

**INTRODUCTION TO THE UN CONVENTION ON THE
RIGHTS OF PERSONS WITH DISABILITIES.
DEVELOPMENT AND PURPOSE OF THE UNCRPD, GENERAL
PRINCIPLES AND OBLIGATIONS FOR THE CONTRACTING PARTIES**
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INTRODUCTION TO THE UN CRPD

- I. Development of international standards on disability
- II. Overview of the UN CRPD: Rationale, Structure, General Obligations
- III. General Principles, Specific Obligations and Practical Approaches



I.

Development of International Standards on Disability



Early Efforts to Develop International Standards on Disability

1971	<i>Declaration on the Rights of Mentally Retarded Persons</i>
1975	<i>Declaration on the Rights of Disabled Persons</i>



1981	<i>International Year of Disabled Persons (United Nations)</i>
1982	<i>World Programme of Action concerning Disabled Persons</i> (http://www.un.org/disabilities/default.asp?id=23)
1982-1992	<i>International Decade of Disabled Persons (United Nations)</i>

Towards Rights-Based Standards on Disability...

1993

UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities

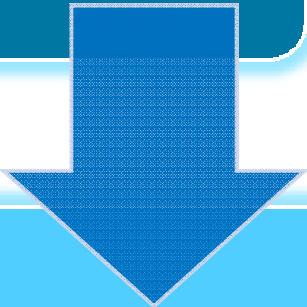
(<http://www.un.org/disabilities/default.asp?id=26>)

The Standard Rules consists of 22 rules and incorporate the **human rights perspective**. The rules consist of four chapters (preconditions for equal participation, target areas for equal participation, implementation measures, and the monitoring mechanism) and **cover all aspects of life of disabled persons**.

The rules provide **detailed guidelines** for policy development and implementation

In December 2001 the General Assembly established an Ad Hoc Committee to consider enacting a disability-based human-rights instrument...

On August 25, **2006**, the Ad Hoc Committee adopted the CRPD.



On December 13, **2006**, the UN General Assembly adopted the CRPD together with its Optional Protocol by consensus

The negotiation of the UN CRPD in a little over two years time is an unique achievement...

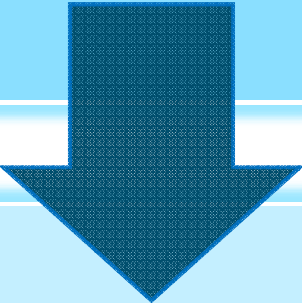


...Equally unprecedented was the participation of persons with disabilities and their representative associations/ organizations in the negotiation process: numerous position papers and side events were aimed at raising awareness and lobbying delegations.

Civil society was present throughout all the discussions on the Convention.

The UN CRPD is the first human rights treaty of the 21st century

On March 30, **2007**, the UN CRPD and its Optional Protocol were opened for signature



On May 3, 2008 the UN CRPD entered into force (in compliance with Art. 45 UN CRPD).

II.

THE UN CRPD

The Rationale

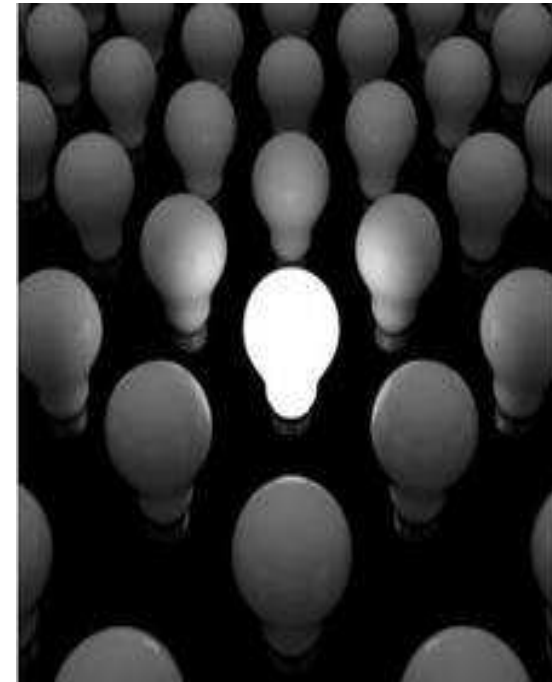
The Structure

The General Obligations



UN CRPD RATIONALE

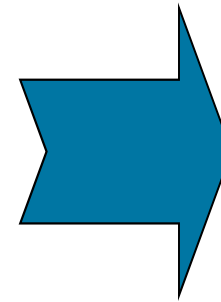
- The Convention establishes a comprehensive framework to **protect** and **promote** the rights of persons with disabilities
- The Convention does not seek to create new rights for disabled persons, but rather elaborates and clarifies existing human rights obligations within the disability context
- The UN CRPD aims to apply the **principle of discrimination** to every human right (Bariffi)



Art. 1 UN CRPD

*“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”.*



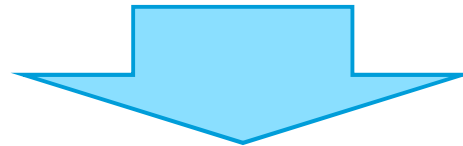
What obligations arise from Art. 1?

The UN CRPD has adopted the Social Model of Disability

- The social model of disability identifies systemic barriers, negative attitudes and exclusion by society (purposely or inadvertently) that mean society is the main contributory factor in disabling people. I.e. it is the society as a whole that is responsible for creating barriers to full participation of persons with disabilities, and it is the society as a whole that has the responsibility to remove them.

Structure of the Convention

- The UN CRPD includes **twenty-five** preambular paragraphs and **fifty** Articles.



- Introductory set of provisions outlining **purpose** (Art. 1) and key **definitions** (Art. 2),
- **Articles of general (cross-cutting) application**, to be applied across the treaty text (**Articles 3-9**)
- **Specific substantive rights** elaborated across the full spectrum of civil, political, economic, social and cultural rights (**Articles 10 to 30**).
- **System of monitoring and implementation** (Articles 31 to 40).
- **Final provisions** that govern the operation of the Convention (Articles 41 to 50).

Substantive Rights

- Right to life, liberty and security of the person (Arts. 10 & 14)
- Equal recognition before the law and legal capacity (Art. 12)
- Freedom from torture (Art. 15)
- Freedom from exploitation, violence and abuse (Art. 16)
- Right to respect physical and mental integrity (Art. 17)
- Freedom of movement and nationality (Art. 18)
- Right to live in the community (Art. 19)
- Freedom of expression and opinion (Art. 21)
- Respect for privacy (Art. 22)
- Respect for home and the family (Art. 23)
- Right to education (Art. 24)
- Right to health (Art. 25)
- Right to work (Art. 27)
- Right to adequate standard of living (Art. 28)
- Right to participate in political and public life (Art. 29)
- Right to participation in cultural life (Art. 30)

Art. 31

- Art. 31 introduces a new element to human rights treaties and requires State Parties to specifically acquiring disability data and statistics to facilitate UN CRPD implementation.
- Disability data collection should enable Parties to formulate, implement, monitor, evaluate policies and programs, in order to give effect to the CPRD.
- Art. 31(2) requires disability data to be *disaggregated* in order to be used for monitoring purposes
- Art. 31(3) requires States Parties to ensure that this information is disseminated to persons with disabilities in accessible formats and to other interested parties

Art. 32



- The UN CRPD expressly recognizes the role that international cooperation and disability inclusive development can play in support of national implementation efforts.
- Article 32 identifies a range of measures that States Parties can take within the framework of international cooperation, including:
 1. **capacity building, including through the exchange and sharing of information, experiences, training programs**
 2. **research programs and the facilitation of access to scientific knowledge; and**
 3. **technical and economic assistance, including the facilitation of access to accessible and assistive technologies**

System of Monitoring and Implementation

Mechanism of **internal follow-up** (Art. 33)

Art. 33(1) UN CRPD states that Parties to the Convention must designate “one or more **focal points** within their governments for matters relating to the implementation of the Convention”, and they can designate a **coordination mechanism**.

Art. 33(2) requires Parties to designate or establish a ‘**framework, including one or more independent mechanisms**’, to promote, protect and monitor the implementation of the Convention.

System of Monitoring and Implementation

The UN CRPD creates an international monitoring body along the lines of other core human rights treaties...

- ▣ **The Committee on the Rights of Persons with Disabilities is the body of 12 (18 with 60th ratification) independent experts which monitors implementation of the Convention by the States Parties**
- ▣ **All States parties are obliged to submit regular reports to the Committee on how the Convention is being implemented**
- ▣ **The Committee examines each report and shall make suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned**

The Optional Protocol

- 18 articles
- It introduces two procedures to strengthen the implementation of the Convention:
 - A. The **individual communication** procedure permits individuals and groups of individuals in a State Party (to the OP) to complain to the Committee on the Rights of Persons with Disabilities that the State has breached one of its obligations under the Convention (Art. 1 OP).
 - B. If the Committee receives reliable information indicating grave or systematic violations of the Convention by a State Party to the OP, an **enquiry** can be opened (Art. 6 OP).

General Obligations

- Article 4 of the CRPD expressly requires Parties to give effect to Convention within their domestic legal orders
- Among other obligations, it requires Parties: to **adopt** legislative, administrative and other measures to implement the Convention; to **abolish** or **amend** existing laws, regulations, customs and practices that discriminate against persons with disabilities; to **refrain** from engaging in any act or practice that is inconsistent with the Convention; to **ensure** that public authorities and institutions act in conformity with the Convention; and to **adopt** an **inclusive** approach to protect and **promote the rights of persons with disabilities in all policies and programmes.**

General Obligations

- The Convention requires:
 - *A scoping exercise to measure compliance with the Convention across laws, bylaws and regulatory schemes.*
 - **Enactment of legislation (amendment of existing acts, repeal of inconsistent legislation...)**
- But also...
 - **Training on disability rights**
 - **Research and development of accessible goods, services and technologies for persons with disabilities**
 - **Accessible information about assistive technology**
- ...and mainstreaming of disability into policy and legislation

General Obligations

Article 4 must be read in conjunction with Article 33 UN CRPD, which recommends States Parties to give due consideration to the establishment or designation of one or more focal points and of a governmental coordination mechanism to facilitate **cross-sectoral and multi-tiered implementation.**

General Obligations

- Article 4 requires the consultation with and **involvement of persons with disabilities** in developing and implementing legislation and policies and in decision-making processes concerning UN CRPD rights



III. General Principles, Specific Obligations and Practical Approaches



General Principles

- **Article 3 enunciates the general principles upon which the UN CRPD is based**
- **Some of the general principles are evident in other articles of general application (e.g. Article 5, non-discrimination and equality; Accessibility, Article 9) or in articles of specific obligation (e.g. Political Participation)**

“ 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”

Unpacking the general principles...



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

- The concept of **personal autonomy** includes the right to establish details of one's identity as a human being, the right to make choices over her/his own body, in all matters relating family and relationships, the right to privacy and the freedom of thought, conscience and religion.
- This principle closely matches with: **Art. 12 (Equal recognition before the law)** which addresses *legal capacity*, and confirms that persons with disabilities “enjoy legal capacity on an equal basis with others in all aspects of life”, with **Art. 23** (Respect for family and home), and with **Art. 18** which recognizes *inter alia* “the rights of persons with disabilities [...] to freedom to choose their residence”

Living independently (Art. 19)

- Article 19 recognises the right of persons with disabilities to **live independently** and be included in the community.
- **Article 19** can be seen as a logical extension of Article 12, in the sense that recognition of legal capacity restores the „power“ of persons with disabilities to decide about their own lives, while the right to independent living paves the way for persons with disabilities to choose how to live their lives
 - ▣ State Parties must ensure legal framework to promote autonomy of persons with disabilities and their full inclusion in society

Equality and Non-Discrimination

Art. 3

(b) Non-discrimination;
[...]

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

(e) Equality of opportunity;
[...]

(g) Equality between men and women (Art. 6)

Art. 5

- “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 [...].”

Equality and Non-Discrimination

Parties are required:

- To **combat any form of discrimination** (as defined by Art. 2), including **multiple discrimination**

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

- To ensure **equality of opportunity**, either by adopting a range of measures usually referred to as **“positive actions”** to compensate for disadvantages, or by providing for specific measures to **remove individual and environmental (physical) barriers** which inhibit participation in society (Art. 5)

Participation and Inclusion in Society

- Participation and inclusion should be understood very broadly
- Participation should be understood well beyond the political participation (and the voting context).
- The principle of participation is further elaborated in **Art. 29** (Participation in political and public life), but miscellaneous articles of the UN CRPD make reference to participation.
- This principle must be read in conjunction with **Arts. 4** and **33**, which envisage participation of people with disabilities to the implementation of the Convention and to the monitoring of the implementation.

Accessibility

- Preamble (para. (v))
- Article 3 on general principles (lett. f)
- Article 4 on general obligations (accessible information, para 1, lett. h)
- Article 21 on access to information (lett. a, c and d)
- Article 31 on accessibility to statistical and research data of relevance for the realization of UN CRPD
- Article 49 on ensuring that UN CRPD is available in accessible formats

Accessibility

- It is one of the key general principles of the Convention
- ‘Accessibility’ means that persons with disabilities can access, on an equal basis with others, to **physical environments, to transportation, to information and communication, including information and communication technologies and systems, and to other facilities and services** open or provided to the public, both in urban and in rural areas. (Art. 9 para. 1)

The UN CRPD makes references to 4 concepts related to accessibility

UNIVERSAL DESIGN

REASONABLE
ACCOMODATION

(Art. 2, Art. 5, Art. 24, Art. 27)

ACCESSIBILITY

USABILITY

AVAILABILITY

(Art. 4 lett. f & g, Art. 9 para 2, lett. f, Art. 26 para 3)

Accessibility

- Accessibility gives rise to specific applications in other substantive articles: **accessibility rights** in the UN CRPD serve the function of facilitating access in various contexts, including generally in public and private spheres
- Specifically the UN CRPD demands Parties to ensure the **access to justice (Art. 13)** and to political decision-making contexts (**Art. 29**).

Art. 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”.

Practical Approaches...



- These principles are ***benchmarks*** against which national law frameworks must be assessed
- These principles must be used to interpret national provisions (consistent interpretation)
 - Trib. Catanzaro - Decr. 9.04.2009
 - Trib. Varese - Decr. 06.10.2009
 - Tribunal Supremo Esp. 282/2009
 - Slovenian Const. Court 13.11.2008
 - Italian Const. Court 80/2010

**THANK YOU
FOR YOUR ATTENTION**

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