.

If a person cannot perform a job and no reasonable accommodation is possible, then differential treatment is justifiable.

B. The definition of discrimination in the Convention

The Convention defines discrimination in article 2 as follows:

> *"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.*

To help understand this definition, it is important to break it down.

Distinction, exclusion or restriction

Discrimination means any *distinction*, as well as *exclusion* or *restriction* made on the basis of disability. Consequently, the acts that constitute discrimination can be quite varied.

- A "distinction" might be an explicit differentiation between two people on the basis of disability. For example, if children with certain intellectual impairments are subject to forced sterilization

while other children are not, this is a discriminatory distinction.

- An "exclusion" refers to a situation where a person, on the basis of disability, cannot enter a particular space or participate in a particular activity. A policy that does not allow a child with a disability to enter mainstream education is an exclusion which could amount to discrimination.
- A "restriction" refers to a limitation on the right of people to participate in certain aspects of civil, cultural, economic, political or social life. For example, a law stating that persons with intellectual disabilities cannot, prima facie, vote in national elections could amount to a discriminatory restriction.

On the basis of disability

The Convention refers to "discrimination on the basis of disability". This goes further than "discrimination against persons with disabilities" as the focus is not only on protecting persons with disabilities but on combating (and ultimately eliminating) discrimination itself, whether against persons with disabilities or anyone else. Consequently, discrimination on the basis of disability is not targeting only persons with disabilities but also people who, for different reasons, are associated with persons with disabilities (discrimination by association).

This mirrors the Convention's social/human rights approach to disability. Rather than "protecting persons with disabilities", which could be a charity approach in certain situations, the Convention seeks to combat discrimination, i.e., the negative attitudes and environment that can put persons with disabilities in a vulnerable or marginalized situation. This is in order to get to the heart of the problem. If someone suffers discrimination on the basis of a perceived disability, this is evidence that prejudice exists and human rights law seeks to tackle these negative attitudes. In doing so, we can imagine a world without discrimination.

Purpose or effect

Article 2 clarifies that such distinctions, exclusions or restrictions are violations if they have:

(a) The *purpose* (discriminatory intention); or

(b) The *effect* (the objective outcome, *whether this was the intention or not*),

of impairing or nullifying the recognition, enjoyment or exercise of all rights for/by persons with disabilities.

There does not need to be an *intention* to discriminate for discrimination to occur. The focus is on the experience of the person suffering the discrimination. Thoughtlessness and neglect can have the same or an even worse discriminatory effect than an intended discriminatory act.

The reference to purpose and effect highlights the fact that the Convention prohibits both *direct* and *indirect* discrimination. While some acts lead directly to discrimination—for example, restricting the right to vote for persons with intellectual disabilities—much discrimination occurs by treating two persons in different situations in the same way. So building a staircase at the entrance of a hospital is treating persons with and without disabilities in the same way, but the result is discriminatory, as a person in a wheelchair

cannot enter the hospital while a person who can walk is able to enter. While on the surface there does not appear to have been any discrimination (the hospital is open to all) the effect can be discriminatory. The Convention prevents this *indirect discrimination* as well.

Recognition, enjoyment or exercise

Protection from discrimination extends not only to the recognition of the rights of persons with disabilities, for example, in laws, but also the enjoyment of their rights (such as the benefit of freedoms without hindrance, e.g., freedom from abuse or torture) and their exercise (such as the capacity to take steps to attain a right, e.g., entering a school and getting an education or deciding to refuse certain medications). This recalls the prohibition in other areas of human rights law of both de jure (discrimination in laws and policies) as well as de facto discrimination (discrimination in practice).

Enjoyment of human rights "on an equal basis with others"

The Convention does not seek to create new rights for persons with disabilities. Instead, it seeks to combat discrimination, i.e., those barriers and attitudes that prevent persons with disabilities from enjoying their rights. The ultimate aim is that everyone, whether with or without disabilities, can enjoy the same human rights.

All human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field

The Convention combats discrimination in relation to all human rights, whether civil, cultural, economic, political or social, and in any field. In the past and still today, some people and even States have tended to prioritize some rights over others. For example, during the cold war, States with a market economy often put greater emphasis on civil and political rights, while States with a centrally planned economy tended to focus on economic, social and cultural rights. In the context of disability, there has traditionally been a greater focus on protecting economic, social and cultural rights, and civil and political rights have been given less attention. The Convention clearly states that the protection against discrimination covers *all* rights in *all* fields.

Denial of reasonable accommodation

The definition recognizes denial of reasonable accommodation as a form of discrimination. To promote equality and eliminate discrimination, State parties must take all appropriate steps to ensure that reasonable accommodation is provided.

"Reasonable accommodation" means, for example, making adaptations to the organization of a work environment, an educational establishment, a health-care facility or transport service so as to remove the barriers that prevent an individual with a disability from participating in an activity or receiving services on an equal basis with others. At work, this might involve physical changes to premises, acquiring or modifying equipment, providing a reader or interpreter, giving appropriate training or supervision, adapting testing or assessment procedures, altering standard working hours or allocating some of the duties of a position to another person.

While the Convention requires the particular needs of an individual with a disability to be accommodated, it refers to *reasonable* accommodation. If the accommodation

imposes a disproportionate or undue burden on the person or entity expected to provide it, then failure to do so would not constitute discrimination.

In a number of countries, legislation sets out the factors that should be taken into account when assessing whether the accommodation requested amounts to a disproportionate burden. These include:

- The practicability of the changes required;
- The cost;
- The nature, size and resources of the entity expected to provide it;
- The availability of other financial support;
- Occupational health and safety implications; and
- The impact on the entity's operations.

Reasonable accommodation is a modification made in favour of and at the request of an individual. Thus, an employee who has a car accident and requires certain modifications to continue working can request reasonable accommodation of the employer. *This is different from general accessibility measures under article 9* of the Convention which are not necessarily targeted at individuals (although individuals obviously benefit) but at the community at large. While States must achieve general accessibility over time, an individual can request reasonable accommodation immediately and lodge a complaint with a tribunal if it is not made.

The Convention imposes the burden to ensure reasonable accommodation on States. However, given that much of it is needed in the private sector, States should oblige the private sector, through legislation, to provide reasonable accommodation.

C. Manifestations of discrimination

Persons with disabilities have long faced different forms of discrimination, but the hope is that the adoption of the Convention will reduce this discrimination worldwide.

Persons with disabilities have been considered abnormal beings, manifestations of evil or unnatural curiosities. They have been executed, segregated or forced to undergo medical experiments. They have been subjected to ridicule and cruel amusement and seen as bad omens. In many cases, they have been considered inferior beings equal only in the eyes of God and as such deserving sympathy and pity.

Discrimination evolves but does not necessarily decrease. In 2006, on the adoption of the Convention, United Nations Secretary-General Kofi Annan stated:

> Too often, those living with disabilities have been seen as objects of embarrassment, and at best, of condescending pity and charity. … On paper, they have enjoyed the same rights as others; in real life, they have often been relegated to the margins and denied the opportunities that others take for granted.

Consider some examples:

- *The annihilation of the "unfit"*: discrimination and the right to life. One of the most serious forms of discrimination on the basis of disability was perpetrated in the twentieth century during the Nazi

regime. It targeted persons with mental and physical disabilities, like other groups considered inferior, and subjected them to annihilation, experimentation, sterilization and other brutalities. Sterilization and euthanasia programmes were carried out against the mentally or physically "unfit". Individual cases were presented in front of public health officers, who decided whether or not to carry out forced sterilization. The Interior Ministry also required doctors and midwives to report all cases of newborns with severe disabilities. Children under the age of three with illnesses or disabilities such as Down's syndrome, hydrocephalus, cerebral palsy or "suspected idiocy" among others were targeted. Around 250,000 disabled people were killed and some 450,000 sterilized during this period.

- Other States, too, adopted legislation and policies authorizing sterilization. Thousands of persons with disabilities were sterilized by force. Sterilization practices were based on eugenic theories, very popular at the beginning of the twentieth century, which promoted race quality control, reproduction of selected people and traits, and repression of undesired groups.
- *Denial of legal capacity*: discrimination and equal recognition before the law. Legal systems around the world have considered disability as a lawful ground for not recognizing persons with intellectual, mental or sensory disabilities as persons before the law—and many still do. In practice this denies these persons a wide range of human rights such as the capacity to make decisions, sign contracts, vote, get married, inherit property, administer personal goods, defend rights in court or choose medical treatments. Guardians sometimes fail to act in the interest of the persons with disabilities they are representing. They may even abuse their positions of authority and violate the rights of others. When legal capacity is lacking, forced medical interventions (drugs, surgery and sterilization) and medical experiments can be carried out without free and informed consent. Women and girls with intellectual disabilities, for example, are often subjected to forced sterilization.
- *Deprivation of liberty on the basis of disability.* Disability has been considered as a lawful ground to deprive persons with disabilities of their liberty. By declaring that they may be dangerous to themselves or others or be in need of care, the State can commit them, sometimes for their entire lives. Laws and policies have been enacted on the assumption that persons with disabilities are better off in institutions. In other cases persons with disabilities are segregated from society and kept at home.
- *Disability and gender: multiple forms of discrimination.* Men and women have different experiences of disability; women with disabilities can be discriminated against on two grounds: sex *and* disability. For instance, in rural areas women and girls with disabilities sometimes have very limited access to education at any level and few opportunities to earn a living. Schools, roads and transport are often inaccessible. Parents might therefore not be able to send children with disabilities to school. In addition, these barriers might be exacerbated by gender-based discrimination in communities where attitudes already discourage girls from going to

school. The result can be high illiteracy among girls with disabilities and a missed childhood, since they have no interaction with other children in an educational environment.

- *Discrimination and the right to education*. Children with disabilities have been excluded from education and may even be considered uneducable. Some have argued that people with certain disabilities (mental, learning and even physical) cannot be educated in mainstream schools. Often these decisions are taken without investing in experts or teachers able to support or ensure peer learning between children with and without disabilities. The result is that children with disabilities are put in special schools, where expectations for excellence are unsatisfactory. Given the prejudice that children with disabilities supposedly obstruct the education of other children, parents of children with disabilities may decide to put their children in special schools or keep them at home. If discrimination is pervasive, taking decisions that go against the overall discriminatory mentality can be seen as risky and ultimately detrimental to the child with disabilities. Yet, giving in only reinforces stigma and discrimination.

- *Specific cultural settings and stigma: discrimination and the right to cultural life*. In some cultural settings, disability can be perceived as a punishment from God, the result of witchcraft or as a shameful failure on the part of the family. This can entail social disapproval, marginalization and even frustration leading to domestic violence. Persons with disabilities, including children, may decide to leave their communities and go to urban areas to gain some independence. However, they may end up begging or being exploited in other ways because they are illiterate or have few job opportunities. Those who cannot move freely may be hidden by their family members or live in the community in very precarious conditions.

  In some rural villages in Haiti, parents giving birth to a child with mental or physical disabilities feel that they have been punished for a sin they committed. The implications are grave: the father may impregnate other women to show he was not responsible for the disability. The child may be kept at home, hidden from the rest of the community.

  In Cambodia many children and adults have lost limbs in landmine explosions, mainly in rural areas. Having a disability is considered socially unfortunate and often forces persons to live on the margins of society. Even today persons with disabilities may be ignored by vendors in the marketplace and have to ask the assistance of someone else to get served.

- *Inaccessibility: discrimination and freedom of movement/independent living*. Physical, informational and technological barriers prevent persons with disabilities from fully participating in society on an equal basis with others. Inaccessibility also relates to negative attitudes in society that perpetuate images of persons with disabilities as being slow, less intelligent or unable to make decisions, for example. A key element to ensure equal rights for persons with disabilities is improving the accessibility of the built environment, information and communications technology, transport and other facilities, goods and services open to the public.

D. Linking non-discrimination with equality: specific measures

Combating discrimination requires more than merely prohibiting it. It also requires getting to the heart of indirect discrimination—changing the underlying biases in society that lead to discrimination in the first place—by promoting equality. For this reason, specific measures are often needed to help achieve equality for persons facing discrimination, including persons with disabilities. Specific measures in favour of a person with a disability are not considered discriminatory; they amount to justified differential treatment. This is recognized in the Convention. Article 5 (4) states:

> *Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.*

The Convention therefore recognizes that to ensure de facto equality with others, it may sometimes be necessary to adopt measures that are specific to persons with disabilities.

Such measures can be permanent—for example, building accessible car parks in urban areas for vehicles carrying persons with disabilities—or temporary—such as employment quotas for workers with disabilities. Both are permissible under the Convention and do not constitute discrimination as defined in its article 2.

At times, specific measures in favour of a particular individual or group might be resented by others, who see them as being unfair or even discriminatory. Yet such measures are permissible only to the extent that they redress the imbalance in the enjoyment of human rights between persons with and without disabilities. Once equality between them is achieved, specific measures are no longer necessary.

The formula provided in article 5 must be read in conjunction with the specific non-discrimination and equality measures that are attached to the broad range of rights contained in the Convention, such as in matters of marriage, family, parenthood and relationships (art. 23), education (art. 24), health (art. 25), employment (art. 27), standard of living and social protection (art. 28), and participation in public and political life (art. 29).

Take the right to work in article 27. State parties to the Convention have committed to employing persons with disabilities in the public sector and to promoting their employment in the private sector, including through affirmative action programmes. These are specific measures that seek to redress the under-employment of persons with disabilities in an area where the State has direct influence, namely its employment policies. By actively seeking to employ persons with disabilities, the State can promote equal enjoyment of the right to work. By requiring or encouraging the private sector to introduce affirmative action programmes, the State can influence employment indirectly.

One type of affirmative action programme is the introduction of quotas—e.g., a requirement that 5 per cent of employees have a disability and the imposition of a fine on the employer who does not respect the quota. The Convention does not require quotas. Quotas have advantages and disadvantages. They might lead to tokenism, with employers recruiting any person with a dis-

ability at any level simply to meet the quota or paying the fine to avoid the measure all together. On the other hand, quotas might be a way to get persons with disabilities into the workplace, which in turn can lead to economic empowerment and the enjoyment of other rights. Given that the Convention refers to affirmative action programmes without specifying what they are, it is advisable to examine what programmes are most likely to lead to sustainable improvements for persons with disabilities and their right to work. In some cases quotas might work, in others not.

The Committee on the Elimination of Discrimination against Women, in its general comment No. 25 (2004) on temporary special measures (art. 4 (1)), identified some measures which could be relevant to identifying specific measures in favour of persons with disabilities. These include:

✓ Outreach and support programmes

✓ Allocation and/or reallocation of resources

✓ Preferential treatment

✓ Targeted recruitment, hiring and promotion measures

✓ Numerical goals connected with time frames

✓ Quota systems.

E. Who is responsible?

When discrimination on the basis of disability occurs, who is actually perpetrating it? And who is responsible?

Here are some examples:

- A passenger changes compartment because she feels uncomfortable sitting close to a passenger with Down's syndrome;
- A family keeps a small child with autism at home because there are no inclusive education opportunities at the local school;
- A private bank denies a loan to a person who has a mental impairment;
- An employee with cerebral palsy requests a change of position in a large corporation and the employer refuses to accommodate her without giving reasons;
- A person with a physical disability is abused at home and reports it to the police, but the police refuse to take action;
- A United Nations humanitarian preparedness plan fails to mention persons with disabilities in a disaster-prone country;
- A person with a visual impairment cannot apply for a position of human rights officer because the vacancy requires a driving licence.

Considering the examples above, who, if anyone, is responsible? The passenger, the family, the bank, management, the human resources section? When it comes to discrimination, different layers of responsibility emerge, but the State is the primary duty-bearer.

States

Both States and regional integration organizations, which are made up of sovereign States, can sign up to the Convention. The Convention lays down specific obligations on State parties to protect, promote and ensure the rights of persons with disabilities.

Moreover, under article 32, States commit to undertaking appropriate and effective measures of international cooperation in support of national efforts for the realization of the Convention. While States have primary responsibility for implementing the rights of persons with disabilities in their jurisdiction, they also have to cooperate with other States. This highlights their extraterritorial responsibilities to promote, protect and ensure the rights of persons with disabilities.

International and regional organizations

This, in turn, raises the question of the responsibility of international and regional organizations, such as the United Nations, the World Bank, the Council of Europe and so on. Article 32 refers to them as partners in international cooperation. Similarly, the specialized agencies and other United Nations organs are entitled to be represented before the Committee on the Rights of Persons with Disabilities. This clearly shows that they have a role in international cooperation to promote the Convention. However, international organizations might themselves discriminate. While their member States are ultimately responsible for avoiding such discrimination, these organizations also have a role to play to support the Convention, even if this role is not clearly defined.

Private enterprises

Rights can be violated through the direct action or omission by State parties, including their national and local institutions or agencies. However, while States are the main duty-bearers under the Convention, those implementing many of its provisions are not State actors but private enterprises. The private sector plays a very important role in the delivery of relevant services (e.g., education, sign translation, mobile telephones with voice-over systems).

According to article 4, State parties must ensure that the private sector respects the rights of persons with disabilities. Consequently, States must ensure that appropriate mechanisms are in place to monitor the private sector and that State policies related to, for instance, education, employment and health integrate the principle of non-discrimination and are adopted by private providers.

Service providers

The Convention also refers to specific services such as support for decision-making (art. 12), personal assistance for independent living (art. 19), teachers (art. 24), health professionals (art. 25). Service providers have an important role in providing the conditions needed by persons with disabilities to fully enjoy their human rights. At the same time, service providers themselves might discriminate against persons with disabilities—intentionally or otherwise. Thus, the State must also take steps to ensure that service providers are aware of and support the Convention, for example, by taking appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille and to train professionals and staff who work at all levels of education.

Individuals and families

Article 4 also requires States to take steps to eliminate discrimination by any person. This includes ensuring adequate penalties and other judicial measures to protect against discrimination. It also requires

"rais[ing] awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities", as set out in article 8.

F. What can these actors do to combat discrimination?

Module 4 sets out the range of measures that assist in the implementation of the Convention: developing laws and policies; ensuring allocation of adequate resources; providing inclusive services; raising awareness and training professionals and others; undertaking research and development; providing remedies; and building institutions. When we consider the various examples outlined in the previous section, it is possible to identify some of the actions these actors can take to combat discrimination.

- *A passenger changes compartment because she feels uncomfortable sitting close to a passenger with Down's syndrome.* While the negative attitude of this woman is potentially creating barriers to the participation of the person with Down's syndrome, this is not strictly speaking discrimination. There has been a distinction on the basis of disability, but this has not impaired the enjoyment of any right of the passenger with Down's syndrome. However, the State might consider raising awareness to promote more inclusive societies and to combat fear of persons who are different;

- *A family keeps a small child with autism at home because there are no inclusive education opportunities at the local school.* The failure to provide inclusive education opportunities has the effect of nullifying the right to education of the child. The State has a duty to ensure inclusive education services are available in the area and also to raise awareness about inclusion. The State should also ensure that laws and policies reflect principles of inclusive education. At the same time, the school board and teachers might have responsibilities to ensure that inclusive education is effective and that parents are aware that such services are in place (if indeed they are);

- *A private bank denies a loan to a person who has a mental impairment.* Whether there has been discrimination here is open to question. In reality, the bank may not specify that the refusal is based on disability, but put forward another excuse to justify the refusal. Moreover, there is no human right to a bank loan. However, the State has a duty to legislate to ensure that private banks do not discriminate on the basis of disability. It should also provide support services so that the person can exercise his or her legal capacity. In such cases, the provision of support might be sufficient to prevent such a situation in the first place, as it would underscore the ability of the person to exercise legal capacity and repay the loan;

- *An employee with cerebral palsy requests a change of position in a large corporation and the employer refuses to accommodate her without giving reasons.* Potentially, there has been a denial of reasonable accommodation that would amount to discrimination. The State has a duty to legislate to ensure that the private sector does not deny reasonable accommodation to the person with a disability. The employer must ensure that accommodation is provided unless it is unreasonable (an undue burden);

- *A person with a physical disability is abused at home and reports it to the police, but the police refuse to take action.* There has been an exclusion on the basis of disability by the police which impairs the right to be free from violence and abuse. The State has a duty to pass laws requiring the police to protect persons with disabilities from violence and abuse and to raise awareness and train the police so that persons with disabilities can access justice;
- *A United Nations humanitarian preparedness plan fails to mention persons with disabilities in a disaster-prone country.* This exclusion could impair or nullify the exercise of a range of human rights in the event of a disaster and has already impaired the right to take part in the conduct of public affairs. States, acting internationally, undertake to ensure that international cooperation is accessible to and inclusive of persons with disabilities. This should include the development of policies that require the United Nations to respect the rights of persons with disabilities through international cooperation programmes;
- *A person with a visual impairment cannot apply for a position of human rights officer because the vacancy requires a driving licence.* This could amount to justifiable differential treatment if driving is a key element of the job and a driver's licence is therefore necessary. It is reasonable treatment based on objective criteria (job requirements applied to all applicants) which seeks to respect the right to work of all applicants.

In all these cases, it is also important to think not only what the State should do but what the individual concerned should do. For example, the individual might seek a remedy through courts, national human rights institutions or informal conflict resolution systems, or might seek help from a non-governmental organization or lobby the Government or others directly to take action (writing letters to local parliamentarians for example).

G. Disability as prohibited grounds of discrimination in other human rights treaties

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, all protect individuals from discrimination. Discrimination on the basis of disability is covered in their articles 2 under "other status":

> *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or* ***other status*** (Universal Declaration)
>
> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or* ***other status*** (International Covenant on Economic, Social and Cultural Rights)

The International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All

Migrant Workers and Members of Their Families also set out States' obligations to combat and eliminate discrimination. Of these, only the Convention on the Rights of the Child explicitly mentions "disability" among the prohibited grounds of discrimination:

> *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property,* ***disability,*** *birth or other status.* (art. 2)

The Committee on Economic, Social and Cultural Rights, in its general comment No. 20 (2009), explained that "other status" covered among other things:

- **Disability**
- Age
- Nationality
- Marital and family status
- Sexual orientation and gender identity
- Health status
- Place of residency
- Economic and social status.

Its general comment No. 5 (1994) provides a definition of discrimination against persons with disabilities. The Committee against Torture includes "mental or other disability" among the grounds for discrimination in its general comment No. 2 (2007). The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 18 (1991), points out the problem of "double discrimination" affecting women with disabilities. In the preamble to the Convention on the Rights of Persons with Disabilities it is recognized that "children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children" and recalled that "obligations to that end undertaken by States Parties to the Convention on the Rights of the Child".

The International Labour Organization's Convention No. 159 (1983) concerning Vocational Rehabilitation and Employment (Disabled Persons) addresses equal opportunity, equal treatment and non-discrimination. The United Nations Educational, Scientific and Cultural Organization's Convention against Discrimination in Education also deserves attention, particularly if complemented with the principles of inclusive education adopted at the 1994 World Conference on Special Needs Education: Access and Quality.

Some relevant regional instruments are the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities of the Organization of American States, the Council of Europe's Convention on the Recognition of Qualifications concerning Higher Education in the European Region and its Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe (2006–2015).

The Convention on the Rights of Persons with Disabilities is a new tool to make the fight against discrimination on the basis of disability more informed and determined. If a specific State has not yet ratified the treaty, it still has obligations to prohibit discrimination against persons with disabilities under other human rights treaties that it has ratified.

MODULE 6 – NATIONAL IMPLEMENTATION AND MONITORING FRAMEWORKS

Introduction

The Convention on the Rights of Persons with Disabilities provides for the establishment of national mechanisms and institutions for the implementation and monitoring of the Convention both at the international and at the national level.

National implementation and monitoring mechanisms, the focus of this module, are set out in article 33 of the Convention. These are:

Focal points. Article 33, paragraph 1, introduces domestic implementation through the designation of a focal point or focal points within the Government. The Convention does not specify who could act as focal point (a ministry, a department in a ministry, a single person and so on). At the very least, having a focal point means that the Convention should not remain only in the ministry of foreign affairs, as an international issue, but should have a dedicated entity focused on national implementation.

Coordination mechanism. The same paragraph requires States to give due consideration to the establishment or designation of a coordination mechanism within the Government to facilitate action related to the implementation of the Convention. Although optional, such a coordination mechanism could be beneficial. Traditionally, disability issues have been dealt with by one ministry, such as the ministry of health or of social affairs. The risk has been that the education of children with disabilities was sometimes dealt with by the ministry of social affairs rather than that of education. Such an arrangement tends to exacerbate exclusion and promote segregation. The Convention spans all rights and, therefore, a range of ministries should have responsibilities such as the ministry of the interior, of justice, of education, of labour and so on. A coordination mechanism can help ensure that the Convention does not remain stuck in one ministry but that responsibilities are shared.

Independent implementation and monitoring mechanism. Article 33, paragraph 2, on the other hand, focuses on establishing a structure to oversee the implementation of the Convention. It requires States to maintain, strengthen, designate or establish one or more independent mechanisms to promote, protect and monitor implementation of the Convention. Importantly, in setting up such mechanisms, States have to take into account "the principles relating to the status and functioning of national institutions for protection and promotion of human rights", otherwise known as the Paris Principles. These are dealt with in greater detail below. At this stage, it is important to highlight the relevance of these Principles to ensuring a truly independent and well-functioning national independent monitoring mechanism as required by the Convention.

The Convention also stipulates that **civil society**, particularly persons with disabilities and their representative organizations, should participate fully in all aspects of this monitoring process, just as they are to be involved in the development and implementation of policies, programmes and legislation to implement the Convention, in line with article 4.

This reference to civil society raises at least two issues:

(a) Civil society, in particular persons with disabilities and their representative organizations, should be involved in the monitoring process undertaken by the independent monitoring mechanism established under article 33 (and ideally also in the work of focal points and coordination mechanisms);

(b) Civil society itself has a role to play in monitoring the Convention, independently of the other mechanisms established under article 33.

In addition to the specific monitoring, promotion and protection framework set up under the Convention, **parliaments** as well as **national courts and tribunals** can also play a key role in promoting and protecting the rights in the Convention. Other relevant mechanisms include **labour inspectorates, school inspectors** and any other mechanisms that have a role in monitoring rights. They should monitor the rights of persons with disabilities as part of their general monitoring functions.

The inclusion of an article detailing national implementation and monitoring structures and their functions continues a trend in human rights treaties towards strengthening the national monitoring of human rights. Prior to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also required State parties to set up national preventive mechanisms.

A. Focal points and coordination mechanisms in the Government

Given that State parties to the Convention have different forms of government and are organized differently, the article relating to focal points and coordination mechanisms is flexible and therefore adaptable.

However, since other international instruments, such as the World Programme of Action concerning Disabled Persons and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, have also called for the establishment of similar entities, it is worth reflecting on their experience to orient the implementation of article 33.

The focal point(s)

- Where focal points on disability exist, it is nonetheless important to give such mechanisms an explicit mandate in relation to the Convention. In addition, this mandate should be revised to ensure that it is sufficiently broad to cover the implementation of the Convention in full.
- For the effective implementation of the Convention, it might be advisable to adopt a two-pronged approach and appoint focal points in each or most governmental departments/ministries as well as designate one overall focal point within the Government responsible for implementation.

- Besides functional focal points in the ministries concerned, the State might establish focal points at different levels of government, e.g., local, regional and national/federal.
- The mandate of the focal point(s) should ideally include promoting awareness of the Convention within the ministry designated as focal point, participation in the development of an action plan on the Convention, and monitoring and reporting on implementation within their functional lines (*but remember, this monitoring does not replace the one foreseen in paragraph 2*).
- If a decision is taken to appoint one overall focal point, the following considerations are relevant:
    - First, the Convention's shift in approach to disability, away from a medical and charity approach to one based on human rights, needs to be reflected in the choice of focal point. The ministry of health should not be designated as the government focal point, because that would reinforce the understanding of disability as a medical condition. Similarly, placing the focal point within the ministries of welfare or labour as is the practice in the majority of State parties may also need to be reviewed to ensure that a human rights approach is adopted. An alternative could be placing the focal point in ministries with responsibility for justice and human rights (which in some countries is, in any case, the ministry of social affairs).
    - Second, implementation of the Convention requires traction at the most senior level. Placing the focal point close to the heart of the Government, such as in the office of the president or the prime minister, or the cabinet office, would be ideal. Some State parties have already done this. However, if a ministry is appointed focal point and that minister is not part of the cabinet, this might hamper effectiveness.
    - Third, the mandate of the focal point should clearly focus on developing and coordinating a coherent national policy on the Convention. As such, the focal point should promote, guide, inform and advise the Government on matters related to the implementation of the Convention but not necessarily implement it by delivering disability support services. The mandate could also include coordinating government action on the Convention in respect of reporting, monitoring, awareness-raising and liaising with the independent monitoring framework designated under article 33, paragraph 2, of the Convention.
    - Fourth, the focal point should represent the channel for civil society and organizations of persons with disabilities to communicate with the Government on the Convention's implementation.
    - Fifth, the focal point should have adequate technical staff and resources. Placing the focal point within a large ministry could ensure this.

The *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol*[12]

[12] *From Exclusion to Equality: Realizing the rights of persons with disabilities (2007).*

identifies possible tasks of the national focal point(s) as follows:

- Advise the Head of State/Government, policymakers and programme planners on the development of policies, legislation, programmes and projects with respect to their impact on people with disabilities;
- Coordinate the activities of various ministries and departments on human rights and disability;
- Coordinate activities on human rights and disability at federal, national, regional, State, provincial and local levels of government;
- Revise strategies and policies to ensure that the rights of persons with disabilities are respected;
- Coordinate the drafting, revision or amendment of relevant legislation;
- Raise awareness about the Convention and its Optional Protocol within the Government;
- Ensure that the Convention and its Optional Protocol are translated into local languages and issued in accessible formats;
- Establish an action plan for the Convention's implementation;
- Monitor the implementation of the action plan on human rights and disabilities;
- Coordinate the preparation of the State's initial and periodic reports;
- Raise public awareness on disability-related issues and the rights of persons with disabilities;
- Build capacity within the Government on disability-related issues;
- Ensure and coordinate the collection of data and statistics for effective policy programming and evaluation of implementation;
- Ensure that persons with disabilities participate in the development of policies and laws that affect them;
- Encourage persons with disabilities to participate in organizations and civil society, and encourage the creation of organizations of persons with disabilities.

The coordination mechanism

Although optional, the establishment of a coordination mechanism at governmental level in addition to focal points is encouraged under the Convention.

A coordination mechanism could, for example, take the shape of an interministerial group, i.e., representatives from the ministries concerned tasked with coordinating the Convention's implementation across departments/sectors or levels of government. Given the breadth of the Convention, all ministries will have some responsibilities for implementing parts of it.

Some coordinating mechanisms include representatives of various ministries as well as of organizations of persons with disabilities, other civil society organizations, the private sector and trade unions. Their mandate often focuses on policy development, the promotion of dialogue on disability, awareness-raising and similar functions.

Note that coordination mechanisms could prove particularly beneficial in countries with systems of devolved administration, such as federal States.

Trainers should endeavour to identify national and regional mechanisms that are relevant to the context of the training so that participants are provided with sufficient examples of existing mechanisms.

B. National independent mechanisms for implementation and monitoring

In addition to designating the above institutions, the Convention requires States to maintain, strengthen, designate or establish a framework to "promote, protect and monitor" the implementation of the Convention.

State parties may choose to set up specific disability mechanisms or assign the monitoring function to existing entities. Furthermore, article 33 does not prescribe a particular organizational form for the national monitoring framework and State parties are free to determine the appropriate structure for their political and organizational context.

Whatever the organizational structure, article 33 sets out three key requirements for the monitoring framework:

1. The State must **maintain, strengthen, designate or establish** a framework with **one or more mechanisms;**
2. The mechanism(s) shall take into account the Paris Principles. This does not mean that only entities that comply with the **Paris Principles** should be included in the framework, but the framework should have at least one such entity;
3. **Civil society** and in particular persons with disabilities and their representative organizations need to be involved and fully participate in the monitoring process (art. 33 (3)).

C. The organizational structure of the monitoring framework: alternatives and preferences – one or more mechanisms

An initial consideration for the State party is whether it should designate (and maintain or even strengthen) an existing mechanism or establish an entirely new framework. In this regard, the following factors are particularly relevant:

✓ *Human and financial resources.* The decision by a State to either modify and/or add functions to an existing framework or, instead, establish a new one will naturally be affected by financial and human resource considerations. In some cases creating a new structure shaped on the Convention's expectations could be more cost-effective than reconceptualizing the mandate, the expertise and the mentality of an existing institution; in others, the NHRI, ombudsperson or specialized agency could be sufficiently flexible to adapt to additional tasks.

✓ *Commitment to the Convention.* To have a fully functioning framework, commitment to the Convention's innovative approach is as important as resources. The national framework should represent a ground-breaking human rights body, with its promotion, protection and monitoring duties reflecting the Convention's principles. The nomination of commissioners and/or staff needs to involve persons with disabilities. The body has to be open to the participation of per-

sons with disabilities and their representative organizations (see below), and have sufficient credentials of integrity, independence and expertise in human rights monitoring.

✓ *A twin-track approach.* In the context of development cooperation, it is recognized that, at times, disability-specific development measures are necessary while, at other times, disability rights should be mainstreamed into general development programmes, projects and other interventions. The same logic can be applied to the monitoring of the Convention. At times, specific knowledge of the Convention, its social/human rights approach and its general principles is essential to ensure that monitoring respects the Convention. For example, in mainstream human rights work, the Principles for the protection of persons with mental illness and the improvement of mental health care are still commonly applied, while disability rights experts question these Principles, which are sometimes in conflict with the Convention. Consequently, either ensuring full participation of disability rights experts or, alternatively, having a stand-alone disability rights commissioner or other mechanism might be preferable to having an existing human rights mechanism take over the monitoring role foreseen under article 33.

In addition, the State must consider whether its national framework will have one or more mechanisms. Here are some options:

1. Attribute the monitoring function to a **single entity**, i.e., one independent mechanism

   The explicit link in article 33 (2) between the framework and the Paris Principles suggests a preference for attributing the monitoring function to a national human rights institution. Such attribution would certainly comply with the Convention.

   Nowadays, over 100 national human rights institutions have been established worldwide. They may be called human rights commissions, ombudsmen or institutes.

2. Attribute the function to a framework consisting of more than one independent mechanism

   The Convention also foresees the possibility of more than one independent mechanism being appointed.

D. The Paris Principles in the context of the Convention

An international workshop of national human rights institutions, held in Paris in 1991, first drafted the Principles relating to the status and functioning of national institutions for the protection and promotion of human rights, known today as the Paris Principles.

Article 33 (2) of the Convention requires State parties to take these Principles into account when designating or establishing mechanisms to promote, protect and monitor its implementation. With reference to the Convention, the Paris Principles would raise the following questions:

Competence and responsibilities

In general terms:

✓ Has the mechanism been vested with competence to promote and protect the Convention's provisions?

- ✓ Is the mandate as broad as possible?
- ✓ Is the mandate set forth in a legislative act or in the constitution?
- ✓ Does the law establishing the mechanism set out the mechanism's composition and competence/mandate?

In relation to specific responsibilities:

- ✓ Does the mandate include the possibility to hear any matter, without referral, relating to the promotion and protection of the rights of persons with disabilities?
- ✓ Can the mechanism promote and ensure the harmonization of national laws and policies with the Convention?
- ✓ Can the mechanism encourage ratification of other human rights instruments, such as the Optional Protocol to the Convention?
- ✓ Can the mechanism contribute to State reports to United Nations and regional bodies, such as the Committee on the Rights of Persons with Disabilities or the Conference of States Parties, and express its opinion on the subject?
- ✓ Can the mechanism assist in the formulation of programmes for disability rights education?
- ✓ Can the mechanism publicize the rights of persons with disabilities and raise awareness about the Convention, including through combating all forms of discrimination based on disability?

Composition and guarantees of independence and pluralism

- ✓ Is the composition of the mechanism pluralistic; in particular, does it have experts that reflect the diversity of disability?
- ✓ Does the composition of the mechanism include and/or reflect: civil society, trends in philosophical or religious thought, universities and qualified experts, parliament?
- ✓ While optional, does the composition of the mechanism include government departments participating in the mechanism's deliberations in an advisory capacity?
- ✓ Does the mechanism have sufficient powers to enable effective cooperation with non-governmental organizations, including organizations of persons with disabilities?
- ✓ Is the mechanism funded so that it has its own staff and premises, so that the Government cannot subject it to financial control in a way that might affect its independence?
- ✓ Is the membership of the mechanism established by an official act which sets out the specific duration of the mandate?

Methods of operation

- ✓ Can the mechanism freely consider any question falling within its competence?
- ✓ Can the mechanism hear any person and obtain any information necessary for assessing situations falling within its competence?
- ✓ Can the mechanism address public opinion, including through publication of its opinions and recommendations?
- ✓ Can the mechanism meet on a regular basis?
- ✓ Can the mechanism establish working groups and set up local or regional sections?

- ✓ Can the mechanism maintain consultation with other bodies responsible for the promotion and protection of human rights?
- ✓ Can the mechanism establish and maintain relations with persons with disabilities and their representative organizations?

Additional principles concerning the status of commissions with quasi-jurisdictional competence

An optional principle relates to the authorization of a mechanism to hear and consider complaints and petitions concerning individual situations, such as claims that the rights of a person with a disability have been breached. Where this option is granted, the power of the mechanism should be based on four principles:

- ✓ Seeking an amicable resolution through conciliation
- ✓ Informing petitioners of their rights and remedies
- ✓ Hearing complaints or petitions and transmitting them to the competent authorities
- ✓ Making recommendations to the competent authorities.

For the Paris Principles to apply fully to the national framework under article 33, it is essential to ensure access to justice. In this connection, article 13 requires States to:

- Ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations; and
- Promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Accessibility considerations and accommodation can relate for instance to:

- ✓ Access to the building that houses the mechanism
- ✓ Publication of reports, awareness-raising materials, recommendations, training materials and so on in accessible formats
- ✓ Access to the mechanism's website
- ✓ Affirmative action policies to promote the employment of persons with disabilities
- ✓ Provision of reasonable accommodation to individual employees of the mechanism
- ✓ Provision of accessibility measures such as sign language interpretation during public hearings.

E. Functions of the national monitoring framework

The independent monitoring framework is expected to **promote, protect and monitor** the implementation of the Convention. Slide 10 in the computer slide presentation sets out some examples of tasks to promote, protect and monitor the rights of persons with disabilities.

F. Participation and involvement of civil society and persons with disabilities

Article 4 (3) requires State parties to ensure consultation with and active involvement of persons with disabilities and their representative organizations in the development and implementation of legislation and policies to implement the Convention and in other decision-making on the rights of persons with disabilities.

Article 33 (3) requires civil society, in particular persons with disabilities and their representative organizations, to be involved and participate fully in the monitoring process.

At the very least, this means that national structures established under article 33 should endeavour to involve and ensure the participation of persons with disabilities and their representative organizations. No guidance is provided on how this participation could and should take place. The trainer could open the floor for discussion among course participants on areas for involvement, such as:

- ✓ Membership of the national framework, focal points and coordination mechanisms
- ✓ Consultation with representative organizations in the drafting of laws and regulations establishing the various mechanisms
- ✓ Consultation with representative organizations on the appointment of key figures
- ✓ Consultation with representative organizations in the development of annual workplans
- ✓ Regular hearings on the work of national mechanisms for persons with disabilities and their representative organizations
- ✓ Designation of an advisory group including representative organizations
- ✓ Production of reports, recommendations and other documents relating to monitoring in accessible formats
- ✓ Open facilities, goods and services through maintaining high accessibility standards
- ✓ Reflection of the diversity of disabilities in activities to promote consultation and participation.

There could be many other areas to promote consultation with and participation of persons with disabilities and their representative organizations in the implementation and monitoring of the Convention. The group activity will provide a means to identify more.

G. Parliaments

In addition to the specific monitoring arrangement set up by the Convention, parliament, through its oversight function, plays a key role in ensuring respect for the human rights of persons with disabilities. Various parliamentary mechanisms that could be relied upon include:

Parliamentary committees

Parliamentary committees oversee the executive. To be effective, they must be able to set their own agendas and have the power to oblige ministers and civil servants to appear and answer questions. Parliamentary committees can ask ministers and civil servants questions relating to the establishment of national frameworks or any other matter relating to the implementation and monitoring of the Convention.

Commissions of inquiry

Commissions of inquiry are established when a major public concern arises involving aspects not limited to the remit of specific parliamentary committees. This might be the case where certain violations of the rights of persons with disabilities come to light, such as forced institutionalization and forced treatment of persons with mental disabilities or systematic exclusion of persons with disabilities from the general education system.

Direct questioning of ministers

Direct questioning of ministers is relevant in countries where ministers are members of the legislature. Questioning might be oral or in writing and helps to maintain government accountability. Persons with disabilities, their representative organizations or independent mechanisms under article 33 might contact local members or members of parliamentary committees related to human rights in order to raise questions for ministers with responsibility for implementing the Convention.

Scrutiny of executive appointments

Scrutiny of executive appointments is particularly relevant in countries where ministers are not members of the legislature. For example, for the appointments of ombudsmen, human rights commissioners and cabinet members, it would be entirely appropriate for parliament to verify the appointee's knowledge of and attitude towards disability issues.

Oversight over non-governmental public agencies

Parliament also monitors independent agencies to which the Government may have devolved public functions, such as agencies involved in regulatory activities or the delivery of front-line services. These include regulatory bodies for health and safety, service-delivery agencies, public utilities and other agencies whose activities might have a direct impact on the rights of persons with disabilities.

Budgetary scrutiny and financial control

Parliament holds considerable influence over policies through its control of the Government's budget, during the stages of formulation as well as expenditure. As part of this process, parliament can ensure that the impact of the proposed budget on different social groups, such as persons with disabilities, is discussed and monitored.

H. National courts and tribunals

National courts can also play an important role in the implementation and monitoring of the Convention.

✓ National courts have a role to protect the rights set out in the Convention. While persons with disabilities claiming a violation of their rights should be able to access national human rights institutions and other mechanisms under article 33, they should also have the opportunity to seek a legally enforceable remedy through courts.

✓ National courts have a role in interpreting and applying the Convention nationally. Cases that come before national judges provide a means of testing the application of the Convention in national circumstances. Judgements can help to clarify what global standards mean in the national context.

✓ National courts can complement the article 33 mechanisms. In particular, if a case is particularly important or complicated, the national mechanism might refer it to the national courts to ensure the fullest consideration as well as a legally enforceable solution.

As a result of national court cases:

✓ It is possible to reflect upon areas where progress in the realization of disability rights has been possible as well as problem areas (particularly where the same complaint arises in several cases);

- ✓ Respect for the rights of persons with disabilities is strengthened. Not only does a court case provide a remedy for the complainant, a court case can often provide the trigger for law reform as well as clarity on the law. In addition, a case supporting disability rights can help to raise awareness on the rights of persons with disabilities and the Convention. In doing so, similar violations can be prevented.

The trainer might consider researching national case law to identify disability-related cases. The trainer could provide a summary of the case and then encourage participants to discuss the various ways in which the judiciary has been able to strengthen and protect the rights of persons with disabilities.

MODULE 7 – REPORTING TO THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES: STATE AND ALTERNATIVE REPORTS

Introduction

The purpose of this module is to provide detail for States, civil society and national human rights institutions on the process of reporting to the Committee on the Rights of Persons with Disabilities. In accordance with article 35 of the Convention, a State party has an obligation to submit an initial report within two years after the Convention's entry into force for it and to submit periodic reports thereafter, at least every four years and further whenever the Committee so requests. Civil society and NHRIs have a crucial role to play in the reporting process by complementing information provided by the State party. This module covers the content of State and alternative reports as well as the process of drafting them, submitting them to the Committee and following up on the Committee's concluding observations and recommendations.

A. State reports

1. The Committee on the Rights of Persons with Disabilities

Before discussing reports, it is important to understand the nature and role of the Committee on the Rights of Persons with Disabilities, the Committee that receives and reviews reports from States and other stakeholders. Article 34 establishes the Committee. It is a treaty body of 18 independent experts acting in their personal capacity. They are elected by State parties to the Convention at the Conference of States Parties and possess certain characteristics, such as:

- High moral standing
- Recognized competence and standing in the field covered by the Convention.

When electing these experts, State parties should give consideration to a range of issues explicitly referred to in article 34, including:

- Equitable geographic distribution
- Representation of different forms of civilization
- Representation of the principal legal systems
- Gender balance
- Participation of experts with disabilities.

This last criterion—the participation of experts with disabilities—is a novelty in the Convention and attests to the fact that persons with disabilities have often been excluded from decision-making processes that affect them. In a similar vein, State parties are invited to give due consideration to article 4 (3) when nominating experts. Article 4 (3) requires States to consult closely with and actively involve persons with disabilities, including children with disabilities, and their representative organizations in deci-

sion-making processes that affect them (and specifically in relation to decisions on laws and policies). While the call to participation is relatively weak—States are only *invited* to consider this in nominating experts—it nonetheless provides an indication that the nomination process should not be a purely government concern but that other parts of society also have a role to play and an interest in the Committee's membership.

The Committee's experts are elected for a four-year term, renewable once.

The Committee's main responsibility is to receive comprehensive reports from each State party to the Convention (see below).

In addition, under the Optional Protocol, the Committee can:

- Receive communications (complaints) and issue recommendations on these communications (see module 8);
- Undertake inquiries into countries when there is reliable information indicating grave or systematic violations of the Convention (see module 8).

The Committee also undertakes thematic work. It:

- Holds **days of general discussion** on various themes. The Committee has already held days of discussion on legal capacity and accessibility, and a half day of discussion on women and girls with disabilities.
- Adopts **general comments**. A general comment is an authoritative statement of the Committee on particular themes or articles in the Convention and can help State parties in their task of reporting to the Committee by identifying in greater detail what specific provisions mean. The Committee is currently considering drafting general comments on accessibility, legal capacity, and women and girls with disabilities, following the days of general discussion held on these topics.

Finally, the Committee has authority in relation to its own administration. For example:

- It elects its Chair, adopts its working methods and rules of procedure and so on;
- It meets representatives of civil society, national human rights institutions and United Nations agencies to discuss issues related to the implementation and monitoring of the Convention;
- It coordinates with other treaty bodies to strengthen the treaty body system and harmonize working methods.

2. The requirement on States to report

According to article 35 (1), "[e]ach State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned."

After the initial report, the State party must submit subsequent reports at least every four years and whenever the Committee requests it. The subsequent report is often referred to as a periodic report. The possibility of the Committee requesting reports at any time was added so that it can respond to particular situations that require its attention outside the four-year cycle.

3. The reporting cycle

The reporting cycle is similar to that under any human rights treaty. The important factor to remember is that it is a cycle. It is not, or at least it should not be, a one-off event, but rather a process that comprises the following steps:

- Drafting the report through a consultative process both within the Government and with counterparts such as civil society and NHRIs, and submitting it;
- Preparing and responding to the list of issues;
- Meeting the Committee and having a constructive dialogue on implementation;
- Following up to the views and recommendations of the Committee;
- Preparing for the next cycle on challenges since the previous dialogue with the Committee and on implementation of the Committee's recommendations.

A potentially significant difference compared to other treaties is the fact that State parties are invited to consider adopting an open and transparent process in drafting the report, taking into account article 4 (3). As noted above, this article requires States to consult closely with and actively involve persons with disabilities, including children with disabilities, and their representative organizations in decision-making processes that affect them (and specifically in relation to decisions on laws and policies). Again, the requirement on States is only to give due consideration to the participation of persons with disabilities in the preparation of the report. Nonetheless, it provides a further indication that this drafting process (and indeed the whole reporting cycle) should not be a purely government concern but also a legitimate interest of other parts of society.

4. Documents to prepare

There are two main documents for the State to prepare:

- **The common core document** should contain general information about the reporting State, the general framework for the protection and promotion of human rights, disaggregated according to sex, age, main population groups and disability, as well as information on non-discrimination and equality, and effective remedies, in accordance with harmonized guidelines on reporting to the treaty bodies.[13]
- **The treaty-specific document** submitted to the Committee on the Rights of Persons with Disabilities should not repeat the information included in the common core document or merely list or describe the legislation adopted by the State party. Rather, it should contain specific information relating to the implementation, in law and in fact, of articles 1 to 33 of the Convention, taking into account analytical information on recent developments in law and practice affecting the full realization of the rights recognized in the Convention by all persons, with all forms of disabilities within the territory or jurisdiction of the State party. It should also contain detailed information on substantive measures taken towards the aforementioned goals and the resulting progress achieved. Where applicable, this information should be presented in relation to policy and legislation of persons without disabilities. In all cases, it should indicate data sources.

[13] For more information, see HRI/GEN/2/Rev.5, chap. I.

5. Methodology

There is no strict methodology that States have to follow for the preparation of their reports, but the following steps are relevant:

- Identifying a reporting group; normally, the focal point or the coordination mechanism established under article 33 of the Convention will have a role to play in drafting the report to the Committee. Early in the drafting stage, the focal point and/or coordination mechanism should identify the ministries and departments that have a role in implementing the Convention, as they should be on board. It is also useful to include civil society representatives in the group, bearing in mind the importance of participation. The reporting group might identify a smaller drafting group to prepare the first draft.
- Initial review of key issues; at this stage, the reporting group should review the Convention as well as documents such as laws and policies as well as any studies that have been done so as to identify the issues that are relevant to the report.
- Legal analysis and data collection; at this stage, the drafters should first of all review laws, policies and strategies to examine the extent to which they comply with the Convention. In addition, studies, surveys, statistics and other materials should be collected to back up the legal analysis with facts and figures that reflect the current situation of persons with disabilities.
- Analysis and preparation of the draft report; on the basis of the legal analysis and data collection, a first draft can be prepared. The data collected should not simply be reproduced, but be analysed by reference to the provisions of the Convention to identify the extent to which they are being implemented and also reveal the challenges.
- Consultation within the Government and finalization of the report; the draft report should be circulated to the broader reporting group to ensure that it reflects the position of all relevant government representatives. The Government should also consider ways to circulate the draft to civil society so as to respect article 33, which requires participation of persons with disabilities in monitoring the Convention. The draft might also be shared with the NHRI or independent framework established under article 33.

6. Content: the reporting guidelines[14]

The Committee has prepared reporting guidelines to advise States parties on the form and content of their reports, so as to facilitate the preparation of reports and ensure that these are comprehensive and presented in a uniform manner by States parties. Compliance with the reporting guidelines will also reduce the need for the Committee to request further information under article 36 and under rule 36, paragraph 3, of its rules of procedure.

In relation to the rights recognized in the Convention, the treaty-specific document should indicate:

- Whether the State party has adopted policies, strategies and a national legal framework for the implementation of each Convention right, identifying the resources available for that purpose and the most cost-effective ways of using such resources;

[14] CRPD/C/23.

- Whether the State party has adopted comprehensive disability anti-discrimination legislation to put into effect provisions of the Convention in this regard;
- Any mechanisms in place to monitor progress towards the full realization of the Convention rights, including recognition of indicators and related national benchmarks in relation to each Convention right, in addition to the information provided under appendix 3 of the harmonized guidelines and taking into account the framework and tables of illustrative indicators outlined by OHCHR;[15]
- Mechanisms in place to ensure that a State party's obligations under the Convention are fully integrated in its actions as a member of international organizations;
- The incorporation and direct applicability of each Convention right in the domestic legal order, with reference to specific examples of relevant legal cases;
- The judicial and other appropriate remedies in place enabling victims to obtain redress if their Convention rights have been violated;
- Structural or other significant obstacles arising from factors beyond the State party's control which impede the full realization of the Convention rights, including details of the steps being taken to overcome them;
- Statistical data on the realization of each Convention right, disaggregated by sex, age, type of disability (physical, mental, intellectual and sensory), ethnic origin, urban/rural population and other relevant categories, on an annual comparative basis over the past four years.

The treaty-specific document should be delivered in accessible electronic format and in print.

The report should follow paragraphs 24 to 26 and 29 of the harmonized reporting guidelines.

The format of the Convention-specific document should be in accordance with paragraphs 19 to 23 of the harmonized reporting guidelines. The initial report should not exceed 60 pages, and subsequent Convention-specific documents should be limited to 40 pages. Paragraphs should be numbered sequentially.

The reporting guidelines suggest the following broad structure:

1. Articles 1-4
2. Specific provisions:

(a) Equality and non-discrimination
(b) Awareness-raising
(c) Accessibility
(d) Right to life
(e) Situation of risk and humanitarian emergencies
(f) Equal recognition before the law
(g) Access to justice
(h) Liberty and security of the person
(i) Freedom from torture
(j) Freedom from exploitation, violence and abuse
(k) Protecting the integrity of the person
(l) Liberty of movement and nationality
(m) Living independently and being included in the community

[15] For more information, see HRI/MC/2008/3 and *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations publication, Sales No. 13.XIV.2).

(n) Personal mobility
(o) Freedom of expression
(p) Respect for privacy
(q) Respect for home and family
(r) Education
(s) Health
(t) Habilitation and rehabilitation
(u) Work and employment
(v) Adequate standard of living and social protection
(w) Participation in political and public life
(x) Participation in cultural life
3. Specific situation of boys, girls and women with disabilities
4. Specific obligations
(a) Statistics and data collection
(b) International cooperation
(c) National framework for implementation and monitoring

The Committee's reporting guidelines set out specific issues that State parties should report on, provision by provision.

The initial report submitted by Peru (CRPD/C/PER/1), part of which is reproduced below, provides a good example as the State party reported on each of the guidelines identified by the Committee. For article 29, for instance, the table below sets out the Committee's guidelines in the left-hand column and the measures undertaken in the right-hand column. The example is interesting for at least two reasons:

- First, the State party makes the effort to report on each of the questions identified in the reporting guidelines;
- Second, the information provided does not appear to answer the questions posed by the Committee. For example, the first response to the request for legislation and measures to guarantee political rights mentions only the legal framework but does not refer explicitly to persons with mental or intellectual disabilities, nor does it clarify whether the act does in fact guarantee political rights to persons with disabilities. Instead, it only mentions facilitating voting by persons with disabilities (which is not exactly the same thing). This demonstrates the importance of the constructive dialogue with the Committee to clarify such ambiguities.

23. Article 29: Participation in political and public life

81. This article guarantees political rights to persons with disabilities.

Report on	Progress
Legislation and measures to guarantee to persons with disabilities, in particular persons with mental or intellectual disabilit[ies], political rights, including, if it is the case, existing limitations and actions taken to overcome them	Since the adoption of Act No. 29478 by Congress in December 2009, the National Election Procedures Office has had the necessary legal framework to facilitate voting by persons with disabilities.
Measures taken to ensure the right to vote of all persons with disabilities, on their own or to be assisted by a person of their choice	The national identity card also serves as the one and only type of voter registration card. Its use is compulsory for all citizens, and the National Identity and Civil Status Registry has issued an administrative decision under which national identity cards are to be issued free of charge to persons with disabilities, following verification of eligibility.
Measures taken to ensure the full accessibility of the voting procedures, facilities and materials	Under Act No. 29478, the National Election Procedures Office maintains a register of citizens with disabilities in order to facilitate their access to the ballot box by: (a) preparing ballot papers in Braille (Braille templates) for citizens with visual disabilities; (b) setting up voting booths at ground-floor level in polling stations; (c) temporarily moving voting booths from upper floors in polling stations to ensure that persons with disabilities do not have to climb stairs; (d) putting up signs in polling stations to guide citizens with disabilities and publicizing the measures taken to facilitate their access to voting booths. The register can be consulted on the Office's website.
Indicators measuring the full enjoyment of the right to participate in political and public life of persons with disabilities	In 2004–2007, 10,758 persons with disabilities exercised their right to vote. • Nationally, the total number of identity cards issued free of charge to persons with disabilities between 2003 and 5 March 2010 was 67,729, of which 38,805 were issued to adults and 28,924 to minors.

Report on	Progress
Support provided, if any, to persons with disabilities for the establishment and maintenance of organizations to represent their rights and interests at local, regional and national level	Since 2001, the National Council for the Integration of Persons with Disabilities (CONADIS) has maintained a register of associations, NGOs and other organizations that work to benefit persons with disabilities and to address the problems they face; in a number of those organizations, parents and relatives of persons with disabilities sit on the board of directors. Currently, 310 institutions have been entered on the roster maintained by the National Registry; this authorizes them to enter into cooperative arrangements, gives them access to international cooperation funding and enables them to promote the social integration of their members.

7. List of issues

Once the Committee has received the State party's report, its country rapporteur (a member of the Committee) will examine it, and the Committee with the assistance of the rapporteur will decide if there is any information missing from the report. On this basis, the Committee forwards a list of issues to the State party with a view to completing the information in the report. Generally, State parties will respond to the list of issues in writing prior to the constructive dialogue with the Committee.

The list of issues is normally decided by the Committee at the session before the constructive dialogue with the State party. This allows the State party sufficient time to respond. It also gives the Committee time to reflect on the additional information provided by the State and decide whether it now has enough information on a certain subject matter or whether further follow-up is necessary during the constructive dialogue.

The report of Tunisia provides an example of how the list of issues works. The State party, in its initial report, provided information on the rights of children with disabilities, although this focused primarily on health and education. Tunisia did not provide information on the protection of children from violence and exploitation. The Committee therefore requested this information. In its response (CRPD/C/TUN/Q/1/Add.1), Tunisia noted:

> 16. Associations have called for increased efforts in legislative, administrative, social, educational, cultural and other spheres to prevent such practices.
>
> 17. In this regard we should like to mention that the Child Protection Code promulgated by Act No. 92 of 9 November 1995 guarantees children in general and children with disabilities in particular freedom from various forms of exploitation, violence and

abuse. Under the said Code, sexual or economic exploitation and habitual mistreatment of children are considered as difficult situations that require swift intervention by both child protection officers and family judges in order to protect children.

Child protection officers

18. Child protection officers are experts on social issues and intervene in all situations in which the physical or mental health and safety of children could be at risk as a result of the environment in which they live or because they are vulnerable to various forms of abuse and exploitation.

19. Child protection officers are one of the most important social protection mechanisms for children at risk; there is one child protection officer in every province, although there can be more than one, if needed, in order to ensure swift and effective intervention and to protect children from all possible harm.

20. Given the importance of reporting mechanisms in strengthening society's role in protecting children from various forms of violence, abuse and exploitation, the Child Protection Code provides that all situations in which children are living in difficult circumstances must be reported to a child protection officer, focusing on threats to children's physical, mental and economic health and safety.

21. To underscore the importance of this mechanism in the protection of children at risk, although persons bound by professional secrecy do not have a duty to report, those who do so enjoy legal protection through impunity as they are acting in good faith by reporting, even if the report proves to be incorrect.

Family judges

22. Family judges in cases involving children with disabilities at risk of exploitation, violence or abuse are required to take the appropriate decision in order to remove them from the difficult situation in which they are living, taking into account their best interests, which all courts, administrative authorities and public or private social welfare establishments must take into consideration when taking any action relating to children.

23. When the source of the violence, exploitation or abuse is the child's family, a family judge can decide to remove the child from his family and place him in a foster family, a specialized social or educational institution or a training or educational centre. He may also send a child who has suffered physical or mental harm as a result of exploitation, abuse or violence for medical treatment, in order to ensure the child's reintegration in society.

24. A child who is the victim of a crime of violence is in a difficult situation that requires the intervention of a family judge to address the underlying causes and the conditions in which the child was subjected to such a crime.

It is interesting to note that the State party provides little information on the protection of children with disabilities specifically, but more on its child protection system more generally. While this of course should apply to children with disabilities, too, there are a range of reasons why laws and policies should specifically mention the protection of children with disabilities. For example, adults might have difficulty communicating with children who are deaf, which in turn might make them more susceptible to violence and abuse as they might not be able to seek protection.

Although the State party did not fully address the Committee's question, it nonetheless helped the Committee to identify that there is a child protection system in place, allowing for more specific questioning during the Committee's session and hence ensuring the optimal use of the Committee's limited time.

8. The Committee's session

The next step is for the State party to come before the Committee to enter into a constructive dialogue. On that basis, the Committee will issue concluding observations and recommendations for the State party.

The Committee currently has two sessions a year with many items on its agenda. From the beginning of 2014, it will have altogether five weeks of plenary meetings and two weeks of pre-sessional working group meetings. The first day will typically begin with opening speeches by its Chair and a representative of OHCHR. This will be followed by discussions in plenary session with representatives of United Nations organizations such as the World Health Organization (WHO), the International Labour Organization (ILO) and the United Nations Children's Fund (UNICEF) as well as OHCHR and then by representatives of civil society. The Committee might also meet in private session to prepare the dialogue with a State party.

The Committee will then meet with the State party. The Committee's dialogue with States parties is split into two meetings of three hours on two different days. It begins with the presentation by the State representative and then an introduction by the Committee's country rapporteur. The Committee's members then take the floor to reflect on the State party's report and ask additional questions. The dialogue proceeds in three stages with a set of questions posed by the Committee's members followed by replies provided by the State party. The State representatives are given time to respond at intermittent stages throughout the day. The Committee will then meet in private session to discuss its concluding observations and recommendations, which also takes some time.

In addition to the constructive dialogue, the Committee discusses communications under the Optional Protocol, as well as other topical issues such as its report to the General Assembly (if relevant at that particular session), treaty body strengthening, its methods of work, the drafting of any general comments or the preparation of future days of general discussion.

Its concluding observations follow the format of those of other treaty bodies. They begin with the positive aspects of implementation by the State party. They then move onto "factors and difficulties impeding implementation" and "principal areas of concern and recommendations". The latter are expressed in terms of observations followed by recommendations and follow the format of the report, namely articles 1–4, specific rights, and specific obligations.

To continue with the example of Tunisia, it is interesting to see that the preoccupations of the Committee at the list-of-issues stage appeared to have continued and the responses of the State party were insufficient to allay these concerns. In the concluding observations (CRPD/C/TUN/CO/1), the Committee noted:

Children with disabilities (art. 7)

16. The Committee is particularly concerned at the low rate of reporting (signalement) of cases of habitual mistreatment of children, including children with disabilities, which may amount to situations of danger, in view of the results of the Multiple Indicator Cluster Survey (MICS 2006) which indicated that 94 per cent of children aged between 2 and 14 years are disciplined in the home through violent means, whether verbal, physical, or through deprivation.

17. The Committee recommends that the State party:

(a) Evaluate the phenomenon of violence against boys and girls with disabilities, and compile systematic disaggregated data (see para. 39 below) with a view to better combating it;

(b) Ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated, and establish complaint procedures accessible to children with disabilities;

(c) Establish independent follow-up mechanisms; and

(d) Take steps to replace institutional care for boys and girls with disabilities with community-based care.

9. Follow-up

Once the concluding observations have been adopted, they are posted almost immediately on the OHCHR website (www.ohchr.org).

However, the State party has a key role in the follow-up. According to article 36 (4) of the Convention:

> *States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.*

So States should at the very least publicize concluding observations. In addition, they should seek ways to follow up on recommendations as they will have to report on implementation four years later.

Bearing these responsibilities in mind, the State might:

- ✓ Issue a press release about the dialogue and concluding observations;
- ✓ Hold a press conference about the concluding observations;
- ✓ Ensure that the focal point, coordination mechanism and national independent framework receive copies of the concluding observations;
- ✓ Hold a round table with civil society and NHRIs to discuss the concluding observations;

- ✓ Draw up an implementation plan that includes deadlines for the implementation of the recommendations and specifies the entities responsible for implementation;
- ✓ Seek the assistance of the United Nations country team for implementation, where necessary.

Since April 2012, the Committee has developed a follow-up procedure. The Committee identifies up to two or three recommendations for follow-up—subjects that it considers of the utmost importance for improving the situation of persons with disabilities in the country under consideration—and requests the State party to report back to it within 12 months on the measures it has taken to implement these recommendations.

10. The functions of reporting

It is important to remember that reporting is not a one-off event or something that has to be done merely to fulfil an obligation under the Convention. It is a fundamental part of the whole implementation process. So reporting to the Committee is both an end in itself, but also a way to strengthen implementation. Some of the functions of reporting can be summarized as follows:

- ✓ Reviewing implementation to date
- ✓ Identifying strengths and challenges in implementation
- ✓ Seeking assistance from international experts with implementation
- ✓ Improving data collection and analysis in relation to persons with disabilities
- ✓ Improving understanding of the Convention through drafting the report
- ✓ Strengthening coordination in the Government (the coordination required for reporting can also strengthen internal coordination mechanisms for ongoing implementation)
- ✓ Strengthening dialogue and partnerships with civil society and NHRIs on implementation
- ✓ Sharing experience on implementation with other countries through publication of the national report
- ✓ Other?

B. Alternative reports

1. Civil society/NHRI input into the reporting cycle

Reporting to the Convention is not a single or isolated event. Instead, it is a process and civil society organizations and national human rights institutions (NHRIs) can contribute to the various stages of the process. The participation of representative organizations of persons with disabilities should be given particular attention, taking into account articles 35 (4) and 4 (3) of the Convention. The overall process is as follows (indicating where civil society organizations and NHRIs can influence):

- **Drafting the State party report** – the State is responsible for preparing its initial and periodic reports. In some countries, the State reaches out to civil society and national human rights institutions when preparing the report. They might hold a consultation with key organizations or circulate the report for review. Some countries annex the views of civil society to the report. Even where these practices are not present, civil society organizations and NHRIs can attempt to have their say in the

preparation and content of the report by contacting Convention focal points in the Government or, where it exists, the coordination mechanism.

- **Preparing the list of issues** – on the basis of the State party report the Committee will develop a list of issues for the State party to prepare for the constructive dialogue. The State party should also provide answers to the list of issues prior to the session – which helps to focus the discussion. Civil society organizations can provide information at the time of submission of the State party report and, in this way, influence the list of issues that are provided to the State for clarification in preparation of the interactive dialogue. In addition, civil society organizations can provide answers to the list of issues which will ensure the Committee has the widest possible information before it.
- **The Committee session** – during the Committee's session, civil society organizations and NHRIs can play an active role. The Committee will generally meet with civil society organizations and NHRIs related to the reporting country to hear issues of interest and concern. Individuals can also use the opportunity of being in Geneva to meet with Committee members to discuss various implementation issues they face nationally. Civil society organizations and NHRIs can also be present during the dialogue with the State party. Following the dialogue in this way can clarify how the Committee identified its various concluding observations, which in turn can help with follow-up later at the country level.
- **Follow-up to concluding observations** – civil society organizations and NHRIs have crucial roles in ensuring follow-up. While the ultimate responsibility for implementing concluding observations rests with the Government, civil society organizations and NHRIs can also play their part. This is considered in greater detail below.

2. What are alternative reports?

Alternative reports are one way—and a significant one—in which civil society and NHRIs can have their say in the reporting process. There is no strict definition of an alternative report and there is no strict format to follow as such. In general, an alternative report provides the Committee with complementary information to that provided by the State party with a view to ensuring the Committee has the fullest information before it.

An alternative report will not necessarily contradict the State report, but simply add to it or provide an alternative perspective on issues raised in the State report. However, if a State report does not provide the most accurate or up-to-date information, the alternative report can alert the Committee to such information.

By providing complementary information, the ultimate aim of alternative reports is to ensure the most relevant concluding observations and recommendations to assist with future implementation.

3. Structure of the report

There is no requirement to structure alternative reports in a particular way; however, drafters should consider a methodological approach that assists the Committee to understand how the report was compiled and that identifies in as clear a manner as possible the issues civil society and NHRIs wish to raise with the Committee as well as possible solutions.

The following is one possible structure, drawn in large part from the Committee's reporting guidelines:

1. Executive summary setting out the principal concerns, advances and recommendations
2. Table of contents
3. Methodology for preparing the report, including the process of data collection and which organizations have been involved in preparing and finalizing the report
4. Discussion of the general background—political, economic, social, cultural—that might help the Committee better understand the context of the report
5. Key issues:
   (a) Articles 1–4: purpose, definitions, general principles and general obligations
   (b) Articles 5–30: in relation to specific rights
   (c) Articles 6 and 7: boys, girls and women with disabilities
   (d) Articles 31–33: specific obligations in relation to data and statistics, international cooperation and national implementation and monitoring frameworks
6. Recommendations, to be as precise and focused as possible. There is no need to include many.

4. Methodology: forming a coalition for an alternative report

Although not a requirement, it can be useful to form a coalition of national stakeholders to prepare the alternative report. This helps the Committee by providing it with one document covering the various concerns of civil society across the country. In addition:

✓ Forming a coalition to draft the report also helps to form national civil society coalitions to work on issues beyond the alternative report. For example, the coalition might not only prepare the alternative report but work together on implementing the Committee's recommendations.

✓ Similarly, it allows stakeholders to understand issues of concern in areas beyond their own focus. For example, one organization focusing on service delivery for persons with physical disabilities might learn about the concerns of another that is working to protect the rights of persons with psychosocial disabilities in prisons. This provides an opportunity to learn about the work of other disability groups and identify common areas of activities such as advocacy.

✓ Furthermore, forming coalitions allows groups to capitalize on knowledge and expertise. For example, a DPO might have extensive experience on protecting disability rights nationally and could pair up with the more general human rights organization with extensive experience in treaty body reporting. Both organizations bring something to the table and can make for an effective process and useful alternative report.

Some issues to consider in forming coalitions are:

✓ Are all disability constituencies represented?

✓ Is the diversity of society reflected as much as possible, e.g., women and

men, a child perspective, older persons, racial and ethnic minorities, indigenous persons and so on.

✓ Is there sufficient knowledge about the treaty body reporting system?

✓ Is there sufficient capacity to consult with as wide a group as possible?

5. Content: specific rights

It is advisable for alternative reports to follow the Committee's reporting guidelines. This means that the report aligns with the Committee's practice and also with the State report, assuming that the State has followed the reporting guidelines when preparing its report. As noted above, the Committee groups the rights and obligations in the Convention as follows:

- Definitions, general principles and general obligations;
- Specific rights;
- The rights of women, boys and girls with disabilities;
- Specific obligations, namely data and statistics, international cooperation and national implementation and monitoring frameworks.

The reporting guidelines also provide a list of questions that should be addressed in relation to the various provisions under these headings.

For example, the Committee's guidelines for article 5 on non-discrimination and equality are:

> *This article recognizes that all persons are equal before the law with entitlement to equal protection and benefit of the law on equal grounds without any discrimination.*
>
> States parties should report on:
>
> - *Whether persons with disabilities are able to use the law to protect or pursue their interests on an equal basis with others*
> - *Effective measures taken to guarantee persons with disabilities equal and effective legal protection against all types of discrimination, including the provision of reasonable accommodation*
> - *Policies and programmes, including affirmative action measures, to achieve the de facto equality of persons with disabilities, taking into account their diversity.*

Spain provided the following information in response to these questions in its initial report (CRPD/C/ESP/1, paras. 15–16, emphasis added):

> *15. In the sphere of disability,* ***full compliance with this article*** *is ensured by the 1978 Constitution and LIONDAU [Act No. 51/2003 on equality of opportunity, non-discrimination and universal accessibility for persons with disabilities] mentioned earlier. Chapter II of the latter is devoted to equality of opportunity; specifically, it defines infringements of the right to equality of opportunity (as defined in art. 1) and specifies two types of measure which the public authorities must take to guarantee that right, namely anti-discrimination and affirmative action measures. In addition, article 10 of LIONDAU requires the Government to regulate the basic conditions to govern accessibility and non-discrimination in a number of spheres and areas.* ***However, in view of***

***the entry into force of the Convention, steps are being taken to revise existing legislation**; there is already a proposal to amend articles 10 and 18 of the General Health Act No. 14/1986 to include a mention of disability as one of the grounds on which no person may be discriminated against.*

*16. **The entry into force of LIONDAU and its enabling regulations, together with the mechanisms for supervision and the imposition of penalties, is a basis for the achievement and guaranteeing of equality and non-discrimination**. In addition, it offers the system effective safeguards against discrimination of any kind. The establishment of specific regulations and action plans and programmes in the different areas is the responsibility of the ministerial departments concerned, which will in any case have to adapt to the new standards.*

In summary:

- Spanish legislation ensures full compliance with article 5;
- Some legislation nevertheless requires revision in the light of the Convention, such as the General Health Act;
- Legislation together with the supervisory mechanisms and sanctions imposed for breaches of the law provide an effective regime to guarantee equality and non-discrimination.

The alternative report provides the Committee with a longer response to its questions as well as complementary information. It notes that:

- Protection against discrimination in Spanish legislation is not in line with the Convention as it is restricted to persons with a certificate indicating a degree of disability above 33 per cent (although the Government has expressed its intention to repeal this requirement);
- Administrative and legal protection against discrimination is not effective. There are supervisory and sanctions mechanisms but these face two obstacles:
  - There are no data to demonstrate that the infraction system is being applied and so its efficacy is unknown. There has been no action on the 10 complaints filed.
  - The procedures are slow (taking 11 to 26 months), which can lead to irreparable damage.

6. Recommendations

It is important for alternative reports to propose action that the Committee can take, such as questions that the Committee could put to the State representatives. Alternatively, it could propose recommendations to be included in the concluding observations. The important thing to remember is that recommendations should be as clear and targeted as possible so that they can be implemented and reflected in the next periodic report. Vague or general recommendations might be confusing for the State party to implement or lead to non-implementation or ineffective implementation.

Some guidelines for recommendations are:

✓ They should be clear

✓ Each one should contain only one action

✓ They should specify who should implement them

- ✓ If possible, they should be measurable
- ✓ Where relevant, they should specify a time frame for implementation
- ✓ They should be linked to a particular implementation challenge
- ✓ They should not be vague or general.

Still in connection with article 5, the alternative report on Spain's implementation makes two sets of recommendations.

In relation to the claim that protection against discrimination fails to protect certain persons with disabilities, it proposes a focus not on percentages of disability but on vulnerability:

> *It is important, not only to extend protection against discrimination in line with the Convention, but also to consider the situation of those persons who, despite having a permanent disability and obvious difficulty in accessing and exercising their rights (this can be clearly, although not exclusively, seen with regard to the right to work, or education) do not meet the requirements of the administrative concept of disability. In this regard, CERMI [Spanish Committee of Representatives of Persons with Disabilities] have already proposed that certain particularly vulnerable groups who are in a situation of legal neglect (persons with limited intelligence, for example) should receive administrative recognition, and it is necessary that the Spanish State identify situations of great vulnerability and adopt the measures needed to widen the protection of the rights of persons in a situation of disability in accordance with the [Convention].*

In relation to the claim that the supervisory and sanctions mechanisms were not completely effective, the alternative report recommends:

- *Include indicators monitoring the efficacy of the protection systems following up matters both in the administrative disciplinary area and follow-up indicators in the legal area*
- *With regard to the legal protection on fundamental rights, principally in the contentious-administrative and civil areas, it is necessary to hasten processes or establish immediate protection measures (similar to injunction proceedings)*
- *Ensure that the system of infractions and sanctions of LIONDAU is developed on a regional level and started effectively*
- *Promote the arbitration system covered by LIONDAU*
- *Extend the benefit of* ***free justice*** *to all situations where protection has been requested of a fundamental right which has been violated on the grounds of disability, with no financial restrictions to its application.*

The recommendations are helpful, although not all of them meet the suggestions listed above. Consider the following recommendation:

> *Include indicators monitoring the efficacy of the protection systems following up matters both in the administrative disciplinary area and follow-up indicators in the legal area*

In general terms, the recommendation is helpful:

✓ It is clear

✓ It is measurable

✓ It links with and responds to an implementation challenge

✓ It is not vague or general.

It could be improved by:

- Specifying which governmental authority should develop the indicators
- Setting a time frame for this to occur.

7. Data collection and analysis

There are several data sources that could be helpful for the alternative report:

✓ Laws and policies. The alternative report, as with the State report, should provide the Committee with information on the legal and policy context as it relates to the Convention's implementation. This requires a mapping of laws and a gap analysis. See the forthcoming OHCHR publication on law review, which will aim to assist in analysing the extent to which national legislation is in compliance with the Convention.

✓ Review of secondary materials. Civil society organizations might not have the time or the resources to collect new data. One way to overcome this situation is to rely on trustworthy secondary sources of information. For instance:

Reports, such as census data or ad hoc reports, from the national statistical institute

Data from ministries of education, health, justice, social affairs, transport

Reports from the United Nations and the World Bank might either include information on persons with disabilities or even focus specifically on disabilities

National human rights institutions might have information such as research reports

Academic institutions might have undertaken research or surveys on the rights of persons with disabilities.

✓ Information on complaints (such as court cases, complaints to the ombudsman and so on) can show whether individuals are using complaints mechanisms and whether such mechanisms are effective. An analysis of complaints can also identify challenging and recurring issues in implementation.

✓ It might be possible for civil society organizations to undertake their own research for the alternative report. Techniques such as household surveys can provide quantitative information, while interviews with key experts and interviews with groups reflecting the diversity of disability can provide important qualitative information that could add depth to the report, for example, by reflecting an individual's actual experience of human rights in the national context.

8. Submitting the report to the Committee

The drafters should submit their alternative report to the Committee in time for it to be considered in full. This could be done:

✓ At the time of submission of the State report. However, given the delays in the Committee's review of State reports, this might require updating the report prior to the constructive dialogue.

- ✓ Prior to the Committee's session preceding its review of the State party report. For example, if the State party will be reviewed at the tenth session, the Committee's secretariat should receive the alternative report before the ninth session, so the report can influence the list of issues.
- ✓ Prior to the session itself. In this way, the alternative report can still influence the constructive dialogue with the State and will be fully up to date.

The report should be sent to the Office of the United Nations High Commissioner for Human Rights, secretariat of the Committee on the Rights of Persons with Disabilities, at crpd@ohchr.org.

Civil society organizations might also consider attending the Committee's sessions either:

- ✓ At the session prior to the constructive dialogue with the State. The International Disability Alliance holds a lunchtime session for the Committee's members, which is open to the public, to discuss issues relating to the State party whose report will be reviewed at the next session;

  or

- ✓ At the session of the constructive dialogue. The Committee will set aside time to meet civil society organizations and NHRIs prior to the constructive dialogue to have their views. These sessions are normally closed.

9. Follow-up to the Committee's session

There are many ways in which civil society organizations, either separately or in partnership with the authorities, can follow up on the Committee's concluding observations and recommendations. For example, they may:

- ✓ Issue a press release to raise awareness of the concluding observations and recommendations
- ✓ Continue the coalition that drafted the alternative report, meet and strategize on ways to move forward on the concluding observations
- ✓ Meet staff in the relevant ministries to ensure that a workplan for the implementation of the concluding observations is developed
- ✓ Meet parliamentarians to raise awareness of specific recommendations that require law and policy reform
- ✓ Meet the United Nations country team to encourage United Nations agencies to advocate implementation of the concluding observations and to align programming with the Committee's recommendations
- ✓ Hold a national conference to raise awareness of the concluding observations
- ✓ Hold workshops on specific issues
- ✓ Identify recommendations that civil society could assist in implementing
- ✓ Follow implementation of recommendations over time to maintain focus
- ✓ Report on implementation to the Committee as well as to other international processes such as the universal periodic review.

Introduction

This module sets out the basic parameters of the two procedures under the Optional Protocol to the Convention on the Rights of Persons with Disabilities: communications and inquiries. It explains the steps involved in each procedure and identifies some of the benefits of the Optional Protocol as a means of strengthening the rights of persons with disabilities.

A. The Committee on the Rights of Persons with Disabilities

Article 34 of the Convention establishes a Committee on the Rights of Persons with Disabilities, an international committee of independent experts with several functions. Its members are elected during the Conference of States Parties, which takes place in New York. Unlike the Conferences of States Parties of other human rights treaties, that of the Convention on the Rights of Persons with Disabilities also holds substantive discussions on issues related to the Convention's implementation.

State parties elect the experts by secret ballot on the basis of candidatures put forward by the State parties themselves. The State parties elect the expert members taking into account their competence and experience in the field of human rights and disability, and also in consideration of equitable geographic representation, representation of different forms of civilization and legal systems, gender balance, and participation of experts with disabilities. The experts serve in their personal capacity: they do not represent the State that put forward their candidature or that elected them. They are independent.[16] In order to guarantee their independence, they do not participate in the review of the reports or in the constructive dialogue connected to their own countries.

B. The Committee's duties under the Convention

By becoming parties to the Convention, States commit to providing the Committee with **periodic reports** on the steps they have taken to implement it (art. 35). State parties shall submit their initial reports within two years after the Convention's entry into force for them. Subsequent reports must be submitted at least every four years thereafter and further whenever the Committee requests them to do so.

The Committee engages in a **constructive dialogue** with State parties and issues concluding observations and recommendations for follow-up action to improve and strengthen the Convention's implementation. Other inter-

[16] For further information on the Committee and its duties under the Convention, see module 7.

ested parties, such as national human rights institutions and civil society organizations, can also be part of this dialogue. DPOs for example can submit alternative reports to the Committee. Alternative reports can be very valuable, as they provide a civil society perspective on implementation and thus give the Committee a fuller view of the status of the Convention's implementation.

The Committee may also hold **days of general discussion**, open to the public, during which it discusses issues of general interest arising from the Convention. The Committee has already held days of discussion on legal capacity and accessibility and a half day of discussion on women and girls with disabilities.

The Committee issues **general comments** on specific provisions in the Convention or on specific issues. These are authoritative statements that clarify issues arising from the implementation of the Convention. General comments have been particularly important in the context of other treaty bodies, as they provide a summary guide for the implementation of specific treaty provisions. For example, the general comments of the Committee on Economic, Social and Cultural Rights have had a significant impact at the national level, fleshing out the Covenant's provisions, which are quite general. National courts in several jurisdictions on different continents have referred to these general comments as a means of applying the Covenant to individual cases.

C. The Committee's duties under the Optional Protocol

The Optional Protocol is a separate international legal instrument attached to the Convention on the Rights of Persons with Disabilities. It was adopted together with the Convention on 13 December 2006. The Optional Protocol is subject to separate ratification or accession. In order to become a party to the Optional Protocol, a State already needs to be a State party to the Convention. Reservations to the Optional Protocol are permitted so long as they are not incompatible with the object and purpose of the Convention and the Protocol.

The Protocol is optional in the sense that States are not obliged to ratify it when they ratify the Convention. However, the right to remedy or redress is fundamental for the full enjoyment of all rights, as recognized, for instance, in the International Covenant on Civil and Political Rights and in the Convention on the Rights of Persons with Disabilities. It applies to persons with disabilities as it does to anyone else. Treaty bodies always recommend the ratification of optional protocols to ensure the comprehensive protection of rights.

By becoming parties to the Optional Protocol, States recognize the competence of the Committee to receive complaints (known as communications) from individuals alleging violations of any of the provisions of the Convention. The Optional Protocol (art. 6) also provides the Committee with the opportunity to undertake inquiries if it receives reliable information indicating grave or systematic violations of the Convention in a particular State party. States can opt out of the inquiry procedure by making a declaration to this effect at the time of signing or ratifying the Optional Protocol (art. 8).

D. Basic information on the communications procedure

The procedure for individual communications set out in the Optional Protocol is similar to that under other international

human rights treaties. It allows individuals and groups of individuals claiming to be victims of a violation of any of the provisions of the Convention to file complaints before the Committee. It is worth pointing out from the outset some basic information on what the Optional Protocol is and what it is not so as to avoid confusion.

The communications procedure is what is known as a quasi-judicial procedure. In many ways the procedure parallels judicial consideration of complaints but there are also some important differences:

- The procedure is in writing and there is no oral hearing as in court cases. The parties are not represented before the Committee by lawyers, nor is it necessary for the parties to come to the Committee. Everything is done in writing, through correspondence.
- The Committee's experts are independent experts, but they are not judges.
- The Committee offers views and recommendations on communications, but unlike a court decision, these are not legally enforceable. Their implementation will depend on the political will of the State party and the pressure brought to bear through various actors at the national level. The Committee cannot compel implementation.

It is also interesting to note that many communications are sent to the Committee. However, most of these cannot be registered as they do not meet the basic requirements for admissibility (for example, many communications have been brought against the United States, which is not a party to either the Convention or its Optional Protocol).

E. The communication procedure: from complaint to resolution

The overall procedure is as follows:

- Individuals can complain to the Committee if they consider that their rights under the Convention have been violated by a State party. The complaint is sent to the petitions team of OHCHR, CH-1211 Geneva 10, petitions@ohchr.org or by fax (for urgent matters) +41 22 917 90 22.
- The communication is registered. In order to be registered, the communication must meet the basic requirements for admissibility, such as the identification of the State party to the Optional Protocol. Otherwise, the communication is not registered and the petitions team may request additional information from the author.
- Any communication that is registered is then brought to the attention of the State party concerned.
- The State party may submit written information within six months, clarifying its position on the issues raised and outlining remedies that may have been taken in the specific case.
- The Committee should transmit the information provided by each of the parties to the other party and shall afford each of them the opportunity to comment on their respective submissions within fixed time limits.
- If necessary, the Committee may order interim measures to prevent any irreparable damage to the individual or group. However, this does not imply that

the Committee believes the communication is either admissible or founded. The Committee could order interim measures but then decide that the communication is inadmissible and take no further action.

- The Committee will consider whether the communication is admissible.
- If the communication is admissible, the Committee will consider the merits of the communication. In other words, it will assess whether there has been a violation of the Convention. If the communication is inadmissible, the parties are informed and the procedure ends.
- Admissibility and the merits can be examined together or separately.
- After examining the communication, the Committee will forward its views and recommendations, if any, to the State party and the petitioner.
- The views on admissibility and the merits are made public.
- If the Committee makes a finding of a violation, it will follow up on action taken by the State, for example, through future periodic reports.

The Committee has so far given its views on the merits of three communications: *H.M.* v. *Sweden* (communication No. 3/2011), *Szilvia Nyusti and Péter Takács* v. *Hungary* (communication No. 1/2010) and *Zsolt Bujdosó and five others* v. *Hungary* (communication No. 4/2011).[17]

[17] For the Committee's jurisprudence, see www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx (accessed 24 September 2013).

H.M. v. *Sweden* (communication No. 3/2011)

1. Facts

The author, whose impairment has resulted in her being completely bedridden, was not able to leave her house or be transported to hospital or rehabilitation care because of the increased risk of injury. The only type of rehabilitation that could stop the progress of her impairment was hydrotherapy, which in the author's circumstances would only be practicable in an indoor pool in her house. Consequently, the author applied for planning permission for an extension to her house on her privately owned piece of land, partly on land where building is not permitted. The request for building permission was rejected at all levels of the national administrative justice system, because it went against building regulations, and construction could not be permitted even as a minor divergence from the detailed plan and the State party's Planning and Building Act.

2. Claim

The author claimed to be a victim of a violation by Sweden of her rights under articles 1 (purpose), 2 (definitions), 3 (general principles), 4 (general obligations), 5 (equality and non-discrimination), 9 (accessibility), 10 (right to life), 14 (liberty and security of person), 19 (living independently and being included in the community), 20 (personal mobility), 25 (health), 26 (habilitation and rehabilitation) and 28 (adequate standard of living and social protection) of the Convention on the Rights for Persons with Disabilities. The author claimed that she had been discriminated against by the decisions of the State party's administrative bodies and courts, since they had failed to

take into account her rights to equal opportunity for rehabilitation and improved health. She thereby claimed to have been refused her right to a worthwhile quality of life. The author requested the Committee to determine whether her needs for rehabilitation and care due to her disability were of primary consideration over the public interest as protected by the Local Housing Committee and as determined in the Planning and Building Act.

3. The State party's submissions on admissibility and on the merits

According to the State party, the author's claims failed to rise to the basic level of substantiation required for purposes of admissibility and should be declared inadmissible pursuant to article 2 (e) of the Optional Protocol. It further stated that the author had merely referred to a number of articles of the Convention without advancing grounds for how her rights under these articles had been violated, and that it was only in a position to explain in general terms how Swedish legislation relates to and fulfils the requirements contained in the articles that may be relevant in this case. The State party viewed that the communication should be declared inadmissible for lack of substantiation, since the author's claims under various articles of the Convention failed to rise to the basic level of substantiation.

4. Decision

The Committee noted that the author had invoked a violation of articles 9, 10, 14 and 20 of the Convention, without however providing further substantiation as to how these provisions may have been violated. Therefore, the Committee considered that these claims were insufficiently substantiated, for purposes of admissibility, and were thus inadmissible under article 2 (e) of the Optional Protocol. The Committee considered that the author's remaining allegations under articles 3, 4, 5, 19, 25, 26 and 28 of the Convention had been sufficiently substantiated, for purposes of admissibility, and proceeded to their examination on the merits. The Committee noted that the information before it showed that the author's health condition was critical and access to a hydrotherapy pool at home was essential and an effective—in this case the only effective—means to meet her health needs. Appropriate modification and adjustments would thus require a departure from the development plan, in order to allow the building of a hydrotherapy pool. With reference to the Convention's definitions of "discrimination on the basis of disability" and "reasonable accommodation" (art. 2), the Committee noted that the State party had not indicated that this departure would impose a "disproportionate or undue burden", which was a prerequisite for defining that a request for accommodation was unreasonable. In relation to articles 25 (health) and 26 (habilitation and rehabilitation), the Committee noted that, when rejecting the author's application for a building permit, the State party had not addressed the specific circumstances of her case and her particular disability-related needs. The Committee therefore considered that the decisions of the domestic authorities to refuse a departure from the development plan in order to allow the building of the hydrotherapy pool were disproportionate and produced a discriminatory effect that adversely affected the author's access, as a person with a disability, to the health care and rehabilitation required for her specific health condition.

5. Finding

The Committee found that the State party had failed to fulfil its obligations under articles 5 (1), 5 (3), 19 (b), 25 and 26, read alone and in conjunction with articles 3 (b), (d) and (e), and 4 (1) (d), of the Convention. Having reached this conclusion, the Committee did not consider it necessary to address the author's claims under article 28 of the Convention.

Szilvia Nyusti and Péter Takács v. *Hungary* (communication No. 1/2010)

1. Facts

Both authors are persons with visual impairments who had contracts for private current account services with the OTP Bank Zrt. credit institution (OTP), according to which they are entitled to use banking cards. Nevertheless, the authors were unable to use automatic teller machines (ATMs) without assistance, as the keyboards of the ATMs operated by OTP were not marked with Braille fonts, and the ATMs did not provide audible instructions and voice assistance for banking card operations. The authors paid the same annual fees for banking card services and transactions as other clients, although they were unable to use the services provided by these ATMs to the same level as sighted clients. They therefore received lesser services for the same fees. The authors submitted a claim to a court of first instance, which held that the bank's behaviour resulted in direct discrimination and that, as a consequence, OTP had violated the authors' right to human dignity and to equal treatment. The court further specified two elements that had been under discussion: first, that the Equal Treatment Act was applicable to all civil relations, irrespective of whether the parties thereto were public or civil sector operators, where services were provided to numerous clients; and second, that even contract offers made prior to the entry into force of the Equal Treatment Act would be covered by its provisions, since the aim of the Act was to make the principle of non-discrimination applicable to any relationship where a larger number of clients could be involved. The court ordered that some ATMs needed to be retrofitted. It also granted pecuniary damages which took into consideration that OTP had recently purchased new ATMs that could not be retrofitted and had not taken any measures to facilitate the authors' access to the services provided by ATMs, even after the entry into force of the Equal Treatment Act.

The authors appealed against the first instance decision, requesting that *all* ATMs be made accessible, asserting that their activities should not be limited only to those cities where ATMs were to be made accessible further to the decision of the court of first instance. They also demanded more compensation. The Court of Appeal rejected the appeal, reaffirming the findings of the court of first instance. Consequently, the authors submitted a request for an extraordinary judicial review at the Supreme Court, in which they asked the Court to alter the decision of the Metropolitan Court of Appeal. The Supreme Court rejected the request.

2. Claim

The authors claimed to be victims of a violation by the State party of their rights under article 5, paragraphs 2 and 3, article 9 and article 12, paragraph 5, of the Convention. The authors submitted that, by not intervening in a long-term contractual relationship

between them and OTP on their request in order to impose on OTP an obligation of equal treatment, the Court of Appeal and the Supreme Court had violated the State party's obligations under article 5, paragraph 2, of the Convention to prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. The State party's submissions on admissibility and on the merits

The State party informed the Committee that it would not challenge the admissibility of the communication. On the merits of the communication, the State party submitted that, based on the regulations in force in the State party, the judgement of the Supreme Court was sound. It added that the problem outlined in the communication was real and required a fair settlement, and put forward three aspects in order to find a solution acceptable to all parties. Firstly, steps were to be taken to improve the accessibility of ATMs and other banking services, not only for persons who are blind but also for persons with other impairments. Secondly, given the related costs and technical viability, the above target could be achieved only gradually, by procuring and installing new ATMs facilitating physical and info-communication accessibility as a basic condition. Finally, although the communication concerned the services provided by a specific bank, the above-mentioned requirements would have to be met by all financial institutions in the State party. Based on these considerations, the State Secretary for Social, Family and Youth Affairs of the Ministry of National Resources sent a letter to OTP, asking it to provide information on its plans and commitments related to its ATMs. The State Secretary further suggested that, in the future, OTP should give priority to accessibility when new ATMs are procured. Taking into account that ensuring accessibility should not be the duty of one bank alone, the State Secretary had also contacted the State party's Financial Supervisory Authority with a request to identify possible regulatory tools and incentives for all financial institutions.

4. Decision

The Committee noted that the authors had invoked a violation of article 12, paragraph 5, of the Convention, without however providing further substantiation as to how this provision may have been violated, given that, according to the information before the Committee, their legal capacity to control their own financial affairs had not been restricted. Therefore, the Committee considered that this part of the communication was insufficiently substantiated, for purposes of admissibility, and was thus inadmissible under article 2, paragraph (e), of the Optional Protocol. The Committee considered that the authors had sufficiently substantiated, for purposes of admissibility, their claims under article 5, paragraphs 2 and 3, and article 9 of the Convention. In the absence of other impediments to the admissibility of the communication, the Committee declared these claims admissible and proceeded to their examination on the merits.

On the merits, the Committee noted that the authors' initial complaint to the first instance focused on the lack of reasonable accommodation, i.e., the failure by OTP to provide for accessible ATMs in the proximity of the authors' homes, considering their visual impairments. The Committee further

noted that the authors' civil action before the Court of Appeal and the Supreme Court, as well as their communication before the Committee went further and raised a broader claim, i.e., the lack of accessibility for persons with visual impairments to the entire network of ATMs operated by OTP. Given that the authors had opted to frame their communication before the Committee under this broader claim, the Committee considered that the totality of the authors' claims should be examined under article 9 of the Convention and that it was unnecessary for it to separately assess whether the State party's obligations under article 5, paragraphs 2 and 3, of the Convention had been fulfilled.

In this regard, the Committee recalled that under article 4, paragraph 1 (e), of the Convention, States parties undertake "to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise". To this end, States parties are required pursuant to article 9 of the Convention to take appropriate measures to ensure to persons with disabilities, on an equal basis with others, access to, inter alia, information, communications and other services, including electronic services, by identifying and eliminating obstacles and barriers to accessibility. States parties should, in particular, take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public (art. 9, para. 2 (a), of the Convention), and ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities (art. 9, para. 2 (b)).

5. Finding

While giving due regard to the measures taken by the State party to improve the accessibility of the ATMs operated by OTP and other financial institutions for persons with visual and other types of impairments, the Committee observed that none of these measures had ensured the accessibility to the banking card services provided by the ATMs operated by OTP for the authors or other persons in a similar situation. The Committee found accordingly that the State party had failed to comply with its obligations under article 9, paragraph 2 (b), of the Convention.

Zsolt Bujdosó and five others v. *Hungary* (communication No. 4/2011)

1. Facts

The authors' names were erased from the electoral register as an automatic consequence of their being placed under partial or general guardianship on the basis of their intellectual impairments. For this reason they could not participate in parliamentary and municipal elections in 2010, and they remained disenfranchised at the time of submitting the complaint. The authors alleged that no effective remedy was at their disposal. The courts did not have the power to consider and restore their right to vote. The authors could only have submitted a claim to have their legal capacity restored, but this was neither possible nor desirable for the authors, who acknowledged that they required support in managing their affairs in certain areas of their lives. They could not file a complaint based on the electoral procedures either, because the State's courts could not overrule their exclusion from the electoral register, which was pursuant to a constitutional provision.

2. Claim

The authors claimed that Hungary violated their right under the Convention's article 29 (participation in political and public life), read alone and in conjunction with article 12 (equal recognition before the law). They argued that they were able to understand politics and participate in elections if they were allowed to, and maintained that the ban they received was unjustified. They requested the State party to introduce the necessary changes to the domestic legal framework and to award them compensation for non-pecuniary damages on an equitable basis.

3. State party's submissions

The State party did not challenge the admissibility of the communication. In its observations on the merits, it reported that the relevant legislation had changed since the authors submitted the complaint. In particular, the constitutional provision that automatically excluded from suffrage all persons under guardianship was abandoned. The new legislation made it possible to address the issue of suffrage separately from that of placement under guardianship and required judges to make decisions in consideration of an individual's circumstances and subject to review. With the new provisions, a person under guardianship could also reclaim suffrage without challenging guardianship. The State party concluded that by introducing these amendments it had brought its laws in line with article 29 of the Convention and demanded that the Committee should dismiss the authors' request for legal amendment and non-pecuniary compensation.

4. Third-party intervention

The Harvard Law School Project on Disability submitted a third-party intervention in support of the authors' communication. It submitted that, further to the claims of the authors, subjecting persons with disabilities to individualized assessments of their voting capacity was in itself a violation of article 29 and that the right to vote should never be subject to a proportionality assessment and justification.

5. Decision

The Committee considered the communication admissible since the State party made no objection in connection with the exhaustion of domestic remedies nor had it identified any remedy which would have been available to the authors, and the authors had sufficiently substantiated their claims under articles 29 and 12 of the Convention.

The Committee observed that the State party had merely described the new legislation without showing how this regime specifically affected the authors and the extent to which it respected their rights under article 29. The Committee also found that the State party had failed to respond to the authors' contention that they were prevented from voting and remained disenfranchised despite the new legislative changes. The Committee also clarified that article 29 did not foresee any reasonable restriction nor did it allow any exception for any group of persons with disabilities and therefore even a restriction pursuant to an individualized assessment constituted discrimination on the basis of disability. The Committee found the assessment of individuals' capacity to be discriminatory in nature (as it targeted only persons with disabilities) and considered this measure neither legitimate nor proportional. In this

regard, the Committee recalled that under article 29 the State party was required to reform its voting procedures to ensure that persons with intellectual disability were able to cast a competent vote on an equal basis with others. Finally, the Committee recalled that, under article 12, State parties had a positive duty to take the necessary measures to guarantee persons with disabilities the actual exercise of their legal capacity.

6. Finding

The Committee found that the deletion of the authors' names from the electoral registers as well as the State party's failure to adapt its voting procedures breached article 29, read alone and in conjunction with article 12. It also concluded that the new legislation, insofar as it allowed courts to deprive persons with intellectual disability of their right to vote and to be elected, was in breach of article 29. The Committee therefore recommended that the State party should provide the authors with adequate compensation for moral damages incurred as a result of being deprived for their right to vote and should take measures, including appropriate legislative changes, to prevent similar violations in the future.

Before the entry into force of the Convention and its Optional Protocol, communications related to the rights of persons with disabilities had been considered by regional human rights mechanisms as well as by other United Nations human rights treaty bodies, such as the Human Rights Committee. Here are two examples: one from the Council of Europe's Committee of Social Rights and another from the Human Rights Committee:

European Committee of Social Rights *Autism Europe* v. *France*, complaint No. 13/2002

1. Facts

According to State legislation, people with autism were able to attend mainstream schools, either individually (individual mainstreaming) in ordinary classes with the assistance of special auxiliary staff, or as part of a group (collective mainstreaming) through school integration classes (primary level) or educational integration units (secondary level). People who, due to the severity of their autism, were unable to integrate into the ordinary school system, were able to receive special education in a specialized institution. Individual mainstreaming was financed through the general education budget, while collective mainstreaming was financed through the sickness-insurance benefit. Autism-Europe argued that the State did not, in practice, make sufficient provision for the education of children and adults with autism due to identifiable shortfalls—both quantitative and qualitative—in the provision of both mainstream education as well as so-called special education.

2. Claim

Autism-Europe claimed that the failure to take the necessary steps to ensure the right to education of children and adults with autism resulted in violations of the right of persons with disabilities to independence, social integration and participation in the life of the community, the right of children and young persons to social, legal and economic protection and the prohibition on discrimination.

3. Decision

The Committee recalled that the implementation of the European Social Charter required State parties to take not merely legal action but also practical action to give full effect to the rights recognized in the Charter. When the achievement of one of the rights in question was exceptionally complex and particularly expensive to resolve, a State party had to take measures that allowed it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. In doing so, States should be mindful of the impact that choices of measures might have on groups with heightened vulnerabilities as well as for others affected, especially the families of vulnerable people. In the light of the facts of the case, the Committee noted that the State continued to use a more restrictive definition of autism than that adopted by the World Health Organization and that there were still insufficient official statistics that would rationally measure progress through time. Further, the proportion of children with autism being educated in either general or specialist schools was much lower than that of other children—whether disabled or not—and there was a chronic shortage of care and support facilities for autistic adults. For these reasons, the State had failed to achieve sufficient progress in advancing the provision of education for people with autism. The Committee also noted that establishments specializing in the education and care of disabled children, particularly those with autism, were not in general financed from the same budget as normal schools; however, this did not amount to discrimination as it was for the States themselves to decide the modalities of funding.

4. Finding

The Committee stated that the State did not conform with the Charter.

Human Rights Committee
M.G. v. *Germany*, communication No. 1482/2006

1. Facts

Three members of the author's family filed lawsuits against the author in family law and civil matters. The author made frequent and voluminous submissions in court proceeding and appealed every single decision that she considered disadvantageous. The members of her family sought an order compelling her to desist from making certain statements and seeking pecuniary damages. The court, without hearing or seeing the author in person, ordered a medical examination of the author to assess whether she was capable of taking part in the legal proceedings. The court reasoned that the behaviour of the author in the proceedings, including her many very voluminous submissions to the court, raised doubts as to her capacity to take part in proceedings. The author challenged the court's decision requiring a medical examination, claiming that there were no objective reasons for ordering the examination and challenging the absence of an oral hearing prior to issuing the order. Having lost that challenge, she took her challenge to two higher courts, including the Federal Constitutional Court, both of which rejected it.

2. Claim

The author claimed to be victim of violations of articles 7 (freedom from torture or cruel, inhuman or degrading treatment), 17 (right to privacy) and 14 (1) (right to a fair

trial) of the International Covenant on Civil and Political Rights. In relation to article 7, she argued that requiring the medical treatment was "degrading" as it would cause feelings of fear or anguish and inferiority capable of debasing the victim. In relation to article 17, she argued that involuntary medical examination would interfere with her privacy and integrity, arguing that only in exceptional circumstances and for compelling reasons may a person be subjected to medical or psychiatric examinations without explicit consent. Finally, in relation to article 14 (1), she argued that the refusal of the court to hear or see her in person prior to ordering her medical examination violated her right to a fair trial as an oral hearing is an essential element of the due process guarantees.

3. The State party's submissions on admissibility and on the merits

The State challenged the admissibility of the communication, arguing that it constituted an abuse of the right of submission on various grounds, including the fact that she did not disclose that the order of the court to determine her capacity concerned only proceedings against members of her family and not her legal capacity in other respects. In relation to the merits of the case, the State considered the claim to be "manifestly ill-founded". The State argued that the author was not compelled to undergo the examination as she could refuse to see the expert, in which case the opinion would be prepared on the basis of the files. Moreover, the State said that the author would have had the occasion to be heard by the court when the court came around to evaluating the expert opinion; however, that stage had not been reached in the proceedings.

4. Decision

The Committee considered admissibility and the merits together. On admissibility, the Committee found that the author had failed to substantiate that the invitation to undergo an expert examination by itself failed to raise issues related to article 7 so this part of the submission was inadmissible. Similarly, the Committee found that the author had not sufficiently substantiated the claim in relation to article 14 (1). In relation to article 17, the Committee found that the author had substantiated these claims for purposes of admissibility and the State had not challenged this.

5. Finding

The Committee found that to order a person to undergo medical treatment or examination without the consent or against the will of that person constitutes interference with privacy, and may amount to an unlawful attack on his or her honour and reputation. For such an interference to be permissible, it must meet certain conditions, i.e., it must be provided for by law, be in accordance with the provisions, aims and objectives of the Covenant and be reasonable under the circumstances. The Committee found the court's actions not to be reasonable, as the author would either have to undergo the examination or, alternatively, the expert would prepare the opinion on the basis of the file without the author being heard. It found a violation of article 17 in conjunction with article 14 (1). The Committee noted the State was under an obligation to provide the author with an effective remedy and to prevent similar violations in the future. The Committee requested information about measures taken to follow up on its views within 180 days. The Committee also requested the State to publish the Committee's views.

It is interesting to review these two cases, which precede the Convention, in the light of the Convention's norms and standards. In particular, the second case raises particularly complicated issues. Importantly, the court's actions, calling into question the legal capacity of the author, would be questionable under the Convention for failing to respect legal capacity on an equal basis with others (using mental disability as a possible distinction for denying her legal capacity in relation to the case). How would this case have been decided by the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention?

F. Checklist for submitting a communication

The Committee has provided helpful guidance on the issues that must be reflected in a communication for it to be registered (CRPD/C/5/3/Rev.1). These are produced in the box below:

Guidelines for submission of communications to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention

1. Information concerning the author(s) of the communication

- Family name
- First name(s)
- Date and place of birth
- Nationality/citizenship
- Sex
- Other relevant personal identification data (if any of the above details are not available)
- Present address
- Postal address for confidential correspondence (if other than present address)
- Telephone or mobile number (if any)
- E-mail address (if any)
- Fax number (if any)
- If you are submitting the communication on behalf of the alleged victim(s), please provide evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent

2. Information concerning the alleged victim(s)

- Family name
- First name(s)
- Date and place of birth
- Nationality/citizenship
- Sex
- If you consider it appropriate, please indicate whether the alleged victim(s) has a disability and, if so, the nature of that disability
- Other relevant personal identification data (if any of the above details are not available)
- Present address
- Postal address for confidential correspondence (if other than present address)
- Telephone or mobile number (if any)
- E-mail address (if any)
- Fax number (if any)
- If the communication concerns a group of individuals claiming to be victims, please provide basic information about each individual, in line with the above list

3. Information on the State party concerned

- Name of the State party (country)

4. Subject matter of the communication

5. Nature of the alleged violation(s)

Please provide detailed information to substantiate your claim, including:

- Description of the alleged violation(s), specifying the acts or omissions that prompted the communication
- Details of the perpetrators of the alleged violation(s)
- Date(s)
- Place(s)
- Insofar as possible, please indicate which provisions of the Convention were allegedly violated. If the communication refers to more than one provision, describe each issue separately.

6. Steps taken to exhaust domestic remedies

Describe the action taken to exhaust domestic remedies in the State party in which the alleged violation(s) of rights protected under the Convention occurred, such as attempts to obtain legal or administrative redress. Any complaint submitted to the Committee must first have been submitted to the national courts and authorities for consideration.

In particular, please indicate:

- Type(s) of action taken by the alleged victim(s) to exhaust domestic remedies, such as decisions of domestic courts
- Authority or body addressed
- Name of the court hearing the case (if any)
- Date(s)
- Place(s)
- Who initiated the action or sought a solution
- Key points of the final decision of the authority, body or court addressed
- If domestic remedies have not been exhausted, please explain why

Note: Please enclose copies of all relevant documentation, including copies of legal or administrative decisions or domestic legislation related to the case or summaries of such decisions or legislation in one of the working languages of the secretariat (English, French, Russian or Spanish).

7. Other international procedures

Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If yes, explain:

- Type of procedure(s)
- Body or bodies addressed
- Date(s)
- Place(s)
- Results (if any)

Note: Please enclose copies of all relevant documentation.

8. Specific requests/remedies

Please detail the specific requests or remedies that are being submitted to the Committee for consideration.

9. Date, place and signature

Date of communication:

Place of signature of communication:

Signature of author(s) and/or alleged victim(s):

10. List of documents attached

Note: Do not send originals, only copies.

All ten points are important. However, it is relevant to draw attention to some specific issues:

Who can apply?

Any individual under the jurisdiction of a State party that has accepted the competence of the Committee can submit a communication to the Committee's secretariat. In addition, groups of individuals can also submit communications. In other words, two or more individuals can join together and send a communication to the Committee claiming a breach of their rights.

Furthermore, a communication can be brought on behalf of an individual or group. That means, for example, a family member, an NGO or a public interest law centre or other entity could bring a communication on behalf of someone. The Committee's rules of procedure simply specify that communications may be submitted on behalf of an individual or a group of individuals (rule 69). As is clear from the information, an author submitting a communication on behalf of alleged victim(s) must provide evidence of the consent of the victim(s) (such as a power of attorney), or reasons that justify submitting the communication without such consent.

Against whom?

The defendant State must have accepted the competence of the Committee by ratifying the Optional Protocol.

What is the communication about?

The communication must include an allegation of a violation of any provision in the Convention. It is important to note that the communication can concern any "provision". The authors should make sure that they clarify which provisions have allegedly been breached and how that alleged breach has affected them.

How?

The communications procedure is a confidential written procedure; there are no oral hearings. However, the Optional Protocol does not rule out oral hearings and the Committee could receive oral submissions, although this is unlikely.

G. Receivability and admissibility

The Optional Protocol sets out strict admissibility criteria (arts. 1–2), which must be met before the Committee can decide

on the merits. Article 1 sets out the basic requirements that a communication must meet for the Committee to receive and consider it. If these requirements are clearly not met, the Committee's secretariat cannot register the communication and it does not even get to the admissibility stage. The Committee might have to consider some of these criteria itself at the stage of admissibility, if they were not clear at the registration stage. These criteria are set out here in question form:

- Is the communication from an individual or a group of individuals? In other words, does the author have **standing** to bring the communication under the Optional Protocol? If not, the Committee will reject it on formal grounds. For instance, if an author brings a complaint without demonstrating that it is on behalf of an individual or a group of individuals—for example, without furnishing a power of attorney—then the author will not have standing.
- Does the individual or group claim to be a victim of a violation of the Convention? This is the **victim** requirement. The communication must identify an individual or a group of individuals whose rights have suffered. It is not possible to bring a general claim against a State, e.g., on behalf of the broader community for failure to fulfil its obligations but without demonstrating that someone has been a victim of this failure.
- Is the claimant subject to the State's jurisdiction? There must be a connection between the victim and the State party against which the allegation is made.
- Has the State ratified the Optional Protocol? If the State has not accepted the Committee's jurisdiction to receive and consider communications, the Committee cannot consider any communication against that State.

Article 2 sets out the requirements for admissibility. These apply to those communications that are registered and that the Committee considers. As noted above, the Committee could decide that the communication does not meet the admissibility requirements after all and so there is no need to consider its merits.

- Is the alleged victim anonymous? If so, the Committee cannot admit the communication. It should be noted that for all communications the identity of the author can nevertheless remain confidential, if the author so requests.
- Has the communication come before another international procedure of investigation or settlement? This criterion aims at ensuring that a given international or regional body does not examine a communication if the same matter is being (simultaneous procedures) or has already been (successive procedures) examined by another international procedure.
- Are domestic remedies exhausted? The exhaustion of domestic remedies is an important rule of law, which applies to other dispute mechanisms, too. Its purpose is to give national authorities, generally courts, an opportunity to deal with allegations of human rights violations first. Indeed, an important aim of communications procedures is to strengthen national human rights protection mechanisms, which are more easily accessed and likely to provide quicker and legally enforceable remedies to victims.

Having exhausted domestic remedies is a key admissibility criterion under the Optional Protocol. For this reason, it is important for authors to include as much information as possible in their submissions on how they have exhausted domestic remedies. As noted above, the submission can indicate the type of action taken, the authority to which it was addressed, when the action was taken, the final decision and so on. The Committee has also asked why domestic remedies were not exhausted. Indeed, according to article 2 (d), this requirement can be waived in some cases: where the application of the remedy is unreasonably prolonged or unlikely to bring effective relief. This mirrors developments in other areas of international law. For example, the European Court of Human Rights requires domestic remedies to have been exhausted where remedies are "available" and "effective". The inter-American system has identified three exceptions to the rule: (1) the domestic legislation of the State does not afford due process of law for this rule; (2) the party alleging violation of rights has been denied access to remedies under domestic law or has been prevented from exhausting them; (3) there has been unwarranted delay in rendering a final judgement under the aforementioned remedies.

- Is the communication manifestly unfounded or unsubstantiated? This allows the Committee to exclude communications which are contrary to the objects and purposes of the Convention.
- Did the alleged conduct occur after the entry into force of the Optional Protocol for the State? The State cannot be held to account by the Committee for an action that occurred prior to its acceptance of the communications procedure.

H. Interim measures

In urgent situations, the Committee may, after receipt of the communication and before adopting its views, request a State party to take certain interim measures to avoid irreparable damage to the victim of the alleged violation. Interim measures are designed to respond to exceptional or life-threatening situations. For example, in the vast majority of cases before the Human Rights Committee, interim measures have been used in cases concerning the death penalty or deportation that risked violating provisions relating to the right to live and freedom from torture. If the Committee grants interim measures, the final decision may confirm or revoke them.

I. Consideration of the merits and publication of the Committee's views and recommendations

The Committee considers the merits either after or simultaneously with a communication's admissibility. Some treaty bodies consider accessibility and the merits at the same time, while others consider one after the other. The advantage of considering accessibility and merits together is that it saves time. The general process can be summarized as follows.

The next stage is the Committee's adoption of its decision or views on a communication. This is done on the basis of the written information provided by the two parties and the application of the Convention to the facts as determined by the Committee. The Committee then forwards its views and recommendations, if any, to the State party concerned and to the petitioner. In there has

been a violation, the Committee would normally request the State party to take appropriate steps to remedy it. The practice of the Committee in this regard is of course not yet developed. In the experience of other treaty bodies, these steps might be limited to recommendations that a State party should provide an "appropriate remedy", or they might be more specific, such as recommending the review of policies or the repeal of a law, the payment of compensation or the prevention of future violations.

Rule 75 of the Committee's rules of procedure sets out that, within six months of transmission of its views, the State party must submit a written response with information on any follow-up action. The Committee may then request further information from the State party and it may also request the State party to include information in its periodic report to the Committee.

Interestingly, there is a focal point to follow up on the implementation of the Committee's views. The rule establishes that the Committee may appoint a special rapporteur or working group to ascertain the measures taken by State parties to implement views and recommendations. The special rapporteur or working group may make contacts and take action as appropriate to follow up on views and can also recommend action to the Committee. If the Committee and the State party agree, the special rapporteur or working group can visit the country and report back to the Committee.

J. The inquiry

The second procedure established by the Optional Protocol is the **inquiry**. It allows the Committee to examine reliable information indicating grave or systematic violations of the Convention by a State party. State parties may opt out of this procedure, through a declaration and reservation, and still ratify the Optional Protocol (art. 8). States can decide to lift reservations at a later date.

The main features of an inquiry compared to a complaint are:

- First, that to launch an inquiry, the Committee does not have to receive a formal complaint. It is up to the Committee to decide to initiate the procedure (which may include a visit to the State party, subject to the latter's consent);
- Second, an inquiry is permitted only in cases indicating grave or systematic violations of the rights set forth in the Convention; and
- Third, there is no requirement for a victim to come forward.

A *grave* violation refers to a severe abuse of one or more provisions of the Convention, such as discrimination that threatens someone's life, integrity or personal security. A *systematic* violation refers to a pattern of abuse, the scale and frequency of which are significant regardless of intention. The abuse may result from laws, policies or practices. The term "systematic" may include violations which might not be considered "grave".

The process is as follows:

✓ *Receipt of reliable information on grave or systematic violations:* the Committee receives information, which in the experience of other treaty bodies is generally provided by NGOs although treaty bodies may on their own initiative compile information available to them, including from United Nations bodies (see rule 79 of the Committee's rules of procedure). At this stage, the Committee should seek further information to establish that the information received is reliable.

- ✓ *Invitation to State party to cooperate:* if the Committee finds that the information is reliable, it invites the State party to cooperate in the examination of the information, including through the submission of information to the Committee.
- ✓ *Designation of one or more Committee members to conduct the inquiry:* the Committee considers the submission of the State party as well as any additional information provided by governmental organizations, the United Nations system, NGOs and individuals, and designates one or more members to conduct the inquiry. The Committee must seek the cooperation of the State party at all stages if it decides to proceed.
- ✓ *Country visit:* where warranted, the Committee may conduct a visit to the territory concerned, provided the State party agrees. Visits may, again, with the consent of the State party, include hearings. However, a country visit is not mandatory and the Committee may undertake the inquiry without it.
- ✓ *Findings, comments and recommendations submitted to State party:* the Committee must draft a report and transmit it to the State party confidentially.
- ✓ *Observations from the State party to be transmitted within six months:* the State party has six months to submit its observations to the Committee. It is worth noting that the Committee on the Elimination of Discrimination against Women can make its final report public. Neither the Convention on the Rights of Persons with Disabilities nor the Committee's rules of procedure refer to such an option, which suggests it is open.
- ✓ *Invitation transmitted to State party to report on action taken:* the Committee may invite the State party to include in its periodic report details of any measures it has taken to implement the findings. The Committee includes a summary of the procedure in its annual report.

As with the individual communications procedure, it could be helpful for participants to hear about an inquiry. Unfortunately, there are relatively few public inquiry reports owing to the confidential nature of the procedure. Facilitators might wish to discuss the Committee on the Elimination of Discrimination against Women's inquiry into the abduction, rape and murder of women in Cuidad Juárez, Mexico (CEDAW/C/2005/OP.8/MEXICO).

K. Benefits of the Optional Protocol

Both procedurally and substantially, the Optional Protocol represents a potentially important mechanism for protecting persons with disabilities and for strengthening national capacities. There are benefits not only for victims of human rights violations but also for States. It is true that, on first glance, States might have little enthusiasm for a complaints or inquiries procedure. Yet, over half the States that have ratified the Convention have also ratified its Optional Protocol, because the Optional Protocol can also be helpful for them.

- The Optional Protocol can be a means to strengthen national protection mechanisms. If domestic remedies are prompt and effective, individuals are less likely to need to petition the Committee once they have exhausted domestic remedies.
- The Optional Protocol can also provide a means to confirm State policy. Not all communications are decided in favour

of the alleged victim. The application of international standards to specific individuals is not necessarily always clear, as their situations do not always fit into neat compartments. A State party may be convinced it is meeting its obligations under the Convention and a decision of the Committee in relation to an individual communication or an inquiry can confirm the State's position.

- In the same vein, the Optional Protocol mandates the Committee to validate or query national court decisions. It will offer guidance to domestic courts and other human rights protection mechanisms by developing further the substantive content of the rights under the Convention and related obligations of States. International case law can also promote national jurisprudence.

- The Optional Protocol can also help State parties bring about change. The Human Rights Committee's decision on *Toonen* v. *Australia* is a case in point. The Human Rights Committee considered that legislation in the Australian State of Tasmania concerning homosexuality was incompatible with the provisions of the International Covenant on Civil and Political Rights. The Federal Government in Australia then used this decision to bring about law reform in the State.

- The inquiry procedure under the Optional Protocol can provide an opportunity to benefit from international expertise to solve difficult or protracted problems. In particular, country visits by the Committee's members can help analyse problems from a more objective and independent perspective and provide solutions to problems. On the one hand, these experts can draw on the experience of other countries. On the other, the international and independent background of the experts can make the inquiry less politically charged, e.g., because it is not linked to the Government or another political force in the country.

- The Optional Protocol's procedures also clarify how to apply the Convention in specific cases. By examining its application through the prism of an individual complaint or inquiry, the Committee may broaden and deepen its understanding of the Convention and its meaning and so refine its recommendations to States (all States, not only the defendant State) and clarify the steps they need to take.

- The procedures help to incorporate the Convention into domestic law. The Committee's views and recommendations could trigger law reform as a step in bringing State practice into line with the Convention.

- The Optional Protocol provides a mechanism for strategic litigation by civil society to support key changes. Litigation can be costly and the outcomes are invariably uncertain. Litigation is therefore not always the preferred option. However, it can be helpful in certain cases, one of these being strategic litigation. Civil society organizations and public interest advocates can use litigation as a strategic tool in various ways. For example, litigants can bring a test case as a means of clarifying the law. The law is then clarified not only for the litigants in the particular case, but also for others facing similar situations. Bringing one such case and clarifying the law can prevent many problems (and more litigation) in

the future. In this way, organizations can use the Optional Protocol as a means of engaging the views of the Committee on key issues in domestic implementation or interpretation of the Convention.

- The Optional Protocol can protect victims and potential victims. As an international accountability mechanism for addressing violations of the rights under the Convention, it can provide alleged victims with interim measures if the situation is critical and their rights are seriously under threat.
- The complaints procedure is relatively easy to use for victims. There is no time limit for bringing complaints (apart from the requirement that the alleged violation should not have occurred prior to the entry into force of the Optional Protocol for the State party) and the procedure can be relatively fast and simple, although much depends on the capacity of the Committee. There is no requirement to have legal representation and decisions are made in writing.

L. The role of States, civil society and United Nations country teams

States, civil society and United Nations country teams can all play a role in promoting the Optional Protocol and can benefit from it. In particular, States can:

- *Ratify the Optional Protocol.* Clearly, States should consider ratifying the Optional Protocol.
- *Strengthen implementation.* Ratifying the Optional Protocol exposes States to individual complaints and inquiries. This can deter them from not complying with the Convention. Views on communications and inquiries can also indicate the steps that a State should take to comply.
- *Strengthen domestic remedies.* The fact that alleged victims can appeal to the Committee can act as a trigger for strengthening domestic remedies (e.g., ensuring that all rights are justiciable at the national level) so that cases do not need to go to the Committee in the first place.
- *Provide timely information to the Committee.* States should participate actively in the communication and inquiry processes by providing up-to-date and accurate information so that the Committee can act with full knowledge of the facts.
- *Follow up on recommendations.* States should ensure that they follow up on recommendations to provide a remedy to victims, but also to ensure that the treaty body system is respected and is effective. It was, after all, created by States, so States have an interest in ensuring that it works.
- *Disseminate the Committee's views.* States should, at the very least, publish its views on individual communications relating to individuals under their jurisdiction. States should also consider publishing the results of inquiries under the Optional Protocol as this will trigger national debate, which in turn should help the implementation of recommendations and ultimately improve the enjoyment of rights.
- *Report on follow-up.* States should ensure that they conscientiously report on follow-up to recommendations in subsequent periodic reports to the Committee.

Civil society and DPOs have a *crucial role* in strengthening the national implemen-

tation of the Convention through promoting the ratification of the Optional Protocol and advocating the implementation of the Committee's recommendations. In particular, civil society can:

- *Promote ratification of the Optional Protocol.* Organizations of persons with disabilities and civil society organizations have an important role in encouraging States to ratify treaties, including optional protocols. It is often through such lobbying that States take the decision to ratify. In promoting ratification, DPOs and civil society organizations can also advocate acceptance of the inquiry procedure (i.e., no declaration to the contrary upon either signature or ratification).

- *Assist individuals in bringing complaints.* Organizations of persons with disabilities and civil society can play an important role in creating awareness about the communication and inquiry procedures, and provide victims with the knowledge and often the resources to file a complaint.

- *Submit communications.* Organizations of persons with disabilities can act on behalf of victims. At times, persons with disabilities who are victims of violations are denied legal capacity, lack education, live in poverty and so on. In such circumstances, the role of DPOs is even more important. As noted above, normally a DPO will have to demonstrate that it has the consent of the victim on whose behalf it is acting.

- *Inform inquiries.* When violations are grave or systematic, it is often DPOs that have the broad-ranging information available to spot the patterns and provide the Committee with the information it needs.

- *Monitor compliance by State parties with recommendations.* Organizations of persons with disabilities can be the eyes and ears of monitoring. They can witness changes (or lack of action) following the Committee's recommendations. If nothing is done, they can communicate this to the Committee (through communications or alternative reports).

- *Disseminate jurisprudence.* Organizations of persons with disabilities can disseminate decisions taken by domestic courts to satisfy the rights of victims as well as the Committee's recommendations and observations related to communications and inquiries.

- *Report on follow-up.* Civil society organizations preparing alternative reports to the Committee should consider including information on follow-up to views and recommendations under the Optional Protocol.

United Nations country teams can support ratification of the Optional Protocol and also implementation of the Committee's suggestions and recommendations relating to individual communications and inquiries. In particular, United Nations country teams can:

- *Promote ratification.* The United Nations country teams can use advocacy with partner ministries to encourage ratification of the Optional Protocol. One way would be for the country team to collect recommendations of other human rights bodies encouraging ratification of the Optional Protocol and use this in discussions with their government counterparts. It is likely that the Committee (similar to other treaty bodies) will recommend ratification of the Optional Protocol in its regular reviews of State party

reports. Similarly, the universal periodic review of the Human Rights Council, the special procedures during country missions or the High Commissioner and even regional human rights bodies will recommend that specific States should ratify the Optional Protocol. United Nations country teams can draw on these recommendations to promote ratification.

- *Collect information on domestic case law and experience with optional protocols of other treaties.* In countries where domestic courts or NHRIs have already dealt with complaints in relation to disabilities, States might be more willing to accept the justiciability of the Convention's rights. United Nations country teams can collect and analyse information on such experience to demonstrate how judicial and quasi-judicial procedures can improve the realization of human rights, including the rights of persons with disabilities.
- *Raise awareness and train relevant actors,* such as judges, law students, civil servants and DPOs/civil society organizations so that they are aware of the Optional Protocol and its relevance to their work in order to support and advocate ratification. If the Committee has issued recommendations related to a communication or inquiry, training can help these actors identify ways to promote implementation. Alternatively, the United Nations country team could issue a press release on the anniversary of the entering into force of the two instruments (3 May), the international day of persons with disabilities (3 December) or the anniversary of ratification of the Convention by the State to encourage the State party to ratify the Optional Protocol. When the Committee issues suggestions and recommendations related to an inquiry or communication, the country team can encourage the Government to issue a press release or consider issuing a press release itself.
- *Provide reliable information to the Committee.* The United Nations country team can use the inquiry mechanism as a means of highlighting a country situation which might be too sensitive for the United Nations country team to do itself. In this way, the country team can rely on the Committee to undertake an independent investigation so that the issue is dealt with adequately, without the country team being placed in a difficult position vis-à-vis the Government.
- *Assist with follow-up.* Depending on the nature of the views and recommendations and the knowledge and experience in the United Nations country team, it could help the State party implement the Committee's views and recommendations. This could be particularly relevant for inquiries where the views and recommendations are likely to be comprehensive, covering a range of different interrelated issues concerning implementation (as opposed to views on a communication, which might simply be about providing compensation to an individual victim).
- *Disseminate the Committee's views and recommendations.* The United Nations country team could publish the Committee's views and recommendations on its website and also issue a press release when decisions are published.
- *Report on follow-up.* The United Nations country team can also provide informa-

tion to the Committee, either publicly or confidentially, when a State party presents its periodic report. It can provide the Committee with invaluable information on follow-up to its views and recommendations under the Optional Protocol. In this way, the Committee has information from a trusted source.

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