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FROM EXCLUSION TO EQUALITY: REALIZING THE RIGHTS OF PERSONS WITH DISABILITIES

disabilities

HANDBOOK FOR PARLIAMENTARIANS

Nº 14 – 2007

Nº 14 – 2007

From Exclusion to Equality

Realizing the rights of persons with disabilities

Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol

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The secretariat for the Convention on the Rights of Persons with Disabilities-DESA is the focal point within the United Nations Secretariat on disability matters. It acts as a clearinghouse for information on disability issues; prepares publications; promotes national, regional and international programmes and activities; provides support to Governments and civil society; and gives substantial support to technical cooperation projects and activities. It is also responsible for servicing the Conference of State Parties as specified by the Convention on the Rights of Persons with Disabilities. The secretariat is located in the Division for Social Policy and Development, a part of the Department of Economic and Social Affairs in New York.

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abilities

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Foreword

Persons with disabilities remain amongst the most marginalized in every society. While the international human rights framework has changed lives everywhere, persons with disabilities have not reaped the same benefits. Regardless of a country's human rights or economic situation, they are generally the last in line to have their human rights respected. Being denied the opportunities that would enable them to be self-sufficient, most persons with disabilities resort to the kindness or charity of others. In recent years, there was a growing realization throughout the world that continuing to deny 650 million individuals their human rights was no longer acceptable. It was time to act.

The Convention on the Rights of Persons with Disabilities is the response of the international community to the long history of discrimination, exclusion and dehumanization of persons with disabilities. It is historic and groundbreaking in many ways, being the fastest negotiated human rights treaty ever and the first of the twenty-first century. The Convention is the result of three years of negotiations involving civil society, Governments, national human rights institutions and international organizations. After adopting the Convention in the United Nations General Assembly in December 2006, a record number of countries demonstrated their commitment to respecting the rights of persons with disabilities by signing the Convention and Optional Protocol when they opened for signature in March 2007.

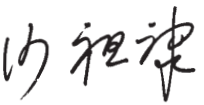
The Convention ensures that the world's largest minority enjoys the same rights and opportunities as everyone else. It covers the many areas where persons with disabilities have been discriminated against including access to justice; participation in political and public life; education; employment; freedom from torture, exploitation and violence, as well as freedom of movement. Under the Optional Protocol, individuals of States parties to the Protocol who allege violations of their rights, and who have exhausted national remedies, can seek redress from an independent international body.

The Convention is long overdue. It is over 25 years since the 1981 International Year of Disabled Persons brought global attention to the issues affecting persons with disabilities. In the intervening years, many

societies have moved away from considering persons with disabilities as objects of charity and pity, by acknowledging that society itself is disabling. The Convention embodies this attitudinal change, and is a major step towards altering the perception of disability and ensuring that societies recognize that all people must have the opportunity to reach their full potential.

This Handbook is the outcome of cooperation between the United Nations Department of Economic and Social Affairs, the Office of the United Nations High Commissioner for Human Rights, and the Inter-Parliamentary Union. The preparation of the Handbook benefited from an editorial review board consisting of parliamentarians, academics and practitioners – many of whom are persons with disabilities.

Parliaments and parliamentarians have a key role to play in promoting and protecting human rights. This Handbook aims to assist parliamentarians and others in efforts to realize the Convention so that persons with disabilities can achieve the transition from exclusion to equality. The Handbook seeks to raise awareness of the Convention and its provisions, promote an appreciation of disability concerns, and assist parliaments in understanding the mechanisms and frameworks needed to translate the Convention into practice. By providing examples and insights, it is hoped that the Handbook will serve as a useful tool for parliamentarians to promote and protect the rights of persons with disabilities all over the world.



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CHAPTER ONE

Overview

Realizing the rights of persons with disabilities: the compelling reasons

Over 650 million persons around the world live with disabilities. Add to that their extended families, and a staggering *two billion* people daily live with disabilities. In every region in the world, in every country in the world, persons with disabilities often live on the margins of society, deprived of some of life's fundamental experiences. They have little hope of going to school, getting a job, having their own home, creating a family and raising their children, enjoying a social life or voting. For the vast majority of the world's persons with disabilities, shops, public facilities and transport, and even information are largely out of reach.

Persons with disabilities make up the world's largest and most disadvantaged minority. The numbers are damning: an estimated 20 per cent of the world's poorest persons are those with disabilities; 98 per cent of children with disabilities in developing countries do not attend school; an estimated 30 per cent of the world's street children live with disabilities; and the literacy rate for adults with disabilities is as low as 3 per cent—and, in some countries, down to 1 per cent for women with disabilities.

While poor people are significantly more likely to acquire disabilities during their lifetimes, disability can result in poverty, too, since disabled persons often face discrimination and marginalization. Disability is associated with illiteracy, poor nutrition, lack of access to clean water, low rates of immunization against diseases,

and unhealthy and dangerous working conditions.

As the world's population grows, so does the number of persons with disabilities. In developing countries, poor medical conditions during pregnancy and at birth, the prevalence of infectious diseases, natural disasters, armed conflict, landmines and small-arms proliferation cause injuries, impairment and lasting trauma on a large scale. Traffic accidents, alone, result in millions of injuries and disabilities each year among young people. In developed countries, those born after the Second World War are living longer, which means that many of them will eventually live with a disability later in life.

"In our communities, disability is seen as a charity issue. You are not seen as a person who can have a life, get a job, live independently. This is very much against our human rights. There is a huge need for awareness work in our countries."

Maria Veronica Reina, researcher with mobility impairment (Argentina)

The fact that persons with disabilities are more likely to live in poverty is often the result of ignorance and neglect that is reinforced in Government and development policies and programmes that ignore, exclude, are not accessible to or do not support the rights of persons with disabilities to be included in the socio-economic life of the country.

However, in the few developed and developing countries that have passed comprehensive legislation aimed at promoting and protecting the basic rights of persons with disabilities, those individuals live fulfilling and independent lives as students, workers, family members and citizens. They are able do so because society has removed the physical and cultural barriers that had previously hindered their full participation in society.

It is with these advances in mind that the international community united to reaffirm the dignity and worth of every person with a disability, and to provide States with an effective legal tool to end the injustice, discrimination and violation of rights that confront most persons with disabilities. That tool is the Convention on the Rights of Persons with Disabilities.

The focus of the Convention

The term "persons with disabilities" applies to all persons who have long-term physical, mental, intellectual or sensory impairments that, in the face of various negative attitudes or physical obstacles, may prevent those persons from participating fully in society. However, this is not an exhaustive definition of those who may claim protection under the Convention; nor does

Consider the statistics

- Approximately 10 per cent of the world's population lives with a disability —the world's largest minority. This number is increasing because of population growth, medical advances and the ageing process. (WHO)
- It is estimated that 20 per cent of the world's poorest people have a disability and tend to be regarded in their own communities as the most disadvantaged. (WORLD BANK)
- Disability rates are significantly higher among groups with lower educational attainment in the countries of the Organisation for Economic Co-operation (OECD) and Development. On average, 19 per cent of less-educated people have disabilities, compared to 11 per cent among better-educated people. (OECD)
- Mortality for children with disabilities may be as high as 80 per cent in countries where under-five mortality, as a whole, has fallen to below 20 per cent. In some cases, it seems as if disabled children are being "weeded out." (Department for International Development, United Kingdom)

this definition exclude broader categories of persons with disabilities found in national law, including persons with short-term disabilities or persons who had disabilities in the past.

A person with disabilities may be regarded as such in one society or setting, but not in another. In most parts of the world, there are deep and persistent negative stereotypes and prejudices against persons with certain conditions and differences. These attitudes determine who is considered to be a person with a disability and perpetuate the negative image of persons with disabilities. The language used to refer to persons with disabilities plays a significant role in creating and maintaining negative stereotypes. Terms such as "crippled" or "mentally retarded" are clearly derogative. Others, such as "wheelchair-bound," emphasize the disability rather than the person. Historically, society has often failed to use the terms that persons with disabilities use to define themselves or has forced

"For people born with a disability as I was, often the family expects very little of them, number one, so expectations are low; number two, physical barriers in the community may prevent them from accessing their community; and number three, social barriers may prevent them from accessing their community."

Linda Mastandrea, Paralympian and disability lawyer (USA)

Disability resides in society, **not** in the person

A person in a wheelchair might have difficulties being gainfully employed, not because of his/her condition, but because there are environmental barriers, such as inaccessible buses or staircases in the workplace, that impede his/her access.

A child with an intellectual disability might have difficulties in school because of teachers' attitudes towards him/her, in appropriate curricula and learning materials, inflexible school boards, and parents who are unable to adapt to students with different learning capacities.

In a society where corrective lenses are available for a person with extreme myopia (short-sightedness), this person would not be considered as having a disability. But someone with the same condition in a society where corrective lenses were not available would be considered as having a disability, especially if the person were unable to perform the tasks expected of him/her, such as shepherding, sewing or farming.

people to define themselves using terms with which they are uncomfortable.

The drafters of this Convention were clear that disability should be seen as the result of the interaction between a person and his/her environment, that disability is not something that resides in the individual as the result of some impairment. This Convention recognizes that disability is an evolving concept and that legislation may be adapted to reflect positive changes within society.

Why a convention was needed

Persons with disabilities are still primarily viewed as "objects" of welfare or medical treatment rather than "holders" of rights. The decision to add a universal human rights instrument specific to persons with disabilities was borne of the fact that, despite being theoretically entitled to all human rights, persons with disabilities are still, in practice, denied those basic rights and fundamental freedoms that most people take for granted. At its core, the Convention ensures that persons with disabilities enjoy the same human rights as everyone else and are able to lead their lives as full citizens who can make valuable contributions to society if given the same opportunities as others.

The Convention on the Rights of Persons with Disabilities and its Optional

Protocol, adopted by the United Nations General Assembly on 13 December 2006, are the latest additions to the body of core international human rights instruments (see chapter 2). Since the adoption of the Universal Declaration of Human Rights in 1948, Governments, under the auspices of the United Nations, have negotiated and agreed upon several international treaties that define the civil, cultural, economic, political and social rights that apply to all human beings. These treaties establish fundamental principles and legal provisions designed to protect and promote those rights.

Rights specified in the Convention

The Convention is a complement to existing international human rights treaties. It does not recognize any new human rights of persons with disabilities, but rather clarifies the obligations and legal duties of States to respect and ensure the equal enjoyment of all human rights by all persons with disabilities. The Convention identifies areas where adaptations have to be made so that persons with disabilities can exercise their rights and areas where the protection of their rights must be reinforced because those rights have been routinely violated. It also establishes universal minimum standards that should apply to everyone and that provide the basis for a coherent framework for action.

Under the terms of the Convention, States are obliged to consult with persons with disabilities, through their representative organizations, when developing and implementing legislation and policies to effectuate the Convention, and on all other policy matters that will affect the lives of persons with disabilities.

Persons with disabilities are routinely denied these basic rights:

- Receiving an education
- Moving around freely
- Living independently in the community
- Getting jobs, even when well qualified
- Accessing information
- Obtaining proper health care
- Exercising political rights, such as voting
- Making their own decisions

At the United Nations Millennium Summit in September 2000, Heads of State and Government agreed to work to achieve the following goals:

GOAL 1 Eradicate extreme poverty and hunger

- Poverty as a cause of disability: well over 50 per cent of disabilities are preventable and directly linked to poverty. This is particularly true for disabilities arising from malnutrition, maternal under-nourishment and infectious diseases.
- Disability as a risk factor for poverty: over 85 per cent of persons with disabilities live in poverty.

GOAL 2 Achieve universal primary education

- An estimated 98 per cent of children with disabilities in the developing world do not attend school.

GOAL 3 Promote gender equality and empower women

- It is widely recognized that women with disabilities are doubly disadvantaged in society: they are excluded from various activities because of both their gender and their disability.
- Women with disabilities are twice to three times more likely to be victims of physical and sexual abuse than women without disabilities.

GOAL 4 Reduce child mortality

- Mortality rates for children with disabilities can be as high as 80 per cent in some countries, even in those countries where mortality rates among children who have no disabilities is below 20 per cent.

GOAL 5 Improve maternal health

- Approximately 20 million women become disabled each year as a result of complications during pregnancy or childbirth.
- Abnormal pre-natal events are a major cause of disability in children in the developing world. Such disabilities can often be prevented.

GOAL 6 Combat HIV/AIDS, malaria and other diseases

- Persons with disabilities are particularly vulnerable to HIV/AIDS but typically lack the necessary services and access to information on prevention and treatment.
- One in 10 children has a neurological impairment, including learning disabilities and loss of coordination and epilepsy, as a consequence of malaria.

GOAL 7 Ensure environmental sustainability

- Poor environmental quality is a significant cause of ill health and disability.
- Trachoma is the main cause of preventable blindness, and can be prevented with access to safe water.

GOAL 8 Develop a global partnership for development

- Most persons with disabilities do not have access to new technologies, especially information and communications technology (ICT). The majority of websites are inaccessible and assistive technology is too expensive.

The relationship between disability and development

Once a country ratifies the Convention, the obligations established by the Convention must be reflected in the State's national legal framework, development planning and budgeting, and in related policies. The Convention highlights the concrete, pragmatic steps that States Parties should take to support the inclusion of persons with disabilities into all areas of development (see chapter 5).

The Convention also recognizes the importance of international development cooperation in supporting national implementation efforts. For the first time, the Convention shifts emphasis away from creating specialized programmes for persons with disabilities, such as rehabilitation, to requiring that all development programmes, including those supported through internation-

CHECKLIST FOR PARLIAMENTARIANS

Why I should be interested in the rights of persons with disabilities:

- ☐ The human rights of persons with disabilities should be promoted for the same reason that human rights are promoted for all other people: because of the inherent and equal dignity and worth of each human being.
- ☐ In most countries, persons with disabilities have difficulty attending school, getting a job, voting and obtaining health care.
- ☐ The only way to ensure that persons with disabilities can fully enjoy their human rights is to guarantee those rights under national law, support that legislation through consistent, coordinated and continued actions across all ministries, and ensure that legal institutions enforce respect for those rights.
- ☐ Marginalizing persons with disabilities and encouraging them to remain dependent is costly, both for their families and for the general public. Empowering persons with disabilities to live independently and contribute to society is socially and economically beneficial.
- ☐ Everyone is likely to experience disability at some point during his/her lifetime because of illness, accident or ageing.
- ☐ Persons with disabilities are voters, taxpayers and citizens like everyone else. They expect your support and are fully entitled to it.

al cooperation, be inclusive and accessible to persons with disabilities. And in all instances, organizations of persons with disabilities should participate in formulating these development programmes.

The need to include persons with disabilities in the world's development mainstream is evident, particularly with regard to the Millennium Development Goals. Without their participation, it will be impossible to halve the incidence of poverty and hunger by 2015, as envisioned in millennium development goal 1 (see box on page 6). Similarly, the right to free and universal primary education for every child (millennium development goal 2) will not be achieved as long as 98 per cent of children with disabilities in developing countries do not attend school.

CHAPTER TWO

The Convention in detail

The Convention on the Rights of Persons with Disabilities is not the first human rights instrument to deal with disability concerns. However, unlike its predecessors, it offers persons with disabilities an unprecedented level of protection. The Convention details the rights that all persons with disabilities should enjoy, and the obligations of States and other actors to ensure they are respected.

Historical developments leading to a new convention

The United Nations addressed the issue of human rights and disability several times prior to negotiating and adopting this Convention. In 1982, the General Assembly adopted the World Programme of Action concerning Disabled Persons, which promotes the full participation and equality of persons with disabilities in social life and development in all countries, regardless of their level of development.[1] The General Assembly proclaimed the decade from 1983 to 1992 "the United Nations Decade of Disabled Persons" and encouraged Member States to implement the World Programme of Action concerning Disabled Persons during that period.[2]

During the first major international review of the implementation of the World Programme of Action concerning Disabled

[1] See objectives set out in the World Programme of Action adopted by General Assembly resolution 37/52 on 3 December 1982.

[2] General Assembly resolution 37/53 of 3 December 1982.

Key antecedents to the Convention

The International Bill of Rights:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights

Other United Nations and ILO instruments dealing specifically with human rights and disability:

- Declaration on the Rights of Mentally Retarded Persons (1971)
- Declaration on the Rights of Disabled Persons (1975)
- World Programme of Action concerning Disabled Persons (1982)
- Tallinn Guidelines for Action on Human Resources Development in the Field of Disability (1990)
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991)
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

Persons, held in Stockholm in 1987, participants recommended drafting a convention on the human rights of persons with disabilities. Despite various initiatives, including proposals made by the Governments of Italy and Sweden, and the Commission for Social Development's Special Rapporteur on Disability, and strong lobbying from civil society, the proposition did not win enough support to lead to the negotiation of a new treaty.

In 1991, the General Assembly adopted the "Principles for the protection of persons with mental illness and the improvement of mental health care," known as the MI Principles. The MI Principles established standards and procedural guarantees and provided protection against the most serious human rights abuses that might occur in institutional settings, such as misuse or inappropriate use of physical restraint or involuntary seclusion, sterilization, psycho-surgery, and other intrusive and irreversible treatment for mental disability. While innovative at the time, today the value of the MI Principles is disputed.

In 1993, the General Assembly adopted the "Standard Rules on the Equalization of Opportunities for Persons with Disabilities" (the Standard Rules). The Standard Rules intended to ensure that "girls, boys, men and

women with disabilities, as members of their societies, may exercise the same rights and obligations as others," and required States to remove obstacles to equal participation of persons with disabilities in society. The Standard Rules became the principal United Nations instrument guiding State action on human rights and disability, and constituted an important reference in identifying State obligations under existing human rights instruments. Many countries have based their national legislation on the Standard Rules. Although a Special Rapporteur monitors implementation of the Standard Rules at the national level, the Standard Rules are not legally binding and do not protect the rights of persons with disabilities as comprehensively as does the new Convention.

International human rights instruments promote and protect the rights of everyone, including persons with disabilities.

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights together form what is known as the International Bill of Human Rights. These three documents together recognize the civil, cultural, economic, political and social rights that are inalienable to every human being; thus, the International Bill of Human Rights recognizes and protects the rights of persons with disabilities, even

The path to a new convention

December 2001 Government of Mexico proposal in the General Assembly to establish an ad hoc committee to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities.

August 2002 First session of the Ad Hoc Committee, in which it discussed the rationale for a possible new convention and procedures for participation of civil society.

25 August 2006 Eighth session of the Ad Hoc Committee, in which negotiations on the draft convention and a separate optional protocol are finalized and the texts are adopted, ad interim, subject to a technical review.

13 December 2006 The United Nations General Assembly adopts by consensus the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

30 March 2007 The Convention and Optional Protocol are open for signing at United Nations Headquarters in New York.

if those persons are not explicitly mentioned.

The Convention on the Rights of the Child is the first human rights treaty to explicitly prohibit discrimination against children on the basis of disability. It also recognizes the right of children with disabilities to enjoy a full life and to have access to special care and assistance to achieve this end.

Prior to the adoption of the new Convention, existing human rights treaties had not comprehensively addressed the protection of the rights of persons with disabilities; and persons with disabilities had underutilized the various protection mechanisms under those treaties. The adoption of the Convention and the establishment of new human rights protection and monitoring mechanisms should thus significantly improve the protection of the rights of persons with disabilities.

The Convention at a glance

The purpose of the Convention

Article 1 of the Convention on the Rights of Persons with Disabilities states that the purpose of the Convention is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."

The scope of the Convention

The Convention promotes and protects the human rights of persons with disabilities in economic, social, political, legal and cultural life. It calls for non-discriminatory treatment and equality in access to justice, in treatment by the courts and by the police and in undertaking administrative tasks by providing the necessary reasonable, procedural and age-appropriate accommodations, in education, in health care, in the work-place, in family life, in cultural and sporting activities, and when participating in political and public life. The Convention ensures that all persons with disabilities are recognized before the law. It also prohibits torture, exploitation, violence and abuse, and protects the life, liberty and security of persons with disabilities, their freedom of movement and expression, and respect for their privacy.

Defining disability

The Convention does not explicitly define the word "disability"; indeed, the Preamble to the Convention acknowledges that "disability" is an evolving concept (subpara. (e)). Nor does the Convention define the term "persons with disability". However, the treaty does state that the term includes persons who

have long-term physical, mental, intellectual or sensory impairments that, in the face of various negative attitudes or physical obstacles, may prevent those persons from participating fully in society (article 1).

The recognition that "disability" is an evolving concept acknowledges the fact that society and opinions within society are not static. Consequently, the Convention does not impose a rigid view of "disability", but rather assumes a dynamic approach that allows for adaptations over time and within different socio-economic settings.

The Convention's approach to disability also emphasizes the significant impact that attitudinal and environmental barriers in society may have on the enjoyment of the human rights of persons with disabilities. In other words, a person in a wheelchair might have difficulties taking public transport or gaining employment, not because of his/her condition, but because there are environmental obstacles, such as inaccessible buses or staircases in the workplace, that impede his/her access.

"We are now enacting a National Disability Act, which is an all-embracing legislation that will serve to give legislative teeth to the protection of persons with disabilities. We are also putting in place a number of programmes and initiatives to improve the educational capacities of persons with disabilities because we believe that if the lives of persons with disabilities are to be transformed in a sustainable way, it has to be done through education. And so we are deeply proud to be the first country to have ratified the Convention."

Senator Floyd Emerson Morris, Minister of State in the Ministry of Labour and Social Services (Jamaica)

Similarly, a child with an intellectual disability might have difficulties in school because of teachers' attitudes toward him/her, inflexible school boards and possibly parents who are unable to adapt to students with different learning capacities. It is thus vital to change those attitudes and environments that make it difficult for persons with disabilities to participate fully in society.

The Convention indicates, rather than defines, who are persons with disabilities. Persons with disabilities "include" those persons with long-term physical, mental, intellectual or sensory impairments; in other words, the Convention protects at least those individuals. Implicit in this indication is the understanding that States may broaden the range of persons protected to include, for example, persons with short-term disabilities.

Non-discrimination and equality

The principle of non-discrimination is a cornerstone of human rights law and a principle included in all other human rights treaties. Discrimination on the basis of disability is defined in the Convention as "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."

States must stop discrimination both in law, such as discrimination embodied in legislation, and in practice, for example when discrimination occurs in the work-place. However, States may still discriminate in favour of persons with disabilities when this is necessary to ensure that persons with and without disabilities have equal opportunities.

"Reasonable accommodation" means carrying out, when necessary, appropriate modifications and adjustments, which do not impose a disproportionate or undue burden, so that persons with disabilities can enjoy their human rights and fundamental freedoms on an equal basis with others (article 2). Given this principle, an individual with disabilities can argue that the State and, through the State, other actors, including the private sector, are obliged to take steps to accommodate his/her particular situation, as long as those steps do not impose a heavy burden.

For example, if an employee has an accident, in or outside the work-place, that results in a physical disability that requires the employee to use a wheelchair from then on, the employer has a responsibility to provide ramps, wheelchair-accessible toilets and clear corridors, and to make other adjustments and modifications so that the person can continue working as an active employee. The failure to make such accommodations could prompt the individual employee to bring a claim of discrimination to an appropriate judicial or quasi-judicial body.

However, the accommodations that the employer must undertake are not unlimited; they must only be "reasonable." Thus, disproportionately expensive reconfigurations of the work site would not be mandatory, particularly if the enterprise concerned is very small or if its facilities cannot be modified easily.

The rights and principles enumerated in the Convention

General principles

The general principles provide guidance to States and other actors on interpreting and implementing the Convention. The eight general principles are:

- Respect for the inherent dignity, autonomy, including the freedom to make one's own decisions, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women; and
- Respect for the evolving capacities of children with disabilities and for the right of children with disabilities to preserve their identities.

Rights

While the civil, cultural, economic, political and social rights specified in the Convention apply to all human beings, the Convention focuses on the actions States must take to ensure that persons with disabilities enjoy these rights on an equal basis with others. The Convention also addresses the specific rights of women and children, areas in which State action is required, such as data collection and raising awareness, and international cooperation.

The explicit rights set out in the Convention are:

- Equality before the law without discrimination
- Right to life, liberty and security of the person
- Equal recognition before the law and legal capacity
- Freedom from torture
- Freedom from exploitation, violence and abuse
- Right to respect physical and mental integrity
- Freedom of movement and nationality
- Right to live in the community
- Freedom of expression and opinion
- Respect for privacy
- Respect for home and the family

- Right to education
- Right to health
- Right to work
- Right to an adequate standard of living
- Right to participate in political and public life
- Right to participate in cultural life

The Convention recognizes that certain people are exposed to discrimination not only on the basis of disability, but also on the basis of sex, age, ethnicity and/or other grounds. Thus the Convention includes two articles devoted to specific individuals: women with disabilities and children with disabilities.

The Convention sets out specific areas for State action. Establishing a right is not the same thing as ensuring that that right is realized. This is why the Convention obliges States parties to provide the appropriate enabling environment so that persons with disabilities can fully enjoy their rights on an equal basis with others. These provisions relate to:

- Raising awareness – so that persons with and without disabilities understand their rights and responsibilities;
- Accessibility – fundamental to the enjoyment of all rights and to

Participation: a principle and a right

The principle of participation and inclusion aims to engage persons with disabilities in the wider society and in making decisions that will affect them, encouraging them to be active in their own lives and within the community. Inclusion is a two-way process: persons who have no disabilities should be open to the participation of persons with disabilities.

The Convention specifically recognizes the right to participation in political life, such as through voting in parliamentary elections, and in cultural life, such as through assisting in cultural, sporting and other recreational activities. However, the realization of the right to participate sometimes requires specific State actions. For example, a blind person might require voting material in Braille and might also require personal support in the voting booth so that his/her choice is clear. If a voting station does not have ramp access or is too far from home, a person in a wheelchair might be hindered from voting, hence his/her right to participate in political life is obstructed.

Equality between men and women

Women with disabilities might experience discrimination on at least two levels: on the basis of sex and on the basis of disability. The principle of equality between men and women requires States to promote equality between men and women and to combat inequality when implementing the provisions of the Convention. Article 6 of the Convention specifically recognizes that women and girls with disabilities are subject to multiple forms of discrimination, including on the basis of disability, on the basis of sex and sometimes on other grounds as well. Equality between men and women is not only a guiding principle of the human rights work of the United Nations, it is also a right in and of itself.

live independently in the community;

- Situations of risk and humanitarian emergencies – a cause of disability that requires specific action by the State to ensure protection;
- Access to justice – essential for persons with disabilities to claim their rights;
- Personal mobility – to promote independence for persons with disabilities;
- Habilitation and rehabilitation – for persons with a disability from birth and people who have acquired a disability, respectively, to enable those persons to attain and maintain

Accessibility

The principle of accessibility aims to dismantle the barriers that hinder the enjoyment of rights by persons with disabilities. The issue concerns not just physical access to places, but also access to information, technologies, such as the Internet, communication, and economic and social life. The provision of ramps, sufficiently large and unblocked corridors and doors, the placement of door handles, the availability of information in Braille and easy-to-read formats, the use of sign interpretation/interpreters, and the availability of assistance and support can ensure that a person with a disability has access to a workplace, a place of entertainment, a voting booth, transport, a court of law, etc. Without access to information or the ability to move freely, other rights of persons with disabilities are also restricted.

maximum independence and ability;

- Statistics and data collection – as a basis for formulating and implementing policies to promote and protect the rights of persons with disabilities.

International cooperation

International cooperation is widely recognized as vital for ensuring that persons with disabilities can fully enjoy their human rights. The Convention expressly acknowledges this relationship, and obliges States parties to cooperate with other States and/or with relevant international and regional organizations and civil society in:

- Building capacity, including through the exchange and sharing of information, experiences, training programmes and best practices;
- Research programmes and facilitating access to scientific knowledge; and
- Technical and economic assistance, including facilitating the use of accessible and assistive technologies.

By including a separate article on international cooperation, the Convention underlines the need for all such efforts, including international development programmes, to be accessible to and inclusive of persons with disabilities. Given that, in many countries, there is a higher percentage of persons with disabilities living in poverty than living in other sectors of society, a failure to include persons with disabilities in planning and implementing development programmes would only exacerbate existing inequalities and discrimination within society.

The Convention affirms that not only do States parties have a role to play in fostering international cooperation to promote the rights of persons with disabilities, but civil society, including organizations representing persons with disabilities, and international and regional organizations, such as the United Nations specialized agencies, the World Bank and other development banks, and regional organizations, such as the European Commission and the African Union, do, too.

Obligations of States parties under The Convention

As affirmed in article 4 of the Convention, a Government that ratifies the Convention agrees to promote and ensure the full realization of all human

Actions to be taken by States parties

- Adopt legislation and administrative measures to promote the human rights of persons with disabilities.
- Adopt legislative and other measures to abolish discrimination.
- Protect and promote the rights of persons with disabilities in all policies and programmes.
- Stop any practice that breaches the rights of persons with disabilities.
- Ensure that the public sector respects the rights of persons with disabilities.
- Ensure that the private sector and individuals respect the rights of persons with disabilities.
- Undertake research and development of accessible goods, services and technology for persons with disabilities and encourage others to undertake such research.
- Provide accessible information about assistive technology to persons with disabilities.
- Promote training on the rights of the Convention to professionals and staff who work with persons with disabilities.
- Consult with and involve persons with disabilities in developing and implementing legislation and policies and in decision-making processes that concern them.

rights and fundamental freedoms for all persons with disabilities, without discrimination of any kind. The box below details the concrete actions that States must take in order to meet this obligation.

Each State must take measures to realize economic, social and cultural rights progressively, using the greatest amount of available resources to do so. This obligation, commonly referred to as progressive realization, acknowledges that it often takes time to realize many of these rights fully, for example, when social-security or health-care systems must be created or improved. While progressive realization gives States parties, particularly developing countries, some flexibility in achieving the objectives of the Convention, it does not absolve States parties of the responsibility to protect those rights. For example, a State must not forcibly evict a person with a disability, arbitrarily withdraw social-security protection or fail to introduce and respect the minimum wage.

Unlike economic, social and cultural rights, civil and political rights are not

"Personally, as a woman with a disability, just like other women with disabilities from developing countries, we suffer triple discrimination on account of our disability, our gender and our poverty, so this Convention is going to be very helpful in making sure we enjoy our rights the same way other people enjoy their rights."

Venus Ilagan, Disabled Peoples' International (Philippines)

subject to progressive realization. In other words, States must protect and promote these rights immediately.

Obligations to respect, protect and fulfil

Implicit in the Convention are three distinct duties of all States parties:

The obligation to respect – States parties must refrain from interfering with the enjoyment of the rights of persons with disabilities. For example, States must not perform medical experiments on persons with disabilities without their consent or exclude a person from school on the basis of a disability.

The obligation to protect – States parties must prevent violations of these rights by third parties. For example, States must require private employers to provide just and favourable working conditions for persons with disabilities, including by providing reasonable accommodation. States must be diligent in protecting persons with disabilities from mistreatment or abuse.

The obligation to fulfil – States parties must take appropriate legislative, administrative, budgetary, judicial and other actions towards the full realization of these rights (see box on previous page).

Examples of how these obligations might be practically fulfilled are provided in the box on the next page.

Comparing The Convention to other human rights treaties

The Convention complements the other international human rights treaties. It does not recognize any new human rights for persons with disabilities, but rather clarifies States' obligations to respect and ensure the equal enjoyment of human rights by persons with disabilities.

International human rights instruments that were adopted after the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights clarified the steps that States must take in order to ensure

The obligations to respect, protect and fulfil: how they might be translated into action

Freedom from Torture

Respect: the State must not subject a person with a disability to torture and other cruel, inhuman or degrading treatment in a State-run prison.

Protect: the State must ensure that privately run prisons or psychiatric institutions do not practise torture and similar practices on persons with disabilities.

Fulfil: the State must ensure that prison officers and health professionals are given adequate training and information so that the human rights of persons with disabilities are respected.

The Right to Health

Respect: the authorities must not undertake medical experimentation on a person with a disability without his/her free and informed consent.

Protect: the Government must ensure that private health-service providers do not discriminate against or withhold health care from someone on the basis of disability.

Fulfil: the Government must increase the availability of quality and affordable health care for persons with disabilities.

Freedom of Expression

Respect: the State must not withhold information or stop a person with a disability from freely expressing his/her views.

Protect: the State must prevent private entities from prohibiting a person with a disability from freely expressing his/her views.

Fulfil: the State must facilitate the use of sign languages, plain language, Braille, and augmentative and alternative communication in official interactions.

The Right to Education

Respect: school authorities must not exclude a student with a disability from education on the basis of disability.

Protect: the State must ensure that private schools do not discriminate against a person with a disability in their education programmes.

Fulfil: the State must ensure that free secondary education is progressively available to all, including persons with disabilities.

The Right to Work

Respect: the State must respect the right of persons with disabilities to form trade unions.

Protect: the State must ensure that the private sector respects the right to work of persons with disabilities.

Fulfil: the State must provide vocational training, with available resources, to persons with disabilities.

Equal recognition before the law: the elaboration of a principle

The International Covenant on Civil and Political Rights (ART. 16)

Everyone shall have the right to recognition everywhere as a person before the law.

The Convention on the Rights of Persons with Disabilities (ART. 12)

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide to persons with disabilities access to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible, and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

that these rights are respected in particular situations. There are, for example, treaties that specifically protect children or migrant workers and their families, that prohibit torture, or that protect against discrimination on the basis of sex or race. The new Convention focuses on the steps that States must take to ensure that the human rights of persons with disabilities are respected.

The box above illustrates how the new Convention takes one right that was

introduced in the International Covenant on Civil and Political Rights—the right to equal protection before the law—and expands and elaborates on it, focusing specifically on persons with disabilities. The right to equal recognition

CHECKLIST FOR PARLIAMENTARIANS

How I can raise awareness about the Convention's main principles:

- [ ] Raise issues relating to the Convention in parliament.
- [ ] Review draft legislation to assess conformity with the Convention.
- [ ] Liaise with civil society groups, including organizations representing persons with disabilities and human rights organizations.
- [ ] Discuss the Convention in meetings and visits to local electorates, local schools, in party meetings, etc.
- [ ] Discuss the Convention in speeches to public gatherings, particularly on the International Day for Disabled Persons (3 December).
- [ ] Organize meetings with parliamentarians to discuss the Convention.
- [ ] Organize television and radio interviews on the Convention.
- [ ] Write articles on the Convention for newspapers, journals, magazines and other publications.
- [ ] Request that the Convention is translated into national language(s) and is widely distributed.
- [ ] Request that the Convention is available in accessible formats.
- [ ] Ensure that parliament adheres to the Convention with respect to its members and staff with disabilities.
- [ ] Advocate for the establishment of a parliamentary committee on human rights and disability, which could have a role in monitoring the Convention, and ensure that other parliamentary committees consider issues related to disability.
- [ ] Ensure that every Member of Parliament has a copy of the Convention and Optional Protocol.
- [ ] Promote the Convention and Optional Protocol in your political work, especially in your constituency.
- [ ] Hold parliamentary hearings on the rights of persons with disabilities.

before the law is fundamental, not only as a right in itself, but as a pre-requisite to the full enjoyment of other rights, since only with recognition before the law can rights be protected through the courts (the right to a remedy), can an individual enter into contracts (right to work, among others), buy and sell property (the right to own property alone as well as in association with others), and marry (the right to marry and found a family).

Persons with disabilities have too often been denied the right to equal recognition before the law simply because of the existence of a disability. Some persons with disabilities have not been registered at birth and some persons with disabilities have had their legal capacity completely, and unnecessarily, transferred to guardians who have abused the rights of the person. To remedy this situation, the Convention explicitly describes the content of the right and the steps that States must take to ensure that this right is not violated.

CHAPTER THREE

Monitoring the Convention and the Optional Protocol

All legally-binding international human rights treaties have a monitoring component and this Convention is no exception. Like the monitoring mechanisms found in other human rights treaties, the procedure outlined in the Convention promotes constructive dialogue with States to ensure that the Convention's provisions are implemented effectively. Monitoring also implies the right of individuals to complain and seek a remedy. Monitoring mechanisms foster accountability and, over the long term, strengthen the capacity of parties to fulfil their commitments and obligations.

Monitoring mechanism in the Convention

The Convention provides for monitoring at both the national and international levels:

At the national level, States parties must appoint one or more focal points within government to handle matters relating to implementation. States parties must also consider establishing or designating a coordinating body within government to facilitate implementation. Similarly, States parties must maintain, strengthen or establish an independent institution, such as a national human rights institution, to promote, protect and monitor the Convention. (More information on national monitoring is provided in chapter 7.)

At the international level, the Convention provides for monitoring through the creation of a committee of independent experts, called the **Committee on the Rights of Persons with Disabilities**.

The Committee reviews reports submitted periodically by States parties. On the basis of these reports, the Committee works with the States parties concerned and makes concluding observations and recommendations to those States parties.

The **Optional Protocol to the Convention**, if ratified separately by a State, enables the Committee to undertake two additional forms of monitoring: an *individual communications procedure*, through which the Committee receives communications (complaints) from an individual claiming that the State breached his/her rights under the Convention; and an *inquiry procedure*, through which the Committee investigates gross or systematic violations of the Convention and, with the agreement of the State party concerned, undertakes field missions to deepen the inquiry.

The Convention also provides for a Conference of States parties, which would consider the implementation of the Convention.

The Committee on the Rights of Persons with Disabilities

The Convention mandates the creation of a Committee on the Rights of Persons with Disabilities when the Convention comes into force. The Committee will examine the periodic reports submitted by States, consider individual communications, conduct inquiries, and formulate general observations and recommendations.

The Committee will initially be composed of 12 independent experts, although that number will rise to 18 after 60 States have ratified the Convention. A Conference of States parties will select the Committee members, who will serve in their personal capacity. Committee members will be chosen on the basis of 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 within the Committee.

States should consult with and involve persons with disabilities and their representative organizations when choosing individuals to nominate to the Committee.

Periodic reporting

Each State party to the Convention must submit to the Committee an initial comprehensive report on measures taken to implement the

Convention. Each State must submit its initial report within two years after the Convention enters into force for that State. The initial report should:

- Establish the constitutional, legal and administrative framework for the implementation of the Convention;
- Explain the policies and programmes adopted to implement each of the Convention's provisions; and
- Identify any progress made in the realization of the rights of persons with disabilities as a result of the ratification and implementation of the Convention.

Each State party must submit subsequent reports at least every four years or whenever the Committee requests one. Subsequent reports should:

- Respond to the concerns and other issues highlighted by the Committee in its concluding observations in previous reports;
- Indicate progress made in the realization of the rights of persons with disabilities over the reporting period; and
- Highlight any obstacles that the Government and other actors might have faced in implementing the Convention over the reporting period.

The Committee will set guidelines on the content of reports. The first report must be comprehensive, in other words, it must cover the implementation of all the provisions of the Convention. Subsequent reports need not repeat information previously provided. States parties should prepare their reports in an open and transparent manner and should consult with and involve persons with disabilities and their representative organizations.

The preparation of periodic reports:

- Encourages Governments to undertake a comprehensive review of national legislation, policies and programmes on human rights and disability;
- Ensures that each State regularly monitors the realization of the rights of persons with disabilities;
- Encourages Governments to set priorities and indicators against which they can judge performance;
- Provides Governments with a benchmark against which

subsequent reports may be compared;

- Provides an opportunity for public discussion and scrutiny of the Government's performance; and
- Highlights difficulties in implementation that might otherwise have gone unnoticed.

The purpose of periodic reporting

Periodic reporting provides a way of promoting States' compliance with their obligations under the Convention, and a means of allowing the Government, national human rights institutions, and civil society to appraise the level of respect for the human rights of persons with disabilities in the country. Periodic reporting before the Committee:

- Provides an instrument through which Governments, national human rights institutions and civil society can better understand the objectives and rights included in the Convention;
- Raises awareness about the Convention and the situation of the rights of persons with disabilities in the country;

Parliamentary oversight of reporting: the South African experience

The Committee and reporting mechanisms envisioned for the Convention are similar to those of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Parliaments have various ways of overseeing these reports. In South Africa, for example, all national reports to the CEDAW Committee (indeed, reports to all international monitoring bodies) have to be debated in Parliament, and Parliament must ensure that the reports contain a wide variety of views, including those of civil society. Parliament thus holds debates and public hearings, calls in ministers and requests documents and reports from a wide range of departments and citizens' groups. In South Africa, Members of Parliament are included in the national delegations that participate in the proceedings of the CEDAW Committee, thus ensuring that they have a good understanding of the subsequent recommendations. Parliament also plays a leading role in making sure that those recommendations are put into effect at the national level.[1]

[1] Quoted from *Parliament and Democracy in the Twenty-first Century: A Guide to Good Practice* (Geneva, Inter-Parliamentary Union, 2006).

The Committee on the Rights of the Child and the rights of children with disabilities

The Committee on the Rights of the Child has been the most active United Nations human rights treaty body in the area of human rights and disability. It systematically requests information from States on the realization of the rights of children with disabilities in their countries. In September 2006, the Committee on the Rights of the Child stated that children with disabilities are still experiencing serious difficulties in fully enjoying the rights enumerated in the Convention on the Rights of the Child. The Committee emphasized that the obstacle to full enjoyment is not the disability itself, but a combination of social, cultural, attitudinal and physical barriers that children with disabilities face every day. The Committee has given guidance to States by promoting birth registration and access to information on the family environment and alternative care, basic health and welfare, education and leisure, juvenile justice, and the prevention of exploitation and abuse.

- Allows the Government to benefit from the expertise of an independent, international committee on how to improve implementation of the Convention;
- Highlights good practices and experiences in the country;
- Allows Governments to benefit from the good practices and experiences of other Governments, as all periodic reports and concluding observations by the committees are public documents;
- Provides authoritative guidance to Governments, national human rights institutions and civil society for future action, including legislation, policies and programmes; and
- Indicates areas where international cooperation, particularly through the United Nations, might be desirable.

Follow-up to periodic reporting

Once the Committee has considered the report and formulated its concluding observations and recommendations, the Committee may transmit its findings to the various specialized agencies, funds and programmes of the United Nations for follow-up in the form of technical cooperation. There are many United Nations agencies whose mandates include activities relevant to the rights of persons with disabilities, such as UNESCO, ILO, WHO, the United Nations Development Programme (UNDP), and the United Nations

Children's Fund (UNICEF), as well as the World Bank. By engaging these and other organizations, States and the Committee can help ensure that periodic reporting leads to sustained improvement in the realization of the rights of persons with disabilities.

The Conference of States parties

States that have ratified the Convention will meet regularly in a Conference of States parties to consider any matter relating to the implementation of the Convention. The first meeting of the Conference of States parties will take place six months after the Convention enters into force. The Convention does not elaborate on the modalities or functions of the Conference.

CHECKLIST FOR PARLIAMENTARIANS

How I can help ensure that periodic reporting is effective:

Parliamentarians have an important role in ensuring that the Government complies with its reporting responsibilities under the Convention. Parliamentarians can:

- ☐ Ensure that the Government prepares its initial and subsequent reports on time.
- ☐ Insist that reports be drafted with the full involvement of persons with disabilities through hearings and other such consultation mechanisms.
- ☐ Request explanations from the Government when the report is late and, if necessary, use parliamentary procedures to urge the Government to comply with its reporting obligations.
- ☐ Be actively involved in the preparation of the report, such as by being a member of the relevant parliamentary committees.
- ☐ Ensure that the report includes any measures taken by parliament in favour of the rights of persons with disabilities.
- ☐ Insist on widely disseminating the Committee's concluding observations.
- ☐ Encourage the relevant ministries to implement the Committee's concluding observations.
- ☐ Pose questions to relevant ministers in parliament to follow-up on significant obstacles to implementation.
- ☐ Publicize the issues raised in the Committee's concluding observations through parliamentary and public debates.

Other mechanisms to monitor the rights of persons with disabilities

All human rights treaties protect the rights of persons with disabilities, which means that the independent committees of experts established under other United Nations human rights treaties also have a role in monitoring the rights of persons with disabilities within the scope of each specific treaty. For example, the Human Rights Committee has authority to monitor the civil and political rights of persons with disabilities among States parties to the International Covenant on Civil and Political Rights. The Committee on the Rights of the Child has the authority to monitor the realization of the rights of children with disabilities.

The Optional Protocol to the Convention

An optional protocol is a legal instrument related to an existing treaty that addresses issues that the parent treaty does not cover or does not cover sufficiently. It is usually, although not always, open to ratification or accession only by States that are parties to the parent treaty. It is "optional" in the sense that States are not obliged to become parties to the protocol, even if they are party to the parent treaty.

The Optional Protocol to the Convention on the Rights of Persons with Disabilities introduces two procedures to strengthen the implementation of the Convention: an individual communications procedure and an inquiry procedure.

"An optional protocol will clearly bolster the current system of treaty monitoring. Importantly, it will help to clarify what is - and what is not - required of States, while providing effective remedies to aggrieved individuals. Ultimately, I hope that an optional protocol will be a step towards the dismantling of the unduly rigid categories of rights and a move towards a unified vision of civil, cultural, economic, political and social rights."

Louise Arbour, United Nations High Commissioner for Human Rights

The individual communications procedure

The individual communications procedure permits individuals and groups of individuals in a State party to the Optional Protocol to complain to the Committee on the Rights of Persons with Disabilities that the State has breached one of its obligations under the Convention. That complaint is known as a "communication." The Committee will then examine the complaint, formulate its views and recommendations, if any, on the communication, and send them to the State in question. Those views and recommendations appear in the Committee's public report to the General

Assembly. Normally, individual communications procedures are paper or written procedures, in other words, neither the complainant nor the State appears before the Committee in person; all submissions are made in writing.

Not all communications are admissible. The Committee will consider a communication inadmissible when:

- It is anonymous;
- It is an abuse of or incompatible with the provisions of the Convention;
- The same complaint has already been examined by the Committee;

Individual communications procedure

The individual communications procedure is composed of the following steps:

- The Committee receives the complaint.
- The Committee considers the admissibility of the complaint. Sometimes, the admissibility of the complaint is considered at the same time as the merits of the complaint, in other words, a decision is made that the complaint is admissible (admissibility) and a decision is made at the same time whether the State is or is not in breach of its obligations (merits).
- The Committee submits the complaint confidentially to the State.
- Within six months, the State submits written explanations or statements clarifying the issue and indicating what remedial and/or other steps, if any, have been taken.
- The complainant is given an opportunity to comment on the State's observations.
- The Committee may ask the State to take interim measures to protect the rights of the complainant.
- The Committee examines the complaint in closed session.
- The Committee makes suggestions and recommendations, if any, to the State and the complainant, and often requests States to provide information on the action it has taken as a result.
- The Committee publishes its suggestions and recommendations in its report.

Increasingly, other committees with individual communications procedures are asking States to report to them on actions taken in response to their suggestions and recommendations.

- The same complaint has been or is being examined under another international investigations procedure;
- All available domestic remedies have not yet been exhausted;
- It is ill-founded or not sufficiently substantiated;
- The facts occurred and terminated prior to entry into force of the Protocol for the State in question.

The inquiry procedure

If the Committee receives reliable information indicating grave or

Human Rights Committee considers individual communications from persons with disabilities

The Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights, has already considered individual communications concerning the rights of persons with disabilities:

In the case Hamilton v. Jamaica (1995), the Human Rights Committee considered the treatment and conditions of confinement of a disabled prisoner on death row. The claimant was paralysed in both legs and experienced extreme difficulty in climbing onto his bed. The Human Rights Committee found that the failure by prison authorities to take the detainee's disability into account and make proper arrangements for him violated the author's right to be treated with humanity and with respect for the inherent dignity of the human person, and was therefore contrary to article 10 (1) of the Covenant.

In the case Clement Francis v. Jamaica (1994), the Human Rights Committee recognized that the State's failure to attend to the deteriorating mental health of a detainee sentenced to death and failure to take the steps necessary to ameliorate his psychiatric illness constituted a violation of the victim's rights under articles 7 and 10 (1) of the Covenant.

In the case C. v. Australia (1999), an Iranian asylum-seeker was detained by the Australian authorities while they considered his application for asylum. The Human Rights Committee found that the continued detention of the complainant, notwithstanding the deterioration of his mental health, constituted a violation of his rights under article 7 of the Covenant (prohibition of torture, and cruel, inhuman and degrading treatment). The Human Rights Committee also held that deportation of the applicant to the Islamic Republic of Iran, where he was unlikely to receive the only effective medication and related treatment, amounted to a breach of article 7.

systematic violations of the provisions of the Convention by a State party, the Committee may invite the State to cooperate in the examination of the information by submitting observations. After considering the State party's observations, and any other reliable information, the Committee may designate one or more of its members to conduct an inquiry and issue a report urgently. Where warranted, and with the consent of the State concerned, this inquiry may include a visit to the country in question. After examining the findings of the inquiry, the Committee must transmit those findings, and its own comments, to the State, which then has six months to submit its observations to the Committee. The inquiry is confidential and has to be conducted with the full cooperation of the State concerned.

After the six-month period in which it may submit its observations, the State may be invited to provide details of measures taken to respond to the inquiry. The Committee may request further information from the State. The Committee will then publish a summary of its findings in its report to the General Assembly. With the agreement of the State concerned, the Committee may also publish its full report on the inquiry.

A State ratifying the Optional Protocol may "opt out" of the inquiry procedure. In other words, at the time of signing, ratification or accession of the Protocol, the State may declare that it does not recognize the competence of the Committee to undertake inquiries. However, even if a State "opts out" of the inquiry procedure, all States parties to the Optional Protocol must accept the individual communications procedure.

Most international human rights treaties include optional communications procedures; some include inquiry procedures, as well. All of these procedures have some relevance to the rights of persons with disabilities. The following international instruments contain individual communications procedures: [2]

- The Optional Protocol to the International Covenant on Civil and Political Rights
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

[2] United Nations Member States are currently drafting an optional protocol to the International Covenant on Economic, Social and Cultural Rights. The current draft foresees the inclusion of both an individual communications procedure and an inquiry procedure.

- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women
- The International Convention on the Protection of All Migrant Workers and Members of their Families
- The International Convention for the Protection of All Persons from Enforced Disappearance (not yet in force)

The following international instruments contain inquiry procedures:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women

The individual communications procedure and inquiry procedure at a glance

The individual communications procedure:

- Provides an opportunity for specific redress in individual cases when a State violates the rights of persons with disabilities and no remedy can be obtained from national procedures;
- Provides the possibility of international recourse for persons with disabilities who have been denied access to justice at the national level;
- Allows the Committee to highlight the need for more effective remedies at the national level;
- Allows the Committee to develop a new body of jurisprudence on how better to promote and protect the rights of persons with disabilities; and
- Assists States in determining the content of their obligations under the Convention and thus assists them in implementing those obligations.

The inquiry procedure:

- Enables the Committee to address systematic and widespread violations of the rights of persons with disabilities;
- Allows the Committee to recommend measures to combat the structural causes of discrimination against persons with disabilities;
- Gives the Committee an opportunity to set out a broad range of recommendations to achieve greater respect for the rights of persons with disabilities; and
- Allows the Committee to work with the State in removing impediments to the full enjoyment of the rights of persons with disabilities.

- The International Convention for the Protection of All Persons from Enforced Disappearance (not yet in force)

Although all of these treaties are open to communications from persons with disabilities living in States that have ratified the procedures, none of them specifically targets the rights of persons with disabilities; and while all of these committees include human rights experts, they do not necessarily benefit from expertise on human rights and disability. The Optional Protocol to the Convention on the Rights of Persons with Disabilities thus provides procedures that specifically target the protection of the rights of persons with disabilities.

Becoming a party to the Optional Protocol

The Optional Protocol encourages States to implement the Convention effectively, to provide more local remedies and remove discriminatory laws and practices, and represents an additional layer of commitment by providing additional guarantees that the State will be accountable for its obligations under the Convention.

The Optional Protocol is a tool used by States to:

- Improve existing protection mechanisms for persons with disabilities;
- Add to existing protection mechanisms;
- Enhance the State's understanding of the steps it must take to protect and promote the rights of persons with disabilities;
- Vindicate State action in cases where the Committee makes a finding that no violation has occurred;
- Foster changes in discriminatory laws, policies and practices; and
- Create greater public awareness of human rights standards relating to persons with disabilities.

The procedure for signing and ratifying or acceding to the Optional Protocol is the same as for the Convention, although the Optional Protocol will come into force after only 10 ratifications or accessions, rather than 20 for the Convention. Chapter 4 discusses the procedures involved in signing and ratifying or acceding to the Convention.

The United Nations secretariat that supports the Convention

The Committee on the Rights of Persons with Disabilities will be supported by the Office of the United Nations High Commissioner for Human Rights, based in Geneva, Switzerland. The Conference of States parties will be supported by the Department of Economic and Social Affairs, based in New York.

For contact information, see next page.

CHECKLIST FOR PARLIAMENTARIANS

How I can raise awareness about the Optional Protocol:

- ☐ Determine if the Government intends to become a party and, if not, ask why.
- ☐ Raise questions in parliament concerning what action the Government intends to take in relation to the Optional Protocol.
- ☐ Submit a private member's bill on the matter.
- ☐ Encourage parliamentary debate on the Optional Protocol.
- ☐ Mobilize public opinion through organized public campaigns and debates using television, radio and print media, and in public meetings.
- ☐ Ensure that the Optional Protocol is translated into the national language(s) and widely distributed.
- ☐ Ensure that the Optional Protocol and simple information about its procedures are available in local languages and accessible formats.
- ☐ Organize and contribute to workshops or information seminars on the Optional Protocol for parliamentarians, members of the Government and civil society.
- ☐ Liaise with organizations representing persons with disabilities and human rights organizations.
- ☐ Use the International Day for Disabled Persons (3 December) as an occasion to encourage action towards signing and ratifying the Optional Protocol.
- ☐ Encourage people with disabilities whose rights have been violated to use the Optional Protocol appropriately.

Contact Information:

Committee on the Rights of Persons with Disabilities
Office of the United Nations High Commissioner for Human Rights

UNOG-OHCHR
1211 Geneva 10
SWITZERLAND

E-mail: **crpd@ohchr.org**
(Please type "Request for information" in the subject line)

Conference of States parties
Secretariat for the Convention on the Rights of Persons with Disabilities

Department of Economic and Social Affairs
Two United Nations Plaza
New York, NY, 10017
United States of America

Fax: +1-212-963-0111

E-mail: **enable@un.org**

CHAPTER FOUR

Becoming a party to the Convention and the Optional Protocol

The means by which an international treaty enters into national legislation differs depending on the parliamentary system and national procedures. However, in all cases States have to take a number of steps to become parties to the Convention and Optional Protocol. These measures are standard practice under international law.

Joining the Convention

Signing the treaty

A State becomes a party to the Convention and Optional Protocol by signing and ratifying either instrument or by acceding to them. A regional integration organization becomes a party to the Convention and Optional Protocol by signing and formally confirming its intention or by acceding to them. A precondition to signing and ratifying the Optional Protocol is having signed and ratified the Convention.

The first step in the process of becoming a party to a treaty is signing the treaty. States and regional integration organizations, such as the European Union, may sign the Convention. Any signatory State or regional integration organization that has signed the Convention may also sign the Optional Protocol. However, no prior signing is required if a country accedes to the Convention or Optional Protocol.

A State may sign the Convention and Optional Protocol at any time. Signing should be arranged with the Office of Legal Affairs at United Nations Headquarters in New York. While some treaties do not leave open the period for signing, this Convention and Optional Protocol are open for signing indefinitely.

Who may sign the Convention or Optional Protocol?

Heads of State, Heads of Government or Ministers for Foreign Affairs are empowered to sign a treaty on behalf of a State without having to produce full powers to that effect.

Other representatives intending to sign a treaty must have the appropriate full powers, issued by one of the above authorities, which expressly authorize signing the Convention or Optional Protocol by a named representative.

States or regional integration organizations wishing to sign the Convention and/or the Optional Protocol through a representative should provide copies of the required full powers in advance to the following address:

Treaty Section
Office of Legal Affairs
United Nations Headquarters
New York, New York
United States of America

Tel: +1 212 963 50 47
Fax: +1 212 963 36 93

E-mail: **treaty@un.org**

What it means to sign the treaty

The Convention and Optional Protocol provide for a simple signing procedure. That means that there are no legal obligations imposed on a signatory State or regional integration organization immediately after the treaty is signed. However, by signing the Convention or Optional Protocol, States or regional integration organizations indicate their intention to take steps to be bound by the treaty at a later date. Signing also creates an obligation, in the period between signing and ratification or consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.

Expressing consent to be bound

In order to become a party to the Convention and the Optional Protocol, a State must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in these two instruments. In other words, it must express its consent to be bound by the Convention and the Optional Protocol.

Under the Convention and the Optional Protocol, States may express their consent to be bound in several ways:

- Ratification (for States)
- Accession (for States and regional integration organizations)
- Formal confirmation (for regional integration organizations)

Consent to be bound by the Convention and the Optional Protocol is the act whereby States demonstrate their willingness to undertake the legal obligations under the instruments.

The ratification process

- **Ratification at the international level**
  The Convention and the Optional Protocol both provide for States to express their consent to be bound by signature, subject to ratification. Upon ratification at the international level, the State becomes legally bound by the treaty.
- **Ratification at the national level**
  Ratification at the international level should not be confused with ratification at the national level. At the national level, the State might have to ratify the treaty in accordance with its own constitutional or legal provisions before it expresses consent to be bound internationally. For example, the constitution might require parliament to consider the terms of the Convention and decide on ratification prior to any action at the international level that would indicate that the State consents to be bound by the treaty. However, ratification at the national level alone is not sufficient to establish a State's intention to be legally bound at the international level. That is why ratification at the international level is still necessary, regardless of national procedures.

Ratification by regional integration organizations

The Convention and the Optional Protocol allow regional integration organizations, such as the European Union, to express their consent to be bound by either the Convention or the Optional Protocol through signing and "formal confirmation." Formal confirmation has the same practical effect as ratification. Thus, upon formal confirmation, the regional integration organization is legally bound by the Convention and/or Optional Protocol.

Accession

A State or regional integration organization may also express its consent to be bound by the Convention or the Optional Protocol by depositing an instrument of accession with the Secretary-General of the United Nations.

The differences between signing, ratifying, formally confirming and acceding

- **Signing** indicates the intention of a State to take steps to express its consent to be bound by the Convention and/or Optional Protocol at a later date. Signing also creates an obligation, in the period between signing and consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.
- **Ratification** legally binds a State to implement the Convention and/or Optional Protocol, subject to valid reservations, understandings and declarations.
- **Formal confirmation** legally binds a regional integration organization to implement the Convention and/or Optional Protocol.
- **Accession** legally binds a State or regional integration organization to implement the Convention and/or Optional Protocol.

Accession has the same legal effect as ratification; however, unlike ratification, which must be preceded by signing to create binding legal obligations under international law, accession requires only one step, namely, depositing the instrument of accession.

The instrument of ratification, formal confirmation or accession

When a State wishes to ratify or accede to the Convention or Optional Protocol, or a regional integration organization wishes formally to confirm or accede, the State or regional integration organization must execute an instrument of ratification, formal confirmation or accession, signed by the Head of State, Head of Government or Minister for Foreign Affairs.

There is no mandated form for the instrument; however, it must include the following:

- Title, date and place of conclusion of the Convention and/or Optional Protocol;
- Full name and title of the person signing the instrument;
- An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the Convention and/or Optional Protocol, and to undertake faithfully to observe and implement its provisions;

- Signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal is not adequate) or any other person acting in such a position at the time or with full powers for that purpose issued by one of the above authorities.

The instrument of ratification, formal confirmation or accession becomes effective only when the State or regional integration organization deposits it with the Secretary-General of the United Nations at United Nations Headquarters in New York.

States or regional integration organizations should deliver such instruments to the Treaty Section of the United Nations to ensure the action is promptly processed. (See contact details for the Treaty Section above.)

When feasible, the State or regional integration organization should provide courtesy translations, in English and/or French, of instruments that are in other languages. This will help ensure that the instrument is promptly processed.

The role of parliament in the ratification process

Parliaments have a key role to play in the ratification process. While a representative of the executive – Head of State, Head of Government or the Minister for Foreign Affairs – signs and ratifies treaties, in most countries, the ultimate decision on ratification rests with parliament, which must approve ratification. This is certainly the case in countries with a civil-law tradition. However, in most countries with a common-law tradition, treaty-making power is generally vested in the executive, and parliaments have a more limited role to play in the ratification process. As international treaties increase in number and cover a growing range of subjects, with clear implications for domestic law and policy, parliaments in all countries are taking a greater interest in the executive's prerogative to make treaties. See the checklist at the end of this section for possible actions for parliamentarians to take in this regard.

When the Convention and Optional Protocol enter into force

At the moment each enters into force, the Convention and the Optional Protocol become legally binding on States parties.

It is probable that the Convention and the Optional Protocol will enter into force on two distinct dates, as the two instruments have distinct processes for entry into force:

The role of parliament in the ratification process

The role of parliaments in the ratification process varies from country to country. In Australia, Parliament reviews Government actions to ratify a treaty. Under this practice, any action relating to a treaty, such as ratification, is tabled in Parliament for a period of at least 15 sitting days before the Government takes action. When tabled in Parliament, the text of the proposed treaty is accompanied by a national interest analysis (NIA), which explains why the Government considers it appropriate to ratify. The NIA includes information relating to:

- The economic, environmental, social and cultural effects of the proposed treaty;
- The obligations imposed by the treaty;
- How the treaty will be implemented domestically;
- The financial costs associated with implementing and complying with the terms of the treaty; and
- Consultations that have been held with states, industry, community groups and other interested parties.

A Treaties Committee reviews the NIA and any other relevant material, then publishes its reviews in the national press and on its web-site, inviting comments from any one with an interest in the proposed treaty action. The Committee routinely holds public hearings and presents a report to Parliament containing its advice on whether Australia should ratify or take any other action on the treaty.

In Australia, the Government can still decide to ratify a treaty even if the Treaties Committee has recommended against such action; alternatively, the Government could decide not to proceed with ratification against a Committee ratification. However, the process does provide an important means of public and parliamentary scrutiny for the Government's decisions concerning ratification of international treaties.

- The Convention enters into force on the 30th day after the deposit of the 20th instrument of ratification or accession.
- The Optional Protocol enters into force on the 30th day after the deposit of the 10th instrument of ratification or accession.

Once the Convention and the Optional Protocol have entered into force at the international level, at the national and regional levels, for each ratifying State or regional integration organization, the Convention enters into force 30

days after the deposit of its instrument of ratification.

For further information on the ratification process, see the web-site of the Office of Legal Affairs: **http://untreaty.un.org**

Reservations to the Convention and Optional Protocol

A reservation is a statement that purports to exclude or modify the legal effect of a treaty provision with regard to the State or regional integration organization concerned. The statement might be entitled "reservation," "declaration," "understanding," "interpretative declaration" or "interpretative statement." However phrased or named, any statement that excludes or modifies the legal effect of a treaty provision is, in fact, a reservation. A reservation may enable a State or regional integration organization that would otherwise be unwilling or unable to participate in the Convention or Optional Protocol to so participate.

States or regional integration organizations may make reservations upon signing, ratification, formal confirmation or accession. When the reservation is made at the time of signing, the reservation is merely declaratory and must be formally confirmed in writing when the State expresses its consent to be bound.

States or regional integration organizations may also make reservations after ratification, formal confirmation or accession.

Reservations that are not permissible

The Convention and the Optional Protocol both permit reservations. However, reservations incompatible with the object and purpose of the Convention or the Optional Protocol are not permitted.

Objecting to Reservations

After a reservation is circulated, other States 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."

Normally, when a State or regional integration organization formulates a reservation, it must be included in the instrument of ratification, formal confirmation or accession, or be annexed to it and separately 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 the authorities just mentioned.

When the United Nations Secretary-General receives a reservation, the Secretary-General informs other States, usually by e-mail, on the date of formulation. When the Secretary-General receives a reservation after an instrument of ratification, formal confirmation or accession is deposited and it meets the formal requirements outlined below, the Secretary-General circulates the reservation to all States concerned.

Modifying and withdrawing reservations

An existing reservation may be modified. Modification might result in a partial withdrawal of the reservation or might create new exemptions from, or modifications of, the legal effects of certain provisions. A modification of the latter kind is similar to a new reservation. The Secretary-General of the United Nations circulates these modifications and grants other States 12 months within which to object to them. In the absence of objections, the Secretary-General accepts the modification in deposit. If there is an objection, the modification fails.

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 formulated 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. The United Nations Secretary-General circulates a notification of a withdrawal to all States concerned.

Declarations to the Convention and Optional Protocol

Types of declarations to the Convention and Optional Protocol

Under the Convention, States may make declarations only in the form of interpretive declarations. Under the Optional Protocol, States may make interpretative declarations and optional declarations.

- **Interpretative declarations**
  A State or regional integration organization may also make a statement about its understanding of a matter contained in or the interpretation of a particular provision in a treaty.

Such statements are called "declarations" or "interpretative declarations." Unlike reservations, these declarations do not purport to exclude or modify the legal effects of a treaty. The purpose of declarations is to clarify the meaning of certain provisions or of the entire treaty.

- **Optional declarations**
  An additional form of declaration is permissible under the Optional Protocol. The Optional Protocol establishes two procedures: a system permitting individuals to petition the Committee on the Rights of Persons with Disabilities, alleging a breach of the Convention (individual communications procedure), and a system permitting the Committee to undertake inquiries when it receives reliable information indicating grave or systematic violations of the rights in the Convention by a State party (inquiry procedure). States and regional integration organizations ratifying the Optional Protocol may, at the time of signing, ratification or accession, declare that they do not recognize the competence of the Committee relating to the inquiry procedures.

Making declarations to the Convention

Declarations are usually deposited at the time of signing or at the time the instrument of ratification, formal confirmation or accession is deposited.

Interpretative declarations do not have a legal effect similar to reservations and so do not require a signature by a formal authority, as long as it clearly emanates from the State concerned. Nevertheless, it is preferable that such a declaration is signed by the Head of State, Head of Government or Minister for Foreign Affairs, or a person having powers for that purpose, issued by one of those authorities.

Since optional declarations affect the legal obligations on the State or regional integration organization making them, they must be signed by the Head of State, Head of Government or Minister for Foreign Affairs, or by a person having full powers for that purpose issued by one of those authorities.

Once the United Nations Secretary-General receives the declaration, he/she communicates the text of the declaration to all States concerned, including by e-mail, allowing those States to reach their own conclusions about the status of the declaration.

A declaration that amounts to a reservation and is incompatible with the

object and purpose of the Convention or the Optional Protocol is not permitted. If such a case arises, a State may notify the United Nations Secretary-General about an objection. 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 true reservation that would modify the legal effects of the treaty. An objecting State sometimes requests that the declaring State "clarify" its intention. In that case, 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.

As with reservations, it is possible to modify or withdraw declarations.

Relevance of the Convention to non-parties

Ideally, States should ratify the Convention and Optional Protocol to ensure optimal protection of the rights of persons with disabilities in their territory. But even when a State is not a party to the Convention and Optional Protocol, the provisions of the Convention may still be relevant. The adoption of the Convention without a vote by the United Nations General Assembly indicates that the international community acknowledges the need to promote and protect the rights of persons with disabilities. At the very least, the Convention thus carries moral authority and can be used to guide States and even prompt reform where there might not be sufficient political will to do so. When a Government decides to undertake law reform, parliamentarians can employ the Convention as an internationally recognized standard against which national legislation and policies can be reviewed. The Convention can also be used as a model to follow when drafting new legislation.

States still have obligations under other international human rights treaties and under general international law to promote and protect human rights, including the rights of persons with disabilities. For example, all States have ratified at least one core human rights treaty, which means that all States have agreed to prohibit discrimination, including against persons with disabilities. Similarly, States have obligations to respect customary international human rights law and peremptory norms of international law, such as the prohibition of torture.

Note:
The contents of this chapter were adapted from chapter 3 of the "Treaty Handbook," United Nations Office of Legal Affairs, available at: **http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm**

CHECKLIST FOR PARLIAMENTARIANS

How I can help ensure that my Government signs and ratifies, or accedes to, the Convention and the Optional Protocol:

- ☐ Check whether your Government has the intention of signing and ratifying the Convention and the Optional Protocol.
- ☐ If not, use parliamentary procedure to determine the reasons for such inaction and encourage the Government to start the signing and ratification process without delay. For example, put an oral or written question to your Government to determine its intention to ratify or the reasons for any Government inaction.
- ☐ Consider your right to submit a private member's bill on the matter.
- ☐ Encourage parliamentary debate on the question.
- ☐ Mobilize public opinion through public-awareness campaigns and disseminate information promoting ratification of the Convention and Optional Protocol.
- ☐ If a signing procedure is underway, check whether the Government intends to make reservations to the Convention or Optional Protocol and, if so, determine whether the reservations are necessary and compatible with the object and purpose of the Convention or Optional Protocol. If you conclude that they are groundless, take action to ensure that the Government reverses its position.
- ☐ If ratification has taken place, check whether any reservations made by your Government are in force and whether they are still necessary. If you conclude that they are not, take action for their withdrawal.
- ☐ Make sure that public officials, State agents and the general public are aware that the State has ratified or acceded to the Convention and Optional Protocol.
- ☐ If your country has ratified or acceded to the Convention but has not yet ratified the Optional Protocol, determine why this is the case and take action to ensure that obstacles to ratifying the Optional Protocol are removed or remedied and encourage prompt ratification of the Optional Protocol.

CHAPTER FIVE

National legislation and the Convention

It is a basic principle of international law that a State party to an international treaty must ensure that its own domestic law and practice are consistent with what is required by the treaty. In some cases, the treaty may give general guidance on the measures to be taken. In others, the treaty includes specific stipulations. The Convention on the Rights of Persons with Disabilities contains both kinds of provisions. Parliament thus has a critical role in ensuring that the legislative measures required by the Convention are adopted.

Many of the provisions contained in the Convention are similar in either wording or substance to the provisions of other human rights treaties to which a State is a party. It might be useful to examine how those treaties are put into effect in order to determine the steps required to implement the Convention on the Rights of Persons with Disabilities.

Incorporating the Convention into domestic law

The meaning of signing and ratifying

Chapter 4 explains in detail the process and meaning of signing and ratifying the Convention and Optional Protocol. In examining legislative measures to implement the Convention, one should bear in mind that:

- There is no time limit between signing the Convention or Optional Protocol and ratifying either instrument;

- Signing the Convention or Optional Protocol obliges the State to refrain from acts that would defeat the object and purpose of either instrument; and
- Ratifying the Convention or Optional Protocol indicates at least an obligation to be bound by these instruments and to perform such obligations in good faith.

"Uganda was one of the 82 signatories to the Convention on 30 March and the process towards ratification is ongoing. When the Convention is implemented, it will mark a significant paradigm shift to a human rights model of disability, embodying principles of dignity, non-discrimination, full participation, respect, equality and accessibility, and advance the rights and inclusion of all people with disabilities."

James Mwandha, former MP (Uganda)

One of the fundamental obligations contained in the Convention is that national law should guarantee the enjoyment of the rights enumerated in the Convention. Members of Parliament should thus consider the best way of giving effect to the rights guaranteed by the Convention in domestic law. The method selected will vary according to the constitutional and legal systems of individual countries:

- In some countries, once it is ratified at the international level, the

Actions to ensure that new and revised laws comply with the Convention

Governments might benefit from having a newly established or already existing body, such as an equality commission, a national human rights institution or a disability commission, conduct a comprehensive review of legislation. This process should include:

- Involving experts from government institutions and ministries, civil society, and persons with disabilities and their representative organizations;
- Establishing and monitoring time frames for the completion of the review; and
- Establishing a parliamentary committee to oversee the process and systematically scrutinize any legislative proposal to ensure consistency with the Constitution.

Convention may automatically form part of national law. In other words, the Convention would be directly enforceable by national courts and other implementing authorities.

Constitutional guarantees of equality for persons with disability

Section 15 of the 1982 **Canadian Charter of Fundamental Rights and Freedoms** provides: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Article 3 of the **Constitution of the People's Republic of China** states that "disabled people enjoy the same rights as other citizens in respect of political, cultural and social aspects, as well as family life" and that "it is forbidden to discriminate against, insult or harass disabled persons."

Article 3 of the **Basic Law of the Federal Republic of Germany** states that all persons shall be equal before the law and that no person shall be disfavoured because of disability.

Section 38 of the **Fiji Constitution** (Amendment Act) 1997 provides that "a person must not be unfairly discriminated against, directly or indirectly, on the ground of his or her actual or supposed characteristics or circumstances including ... disability."

The 1995 **Constitution of Uganda** was drawn up with the participation of many different groups in the community, including persons with disabilities. That participation is reflected in a number of constitutional provisions guaranteeing and promoting equality for persons with disabilities.

Article 21 provides that a person "shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability."

Article 32(1) provides that the State "shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them."

Article 9 of the **Constitution of South Africa** states that "... to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken."

- In some other countries, the legislature might have to adopt an act of ratification at the national level. This may have the effect of incorporating the Convention into domestic law. However, even when parliaments ratify the Convention (national ratification), many provisions might still require legislative action before they come into force. This depends, in part, on how specific the Convention's obligations are: the more specific the obligation, the less likely that implementing legislation will be needed.
- In other cases, including many common-law countries, only those provisions of the treaty that are directly incorporated into national law will give rise to enforceable rights and duties.

Incorporation through constitutional, legislative and regulatory measures

Except in the rare case that the laws in a country already conform fully to the requirements of the Convention, a State party will normally have to amend existing laws or introduce new laws in order to put the Convention into practice.

Ideally, there should be a comprehensive and unequivocal legal statement of the rights of persons with disabilities, and detailed legislation to make those guarantees real in practice. It is critically important that the recognition and protection of the rights of persons with disabilities be enshrined in the supreme law of the country, that is, in the national constitution or in basic laws. This will ensure the highest possible legal protection and recognition. Doing so might involve introducing disability as one of the grounds on which discrimination is prohibited; or *explicitly protecting* the rights of persons with disabilities in the national constitution, whether as part of a general guarantee of equality, or in the form of specific provisions relating to the rights of persons with disabilities.

Further, parliament may incorporate the entire Convention into domestic law. In this case, it might be useful to include in the relevant law a clear indication that the provisions of the Convention are self-executing, that is, that they are intended to be directly enforceable before domestic courts and tribunals. However, even where the Convention is incorporated into domestic law in its entirety, this will not normally be sufficient to give full effect to its provisions; implementing legislation will usually still be required, including detailed legislation in specific areas, such as a law prohibiting discrimination in employment.

In addition, it will not always be possible or appropriate for the legislature

to set out in detail the rules and standards required to ensure equal enjoyment of specific rights by persons with disabilities. The State might have to adopt policy and regulatory initiatives, in addition to legislation, to comply with the many provisions requiring "appropriate measures" to be taken in areas such as physical accessibility to buildings and transport systems or information and communications technologies (article 4 of the Convention). While parliaments might not be enacting these detailed regulations, it might be appropriate to adopt legislation that allows for standards to be set in these areas and to request that those standards be presented to the legislature for information and/or approval.

Various approaches to legislation on discrimination

At least 40 countries have adopted legislation addressing the rights of persons with disabilities. Some of this legislation prohibits discrimination as its primary goal; other laws address the positive duty of the State and the community to ensure the welfare of persons with disabilities and their access to social support. Many countries have both types of legislation.

The **Americans with Disabilities Act (ADA**) prohibits discrimination against people with disabilities in employment, public services and transport, and places of public accommodation. In the employment context, the ADA essentially prohibits discrimination against qualified individuals with a disability who can perform the functions of the position held or desired, with or without reasonable accommodation, which does not impose an undue hardship on the employer.[1]

In **India**, the **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act** of 1995 adopts a more wide-ranging approach: it uses both non-discrimination language in a number of areas and also supports positive discrimination in favour of persons with disabilities through a quota system, reserving a certain number of places for persons with disabilities in the training and employment programmes of public- and private-sector entities. It also provides incentives to establishments that promote the employment of disabled persons and preferential treatment through tax concessions, subsidies and grants.[2]

In 1996, **Costa Rica** adopted **Law No. 7600 on Equality for Persons with Disabilities**. This law imposes clear obligations on the State to advance the rights of persons with disabilities, and guarantees equality in areas such as education, health and work.

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[1] Taken from DESA compilation: http://www.un.org/esa/socdev/enable/discom102.htm#19#19

[2] Taken from DESA compilation: http://www.un.org/esa/socdev/enable/discom102.htm#19#19

Types of equality and non-discrimination legislation

The obligation to prohibit all discrimination on the basis of disability and to guarantee equal and effective protection to persons with disabilities (article 5 of the Convention) requires both that the prohibition be included in national laws and, preferably, also in national constitutions, and that detailed legislative provisions covering discrimination in all fields of public and private life be adopted. The exact form that these provisions should take will depend on existing laws and the particular legal system of a State party.

Some countries have comprehensive, general anti-discrimination laws covering multiple grounds of prohibited discrimination; others have individual laws dealing with different forms of discrimination, such as those based on sex, age or marital status, or covering discrimination in specific areas, such as in employment.

One option is to enact a disability discrimination law that prohibits discrimination on the ground of disability, in general, but that also provides detailed regulations of specified areas of public and private life.

Another option might be to enact a disability-equality law, similar to the gender-equality laws adopted by some States. Laws of this kind do not limit themselves to prohibiting discrimination, but address a wide range of issues relating to persons with disabilities. For example, in India the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1995) sets out a broad policy framework for addressing disability issues, establishes a number of bodies at the national and state level to do this, addresses prevention and early detection of disability, equality in employment and education, including affirmative action, social security, accessible transport and buildings, the recognition of institutions for persons with disabilities, research into disability issues, and other matters.

Even a wide-ranging disability-equality law will probably not address some issues relating to equality for persons with disabilities. Given the need for greater specificity on the issues of social security and social support, workers' compensation, transport standards, building standards, and others, it might be more appropriate to address these topics in other laws.

Where legislation prohibiting other forms of discrimination already exists, it might be appropriate to amend the existing legislation to incorporate disability as a ground of prohibited discrimination. At a minimum, it is important to ensure that the Convention's understanding of "disability" and definition of "discrimination on the basis of disability" are fully reflected in a general

anti-discrimination law. Where existing legislation applies only to some of the areas covered by the Convention, then new legislation will be required to ensure that protection against discrimination on the ground of disability applies to all areas. It might also be appropriate to assign responsibility for monitoring and enforcing the law under the new legislation to existing institutions provided that persons with disabilities are or become involved as members of

What parliament can do to ensure that the Convention is incorporated into national law

- Recognize the civil, cultural, economic, political and social rights of women, men and children with disabilities in the supreme law of your country (constitution or basic law):
  - Revise existing provisions in the constitution or basic law and the protection granted to persons with disabilities;
  - Include a general guarantee of equality;
  - Prohibit the use of disability as a ground of discrimination;
  - Include specific provisions on the rights of persons with disabilities;
  - Revise language used to refer to persons with disabilities.
- Adopt a national law incorporating the content of the Convention, or even its entire text, specifying that the law is enforceable before the courts.
- Adopt additional implementing legislation. Depending on existing legislation, your country might adopt or amend:
  - A comprehensive, general discrimination law, including the prohibition of using disability as a ground of discrimination in public and private life;
  - Non-discrimination laws in different sectors, such as work, education and access to justice, including disability as a prohibited ground of discrimination; and/or
  - Disability-equality law, prohibiting discrimination based on disability and establishing a broad framework to address disability.
- Ensure that there is a mechanism for consulting with persons with disabilities, and/or their representative organizations, at the law-making level.
- Revise language used to refer to persons with disabilities in all existing and new legislation.

those institutions and that the institutions have sufficient expertise in disability issues.

The content of legislative measures

Critical elements

There are a number of critical elements that are needed in implementing legislation, whether it takes the form of one or more separate laws. The legislation should:

- Refer explicitly to the Convention and to the Convention's acknowledgement that the concept of disability is still evolving, and to the notions of "discrimination on the ground of disability," "reasonable accommodation" and other important terms defined in the Convention;
- Prohibit discrimination on the ground of disability in all areas covered by the Convention;
- Identify duty-bearers, including different levels of government and non-State actors;
- Confer rights on individuals and groups to:
  - Raise allegations of discrimination on the ground of disability;
  - Have those claims investigated; and
  - Have access to appropriate remedies;
- Provide for independent agencies to:
  - Hear allegations of systematic discrimination and individual cases;
  - Investigate and report on those allegations; and
  - Seek systematic remedies and change through appropriate legal and other channels.

Linking implementing legislation to the convention

Implementing legislation should include the terms of the Convention or a specific reference to them, in order to indicate clearly that the laws should be interpreted in accordance with the letter and spirit of the Convention.

The Convention is based on an understanding that disability results from the interaction between a person and his/her environment, and that disability is not something that resides in the individual as the result of some

impairment. This understanding has important implications for legislation to implement the Convention, particularly in identifying the obstacles that hinder the full realization of the rights of persons with disabilities and in determining appropriate remedies. Parliamentarians might wish to consult with experts on disability issues, including persons with disabilities and their representative organizations, to update their understanding of the nature and forms of disability and the ways in which social barriers to participation can be removed.

Types of disability to be addressed in legislation

The Convention provides a non-exhaustive list of disabilities to be addressed by legislation, in other words, it sets a minimum. The Convention describes persons with disabilities as including "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."

This definition does not exhaust the categories of disabilities that fall under the protection of the Convention; other types of disability, such as short-term disabilities, could be covered by the Convention and thus could

Shifting the burden of proof in discrimination cases

Under **European law**, it has been found appropriate to adopt special provisions relating to the burden of proof in discrimination cases, including disability discrimination cases. For example, article 10 of **Council Directive 2000/78/EC** of 27 November 2000 *establishing a general framework for equal treatment in employment and occupation provides:*

"Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

1. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs."

be covered by the laws of individual States parties, especially given the social context of disability. Since article 4(4) underlines the fact that the Convention is not intended to undermine or replace higher standards of protection of the rights of persons with disabilities under national law, it is open to a State to adopt a wider definition. A State is not required to limit its own definition to the categories mentioned under article 2 of the Convention.

"Reasonable accommodation" as a cornerstone of legislation

The Convention stipulates that a failure to afford a person "reasonable accommodation" amounts to discrimination on the basis of disability. Consequently, any legislative definition of discrimination should include the denial of reasonable accommodation as an act of discrimination. Specific reference should be made to the definition of "reasonable accommodation" that appears in article 2 of the Convention.

"Reasonable accommodation" is also known as duty to accommodate; reasonable adjustment, adaptation or measures; or effective or suitable modifications. To afford a person "reasonable accommodation" means, for example, making adaptations to the organization of a work environment, an educational establishment, a health care facility or transport service in order to remove the barriers that prevent a person with a disability from participating in an activity or receiving services on an equal basis with others. In the case of employment, this might involve physical changes to premises, acquiring or modifying equipment, providing a reader or interpreter or 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.

How "reasonable accommodation" is addressed in different countries

Americans with Disabilities Act of 1990, 42 USC §12112

(a) General rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

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(b) Construction

As used in subsection (a) of this section, the term "discriminate" includes–

...

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant... .

Spain's 2003 *Law on Equality of Opportunities, Non-discrimination and Universal Accessibility of Persons with Disabilities* provides for reasonable adjustment (*Ajuste razonable*). "*Ajuste razonable*" is defined as "the measures of accommodating the physical, social and attitudinal environment to the specific needs of persons with disabilities which, in effective and practical form and without supposing a disproportionate burden, facilitate the accessibility or participation of a person with a disability in equal conditions as the rest of the citizenry" (paragraph 7.c).

The **United Kingdom's *Disability Discrimination Act* of 1995 legislates the duty of employers "to make adjustments" (s 6 (1)).** This duty applies where "any arrangement" or "any physical feature of premises" of employer "place[s] the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled." In such a case, "it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the arrangements or feature having that effect." Subsection 6 (3) specifies examples of steps an employer may have to take to comply with this duty:

- Making adjustments to premises;
- Allocating some of the disabled person's duties to another person;
- Transferring him/her to fill an existing vacancy;
- Altering his/her work hours;
- Assigning him/her to a different place of work;
- Allowing him/her to be absent during working hours for rehabilitation, assessment or treatment;

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- Giving him/her, or arranging for him/her to be given, training;
- Acquiring or modifying equipment;
- Modifying instructions or reference manuals;
- Modifying procedures for testing or assessment;
- Providing a reader or interpreter;
- Providing supervision.

According to the ***Magna Carta for Disabled Persons*** **of the Philippines**, in the employment context, reasonable accommodation includes "(1) improvement of existing facilities used by employees in order to render these readily accessible to and usable by disabled persons; and (2) modification of work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, *appropriate adjustments or modifications* of examinations, training materials or company policies, rules and regulations, the provision of auxiliary aids and services, and other similar accommodations for disabled persons" (s 4 (h)).

In relation to the provision of public services and public accommodations, the *Magna Carta for Disabled Persons* provides that discrimination includes:

"a failure to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would *fundamentally alter the nature* of the goods, facilities, services, privileges, advantages, or accommodations" (s 36 (2)).

In some countries, laws may also require disability-aware procurement strategies, under which public agencies may be required to give preference to equipment that is fully accessible or based on the principle of inclusive design, or to service providers who employ specified percentages of persons with disabilities in their labour force.

While accommodation of the particular needs of persons with disabilities is required under the Convention, the requirement is one of reasonable accommodation. If the accommodation required would impose a disproportionate or undue burden on the person or entity expected to provide it, then a 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

Disability-aware procurement strategy in the United States Of America

In some countries, legislation requires the Government to give preference in its public procurements to equipment and technology that meets accessibility, universal and inclusive-design standards. For example, section 508 of the US Rehabilitation Act of 1973, 29 U.S.C. § 794 (d) provides:

"§ 794D. ELECTRONIC AND INFORMATION TECHNOLOGY

(a) Requirements for Federal departments and agencies

(1) Accessibility

(A) Development, procurement, maintenance, or use of electronic and information technology

When developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency, including the United States Postal Service, shall ensure, unless an undue burden would be imposed on the department or agency, that the electronic and information technology allows, regardless of the type of medium of the technology –

(i) individuals with disabilities who are Federal employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities; and

(ii) individuals with disabilities who are members of the public seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(B) Alternative means efforts

When development, procurement, maintenance, or use of electronic and information technology that meets the standards published by the Access Board under paragraph (2) would impose an undue burden, the Federal department or agency shall provide individuals with disabilities covered by paragraph (1) with the information and data involved by an alternative means of access that allows the individual to use the information and data . . .."

involved, the nature, size and resources of the entity involved, the availability of other financial support, occupational health and safety implications, and the impact on the operations of the entity.

Disproportionate or undue burden

The 2003 **Spanish** ***Law on Equality of Opportunities, Non-discrimination and Universal Accessibility of Persons with Disabilities***, providing for reasonable adjustment (Ajuste razonable), uses the term "disproportionate burden" ("carga desproporcionada") in its legislation. Article 7 provides that, "to determine whether a burden is proportional or not one must take into consideration the costs of the measure, the discriminatory effects failure to adopt the measure would imply for the persons with disabilities, the structure and characteristics of the person, entity or organization that must implement it and the possibility of obtaining official financing or other assistance."

Under the **United Kingdom's** ***Disability Discrimination Act***, an employer discriminates against a disabled person if two conditions are met: "(a) he fails to comply with a section 6 duty [to make reasonable adjustments] imposed on him in relation to the disabled person; and (b) he cannot show that his failure to comply with that duty is justified." Section 6 (4) of the Act lists key factors that must be considered in determining whether it is reasonable for an employer to have to take a particular step in order to comply with the duty to make reasonable adjustments:

> "(a) The extent to which taking the step would prevent the effect in question;
>
> (b) The extent to which it is practicable for the employer to take the step;
>
> (c) The financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of his activities;
>
> (d) The extent of the employer's financial and other resources;
>
> (e) The availability to the employer of financial or other assistance with respect to taking the step."

Under the **Australian** ***Disability Discrimination Act*** **of 1992**, employers, educational authorities and others are required to make "reasonable adjustment" as long as this would not impose an unjustifiable hardship or be unreasonable. Section 11 provides that "in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account," including:

- The nature of the benefit or detriment likely to accrue or be suffered by any persons concerned;
- The effect of the disability of a person concerned;

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- The financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
- In the case of the provision of services, or the making available of facilities, an action plan given to the Commission under section 64.

With regard to the costs to the employer, the Australian Human Rights and Equal Opportunity Commission specifies that consideration should be given to "the net costs (or benefits) which are identifiable or reasonably likely to result overall for the employer, not simply the direct or upfront or gross costs." This may require taking into account:

- Direct costs;
- Any offsetting tax, subsidy or other financial benefits available in relation to the adjustment or in relation to the employment of the person concerned;
- Indirect costs and/or benefits, including in relation to productivity of the position concerned, other employees and the enterprise;
- Any increase or decrease in sales, revenue or effectiveness of customer service;
- How far an adjustment represents any additional cost above the cost of equipment or facilities that are or would be provided to an employee similarly situated who does not have a disability;
- How far an adjustment is required in any case by other applicable laws, standards or agreements; and
- Relevant skills, abilities, training and experience of a person seeking the adjustment.

In addition to considering the financial costs and benefits of making the adjustment and the benefit of providing equal opportunity, treatment or participation to the person with a disability directly concerned, one might also consider:

- Any benefit, or detriment, of the adjustment concerned for access or opportunity for other employees or potential employees, customers or clients or other persons who would possibly be affected;
- The benefit or detriment of the adjustment concerned to the effective organization of work in the enterprise or workplace concerned, regarding: the number of employees; the spatial

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organization of work; the nature of work to be performed; relevant customer requirements; workforce planning needs; any "down time" or interruption to production involved in making the adjustment; and any other factors affecting the efficiency, productivity, success and, where relevant, competitiveness of the enterprise;

- Whether the adjustment would impose unreasonable requirements on other employees;
- The nature and likelihood of any benefit or detriment to the health or safety of any person in making the adjustment;
- The nature and likelihood of any environmental benefit or detriment as a result of making the adjustment; and
- Whether the adjustment concerned would assist, or interfere, with compliance with applicable provisions of other relevant laws, standards or agreements and the nature and likelihood of any other benefit or detriment as a result of making the adjustment.

Special measures

Legislation should not be limited to prohibiting discrimination, but might also require the State and private actors to take positive measures. Article 5 (4) of the Convention recognizes that in order to ensure equality with others, it may sometimes be necessary to provide special support for particular individuals or for persons with particular types of disabilities. This may take two forms:

- **Ongoing or permanent measures.**
  These are special measures that will be ongoing or possibly permanent. For example, in order to ensure that persons with disabilities are as mobile as others, Governments might provide a travel subsidy for disabled persons to enable them to use taxis.
- **Temporary special measures.**
  These are measures that are adopted to redress the past disadvantage of persons with disabilities, but which may be intended to operate only for a period of time. For example, a Government might set targets or quotas for the employment of persons with disabilities with the goal of removing the quotas once the targets have been achieved.

Both ongoing and temporary special measures are permissible under the Convention and do not constitute discrimination as defined by the Convention. Indeed, both types of special measures might be necessary in order to achieve equality and therefore a State party will be obliged to adopt a range of special measures across different areas of social life.

Sometimes, when special measures of this kind are adopted to redress the historical and continuing disadvantage suffered by members of a group, the measures are challenged by persons who do not belong to that group on the ground that they are discriminatory. Parliaments must ensure that any constitutional or legislative guarantee of equality makes it clear that special measures mentioned in the Convention are lawful under national law and are not subject to challenge under other equality guarantees by persons who do not have disabilities but who claim that their exclusion is a violation of their equal rights.

States parties' obligations to regulate the private sector

- States Parties undertake ... [t]o take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise (article 4 (1) (e)).
- States Parties undertake to ... [encourage] all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention (article 8 (2) (c)).
- States Parties shall also take appropriate measures to ... [e]nsure 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 (article 9 (2) (b)).
- States Parties shall ... [r]equire 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 (article 25 (d)).
- States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia ... [p]romote 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 (article 27 (1) (h)).

Parliaments also have a special role in raising awareness, in the wider community, of the need for special measures and their benefit to society as a whole. Laws might also require government departments and even private corporations to report annually on the steps they have taken to promote the rights of persons with disabilities. Reporting requirements might cover a range of issues, including: the steps taken to ensure that the rights of persons with disabilities are being guaranteed in practice; success in raising the percentage of employees who are persons with disabilities; or success in improving services to customers with disabilities who might have special needs.

Discrimination by state authorities, private persons and corporations

It is a central component of the Convention that persons with disabilities should be protected against discrimination by both public and private actors. Therefore, an anti-discrimination law or other legislative measures that prohibit discrimination and mandate equal treatment should apply to private individuals, bodies or corporations, as well as to public officials and bodies. The Convention also obliges States to regulate the private sector.

Specific areas for legislative reform

The Convention specifies a number of areas that require legislative guarantees or protection. Article 12 (1) of the Convention reaffirms the right of persons with disabilities to recognition as persons before the law, and article 12 (2) recognizes that persons with disabilities have the right to use their legal capacities as others do. Article 12 (3) underlines the need for measures to support the exercise of that capacity, while article 12 (4) calls for the establishment of safeguards to ensure there is no abuse of that support.

Since denying legal capacity to persons with disabilities has led to egregious violations of their rights, any law-reform process should address this issue as a matter of priority. Parliaments should examine existing law to determine if there are any formal limitations on the capacity of persons with disabilities and if the provisions of the law and practice conform to the Convention. Parliaments should also consider whether, despite formal guarantees of respecting the legal capacity of persons with disabilities, legal capacity is respected in practice. The Convention specifically requires States to take appropriate measures to ensure that persons with disabilities who need assistance in exercising that capacity receive it.

The Convention also contains a number of guarantees concerning areas where the rights of persons with disabilities have been and continue to be denied. These include the right to liberty and security of the person (article 14) and the rights to freedom from torture and freedom from exploitation,

States that recognize national sign languages

The **Constitution of Uganda** specifically recognizes sign language and the duty of the State to foster its development. Article 24 of the Constitution provides:

> "[T]he State shall promote the development of a sign language for the deaf."

Section 17 of the **Constitution of Finland** (1995), Section 17 – Right to one's language and culture, provides that:

> "[...] The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act."

Article 101 of the 1999 **Constitution of the Bolivarian Republic of Venezuela** provides:

> "The State guarantees the issuance, receiving and circulation of cultural information. The television media shall include subtitles and translation into Venezuelan sign language for persons with hearing problems. The terms and modalities of these obligations shall be established by law."

Thai Sign Language was acknowledged as "**the national language of deaf people in Thailand**" in August 1999, in a resolution signed by the Minister of Education on behalf of the Royal Thai Government.

In 2006, the **New Zealand Sign Language Act** entered into force. That statute provides for official recognition of New Zealand Sign Language (NZSL), which is the first or preferred language of deaf New Zealanders. The Act recognizes deaf people's language as a unique New Zealand language and thus gives NZSL equal status to that of spoken languages. The Act provides for any person involved in legal proceedings to use NZSL in those proceedings. The Act also provides that the deaf community should be consulted on matters that affect their language, including, for example, the promotion of the use of NZSL; that NZSL should be used in promoting government services and providing information to the public; and that government services and information should be made accessible to the deaf community through appropriate means, including the use of NZSL.

The Act also provides that government departments should, as far as reasonably practicable, be guided by certain principles about their interaction with the deaf community (clause 9). Nothing in this clause should be read as conferring advantages on the deaf community that are not enjoyed by others (clause 9 (2)).

Remedies

Under the **Disability Discrimination Ordinance** of 1995, when a claim of disability discrimination comes before the District Court in **Hong Kong Special Administrative Region of China**, the Court has wide-ranging remedial powers, which include the power, under s 72, to:

> "(a) Make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
>
> (b) Order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
>
> (c) Order that the respondent shall employ or re-employ the claimant;
>
> (d) Order that the respondent shall promote the claimant;
>
> (e) Order that the respondent shall pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
>
> (f) Order that the respondent shall pay to the claimant punitive or exemplary damages; or
>
> (g) Make an order declaring void in whole or in part either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance."

violence and abuse within and outside the home. A State should carefully review its laws and their operation, particularly in areas such as deprivation of liberty of persons with disabilities, including those with intellectual and mental disabilities. For example, States should note the Convention's requirements on independent living within the community instead of forced institutionalization or forced medical interventions, and should ensure that there are laws and procedures to monitor the operation of this legislation, investigates cases of abuse and impose punitive measures, as necessary (article 16 (4).

Intellectual property laws and ensuring access to books, films and other media

States parties should examine their intellectual property laws to ensure

that they do not hinder persons with disabilities from accessing cultural materials. A number of countries have adopted such legislation in adherence to other international obligations, such as those under treaties with the World Intellectual Property Organization and the World Trade Organization.

Legislation recognizing national sign language(s)

The Convention obliges States parties to recognize and promote the use of sign language. This would likely require some implementing legislation.

Complaints procedures under national law

Legislation should ensure that a person who has been subjected to unlawful discrimination is able to obtain an effective remedy. Remedies might include compensation or damages, an order of reinstatement, an order to stop discriminatory acts and prevent them in the future, a requirement to afford reasonable accommodation of the individual's rights, an apology, an order to take wide-ranging remedial measures, including positive action, or other measures.

Under the discrimination law of a number of countries, once a complainant has established facts from which discrimination may be presumed to exist, the burden of proof shifts to the defendant to demonstrate that the treatment was not based on a prohibited ground of discrimination or, if it was, that it fell within a permitted exception to the prohibition of discrimination. Given the difficulties that complainants in discrimination cases often face in adducing direct evidence of discrimination, this is an important dimension of procedural law that should be addressed (see box on various approaches to discrimination legislation on previous page).

Procedural measures to promote implementation

The role that parliamentarians might play in the lead-up to ratification has been discussed earlier in this Handbook. Once a State has ratified or acceded to the Convention, significant obligations arise, and legislatures can play an important role in ensuring that they are met. As first steps to take after the Convention is signed and ratified, parliaments should:

Undertake a comprehensive review

Article 4 (1) (b) of the Convention obliges States 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." Accordingly, one of the most important steps that a State should take as soon as possible after it has become a party to the Convention, and preferably after it has signed the Convention, is to undertake

Critical issues that should be addressed in legislative measures

- Any legislation should be based on the understanding that:
  - Disability is the result of the interaction of the person with the environment and that
  - Persons with disabilities are entitled to civil, cultural, economic, political and social rights on an equal basis with others.
- Discrimination on the ground of disability, including the denial of reasonable accommodation as a form of discrimination, by the private and public sectors is prohibited.
- Persons with disabilities should be included and participate in all aspect of society, including:
  - Political public life (ensuring consultation with persons with disabilities in the implementation of the Convention and policies or laws affecting them, revision of election laws, etc.);
  - Cultural life, recreation, leisure and sport; and
  - Education.
- The physical environment, transport, technologies, information and communications, and public facilities and services should be accessible.
- Specific measures of a temporary or permanent nature should be incorporated to accelerate or achieve de facto equality.
- The rights of individuals and groups to civil, criminal and administrative action against discrimination based on disability, and appropriate remedies, should be ensured.
- Any definitions of types of disability should be in accordance with article 2 of the Convention.
- The right of persons with disabilities as persons before the law and recognition of their legal capacity, including supportive measures and necessary safeguards, should be ensured.
- Persons with disabilities should have access to justice, entailing procedural accommodations at all stages of legal proceedings.
- A national mechanism to monitor the implementation of the Convention should be established.

a comprehensive review of existing law to determine to what extent it is consistent with the treaty. The State should also identify any new legislative and policy measures to be undertaken in order to give effect to the Convention. A detailed timetable for this legislative review and reform should also be developed.

A comprehensive review of this kind can be particularly useful for the State when it prepares its initial report under the Convention, due within two years of ratification. The initial report will set a baseline for the realization of the rights of persons with disabilities, indicate the areas where reform is a priority, and help to develop a programme to improve the situation in a deliberate, planned and monitored manner.

"South Africa has made a lot of progress in the area of disability, self-representation and policy reform. This Convention, however, will cement and ensure that despite the change in political dimension, if and when it happens, the country will be able to continue to protect, and have a responsibility to, disabled people and their families, as well as ensure that they are treated as first-class citizens like all other non-disabled peers."

Hendrietta Bogopane-Zulu, MP (South Africa)

There are a number of ways in which such a review might be conducted. A special independent statutory body might be established to conduct the review and report to the Government, or an existing body, such as an equality commission, national human rights commission or disability commission, might be assigned the task. Parliament, itself, might establish a committee to oversee the process or assign that task to one of its existing bodies.

The framework of the Convention should be the standard against which the level of enjoyment of human rights by persons with disabilities is measured. Persons with disabilities should participate extensively in the process, both as members of the review body and as contributors. The review should not be a one-time event. The body should either be given continuing responsibility for oversight or should ensure that there is an independent review of the implementation of its recommendations after a reasonable period, for example, three to five years.

Ensure that all laws are consistent with the convention

Ensuring that *new* laws and regulations are consistent with, and advance the goals of, the Convention is as important as reviewing existing laws. The Convention obliges States to take the rights of persons with disabilities into

account in all policies and programmes (article 4 (1) (c)). Government officials should thus ensure that their proposals comply with the Convention when they are developing policies and legislation.

The legislature has a critical role to play in scrutinizing new legislation. Parliaments should ensure that there is a stage of the legislative process at which legislation can be examined for its compliance with the Convention. This might involve establishing a committee of its members to review legislative proposals or handing that responsibility to an existing committee or committees that scrutinize legislation for adherence to human rights principles. Once again, it is essential to include persons with disabilities and disability organizations in this process. Parliaments may need to make special efforts to ensure that persons with disabilities are aware of the processes and of draft legislation, and to facilitate the submission of their views to the legislature.

Some parliaments require the executive branch of government to provide a statement affirming that the legislation is compatible with relevant international standards or to provide an assessment of the impact of the legislation on a particular group when it presents draft legislation to parliament. A disability-impact statement, either free-standing or as part of a human rights-impact assessment, would help to focus the Government's attention on the issue.

Engage persons with disabilities in the legislative process

Persons with disabilities should be actively engaged in drafting legislation and in other decision-making processes that affect them – just as they were actively engaged in drafting the Convention itself. They should also be encouraged to offer observations and guidance when laws are implemented. There are a variety of ways to ensure that all views are considered, including through public hearings (with sufficient advance notice and publicity), by inviting written submissions to the relevant parliamentary committees and by sharing all comments received with the wider public, through parliamentary web-sites and other media.[3]

Parliament should ensure that its laws, proceedings and documentation are made available in accessible formats, such as large print, Braille and plain language, in order to ensure that persons with disabilities can fully participate in developing legislation generally, and specifically in relation to disability issues. The premises of parliament and other venues where it may hold hearings should also be accessible to persons with disabilities.

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3 A more comprehensive discussion on citizen involvement in the parliamentary process can be found in *Parliament and Democracy in the Twenty-first Century: A Guide to Good Practice* (Geneva, Inter-Parliamentary Union, 2006), pp. 79-87.

Involve provincial or state-level parliaments

Mirroring the language of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, article 4 (4) of the Convention states that the Convention's provisions "extend to all parts of federal States without any limitations or exceptions." In some federal States, the primary responsibility and power to implement

CHECKLIST FOR PARLIAMENTARIANS

How I can help translate the Convention into national law:

- ☐ Ensure that the supreme law of the land (constitution or basic law) protects and recognizes the civil, cultural, economic, political and social rights of persons with disabilities.
- ☐ Ensure that existing legislation is reviewed for its compliance with the Convention.
- ☐ Ensure that all areas included in the Convention are incorporated in national laws, both existing and new laws.
- ☐ Ensure that persons with disabilities and their organizations are consulted during the law-making process.
- ☐ Ensure that the relevant institutions and mechanisms are established at the parliament level to ensure that any new legislation adopted is consistent with the Convention.
- ☐ Ensure adequate funding is allocated in the national budget for the various sectors relevant to the realization of the rights of persons with disabilities.
- ☐ Make use of parliamentary procedures such as
  - ▸ Oral and written questions;
  - ▸ Submission of bills; and
  - ▸ Parliamentary debate.
- ☐ Raise awareness about the rights of persons with disabilities through
  - ▸ Debate within your political party;
  - ▸ Alliances with other parliamentarians, to strengthen your lobbying capacity;
  - ▸ Partnerships with organizations of persons with disabilities; and
  - ▸ Public-information campaigns.

certain provisions of the Convention might rest with the provinces or constituent units. A failure to exercise that power could render the State, as a whole, in breach of its international obligations. There is no defence that the central Government did not formally have power in that area. This provision does offer some opportunities, since provincial or state legislatures might be able to implement their own legislative and other initiatives, within the area of their competence, to give effect to the provisions of the Convention, adding to any measures that are undertaken by the central Government.

CHAPTER SIX

From provisions to practice: implementing the Convention

Legislation alone will not ensure that persons with disabilities can enjoy their human rights. States will need to formulate effective policies and programmes that will transform the provisions of the Convention into practices that will have a real impact on the lives of persons with disabilities.

For persons with disabilities, as for all persons, the denial of one right can lead to the denial of other rights and opportunities throughout their lives. To illustrate this point, five provisions of the Convention are highlighted below. The relationship between habilitation and rehabilitation (article 26), accessibility (article 9), education (article 24), work (article 27) and legal capacity (article 12) is clearly demonstrated. This is not to suggest, however, that these five areas should be prioritized over the other provisions of the Convention. On the contrary, since rights are interrelated, States should strive to implement separate provisions of the Convention concurrently.

Habilitation and rehabilitation

How does a child, born blind, learn to live as an active member of society? How does a young man who sustains severe spinal injuries in an accident and loses the ability to walk adapt to his new circumstances? How does a mother who lost her legs to a landmine continue to work and manage her family?

Habilitation and rehabilitation (article 26) are the crucial first steps to ensuring that persons with disabilities are able to lead

independent lives (article 19), are mobile in society (article 20) and are able to reach their full potential. Through these processes, persons with disabilities acquire and develop skills that will enable them to work and earn an income, make sound decisions, contribute to society and exercise all the other rights detailed in the Convention.

Habilitation involves learning skills that will enable a person to function in society. These kinds of programmes usually target children born with disabilities. Rehabilitation means restoring capacity and ability. This generally applies to an adult who has to readapt to society after acquiring a disability.

Habilitation and rehabilitation are usually time-limited processes that are tailored to the individual. They involve setting goals to be achieved with the coordinated support of professionals and possibly the participation of family members and close friends. Habilitation and rehabilitation may include medical, psychological, social and vocational support. Without benefit of these interventions, persons with disabilities will probably not be able to realize the rights to accessibility, education and work.

Community-based rehabilitation

Community-based rehabilitation (CBR) is an approach practised in more than 90 countries around the world. It is part of the general community-development strategy intended to reduce poverty, equalize opportunities and involve individuals with disabilities in society. Since communities differ in socio-economic conditions, terrain, cultures and political systems, there cannot be one model of CBR that is applicable throughout the world. CBR is thus a flexible, dynamic and adaptable strategy that includes access to health care, education and vocational training, income-generating projects, and community participation and inclusion.

CBR works with and around communities. It is implemented through the combined efforts of persons with disabilities, their families, organizations and communities, and the relevant government and non-governmental organizations (NGOs) working in the development sector. Since it is a community action that ensures that persons with disabilities have the same rights and opportunities as other community members, CBR is increasingly considered as an essential component of community development.

WHO, ILO, UNESCO, international NGOs with extensive experience in disability and development, and organizations of persons with disabilities are developing guidelines on how CBR can help persons with disabilities realize their rights and promote respect for their inherent dignity.

Accessibility

In every society, there are innumerable obstacles and barriers—from stairs that cannot be climbed to signs that cannot be read—that prevent persons with disabilities from living full lives. Accessibility (article 9) involves providing equal access to facilities and services in the community for all members of society, including persons with disabilities. It is a guiding principle of the Convention (article 4) and is relevant to all areas of implementation. Although some of the provisions for accessibility in the Convention may be costly to implement in the short term, there are a number of low-cost, low-tech solutions that would have immediate impact.

For example, providing access to information can be relatively inexpensive and will improve the lives of persons with disabilities enormously, whether in reading a price tag, entering a hall to participate in a meeting, understanding a bus schedule or browsing web-sites. Television is recognized as an essential source of information and a vehicle for accessing cultural and sporting events. Parliamentarians, in cooperation with the media industry, can work to make television accessible to deaf individuals and elderly persons by providing closed-captioning or subtitles. These measures have already been adopted in more than 30 countries around the world.

Accessibility and the Internet

The Internet can create opportunities for everyone; yet most of these opportunities are inaccessible to persons with disabilities. In late 2006, some 100 leading web-sites in 20 countries were assessed against the international accessibility guidelines established by the World Wide Web Consortium (W3C). The web-sites surveyed included those focusing on travel, finance, media, government and retail shopping.

The survey found that most of the web-sites examined do not meet international standards for accessibility; indeed, only 3 of the 100 web-sites achieved minimum accessibility standards. While some of the sites could be upgraded easily to accommodate persons with disabilities, most need considerable work.

Making information technologies available to persons with disabilities is not only a matter of human rights; it also makes good business sense. Studies suggest that accessible web-sites appear higher up the page rankings of search engines, can save costs on web maintenance, and provide the companies behind the web-sites with access to a largely untapped customer base.

Similarly, the Internet provides a crucial link to education, employment opportunities, news and health-care information, and is a channel for civic engagement and social networking. Individuals who cannot access the Internet are denied a certain degree of involvement in society. When web-sites are designed and developed according to accessibility guidelines, all users have equal access to the information available through the Internet. Although several countries now require that at least the Government's web-site be accessible to persons with disabilities, most of the world's web sites remain inaccessible (see box on previous page).

Access to information is also essential during emergencies. Recent di-sasters around the world have demonstrated that persons with disabilities do not receive the same level of support as everyone else during these

Making life accessible

Physical environment
An accessible physical environment benefits everyone, not just persons with dis-abilities. The Convention states that measures should be undertaken to eliminate obstacles and barriers to indoor and outdoor facilities, including schools, medical facilities and workplaces (article 9 (1) (a)). These include not only buildings, but also footpaths, kerbs, and obstacles that block the flow of pedestrian traffic.

Over time, all new construction should be based on designs that incorporate accommodations for persons with disabilities. The World Bank concluded that the cost of including these features at the time of construction can be minimal. It has also been shown that making buildings accessible adds less than 1 per cent to construction costs.

Public facilities and services
The Convention asks Governments to set an example in ensuring full participa-tion in society for persons with disabilities by developing guidelines to make public facilities and services accessible (article 9 (2) (a)). Accessibility may require providing ramps into government buildings, signage in Braille, accessible toilets and sign-language interpreters or closed-captioning on public television. These guidelines should be developed in consultation with persons with disabili-ties and/or their representative organizations.

Transport
Transportation, including air travel, buses, trains and taxis, is vital for indepen-dent living. In many instances, persons with disabilities, particularly those who are visually impaired or who cannot move around easily, are denied access to these essential services and are thus prevented from attending school, having a job or receiving medical treatment.

catastrophes. The Convention calls upon States to develop measures for emergency services (article 9 (1) (b)). Text messaging, for example, has quickly become one of the preferred methods for communicating for deaf persons. However, emergency services in most countries cannot communicate via text messaging because of incompatible communication protocols.

"When you give blind persons in the world access to information in a timely and efficient manner, and in a format they can read, understand and digest, you are guaranteed that great contributions will be made to societies all over the world by blind people."

Don Breda, blind IT specialist (USA)

In most countries, there are no laws on providing information in accessible formats, such as Braille, audio formats or sign language, or to make web-sites accessible. Often, even where there is legislation, those laws have not been translated into actual services. The Convention asks Governments to introduce adequate legislation and means to ensure that persons with disabilities can access information that directly affects their daily lives (article 9 (1) (a) and (2) (g)).

Education

There are many potential barriers to education for persons with disabilities, especially in developing countries. These include:

CHECKLIST FOR PARLIAMENTARIANS

How I can make society more accessible:

- ☐ Wander through your community and observe how many obstacles exist, such as stairs into buildings, a lack of dropped kerbs and signage in Braille, etc.
- ☐ Determine if government material is available in alternative formats that are accessible to persons with disabilities.
- ☐ Review how accessible government facilities and services are.
- ☐ Ascertain if there are contingencies for persons with disabilities in Government emergency plans
- ☐ Consult persons with disabilities and their representative organizations on steps to improve accessibility.

- Poverty
- Overcrowded schools
- Lack of trained teachers
- Lack of reasonable accommodation and support for students with disabilities
- Inaccessible facilities
- Inaccessible curricula
- Poor or inaccessible transport
- Social stigma and lack of familiarity with the school environment

Current estimates suggest that the school enrolment rates of children with disabilities in developing countries are as low as 1 to 3 per cent; therefore, approximately 98 per cent of children with disabilities do not go to school and are illiterate. As long as such a large number of children with disabilities do not attend school, the millennium development goal of achieving universal primary education will remain elusive. However, research shows that children, including those with significant disabilities, who are included in regular education are more likely to finish school, go onto post-secondary education and training, get jobs, earn good incomes and become active members of their communities.

"I got higher exam results than all the students in the same year group as me who were in the special school: and not because I'm cleverer, but just because of the opportunities I've had and the opportunities I've been given."

Lucia Bellini, blind student (UK)

The Convention covers many aspects of education at different stages of life (article 24). Its priority is to encourage children with disabilities to attend school at all levels (article 24 (2) (a)). The Convention asserts that the best way to do this is to focus on the best interests of the child (article 24 (2) (b)). The Convention also addresses the education needs of the large number of adults with disabilities who are uneducated or under-educated due to a lack of opportunity or access when they were children. It also recognizes the importance of learning over one's lifetime (article 24 (5)), including for those adults who acquire disabilities and, therefore, want or need further education to support their ability to work, including vocational training and university-degree programmes.

The approach to education promoted by the Convention is based on a growing body of evidence that shows that inclusive education not only

provides the best educational environment, including for children with intellectual disabilities, but also helps to break down barriers and challenge stereotypes. This approach helps to create a society that readily accepts and embraces disability, instead of fearing it. When children with and without disabilities grow up together and learn, side by side, in the same school, they develop a greater understanding and respect for each other.

The transition from a school system relying on specialized education to an inclusive system needs to be carefully planned and implemented to protect the needs and best interests of the child. Support from parents, community leaders and teachers is a prerequisite. To be inclusive, the general education system should:

- Provide suitable equipment and teaching materials for persons with disabilities;
- Adopt teaching methods and curricula that embrace the needs of all children and students, including those with disabilities, and promote acceptance of diversity;
- Train all teachers to teach in an inclusive classroom and encourage them to support each other;
- Provide a range of support that meets the diverse needs of all students, including students without disabilities, to the greatest extent possible; and

Beyond the education system

Access to education is not only about the education system. Even if a school allows a child with disabilities to enrol, a lack of accessible transport may make getting to school difficult or impossible. Sometimes the school itself is inaccessible. Changing the physical infrastructure may seem daunting, but it need not be. Over time, as buildings need to be refurbished, they could be retrofitted to include accessible design features.

In the future, it should be mandatory for all new buildings, including educational facilities, to be accessible. This includes not only features that enable wheelchair users to enter the building, but also such things as Braille signage and appropriate lighting for those with low vision. The cost of including accessible features at the time of construction can be minimal, with studies indicating that such accommodations add less than 1 per cent to construction costs.

- Facilitate the learning of Braille and sign language so that children who are blind, deaf or deaf-blind can have access to education and can communicate.

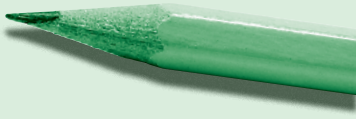
The cost of inclusive education

Inclusion is often (mis)conceived as prohibitively expensive, impractical, unsustainable or a strictly disability-specific issue. However, not all positive measures are costly. Several countries have already developed cost-effective programmes to promote inclusiveness with limited resources. States should use available resources, focus on achieving clear goals, and ensure sustainability of education funding in the short, medium and long term. Cutting funding to an inclusive education system has dramatic adverse effects not only for individuals, but also for the policy of inclusion, in general.

Inclusive educational settings are generally less expensive than segregated systems. This finding is consistent with the notion that a single, integrated

CHECKLIST FOR PARLIAMENTARIANS

How I can help make education more inclusive:



- [ ] Disseminate inclusive-education methodologies as an integral part of teacher-training syllabuses.
- [ ] Encourage persons with disabilities to train as teachers.
- [ ] Use pyramid-training techniques where teachers, once trained in inclusive-education methodologies, teach other teachers.
- [ ] Promote peer-tutoring programmes, whereby higher-level students assist junior students.
- [ ] Promote partnerships between schools and parents.
- [ ] Link existing community-based rehabilitation networks to inclusive-education initiatives.
- [ ] Ensure reasonable accommodation is provided in child assessment.
- [ ] Turn existing special schools into resource centres.
- [ ] Set up a reporting mechanism to monitor school registration and completion by children with disabilities.

educational system tends to be cheaper than two separate ones. A single system lowers management and administration costs. Transport, too, is less expensive, since segregated settings usually involve individuals from a larger geographical area. Experience has shown that as many as 80 to 90 per cent of children with specific education needs, including children with intellectual disabilities, can easily be integrated into regular schools and classrooms, as long as there is basic support for their inclusion.

Work and employment

Employment (article 27) provides many opportunities for social participation, from economic independence, to family formation, to a sense of contributing to the national economy. But in every society, persons with disabilities have not been fully integrated into the labour market. Most are either unemployed or have been dissuaded from actively seeking work. Among those who are working, many are underemployed, paid below minimum wage, and work below their capabilities. This lack of economic participation has a significant impact on the lives of persons with disabilities, as they are then unable to earn an adequate standard of living (article 28) and to live independently in the community (article 19).

In all regions of the world there is a sizeable gap between the working conditions and employment trends of persons with disabilities and those without a disability. All too often, persons with disabilities are dependent upon begging, charity and welfare, rather than upon meaningful employment, for their livelihoods.

Employers often resist hiring persons with disabilities, or simply discard their job applications, believing they will be unable to accomplish their tasks and/or that it would be too expensive to hire them. This attitude is rooted in fear and stereotyping, and focuses more on the disability than on the abilities of the individual. Empirical evidence, however, indicates that persons with disabilities have high performance ratings and job-retention rates, and better attendance records than their non-disabled colleagues. In addition, the cost of accommodating workers with disabilities is often minimal, with most requiring no special accommodation at all. Studies have shown that other benefits accrue to those who employ persons with disabilities, including improved workforce morale and increased customer goodwill.

In developing countries, most workers with disabilities are employed in the informal sector, where labour protection is limited and work is unstable. It is estimated that between half and three quarters of all non-agricultural workers in developing countries are employed in the informal sector. In Africa,

the percentage of informal workers ranges from 48 per cent in North Africa to 78 per cent in sub-Saharan Africa. Self-employment outside of agriculture accounts for 60 to 70 per cent of informal work. Women with disabilities are even less likely than men with disabilities to be employed, and they earn less when they are employed.

Many countries do not have legislation to promote and protect the rights of workers with disabilities. This makes it possible to discriminate against persons with disabilities in the workplace, hindering their access to the labour market. Their absence in the economy is also rooted in the lack of education and training opportunities available to persons with disabilities in their younger years.

Implementation of the Convention's provisions on work and employment will directly affect the approximately 470 million men and women of working age who have disabilities. The Convention enumerates States' obligations to ensure the legal right of persons with disabilities to earn a living through work that they voluntarily choose or accept, and to prohibit discrimination based on disability in all forms of employment (article 27 (1)). While promoting the opening of labour markets for persons with disabilities, the Convention also recognizes the importance of self-employment, which is particularly relevant in developing countries (article 27 (1) (f)). The Convention also provides for reasonable accommodation (article 27 (1) (i)) and promotes policies and programmes, including affirmative action, that encourage employers to recruit persons with disabilities (article 27 (1) (h)).

Although employers are often thought of as private-sector entities, in many countries, particularly developing countries, the Government is the

How access to education and transport affects access to employment

When persons with disabilities are not integrated into policies and planning related to transport, physical infrastructure and education systems, they are often excluded from employment. Even if jobs are available to persons with disabilities, those individuals might find that there are other obstacles to employment: they might not have received the required education; they might not have access to job listings in appropriate formats; and there might be no accessible transport to and from work. All of these factors could dissuade qualified persons with disabilities from seeking employment.

Ensuring employment opportunities

Disability can sometimes affect an individual's ability to carry out a job in the usual or customary way. The obligation to make a reasonable accommodation on a case-by-case basis, or the right to be accommodated, is included in the Convention's provisions on work and employment.

Provisions on reasonable accommodation in the context of employment have been adopted in different parts of the world but will be new to many countries. Both employers and employees may need guidance and assistance in identifying what reasonable accommodations are needed.

Affirmative-action measures, such as employment quotas, seek to promote equal opportunity and are aimed at overcoming structural disadvantages that target certain groups. Unlike reasonable accommodation, such measures are not intended to meet the needs of individuals. Affirmative-action measures are temporary and are intended to last only until the structural disadvantages have been overcome, either through compensation or by creating a more equitable system.

employer of choice and the largest employer. Since the Convention requires Governments to make appropriate reasonable accommodations to hire more job-seekers with disabilities at all levels, the Government can serve as a model for private-sector employers.

Many countries have some type of employment quota for persons with disabilities, at least for positions in the public sector. These quotas range between 2 and 7 per cent, but compliance rates are generally low, between 50 and 70 per cent. Quotas normally apply to medium to large firms and non-compliant enterprises are usually fined. While such fines have not improved compliance rates, they do provide additional funds that are often spent on employment-related programmes for persons with disabilities. States parties could benefit from the creation of bridge programmes for people making the transition from social-welfare schemes to the open labour market.

The Convention's provisions on work and employment cover persons with disabilities in all stages of employment, including those seeking employment, those advancing in employment, and those who acquire a disability during employment and who wish to retain their jobs. The right to exercise labour and trade union rights is also promoted in the Convention (article 27 (1) (c)). States are also legally obligated to ensure that persons with disabilities are not held in slavery or servitude and are protected on an equal basis with others from forced or compulsory labour (article 27 (2)).

Big business backs inclusion

Business and Disability is a European network that grew out of the group of corporate partners formed during the European Year of People with Disabilities 2003. The network promotes disability-inclusion initiatives and encourages the exchange of ideas among business and political actors and individuals with disabilities. Business and Disability is committed to the inclusion of persons with disabilities in all aspects of European society, particularly as workers, consumers and policymakers.

The members of Business and Disability are leaders in their industries. They focus on issues related to physical accessibility, e-accessibility of products and services, and employment. The founding members of Business and Disability are Adecco, Hewlett-Packard, IBM, Manpower, Microsoft and Schindler.

In practical terms, States must ensure that persons with disabilities apply for jobs alongside persons without disabilities, that they are protected from discrimination, and that they have the same rights as others in the workplace and equal opportunities for career advancement. Governments, workers' and trade unions, employers, and representatives of persons with disabilities can work together to ensure the social and economic integration of persons with

CHECKLIST FOR PARLIAMENTARIANS

How I can improve the employment prospects for persons with disabilities:

- ☐ Determine if the social-benefit system inadvertently contains disincentives to work. In some instances, the welfare system may discourage persons with disabilities from seeking employment.
- ☐ Promote vocational rehabilitation and other inclusive policies.
- ☐ Facilitate collaboration among the Government, employers and employees to make the business case for inclusive disability policies, and to encourage their adoption in both the private and public sectors. The Employers' Forum on Disability in the United Kingdom is a good example of this type of work.
- ☐ Support organizations of persons with disabilities in their efforts to advocate an inclusive and equal work environment.

disabilities. Recommended actions will vary according to the level of economic development within the country.

The Convention also recognizes that for many persons with disabilities in developing countries, self-employment or microbusiness may be the first, and perhaps only, option. States parties to the Convention are legally obligated to promote such opportunities.

While Governments will need to promote employment of persons with disabilities in the formal sector, they will also be required to include persons with disabilities in microcredit and microfinance development schemes. These schemes have been very successful in many regions of the world, but have often forgotten to include, or deliberately excluded, persons with disabilities as potential beneficiaries.

Legal capacity and supported decision-making

Imagine having your capacity to make decisions, sign contracts, vote, defend your rights in court or choose medical treatments taken away simply because you have a disability. For many persons with disabilities, this is a fact of life, and the consequences can be grave. When individuals lack the legal capacity to act, they are not only robbed of their right to equal recognition before the law, they are also robbed of their ability to defend and enjoy other human rights. Guardians and tutors acting on behalf of persons with disabilities sometimes fail to act in the interests of the individual they are representing; worse, they sometimes abuse their positions of authority, violating the rights of others.

Article 12 of the Convention recognizes that persons with disabilities have legal capacity on an equal basis with others. In other words, an individual cannot lose his/her legal capacity to act simply because of a disability. (However, legal capacity can still be lost in situations that apply to everyone, such as if someone is convicted of a crime.)

The Convention recognizes that some persons with disabilities require assistance to exercise this capacity, so States must do what they can to support those individuals and introduce safeguards against abuse of that support. Support could take the form of one trusted person or a network of people; it might be necessary occasionally or all the time.

With supported decision-making, the presumption is always in favour of the person with a disability who will be affected by the decision. The individual is the decision maker; the support person(s) explain(s) the issues,

Supported decision-making in practice

The Province of British Columbia in Canada is one of the leading jurisdictions in incorporating supported decision-making into law, policy and practice. An individual with disabilities can enter a "representation agreement" with a support network. The agreement is a sign to others, including doctors, financial institutions and service providers, that the individual has given the network the authority to assist him/her in making decisions and represent him/her in certain matters.

One of the main innovations in the legislation is that persons with more significant disabilities can enter into representation agreements with a support network simply by demonstrating "trust" in the designated supporters. A person does not need to prove legal competency under the usual criteria, such as having a demonstrated capacity to understand relevant information, appreciate consequences, act voluntarily and communicate a decision independently, in order to enter this agreement.

A number of individuals and support networks have entered representation agreements as an alternative to guardianship or other forms of substitute decision-making. A community-based Representation Agreement Resource Centre assists in developing and sustaining support networks by providing information, publications, workshops and advice. The Centre also oversees a registry in which a network can post an agreement for other parties to view if required before entering a contract with the individual. For more information see **www.rarc.ca**.

when necessary, and interpret(s) the signs and preferences of the individual. Even when an individual with a disability requires total support, the support person(s) should enable the individual to exercise his/her legal capacity to the greatest extent possible, according to the wishes of the individual. This distinguishes supported decision-making from substituted decision-making, such as advance directives and legal mentors/friends, where the guardian or tutor has court-authorized power to make decisions on behalf of the individual without necessarily having to demonstrate that those decisions are in the individual's best interests or according to his/her wishes. Paragraph 4 of article 12 calls for safeguards to be put in place to protect against abuse of these support mechanisms.

Supported decision-making can take many forms. Those assisting a person may communicate the individual's intentions to others or help him/her understand the choices at hand. They may help others to realize that a person with significant disabilities is also a person with a history, interests and aims

in life, and is someone capable of exercising his/her legal capacity.

While some good models of support networks exist, there is generally no clear policy framework; guardianship laws and practice still dominate. It is sometimes difficult to designate support networks, particularly when an individual cannot identify a trusted person or people. In addition, people in institutional settings are often denied support, even when it is available. Establishing comprehensive support networks requires effort and financial commitment, although existing models of guardianship can be equally costly. Supported decision-making should thus be seen as a redistribution of existing resources, not an additional expense.

CHECKLIST FOR PARLIAMENTARIANS

What I can do to ensure that persons with disabilities can exercise their legal capacity:

- ☐ Consult with civil society organizations to see whether supported decision-making exists in your constituency.
- ☐ Examine laws on guardianship and consider whether laws and policies promote supported decision-making and respect the legal capacity of persons with disabilities.
- ☐ Raise the issue of supported decision-making, and encourage the development of programmes to promote supported decision-making, in parliament.
- ☐ Visit psychiatric institutions to see what support networks exist.
- ☐ Hold public meetings in constituencies to hear about the experiences of persons with disabilities concerning legal capacity and support.
- ☐ Gather examples of good practices in supported decision-making and share them with parliamentarians in other countries.
- ☐ Ensure that parliamentary committees on the Convention include legal capacity and supported decision-making on their agendas.
- ☐ Propose the development of a national framework for supported decision-making consistent with the United Nations Convention.

CHAPTER SEVEN

Creating national institutions to implement and monitor the Convention

Implementing the Convention does not only require appropriate legislation and policies; it also requires financial resources and institutions that have the capacity to both implement and monitor those laws and policies. Indeed, article 33 of the Convention requires States parties to establish specific mechanisms to strengthen implementation and monitoring of the rights of women, men and children with disabilities at the national level. The Convention requires States to:

- Designate a focal point or **focal points** within government for implementation;
- Consider establishing or designating a **coordination mechanism** within government to facilitate related action in different sectors and at different levels; and
- Establish an independent framework, such as a **national human rights institution**, to promote and monitor implementation of the Convention.

The Convention 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.

Meanwhile, **national courts and tribunals** will play a key role in ensuring that the rights enumerated in the Convention are protected under the law.

Focal points

While the Convention requires States parties to designate one or more focal points within government to address matters relating to implementation and to consider establishing a coordination mechanism within government, the Convention does not prescribe either the form or the function of these entities. However, since some other international instruments, including 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, many countries have already established or designated disability focal points or coordinating mechanisms.

"The key to the Convention's success will, of course, be effective implementation...The Convention itself is quite specific with regard to the actions that need to be taken by Governments to implement it."

Ambassador Dan MacKay, Chairman of the Ad Hoc Drafting Committee (New Zealand)

Focal points could be a section or a person within a ministry or cluster of ministries, an institution, such as a disability commission, or a particular ministry, such as a ministry for human rights or a ministry for persons with disabilities, or a combination of the three. Even if these bodies or mechanisms already exist, they will need to be revised to oversee the implementation of the Convention and to coordinate efforts among various sectors at the local, regional and national/federal level.

Whatever its designated form, the focal point should not act in isolation, but play a leading role in coordinating the implementation of the Convention. It should be equipped with adequate human and financial resources; be established through legislative, administrative or other legal measures; be permanently appointed; and be located at the highest possible level of government.

Coordination mechanisms

The Convention encourages States to designate, within government, a coordination mechanism to facilitate related action in different sectors and at different levels. States may wish to consider establishing a coordination mechanism, or revising an existing coordination mechanism, that:

- Consists of a permanent structure with appropriate institutional arrangements to allow coordination among intragovernmental actors;

The work of focal points

- 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;
- Draft, revise or amend relevant legislation;
- Raise awareness about the Convention and Optional Protocol within the Government;
- Ensure that the Convention and Optional Protocol are translated into local languages and issued in accessible formats;
- Establish an action plan for ratification of the Convention;
- Establish an action plan for implementation of the Convention;
- Monitor the implementation of the action plan on human rights and disabilities;
- Coordinate the preparation of the State's periodic reports;
- Raise awareness on disability-related issues and the rights of persons with disabilities among the public;
- 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.

- Ensures coordination at the local, regional and national/federal levels; and
- Ensures the participation of persons with disabilities, organizations of disabled persons and NGOs by establishing a permanent forum for discussions with civil society.

Various jurisdictions have introduced focal points and coordination mechanisms to act as intermediaries either between the Government and national human rights organizations or, more commonly, between the Government and individuals and their representative organizations. Often, existing coordination mechanisms on disability include representatives of various ministries (ministry of labour and social affairs, or ministries of finance, health, housing, education, employment), occasionally include representatives of local and regional authorities, and very often include organizations of persons with disabilities. Australia's National Disability Council, for example, provides advice to the Government on disability-related issues and organizes consultations with the community to promote dialogue and elicit first-hand information from rights-holders.

National human rights institutions

The relationship between the convention and national human rights institutions

The Convention requires States to establish a framework, involving one or more independent mechanisms, to promote (e.g., through awareness-raising campaigns and public education), protect (e.g., by examining individual complaints and participating in litigation), and monitor (e.g., by reviewing legislation and examining the state of domestic implementation) implementation of the Convention. The Convention refers to a "framework" rather than a "national human rights institution." However, in establishing such a framework, the State is to take into account the "principles relating to the status and functioning of national institutions for the protection and promotion of human rights," as agreed by the United Nations General Assembly in 1993. These principles have become known as the "Paris Principles" (see next page). Given this link, a national human rights institution is the most likely form that an independent "framework" would take in compliance with the national monitoring provisions under the Convention.

Types of national human rights institutions

The term "national human rights institution" has acquired a specific meaning. While the number and range of "institutions" concerned with

human rights is large, and includes religious institutions, trade unions, the mass media, NGOs, government departments, the courts and the legislature, the term "national human rights institution" refers to a body whose specific functions are to promote and protect human rights.

While no two institutions are exactly the same, all share some common attributes. They are often administrative in nature. Many also have quasi-judicial powers, such as in resolving disputes, although national human rights institutions are neither courts nor law-making bodies. As a rule, these institutions have ongoing, advisory authority in respect to human rights at the national and/or international level. They do their work either in a general way, through opinions and recommendations, or by considering and resolving complaints submitted by individuals or groups. In some countries, the Constitution provides for the establishment of a national human rights institution. More often, such institutions are created by legislation or decree. While many national institutions are attached to the executive branch of government in some way, the actual level of independence that they enjoy depends on a number of factors, including membership and the manner in which the institutions operate.

"Achieving rights for people with disabilities is an ongoing challenge. This Convention will serve as a road map and a reference point in the pursuit of opportunity and the creation of a society where access, fairness and equality are available to all people with disabilities in Australia."

Graham Edwards, MP (Australia)

Most existing national institutions can be classified as belonging to one of two broad categories: "human rights commissions" and "ombudsmen." Another less common, but no less important, variety are the "specialized" national institutions, which protect the rights of a particular group of individuals, such as persons with disabilities, ethnic and linguistic minorities, indigenous populations, children, refugees or women.

The Paris Principles

When designating or establishing a mechanism that meets the requirements of the Convention, States parties must take into account the principles relating to the status and functioning of national institutions that protect and promote human rights. An international workshop of national human rights institutions, held in Paris in 1991, first drafted these Principles, which were then adopted by the United Nations General Assembly in 1993.[1] They are known as the "Paris Principles."

[1] General Assembly resolution 48/134 of 20 December, 1993.

Potential functions of a national human rights institution

In addition to establishing the seven principles listed in the box above, which are aimed at creating independent and credible national human rights institutions, the Paris Principles also list a number of responsibilities that these institutions should assume. While national human rights institutions should have as broad a mandate as possible, specified either in the constitution or in legislation, the Paris Principles stipulate that these institutions should:

- Monitor the implementation of human rights obligations of the State party and report annually (at least);
- Report and make recommendations to the Government, either at the Government's request or on its own volition, on human rights matters, including on legislation and administrative provisions, the violation of human rights, the overall human rights situation in the country and initiatives to improve the human rights situation;
- Promote harmonization of national law and practice with international human rights standards;
- Encourage ratification of human rights treaties;
- Contribute to reports that States parties are required to submit to the United Nations treaty bodies on the implementation of human rights treaties;
- Cooperate with regional and United Nations human rights bodies as well as with human rights bodies of other States;
- Assist in the formulation of human rights education programmes; and
- Raise public awareness about human rights and efforts to combat discrimination.

- **Monitoring national law and practice**
  It is common for national institutions to have a mandate to ensure that national law conforms to human rights standards, as recommended by the Paris Principles. This can be achieved by examining existing laws, and by monitoring and commenting upon the development of new laws. A number of institutions dedicate resources to monitoring proposed legislation so that they might consider and, if necessary, comment upon compliance of the proposed law with human rights obligations. Depending on the degree of impact that a proposed law may have on human

The Paris Principles in detail

The Paris Principles are a set of core minimum recommendations adopted by the United Nations General Assembly relating to the status and functioning of national institutions for the protection and promotion of human rights. Article 33 (2) of the Convention on the Rights of Persons with Disabilities requires States parties to take these principles into account when designating or establishing mechanisms to promote, protect and monitor implementation of the Convention. According to the Paris Principles, such mechanisms must:

- Be independent of the Government, with such independence guaranteed either by statutory law or constitutional provisions;
- Be pluralistic in their roles and membership;
- Have as broad a mandate as possible, capable, in the context of the Convention, of collectively promoting, protecting and monitoring the implementation of all aspects of the Convention through various means, including the ability to make recommendations and proposals concerning existing and proposed laws and policies;
- Have adequate powers of investigation, with the capacity to hear complaints and transmit them to the competent authorities;
- Be characterized by regular and effective functioning;
- Be adequately funded and not subject to financial control, which might affect their independence; and
- Be accessible to the general public and, in the context of the Convention, particularly to persons with disabilities, including women with disabilities and children with disabilities, and their representative organizations.

rights, national institutions might also raise public awareness so that individuals and organizations can, if they choose, make submissions to the Government.

Equally important is the role of national institutions in monitoring Government practices and policies to ensure that they comply with international obligations, national laws on the rights of persons with disabilities, including relevant case law, national human rights strategies or action plans, and any applicable codes of practice.

- **Initiatives to improve the human rights situation within countries** Ideally, States will establish a national human rights action

plan outlining the strategy or actions to be taken to implement obligations under human rights instruments. States will often consult the national human rights institution when developing these strategies or actions plans. Independent of the State's national human rights action plan, the national human rights institution might develop its own plan to promote respect for human rights. In either case, appropriate government agencies and civil society should be consulted as these strategies are being drafted. The Convention stipulates that civil society, particularly persons with disabilities and their representative organizations, children with disabilities and individuals who care for persons with disabilities, should be involved in this process.

National institutions might also establish codes of practice that relate to certain rights in particular situations. For example, codes of practice may relate to: the application of a specific right or the elaboration of the specific steps needed to implement the right; the conduct of a particular government agency or a class of agencies; a particular type of public or private activity or class of activities; or a particular industry or profession. Given the regulatory nature of such codes, they must be established by law and will normally be adopted after wide consultations.

- **Public inquiries, studies or reports**

Although resource-intensive, conducting public enquiries or studies on particular issues can help promote respect for rights and raise public awareness. Such studies might be undertaken at the exclusive discretion of a national human rights institution, or launched by the Government, through, for example, an attorney general or rights-specific focal point, or as a result of a series of grievances that might have raised systemic issues. Institutions might also be empowered to undertake fact-finding missions that are either linked to the development of Government policies or to the conduct of judicial proceedings. A mandate to conduct inquiries and studies should be accompanied by powers to gather information and evidence needed to fulfil this function effectively. National human rights institutions lacking investigative powers will need some form of authority to gather information.

Article 35 of the Convention requires States parties to report periodically to the Committee on the Rights of Persons with Disabilities on measures taken to comply with their obligations under the Convention. The combined effect of articles 4 (3)

(consultation with and involvement of persons with disabilities) and 35 (4) of the Convention means that States should consider preparing these reports in close consultation with persons with disabilities, including children with disabilities, and their representative organizations. National institutions can play a role in preparing reports and can facilitate consultation between civil society and the Government in the reporting process.

National institutions can also provide shadow reports, that is, alternative reports to those of the Government, particularly if the institution believes its submissions are not being taken into account adequately or appropriately in the Government's report. Increasingly, treaty-monitoring bodies consult directly with representatives of national human rights institutions during the reporting process.

- **Resolving disputes**
  Consistent with the recommendations made in the Paris Principles, a common function of national human rights institutions is to help resolve disputes concerning alleged violations of human rights. A mandate to help resolve disputes should also be accompanied by powers to gather information and evidence.

- **Education and public awareness**
  The Paris Principles specifically recommend the promotion of human rights education programmes. It is essential that individuals, private entities and government entities know about human rights and the corresponding responsibilities if those rights are to be respected and effectively monitored. Programmes might need to be tailored to the needs of particular groups. For example, programmes targeting persons with disabilities should issue their material in accessible formats such as Braille, large print, plain language, close-captioning or accessible electronic formats.

National human rights institutions and complaints mechanisms

The Paris Principles call for national institutions to have adequate powers of investigation and the ability to hear complaints. Existing national institutions that assume the monitoring functions under the Convention might have to adjust their mediation and conciliation procedures in order to ensure that persons with disabilities and their representative organizations have access to the process. There are various methods by which such institutions can fulfil these roles, including:

Protecting rights in India

India's institutional framework for protecting rights, including those of persons with disabilities, is necessarily somewhat complex, given that the country comprises 29 states and six centrally administered territories. In February 2006, the Ministry of Social Justice and Empowerment, which has central responsibility for disability policies within the Government, completed and adopted a National Policy for Persons with Disabilities (NPPD). The NPPD established an inter-ministerial body to coordinate matters relating to its implementation, made up of a Central Coordination Committee at the national level and State Coordination Committees at state levels. These committees coordinate various specialized institutions and agencies within India, including a National Rehabilitation Council and a National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

Prior to the adoption of the NPPD, a Commission for Persons with Disabilities was established under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995. The Commission's responsibilities include monitoring the use of Government funds, coordinating the work of State Commissioners, and safeguarding the rights and services made available to persons with disabilities. The Commission is semi-judicial, enabling the Chief Commissioner to investigate allegations of the deprivation of rights and non-implementation of laws, call for hearings, receive evidence on oath and issue summonses, although the Commissioner cannot make binding decisions. The Commission therefore has a dual role of overseeing funds and monitoring laws.

India also has a National Human Rights Commission that can look into individual petitions, initiate proceedings in the Supreme Court of India (subject to limitations), intervene in proceedings involving allegations of human rights violations, pending approval of the court, review human rights-related law, including the Constitution, and conduct and promote research. The Commission was active in making recommendations to relevant ministries during the development of the National Policy for Persons with Disabilities and in advising the Government during negotiations on the Convention on the Rights of Persons with Disabilities.

- **Mediation and conciliation**
  At the most basic level, many national human rights institutions help enforce the realization of rights by providing mediation and conciliation services. An aggrieved person can directly contact a conciliation or mediation officer of a national human rights institution to discuss his/her concerns. Such officers are asked to register the complaint and are often empowered

to provide general advice on options available to the aggrieved person and, depending on the wishes of that person, to initiate communications with the other party involved in the dispute. This may include informal telephone or face-to-face discussions, although many national institutions do not accept anonymous or unsigned complaints. More often, the national institution will have to rely on more formal requests, such as written communications. Depending on the nature of the dispute and the outcome of initial discussions, a meeting of the parties involved might be organized during which the mediator or conciliator will attempt to resolve the matter.

National human rights institutions often keep records of mediation and conciliation processes as a way of tracking the patterns through which disputes are resolved. Records might also be included in the annual report, be used to launch a special report, be included in a shadow report to treaty bodies, and/or be used to train conciliation and mediation staff and establish consistent practices and results. These records should be kept secure and any references to past actions should not identify the parties involved.

Mediation and conciliation may be linked to other grievance-resolution mechanisms so that a failure to resolve a grievance at this level will lead to action by the national institution at a higher level.

- **Human rights tribunals**
  Failing successful mediation or conciliation, or failing adherence by one or both of the parties to the terms of the settlement of a dispute, some national human rights institutions have mechanisms through which they, or the parties to a dispute, may initiate proceedings before a tribunal, including a national human rights tribunal. The ability to initiate such proceedings, and the tribunal itself, must be established by statutory authority. A national human rights tribunal can act as a bridge between formal legal proceedings and the more informal process of investigation and conciliation.

- **Intervention in legal proceedings**
  Another possible role of national human rights institutions is to intervene in proceedings that are held within the normal judicial system. In Australia, for example, the Human Rights and Equal Opportunities Commission has the power to intervene as amicus curae (a friend of the court) in court proceedings that raise

The Human Rights Review Tribunal in New Zealand

New Zealand's Human Rights Act of 1993 creates an Office of Human Rights Proceedings, which is part of the national Human Rights Commission. A Director of Human Rights Proceedings heads the Office. The Director has the authority to bring civil proceedings before an independent Human Rights Review Tribunal.

New Zealand's Human Rights Review Tribunal is a statutory body made up of a panel of persons appointed by the Minister of Justice, three of whom will hear any matter before the Tribunal. The panel consists of up to 20 persons, appointed on the basis of their knowledge of or experience in a range of human rights, legal, social, cultural, administrative and economic issues. As a quasi-judicial body, the Tribunal has reasonably wide discretion in the way in which proceedings are conducted. The Tribunal has the authority to resolve disputes and award remedies. It may also refer matters to the Human Rights Commission's conciliatory process and refer to the High Court an issue that involves granting a remedy.

disability-discrimination issues. This allows the Commission to present its views on the interpretation of the law and how it should be applied in the given circumstances.

Establishing an appropriate institution

The Convention recognizes that a framework may already exist within the jurisdiction of States parties that, subject to modification, may be capable of meeting the requirements of the Convention. However, some institutional mechanisms may not be equipped to monitor implementation of the Convention and it is likely that they will have to be modified. National human rights institutions that already exist should be given the human and financial resources needed so that they can effectively monitor the Convention. Whatever form it takes, an institution or a combination of institutions must be able to perform the task identified in the Convention: to promote, protect and monitor implementation of the Convention. The institution should also respect the principle that civil society, particularly persons with disabilities and their representative organizations, participate fully in the monitoring process.

When deciding whether to establish a new institution or rely on an existing institution, consider the following:

- Does the existing institution comply with the Paris Principles?

- Does the institution have a mandate that covers the Convention on the Rights of Persons with Disabilities?
- Does the institution have expertise on the Convention and/or on human rights and disability generally?
- Does the institution have commissioners and staff with disabilities?
- Does the existing institution have sufficient human resources and time to promote, protect and monitor the Convention along with its other duties?
- Is the existing institution sufficiently accessible to persons with disabilities and does it have a policy on accessibility (of premises, documentation, technology, etc.)?

Parliamentary oversight

In addition to the specific monitoring instruments 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. Some of the most prominent oversight tools are described below.[2]

Parliamentary committees

Systematic oversight of the executive is usually carried out by parliamentary committees. They track the work of individual government departments and ministries, and conduct investigations into particularly important aspects of their policy and administration. Effective oversight requires that committees are able to set their own agendas and have the power to oblige ministers and civil servants to appear and answer questions.

Commissions of inquiry

Whenever an issue of major public concern arises, it might be best to appoint a commission of inquiry to address it. This is particularly useful when the issue is not within the purview of a single parliamentary committee or is not the responsibility of a single government department.

Direct questioning of ministers

In countries where ministers are also members of the legislature, an important oversight mechanism is the regular questioning of ministers, both

[2] A more comprehensive discussion on parliamentary oversight can be found in *Parliament and Democracy in the Twenty-first Century: A Guide to Good Practice* (Geneva, Inter-Parliamentary Union, 2006), pp. 127-146.

National human rights institutions are already focusing on the Convention

National human rights institutions (NHRIs) participated in the negotiations concerning the Convention and Optional Protocol and have continued to be involved with the Convention since it was adopted. NHRIs have held expert meetings with organizations representing persons with disabilities at national and international levels to consider implementation and monitoring of the Convention. The Convention held a prominent place on the agenda of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights. At its latest meeting in March 2007, the Committee's focal point on human rights and disability and the representative of the Irish Human Rights Commission proposed that NHRIs work closely with persons with disabilities and their representative organizations, and that future Committee meetings devote time for debate on the Convention.

The Committee's Bureau agreed to support a proposal, elaborated by the Asia Pacific Forum of National Human Rights Institutions, to establish a database on disability for national human rights institutions. The database will facilitate the collection, analysis and reporting of internationally comparable information on issues concerning human rights and disability. The database aims to:

- Identify priorities for capacity-building within NHRIs to enhance their ability to address issues related to the rights of persons with disabilities;
- Raise awareness of human rights violations against persons with disabilities and promote positive social change in response;
- Provide a credible evidence base to support social-science research into the rights of persons with disabilities; and
- Improve coordination within the international community to address issues concerning the rights of persons with disabilities.

orally and in writing, by parliament. Such direct questioning helps maintain Government accountability.

Scrutiny of executive appointments

An important aspect of oversight in countries where ministers are not members of the legislature is the process of approval for cabinet appointments and top civil servants. Usually, this involves lengthy investigations into the appointee's suitability for public office. In the case of 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 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 purse strings. Parliamentary oversight takes place both when the budget is being formulated and during 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.

The courts and the role of the judiciary

Depending on the constitutional structure of each State party, ratification of the Convention on the Rights of Persons with Disabilities will either automatically result in the content of the Convention becoming part of domestic law and applicable by domestic courts (known as the "monist" approach to the reception of international law, common to civil-law traditions), or will require the incorporation of the rights enumerated in the Convention through domestic legislation (known as a "dualist" approach, typical in common-law traditions).[3] Even in the latter case, however, signing or ratification of the Convention alone creates a strong interpretative preference in favour of the Convention. This means that the judiciary will apply domestic law and interpret legislation in a manner that is as consistent as possible with the Convention, applying a commonly held constitutional assumption that the domestic law of a State does not intend to be inconsistent with the State's international obligations. In addition, as evident through case law developed before the adoption of the Convention, States recognize their obligation to apply the principles of equality and non-discrimination in protecting and promoting the rights of persons with disabilities.

Most of the case law considered in the box below is that of higher, appeals courts, although some decisions by national human rights complaints

3 For more details, see chapter 4.

or conciliation bodies are also included. To date, the judiciary has played an important role in developing the principle of non-discrimination as applicable to persons with disabilities. There are both advantages and disadvantages to the judiciary playing such a central role in the protection of rights.

Judicial protection of rights

Most national legal systems use a formal and hierarchical judicial process to determine rights and duties and to establish legal principles. Through the combination of tribunals and civil codes, or the application of the doctrine of precedent, this helps to ensure that the development of law and legal principles is consistent over time. It also has the advantage of bringing "test cases" before higher courts, which are composed of senior judicial officers who are capable of giving careful consideration to issues that may be complex or that might have significant policy implications. Cases at this level also normally attract high-quality legal submissions and representation of parties. A decision on a "test case" can have repercussions not only for the parties to the dispute, but also for other people who might be in the same or a similar situation. For example, the decision of the court in the "test case" might lead not only to compensation for the person bringing the dispute, but also to systematic policy changes and, therefore, to an improvement in the realization of rights for a large group of individuals. The role of the judiciary in the protection of rights is therefore extremely important.

Judges are frequently considering cases concerning any of the full range of civil, cultural, economic, political and social rights. Various intergovernmental and non-governmental institutions have called for the development of case databases on the justiciability of rights.[4] Such mechanisms can be useful for training and increasing awareness among judges and lawyers. As shown in the box on the next page, even prior to the adoption of the Convention, either as a result of specialized national legislation or through the application of the principles of equality and non-discrimination, national case law concerning the rights of persons with disabilities and the enforcement of these rights has already been developed, as have corresponding jurisprudence and commentary by international and regional human rights bodies.

At the same time, there are some limitations inherent in the judicial protection of rights. Litigation, particularly at the appellate level, is expensive and lengthy. The cost of court proceedings may render such recourse inaccessible or unattractive. This may be particularly relevant to persons with

[4] See, for example, the recommendations in Effective functioning of human rights mechanisms: national institutions and regional arrangements – Regional Arrangements for the promotion and protection of human rights in the Asian and Pacific region, (E/CN.4/2006/100/Add.1, paras. 34 ff.).

Some case law on the rights of persons with disabilities

Persons with disabilities have brought cases before the courts in many countries and also before regional human rights courts, such as the European Court of Human Rights. In deciding on these cases, the courts have clarified what States must do to protect the rights of persons with disabilities and have provided remedies to people who have suffered violations of their rights. For example, courts have held that:

- Air carriers should provide a wheelchair for use between the check-in counter at an airport and boarding the aircraft as part of their service to customers. Requiring payment to use such equipment would be unlawfully discriminatory (Ryanair v. Ross [2004] EWCA Civ 1751).
- In medical settings, a lack of reasonable accommodation, in the form of sign-language interpretation for a person who was born deaf and needs to use sign language to communicate, is incompatible with anti-discrimination legislation (Eldridge v. British Columbia [Attorney General] [1997] 3 SCR 624).
- A university had discriminated against a graduate student by refusing her access to a building after hours on the basis that she was suffering from depression, while other graduate students were granted access. The court held that access was part of services customarily available to the public and that the denial of access based on the student's mental health amounted to discrimination (University of British Columbia v. Berg [1993] 2 SCR 353).
- The PGA Golf Tournament, conducted on public grounds and open to qualifying participants from the public, should modify its rules to accommodate a qualified entrant who could not walk great distances and provide golf-cart transport, rather than requiring that the person walk the course as other contestants did (PGA Tour v. Martin [2001] 204 F 3d 994).
- The failure by prison authorities to provide special facilities or treatment in the light of a prisoner's health problems was found to cause suffering beyond that which was inevitable during a prison sentence (Mouissel v. France [2002] EHRR).
- The delay of 40 months in providing a disability benefit was held by the Constitutional Court of South Africa to amount to not just a breach of social-welfare law but, because of the impact on the capacity of the person to sustain herself, also a breach of her dignity (Department of Welfare v. Nontembiso [March 2006] Case No. 580/04, at 32).
- Isolation and segregation of individuals with disabilities are a serious and pervasive form of discrimination. This is particularly relevant to the exclusion of children with disabilities from mainstream schools (Olmstead v. L C [1999] 527 US 581).

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- The enjoyment of a proper standard of living means that persons with disabilities may not only require access to facilities and services, but might also need to be exempted from rules that might otherwise prejudice their ability to enjoy life. In this case, the refusal by an apartment complex to grant permission for a tenant to keep a guide dog was deemed unlawful discrimination on the grounds of disability (Holt v. Cokato Apartments Ltd [1987] 9 CHRR D/4681).

Finally, a case before the European Court of Human Rights illustrates that a failure to accommodate can amount to a violation of other human rights. The case involved the detention in prison of a person confined to a wheelchair. She had extensive need for assistance, such that, at night, she was unable to move enough to maintain a normal body temperature if the room in which she stayed was not specially heated or she was not wrapped in a space blanket. The Court recognized that the applicant was different from other people, and that treating her like others was discriminatory and violated the prohibition against degrading treatment and the right to bodily integrity (Price v. United Kingdom [2002] 34 EHRR 1285).

disabilities who rely upon social welfare and who, depending on the nature of the issue involved, may not qualify for State-sponsored legal assistance. The time involved in legal proceedings may also either discourage the pursuit of valid claims or exacerbate the situation while proceedings are pending. For persons with disabilities, this may result in continued exclusion from participation in mainstream society. The nature of formal, judicial processes may also be inappropriate for resolving disputes concerning the rights enumerated in the Convention. Again, depending on the nature of the dispute or issue involved, mediation or conciliation may be a more effective means of ensuring compliance with the Convention. The various alternative grievance mechanisms considered earlier in this chapter might, at times, provide faster, cheaper, and more accessible and appropriate means of resolving disputes.

"The most important thing is to recognize that where we are today is already a testimony to the empowerment of a community that has a long history of disempowerment. It's the drive and commitment of the disabilities community itself that was the greatest impetus towards the content of the treaty and the fact that it has now such broad-based recognition."

Louise Arbour, United Nations High Commissioner for Human Rights

CHECKLIST FOR PARLIAMENTARIANS

How I can help promote and protect the rights of persons with disabilities through national institutions:

- ☐ Ensure that a framework is established, preferably in the form of a national human rights institution that has the authority to promote, protect and monitor the implementation of the Convention.
- ☐ Ensure that the national institution chosen or created to oversee the implementation of the Convention conforms to the Paris Principles.
- ☐ Ensure that the national institution chosen or created to promote, protect and monitor the implementation of the Convention is provided with adequate financial and human resources so that it can do its work effectively and efficiently.
- ☐ Consider drafting a national human rights action plan that outlines the strategy or actions to be taken to implement the State's obligations under all human rights instruments to which it is a party.

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ANNEX ONE

Convention on the Rights of Persons with Disabilities

Preamble

The States Parties to the present Convention,

(a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) *Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) *Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political 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 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) *Recognizing* that disability is an evolving concept and 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,

(f) *Recognizing* the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) *Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(h) *Recognizing also* that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) *Recognizing further* the diversity of persons with disabilities,

(j) *Recognizing* the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) *Concerned* that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) *Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) *Recognizing* the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) *Concerned* about the difficult conditions faced by persons with dis-

abilities 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,

(q) *Recognizing* that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(r) *Recognizing* that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(s) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(t) *Highlighting* the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(u) *Bearing in mind* that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) *Recognizing* the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) *Realizing* that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) *Convinced* that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) *Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabili-

ties will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

ARTICLE 1: Purpose

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

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

ARTICLE 2: Definitions

For the purposes of the present Convention:

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

"Language" includes spoken and signed languages and other forms of non-spoken languages;

"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;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not

exclude assistive devices for particular groups of persons with disabilities where this is needed.

ARTICLE 3: General principles

The principles of the present Convention shall be:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) Non-discrimination;

(c) Full and effective participation and inclusion in society;

(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) Equality of opportunity;

(f) Accessibility;

(g) Equality between men and women;

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

ARTICLE 4: General obligations

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

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

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

2. 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.

3. 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.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it

recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

ARTICLE 5: Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall 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. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. 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.

ARTICLE 6: Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

ARTICLE 7: Children with disabilities

1. States Parties shall 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.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-

appropriate assistance to realize that right.

ARTICLE 8: Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(a) To raise 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;

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

(c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns designed:

(i) To nurture receptiveness to the rights of persons with disabilities;

(ii) To promote positive perceptions and greater social awareness towards persons with disabilities;

(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

ARTICLE 9: Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and

systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

(a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(b) 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;

(c) Provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

ARTICLE 10: Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

ARTICLE 11: Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

ARTICLE 12: Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

ARTICLE 13: Access to justice

1. States Parties shall 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, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. 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.

ARTICLE 14: Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

ARTICLE 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

ARTICLE 16: Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of
gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances

of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

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.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

ARTICLE 17: Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

ARTICLE 18: Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

ARTICLE 19: Living independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

ARTICLE 20: Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

ARTICLE 21: Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) 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;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages.

ARTICLE 22: Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

ARTICLE 23: Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

ARTICLE 24: Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

(a) The full development of human potential and sense of dignity and

self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take 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. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

ARTICLE 25: Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) 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;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and

reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

ARTICLE 26: Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

ARTICLE 27: Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with

others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(**h)** 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;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

ARTICLE 28: Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and

promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by persons with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

ARTICLE 29: Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs,

without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

ARTICLE 30: Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

ARTICLE 31: Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

ARTICLE 32: International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and,

as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

ARTICLE 33: National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

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.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

ARTICLE 34: Committee on the Rights of Persons with Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry

out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

ARTICLE 35: Reports by States Parties

1. Each 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.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

ARTICLE 36: Consideration of reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. 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.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

ARTICLE 37: Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.

2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

ARTICLE 38: Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present

Convention:

(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

ARTICLE 39: Report of the Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

ARTICLE 40: Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.

2. No later than six months after the entry into force of the present Convention, the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.

ARTICLE 41: Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

ARTICLE 42: Signature

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

ARTICLE 43: Consent to be bound

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

ARTICLE 44: Regional integration organizations

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by this Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

ARTICLE 45: Entry into force

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

ARTICLE 46: Reservations

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

ARTICLE 47: Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

ARTICLE 48: Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

ARTICLE 49: Accessible format

The text of the present Convention shall be made available in accessible formats.

ARTICLE 50: Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

ANNEX TWO

Optional Protocol to the Convention on the Rights of Persons with Disabilities

The States Parties to the present Protocol have agreed as follows:

ARTICLE 1

1. A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.

2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

ARTICLE 2

The Committee shall consider a communication inadmissible when:

(a) The communication is anonymous;

(b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;

(c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(d) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;

(e) It is manifestly ill-founded or not sufficiently substantiated; or when

(f) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

ARTICLE 3

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

ARTICLE 4

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

ARTICLE 5

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

ARTICLE 6

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

ARTICLE 7

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 6.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

ARTICLE 8

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

ARTICLE 9

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

ARTICLE 10

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

ARTICLE 11

The present Protocol shall be subject to ratification by signatory States of this Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of this Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

ARTICLE 12

1. "Regional integration organization" shall mean 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 and this Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and this Protocol. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Protocol shall apply to such organizations within the limits of their competence.

3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

ARTICLE 13

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

ARTICLE 14

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2. Reservations may be withdrawn at any time.

ARTICLE 15

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties,

with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

ARTICLE 16

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

ARTICLE 17

The text of the present Protocol shall be made available in accessible formats.

ARTICLE 18

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.