



Questions & Answers

Basic Ratification Guidelines for the Convention
on the Rights of Persons with Disabilities



I. The Convention in Brief



Why a Convention on the Rights of Persons with Disabilities?

Persons with disabilities are among the most invisible people in societies. Their exclusion has also been perpetuated because none of the anti-discrimination provisions in UN core human rights treaties acknowledge disability and impairment respectively as a ground of discrimination. What is more, the stigma of disability tends to frame persons with disabilities as objects in need of pity, frequently leading to patronizing behavior by others, failing to acknowledge that persons with disabilities are (human) rights holders, too.

What is the new paradigm on disability?

Rather than viewing persons with disabilities as “objects” in need of “help” by way of charity and other welfare-based approaches, the Convention unequivocally affirms that persons with disabilities are rights holders and that human rights need to be inclusive and accessible to ensure the full enjoyment of all human rights by all persons with disabilities on an equal basis with others.¹



I. The Convention in Brief



Who is protected by the Convention?

The Convention does not provide a definition of impairment or disability respectively. Rather, it gives an open description, which leaves room for expansion. Note that the focus is not on the medical aspects of the impairment but rather on the social barriers faced by persons with disabilities:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation on an equal basis with others. Disability is an evolving concept that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others."



What are the added features of the Convention?

The Convention does not prescribe any new rights. However, aimed at ensuring that barriers are overcome, it features a couple of additions in comparison to other core human rights treaties:

- There is no definition of "disabilities" but rather an emphasis on the social barriers that persons with disabilities face – "social model of disability"
- Accessibility: the Convention enshrines the various dimensions of accessibility (see below)
- Obligation to include civil society, particularly Disabled People's Organizations
- A stand-alone provision on data & statistics
- A stand-alone provision on international cooperation
- National implementation monitoring – with civil society participation
- A comprehensive provision on awareness-raising measures

I. The Convention in Brief

So, now that persons with disabilities are reaffirmed as rights-holders – what does this change?

Recognizing persons with disabilities as rights holders necessitates changes in the way persons with disabilities are viewed and interacted with in most societies. Rather than making decisions for them (substituted decision making), the focus is on the free choice of persons with disabilities, providing – where necessary – a supportive network (supported decision making).ⁱⁱⁱ The notion of independent living connotes that persons with disabilities are as free as everyone else to make a choice of their day-to-day-life, including their living arrangements.

There is a lot of discussion about “legal capacity” – why?

Many countries foresee limits to the legal capacity of persons with disabilities, having established guardianship or other substituting decision making model. The changes necessary to ensure that choices can be made freely by persons with disabilities themselves involve amendments both to the basic provision but mainly to the decision making process. Particularly the establishment of a supportive network, which assists the decision making process is a massive change in countries where courts and other bodies have traditionally been involved in the exercise of legal capacity of persons with disabilities.^{iv}

Why is accessibility not just “physical” accessibility?

There are multiple barriers that exclude persons with disabilities. Physical barriers are a well-known fact. However, there are also barriers in communication for deaf, hard-of-hearing and non-verbal people. Persons with intellectual impairments equally need assistance in communication. As explained above,^v the emphasis of the Convention is on the social barriers, which, in order to be overcome, require targeted inclusion measures.^{vi}

I. The Convention in Brief

What are the forms of accessibility?

- Physical: access to the physical environment (doors, bathrooms), transportation, street design, universal design of goods
- Communication: formats of documents, sign language interpretation and videos, alternative means of communication for non-verbal persons
- Intellectual: use of easy to read documents
- Social: awareness-raising to help overcome stigma, prejudices and stereotypes



II. The UNDP internal response



What can UNDP do to comply with the Convention?

UNDP is in the process of achieving compliance with the Convention in three main areas:

- Information – accessibility of reports and technology
- Human resources – recruitment of staff with disabilities
- Accessible premises – ensuring access for staff and visitors to UNDP offices

What can UNDP do to ensure the accessibility of the information it provides?

Barriers to communication are usually small in nature but big in impact: for example, reading programs for blind people often do not recognize pdf documents, the structure of web sites can be hard to follow in terms of easy-reading requirements. Similarly, the structure of reports can be adjusted to meet standards of accessibility. Finally, the grammar of sign language is different to that of spoken language, so videos with sign language interpretation are recommended.

How can UNDP become more inclusive of persons with disabilities?

UNDP's Human Resources Department is developing a guide on the removal of both attitudinal and physical barriers in recruitment, staff regulations, creation of a effective employment environment and related areas. It should be ready by the end of 2009.

II. The UNDP internal response

How can UNDP facilities be more accessible?

If infrastructure is built, it should be made accessible to persons with limited mobility, such as the elders, pregnant women, wheelchair users, and include specific signing for persons that are visually or/and hearing impaired, among others. ^{vii} Adaptations to existing premises may be necessary; persons with disabilities should be consulted in deciding what changes need to be made. Equally, persons with disabilities should be consulted before (!) planning new premises.



III. The Ratification Process



What does 'ratification' mean?

Ratification – depositing the instrument with the Secretary General – makes the Convention legally binding for the State. It is obliged to give effect to the Convention domestically.^{viii}

What does a State have to do to ratify the Convention?

Consensus has to be reached that the Convention shall become legally binding on the State. Indicating this intention, States first sign the Convention. There is no time limit as to when the State should ratify following the signing of the Convention. Most States – by way of Constitution or similar law – have to enact multi-lateral treaties such as the Convention at the national level, by e.g. act of parliament, signing of the head of State or similar measures.

Is there an Optional Protocol that should also be ratified?

The negotiation process also produced an Optional Protocol, which foresees individual complaints to the expert body under the Convention, once all domestic remedies have been exhausted. As a separate legal document, it has to be ratified as such in order to come into effect.^{ix}

III. The Ratification Process



Why is it a good idea to ratify the Convention speedily?

The Convention becomes legally binding upon ratification, obliging the State to uphold its standards. With the added feature of an obligatory domestic monitoring mechanism, being bound adds also to the political pressure to put both legal amendments and changes of administrative structures and practice in place. The obligation to report to the expert body under the Convention two years after ratification adds to incentives for political decisions. Having ratified the Convention sets a legal standard, which has to be upheld by the State and can be utilized as a standard by civil society and others respectively.^x

Is there any benefit in a slower ratification process?

There are countries, which prefer to have their legislation in conformity with a multi-lateral treaty prior to ratification. In those countries one needs to support the development of a legal gap analysis and push for the necessary legal amendments prior to ratification. A challenge in such a process is ensuring the involvement of civil society as the Convention's obligation to do so would not be binding on the country yet.

Can one assess the ratification speed of individual countries?

Many countries have already ratified other core human rights treaties. A good comparator for ratification speed are the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The process of ratification for those treaties should provide helpful clues on the overall process of human rights treaty ratification, including the pace.

III. The Ratification Process

What needs to happen to get the government to ratify the Convention?

Many governments are eager to ratify on their own account but some might require a little push to do so. Possibly the government has made declarations on safeguarding the rights of persons with disabilities in another context, if so, such pronouncements can be utilized. If the country is in a region where social inclusion policies are supported, this could be another incentive. Alternatively, civil society can lobby for the ratification of the Convention.

What can be done to garner civil society support?

Every country has its specific ways of raising societal issues. Some may work through call-in radio programs, which would necessitate asking radio stations to host debates on inclusion. Other countries use petitions, also by way of sending support letters or cards to government representative. Public awareness campaigns, also using advertising space, are yet another possibility.



IV. Issues after Ratification



What could be the first steps following ratification?

In many countries there will be gaps between the standards set in the Convention and domestic rules and legislation. As a first step it is therefore advisable to verify what the gaps are. In a legislative gap analysis – which is also an obligation under the Convention ^{xii} – a country establishes what legal amendments have to be made to comply with the standards of the Convention.

How can one reduce the stigma surrounding persons with disabilities?

The Convention provides a unique tool to reduce stigma and prejudices concerning impairments and disabilities respectively. It is the first human rights convention to enshrine a comprehensive provision on awareness-raising, specifying concrete measures that States are obliged (!) to take. ^{xiii}

Why is it necessary to increase awareness about the need for inclusion of persons with disabilities?

Historically, persons with disabilities have been among the most invisible people in societies. Efforts to overcome the exclusion have to involve those concerned, if the intervention is to be meaningful and sustainable. Also, persons with disabilities are the top experts when it comes to their concerns.

IV. Issues after Ratification



Why is the involvement of civil society such an important aspect in this Convention?

The increased involvement of civil society is a general aim of the United Nations and UNDP specifically. In line with these developments the negotiations of the Convention included an unprecedented amount of civil society representatives. As a result, there are various references to inclusion of civil society, particularly persons with disabilities and their representative organizations included in the Convention. Importantly, it is an obligation – compare Article 4 (3) – to include civil society in all matters related to the implementation of the Convention.

Are there any provisions on national monitoring?

The Convention reflects the consensus of the 1993 Vienna Declaration and Program of Action that national implementation of human rights standards has to be increased. Consequently, the Convention foresees various implementation mechanisms, among them two provisions on national monitoring:

- One – or more – independent mechanisms to promote, protect and monitor the implementation, taking into the account the standards for National Human Rights Institutions; ^{xiii}
- Monitoring by independent authorities of all places designed to serve persons with disabilities. ^{xiv}

IV. Issues after Ratification

What are the requirements for national monitoring?

The Convention states that the “principles relating to the status and functioning of national institutions for protection and promotion of human rights” shall be taken into account in establishing one – or more – national institutions.^{xv} The principles, also known as “Paris Principles” provide concrete guidelines on the comprehensive independence and functioning of National Human Rights Institutions.^{xvi} Note also the obligation to include representatives of civil society.^{xvii}

Are there other national implementation mechanisms?

The Convention foresees one or more focal points in supporting the realization of the Convention as well as a coordinating mechanism to facilitate action taken in different sectors and at different levels.^{xviii}



IV. Issues after Ratification

How does one know the demand for accessibility measures?

The Convention foresees segregated data & statistics on persons with disabilities. Given past – and ongoing – injustices based on “disability data” this is a sensitive area. Also, the non-definition^{xx} may prove tricky to implement this provision. Again, persons with disabilities and their representative organizations should be involved in the development of data collection, including questions.

The Washington Group on Statistics has developed a set of questions for census:

- Do you have difficulty seeing, even if wearing glasses?
- Do you have difficulty hearing, even if using a hearing aid?
- Do you have difficulty walking or climbing steps?
- Do you have difficulty remembering or concentrating?
- Do you have difficulty (with self-care such as) washing all over or dressing?
- Using your usual (customary) language, do you have difficulty communicating, for example understanding or being understood?

Response categories:

No - no difficulty, Yes - some difficulty, Yes - a lot of difficulty, Cannot do at all

What about inclusion of persons with disabilities in National Action Plans?

Accessibility and inclusion measures should be added to national action plans (NAP), wherever they are used. Importantly, persons with disabilities and their representative organizations should be specifically added to the representation of civil society, where a NAP process is underway. Care should be taken in relation to (re)stigmatizing persons with disabilities as a “special group;” both in relation to a possible “definition” of disabilities or impairments^{xx} as well as creating “special” interventions, which end up reinforcing segregation of persons with disabilities.

Endnotes



- I The text of the Convention can be found:
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Convention.aspx>.
- II Compare Article 1 and PP (e) CRPD.
- III Compare Article 12 CRPD.
- IV Legal capacity and the right to act legal capacity are enshrined in Article 12 CRPD.
- V See question on “What is the new paradigm?”
- VI The CRPD refers to accessibility in Article 3 and importantly Article 9;
see also Article 1 & PP (e).
- VII See Integrating Disability Issues into UNDP: A Human Resources Perspective.
- VIII Treaty Handbook, Office of Legal Affairs:
<http://untreaty.un.org/english/treatyhandbook/hbframeset.htm>.
- IX The text of the Optional Protocol can be found:
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocol.aspx>
- X For ratification status of the CRPD see:
<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.
- XI Compare Article 4 (1) CRPD.
- XII Compare Article 8 CRPD.
- XIII Compare Article 33 (2): States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
- XIV Compare Article 16 (3): 3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
- XV Compare Article 33 (2) CRPD.
- XVI The Paris Principles are enshrined in General Assembly Resolution 48/134 and can be found: <http://www2.ohchr.org/english/law/parisprinciples.htm>.
- XVII Compare Article 33 (3) CRPD.
- XVIII Compare Article 33 (1) CRPD.
- XIX See above, Question on “definition.”
- XX See above, Question on “definition.”

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