

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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I. Introduction

The Convention on the Rights of Persons with Disabilities (hereinafter “CRPD” or “Convention”) was adopted by consensus at the United Nations General Assembly on 13 December 2006, opened for signature on 30 March 2007, and attained the requisite number of ratifications for its entry into force on 3 May 2008. By 2023, it is nearing universal ratification, with 186 States Parties to the CRPD. There are 103 States Parties to the Optional Protocol to the CRPD (hereinafter “OP-CRPD”). The initiative to draft the first core international convention specifically addressing the human rights of persons with disabilities, came from a somewhat unlikely source. After several failed country-specific efforts to place disability on the international human rights law agenda, it was Mexico – a State with no particular track record of advancing disability rights in the international arena– that initiated the treaty process in 2001, following its successful effort to include disability as part of the Platform of Action adopted at the World Conference against Racism in Durban, South Africa. A few weeks thereafter, Mexico introduced a proposal at the meeting of the United Nations General Assembly in New York that resulted in the adoption of a resolution on 19 December 2001. The resolution called for the establishment of an *Ad Hoc* Committee to consider the elaboration of “a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the field of social development, human rights and non-discrimination” (General Assembly resolution 56/168 of 19 December 2001).

The drafting process was characterized by other novelties. Notably, the CRPD was the first human rights treaty negotiation to benefit from the participation of its targeted stakeholders, including a diverse number of persons with disabilities, civil society, and representatives of national human rights institutions from all regions of the world. The Convention likewise was the first core human rights convention to be negotiated with access to the internet, Wi-Fi and smart phones during the drafting, facilitating communications between stakeholder participants at the United Nations and those not physically present. The negotiation was, therefore, both path-breaking and unusually transparent for a human rights treaty (Lord,2004).

II. Substantive Aspects

The CRPD, though distinctive in many respects from other core human rights conventions, bears the closest relationship to treaties that incorporate both civil and political as well as economic, social, and cultural rights (generations of human rights), and in particular, the Convention on the Rights of the Child (hereinafter “CRC”) (Stein,2007).

In the introductory articles of the CRPD, and novel for a human rights convention, the treaty’s purpose is outlined (art. 1) and definitions set forth (art. 2). Crucially, article 1 establishes disability as a social construct that arises from “interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” rather than as an inherent limitation (art. 1). In doing so, the Convention presents disability as a natural and universal phenomenon of human diversity and rebuts the prevailing historical paradigms of disability as a medical deficit, focus of charity, or condition requiring a medical ‘cure’ or social welfare provision. Further, article 1 conceives of disability as being inclusive of and not limited to ‘long-term physical, mental, intellectual or sensory impairments’, which reflects a floor rather than a ceiling. Notably absent in article 2, the definitions article, is any definition of ‘disability’. Instead, in preambular paragraph (e), the treaty ‘[r]ecogniz[es] that disability is an evolving concept’ that results from the interaction between persons with impairments and attitudinal and environmental barriers. Further, in preambular paragraph (p), the treaty recognizes that persons with disabilities,

as with other groups experiencing disadvantage, have overlapping identities, the intersection of which can result in “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”.

The introductory articles are succeeded by seven articles of general application (arts. 3-9) that are relevant to the understanding, interpretation and implementation of all other articles in the Convention and are to be transversally applied. These include general guiding principles such as respect for individual dignity, autonomy, and independence (art. 3), obligations of States Parties with respect to domestic disability law, policy and programming (art. 4), awareness-raising measures to address some of the underlying determinants of disability discrimination (art. 8), and ensuring accessibility through dismantling of the physical, technological, information, communication, economic and social barriers that hinder the effective enjoyment of rights by persons with disabilities (art. 9).

A signal obligation that stands out among all core human rights conventions for its participatory directive is the requirement in article 4(3) that States consult with and involve persons with disabilities in developing and implementing legislation and policies and in decision-making processes concerning persons with disabilities. It reflects the often-quoted refrain of the disability community “Nothing about us without us”, and its placement in the general obligations provision gives it considerable heft as it must be applied transversally across the treaty. In this way, the CRPD elaborates more expansively than any other core human rights convention on the principle of participation and the right to be heard.

Further, the CRPD is the second convention, following the CRC, to specifically prohibit discrimination on the basis of disability (art. 5). It is the first to make explicit the definition of discrimination on the basis of disability (art. 2). As such, the CRPD’s disability discrimination framework is triggering an uptake of jurisprudence rooted in the Convention by treaty bodies beyond the CRPD Committee, human rights tribunals, and national level courts.

Articles 10-30 CRPD address the full spectrum of substantive obligations and how they are to be understood and applied so that persons with disabilities can fully enjoy their human rights. CRPD clarifies human rights law within the context of disability and contains standard articles on human rights and fundamental freedoms such as the right to life (art. 10), freedom from torture (art. 15), the right to education (art. 24), employment (art. 27), political participation (art. 29; elections and government, right to participate in), legal capacity (art. 12; right to be recognized as a person), access to justice (art. 13), freedom of expression and opinion (art. 21), privacy (art. 22; private and family life, right to respect for), participation in cultural life, sports and recreation (art. 30), respect for home and family (art. 23), personal integrity (art. 17), liberty of movement and nationality (art. 18), liberty and security of the person (art. 14) and an adequate standard of living (art. 28).

However, several articles bear no specific linkage to existing human rights norms as set out in prior conventions including articles on living independently (art. 19), personal mobility (art. 20), and habilitation and rehabilitation (art. 26). Further, one of the signal advances of the CRPD is its clear and unequivocal directive that children with disabilities be educated, and in inclusive settings using a “whole-of-institution” approach in identifying and mitigating barriers (de Beco, Quinlivan and Lord, 2019). In these ways, the CRPD represents not only important developments in explicating human rights law in the context of disability rights, but also reflects important developments in international human rights law generally.

Implementation and monitoring measures are set forth in the ten subsequent articles, 31-40. The final provisions, articles 41-50, address rules governing the operation of the Convention, including, *inter alia*, its entry into force, amendments, and the official languages in which the Convention is available and considered equally authentic. Adopted at the same time as the CRPD, its Optional Protocol governs communications and procedures of inquiry, providing additional powers of review for the Convention’s treaty monitoring body, the CRPD Committee.

III. Procedural Aspects

The CRPD's procedural and institutional mechanisms shore up its implementation and monitoring (Stein and Lord, 2010). First, it created the CRPD Committee, the body that monitors the implementation of the treaty through the familiar mechanism of State reporting and issues General Comments. The CRPD Committee is also authorized under the Optional Protocol to accept and deliberate upon individual and group complaints and communications (lodged directly by or on behalf of aggrieved individuals) regarding alleged violations of the treaty, but only those asserted against States Parties to the Optional Protocol (art. 1(2) OP-CRPD). The Optional Protocol to the CRPD also includes a procedure of inquiry, employed as in other human rights monitoring systems to allow the initiation of investigations, particularly regarding grave or systematic human rights violations (art. 6 OP-CRPD).

Second, article 40 establishes a regular Conference of States Parties (hereinafter "COSP") that meets annually in New York at the United Nations Headquarters. The COSP has a mandate that goes beyond the typically more limited scope of operations in other human rights conventions and is tasked with considering "any matter with regard to the implementation of the [CRPD]" (art. 40(1)).

Finally, the CRPD establishes a national monitoring framework with several elements to facilitate implementation at the national level.

IV. The Practical Relevance and Impact of the CRPD

The practical relevance and impact of the CRPD are difficult to quantify; nonetheless, several indicators provide insight in this regard. The number of ratifications is now nearly universal at 186 for the CRPD yet lower but still significant at 103 for the Optional Protocol. Ninety-two States Parties have appeared before the CRPD's treaty body. From 2010 to 2017, 71% of newly adopted national constitutions expressly incorporated disability as a prohibited ground of discrimination, 67% guaranteed the right to education for children with disabilities, and 58% guaranteed the right to work for adults with disabilities (WORLD Policy Analysis Center, 2021). As of May 2018, 69% of low-income countries, 82% of middle-income countries, and 84% of high-income countries had legislative provisions explicitly prohibiting workplace discrimination based on disability (WORLD Policy Analysis Center, 2021). Further, as of May 2018, 34% of low-income countries, 48% of middle-income countries, and 67% of high-income countries had legislative provisions requiring the provision of reasonable workplace accommodations for persons with disabilities (WORLD Policy Analysis Center, 2021). The CRPD has likewise influenced regional systems of human rights protection as evidenced by the adoption in 2018 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

Disability inclusive policies adopted by the major international development donors (bilateral and multilateral) are likewise proliferating, as are commitments to ensure that development projects are inclusive of persons with disabilities as participants in and beneficiaries of all development projects. Among these, the World Bank has committed to ensuring that its projects are disability inclusive across its portfolio by 2025.

The Sustainable Development Goals incorporate disability-inclusive elements and targets (General Assembly resolution 70/1 of 25 September 2015). Seven targets address persons with disabilities in specific terms with regard to education, accessible schools, employment, accessible public spaces and transport, empowerment and inclusion, and data disaggregation. Others refer to persons in vulnerable situations, address discrimination, or are universal in application and are therefore understood to include persons with disabilities.

The United Nations also adopted a Disability Inclusion Strategy (UNDIS) in 2019 to ensure that the United Nations system moves towards sustainable and transformative progress on disability inclusion through all pillars of its work, including a system-wide policy and an accountability framework.

Within the humanitarian sector, disability inclusion is now the subject of extensive guidelines adopted by the Inter-Agency Standing Committee, and was acknowledged by the Secretary-General during the 2016 World Humanitarian Summit (Report of the Secretary-General for the World Humanitarian Summit (A/70/709,2 February 2016)). The inclusion of a provision on the protection of persons with disabilities in situations of risk, in article 11 of the CRPD, provided the much-needed impetus for refocusing humanitarian assistance in the direction of a rights-based, social model understanding of disability. More work is required to foment a dynamic treaty

practice in relation to Article 11 in the specific context of protection in armed conflict to ensure that the international humanitarian law principles applicable to persons with disabilities are operationalized (Lord, 2022; Pons, Lord & Stein, 2022).

More difficult is the capturing of the treaty's connectivity and motion locally, on the ground where specific CRPD advocacy has yielded concrete change:

- The parent in China who presented a copy of the CRPD to a school principal and managed to pry open the doors of a school to his child (and children of other parents) with a disability (Interview with Guernsey, 2020).
- The Zambian disabled peoples' organization (DPO) which took up the case of a deaf teen falsely accused of killing his stepfather and demanded that the boy have access to legal counsel and the means to communicate effectively to aid his defence (Lord and Stein, *Deaf Identity and Rights in Africa*, 2015).
- The Paraguayan DPO which, invoking article 31 of the CRPD, succeeded in placing disability questions on its national census, thereby resulting in a more than threefold increase in the population of persons with disabilities (Eduardo Rodríguez-Frías, n.d.).
- The East African regional network of activists with Albinism who see in the CRPD an opportunity to press for access to quality sunscreen and to challenge stigma and mythology about albinism that is connected to ritual killings ("Report of the Independent Expert on the enjoyment of human rights by persons with albinism in Africa", (A/HRC/37/57/Add.3, 19 December 2017)).
- The activists who successfully invoked the CRPD, first before the European Court of Human Rights and then the CRPD Committee, to uphold their right to vote despite their country barring everyone placed under guardianship from exercising the franchise (Lord, Stein and Fiala-Butora, 2014).

The impact of CRPD is thus both easy and difficult to ascertain.

V. Conclusion

The CRPD is a major success story in the field of international human rights. This is attributable in part to the extremely marginal status of persons with disabilities in law, policy and practice worldwide prior to the adoption of the CRPD. The treaty was ratified quickly and broadly across the globe and has been the impetus for domestic disability law and policy reform and for an elevation of disability rights in international policy frameworks and practices. It was a long time in coming and far more work is needed to bring its provisions into the folds of domestic and international practices to the benefit of some one billion persons across the globe.

This Introductory Note was written in February 2023.

Related Materials

A. Legal Instruments

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