



## **The International Convention on the Rights of Persons with Disabilities The case of Spain**

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- **CRPD signed and ratified in 2008** (Gazette 21 April 2008)
  - Art. 10(2) SC: a criterion for interpreting norms relating to basic rights and liberties which are recognized by the Constitution
  - Art. 96(1) SC: once published officially in Spain, international treaties shall constitute part of the internal legal order
  - Art. 49 SC: the care model for people with disabilities is medical/rehabilitation-based
- Art. 4 CRPD
  - States Parties undertake to **adopt all legislative, administrative and other measures to ensure the full exercise by persons with disabilities of all human rights and fundamental freedoms, without any discrimination on grounds of disability.**

- **What notions inspire the CRPD?**

- Model of disability based on human rights (the inherent dignity of the individual)
- Persons with disabilities are subjects in law (autonomy)
  - Legal personality
  - Legal capacity
- Non-discrimination –Equal conditions and opportunities to all other citizens
  - Generalized rights
  - Specific rights
- Full, effective participation and inclusion in society
- Respect for difference – acceptance of persons with disabilities as a manifestation of diversity and the human condition

- **The case of Spain: chronology**

- Future... the legislation to come in 2012 and more
- Present... the legislation in force in 2011 and the Report to the United Nations Committee
- Past... the preparatory work

- *An open, inclusive society must exercise solidarity in altering the environment to welcome persons with disabilities as enriching elements that broaden humanity and contribute to its value, and it should do so by taking account of the intervention that persons with differentiated abilities themselves make (Preamble, Act no. 26/2011)*

## Future

- Act no. 26/2011, of 1 August, seventh additional provision
  - ‘The Government shall, **within one year** from the entry into force of this Act, present to Parliament a legislative Bill for **adapting the rules** of the legal order so as to **implement Article 12** of the International Convention on the Rights of Persons with Disabilities, **in relation to the exercise of legal capacity** by persons with disabilities, **under equal conditions** with all others in every aspect of life. This Bill shall establish the **amendments in legal process required to determine support for such persons with disabilities as may need it in freely taking decisions**’.

- **Other future obligations** contained in Act no. 26/2011
  - Add. prov. 4: The Government shall present a **biennial report** to the Commission on Disability Integration Policies, taking stock and providing indicators of progress in the level of access and inclusion for persons with disabilities in the world of work
  - Add. prov. 5: **Impact assessments for new legislation** shall include the impact of the law on equality of opportunities, non-discrimination and universal access for persons with disabilities
  - Add. prov. 6: Positive action aimed at promoting **access to employment** for persons with limited intellectual ability
  - Add. prov. 8: **Aid for housing communities** to carry out measures and works facilitating access
  - Final provision: within a year, **ensure implementation of the job quota** reserved for persons with disabilities; **evaluate existing measures**

- Another **future obligation** contained in the Concluding Observations of the *United Nations Committee on the Rights of Persons with Disabilities*
  - “The Committee requests the State party to submit its second periodic report by no later than 3 December 2015, and to include therein information on the implementation of the present concluding observations.”

## **Present**

- Legislation to comply with the Convention
  - **Act no. 26/2011**, of 1 August, Adapting Legal Norms to the International Convention on the Rights of Persons with Disabilities
  - **Royal Decree 1276/2011**, of 16 September, Adapting Legal Norms to the International Convention on the Rights of Persons with Disabilities

- **Act no. 26/2011**

- Discards the medical/rehabilitation-based model and **adopts a social perspective geared to rights and abilities**, which sees disability as a complex set of conditions, many of which are aggravated by the social environment.

**Objectives:**

- to facilitate decision-making in every aspect of life, both personal and collective
  - to move towards de-institutionalized personal autonomy
  - to guarantee non-discrimination in a fully inclusive society
- Its **immediate predecessor** is Act no. 51/2003, of 2 December, on Equality of Opportunities, Non-Discrimination and Universal Access for Persons with Disabilities.

- **Law affected by Act no. 26/2011**

- Act no. 51/2003
  - Modifies the legal definition of ‘equality of opportunities’, ‘person with a disability’, ‘civil dialogue’...
- Act no. 27/2007
  - Additional guarantees for the use of sign language
- Act no. 49/2007
  - Regulates offences and penalties relating to equality of opportunities, non-discrimination and universal access for persons with disabilities

- RD 5/2000
  - Offences and penalties in labour relations
- Act no. 30/1979
  - Organ removal and transplant (live donor and recipient)
- Act no. 14/1986 and Act no. 16/2003
  - Non-discrimination on grounds of disability in health care
  - Early detection of disabilities
- Act no. 41/2002
  - Relevant assistance, information in appropriate formats in health care

- Act no. 14/2006
  - Information and consent in appropriate formats for assisted human reproduction techniques
- Act no. 16/2003
  - Non-discrimination on grounds of disability in health care
- Act no. 44/2003 and Act no. 7/2007
  - Increase from 5% to 7% in the recruitment quota for public employment
  - 2% must be persons with mental disabilities

- Act no. 2/1985
  - Special measures of civil protection for persons with disabilities
- Act no. 23/1988
  - Disability is included explicitly and in differentiated forms in the sphere of international cooperation
- Act no. 13/1982
  - Access to housing for persons with disabilities
- Act no. 50/1980
  - Non-discrimination on grounds of disability in the field of insurance – Tougher conditions may not be imposed unless they are justified, proportionate and reasonable, and have been previously and objectively documented

- Act no. 49/1960
  - Measures and work to create access where necessary for the appropriate use of communal facilities
- Act no. 34/2002
  - Level of access to the content of websites serving as support or channels for online social services
- Act no. 39/2007
  - Re-regulation of careers in the armed forces
- Act no. 30/2007
  - 2% of workers with disabilities (or alternative measures) in companies contracted by the public sector

- **RD 1276/2011**

- Sets out in its Preamble an interpretation of Art. 49 of the Spanish Constitution as key to the social model of disability by interpreting it in conjunction with Articles 9(2) SC (material equality), 14 SC (formal equality) and 10(1) SC (human dignity)

- **Law affected by RD 1276/2011**

- RD 1544/2007
  - Amends the basic conditions of accessibility and non-discrimination in access to and use of modes of transport
- RD 1494/2007
  - Regulates the basic conditions for the access of persons with disabilities to technologies, products and services related to the information society and social media



- RD 407/1992
  - Guarantees assistance for persons with disabilities in the basic rules of civil protection to avoid or minimize the adverse effects of the risk
- RD 1546/2004
  - Specific action protocols to guarantee assistance to persons with disabilities in the event of a nuclear emergency
- RD 1564/2010
  - Specific action protocols to guarantee assistance to persons with disabilities in the event of radiation risks
- RD 1123/2000
  - Specific training in matters designed to ensure the safety and protection of persons with disabilities

- Rules on the Organization and Regulation of Notary Services
  - Capacity to serve as a witness
- RD 2070/1990
  - Regulates information and consent in organ donation (live donor)
- RD 1301/2006
  - Regulates information and consent in the donation and acquisition of human cells and tissues
- RD 1088/2005
  - Regulates information and consent in the donation of blood
- RD 223/2004
  - Amends the definition of informed consent in clinical drugs tests

- **Other measures under RD 1276/2011**

- Designates the independent mechanism for promoting, protecting and monitoring CRPD in Spain
- Supply of information to Autonomous Communities

- In compliance with Art. 35 CRPD, Spain was the first country to present a report to the *United Nations Committee on the Rights of Persons with Disabilities*

- Report examined (20 September 2011)
- Concluding Observations (23 September 2011)
- CRPD/C/ESP/CO/1 available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session6.aspx>

- **Positive aspects**

- Approval for Act no. 26/2011 and Act no. 51/2003
- Independent monitoring mechanism
- 3<sup>rd</sup> Action Plan for Persons with Disabilities (2009-2012) and Global Action Strategy for the Employment of Persons with Disabilities (2008-2012)
- High percentage of children with disabilities enrolled in the traditional education system
- Efforts to maintain funding in times of economic crisis for programmes aimed at persons with disabilities

- **Areas of concern 1/3 (selected)**

- Slow development and lack of promotion for the arbitration system provided for in Act no. 49/2007
- non-participation of persons with disabilities and their representatives in designing and evaluating the implementation of legislation, policy and decision-making processes
- decriminalization of voluntary termination of pregnancy, and two specific cases in which the time limits for abortion are extended, if the foetus has a disability
- public programmes and policies on the prevention of gender-based violence do not sufficiently take into consideration the particular situation of women with disabilities
- rates of abuse of children with disabilities

- **Areas of concern 2/3 (selected)**
  - discrimination suffered by air passengers with disabilities
  - guardians representing persons with disabilities deemed “legally incapacitated” may validly consent to termination or withdrawal of medical treatment, nutrition or other life support of those persons
  - no measures have been taken to replace substitute decision-making by supported decision-making in the exercise of legal capacity
  - legal regime allowing the institutionalization of persons with disabilities, including persons with intellectual and psychosocial disabilities (“mental illness”); safeguards only *ex post facto*; abuse of persons with disabilities who are institutionalized in residential centres or psychiatric hospitals
  - persons with disabilities whose legal capacity is not recognized may be subjected to sterilization without their free and informed consent
  - the choice of residence of persons with disabilities is limited by the availability of the necessary services, and those living in residential institutions have no alternative to institutionalization

- **Areas of concern 3/3 (selected)**
  - the law for the promotion of autonomy limits the resources to hire personal assistants only to those persons who have level 3 disabilities and only for education and work
  - parents challenging the placement of their children with disabilities in special education have no possibility of appeal and their only alternative is to educate them at their own expense or pay for the reasonable accommodation of their child in the regular education system
  - overall low rate of employment of persons with disabilities
  - the right to vote of persons with intellectual or psychosocial disabilities can be restricted if the person concerned has been deprived of his or her legal capacity, or has been placed in an institution
  - low level of disaggregated data on persons with disabilities

## Past

- **1<sup>st</sup> National Accessibility Plan, 2004-2012**
- **3<sup>rd</sup> Action Plan for Persons with Disabilities, 2009-2012**
- **Global Action Strategy for the Employment of Persons with Disabilities, 2008-2012**
- **Council of Ministers Agreement, 30 March 2010**
  - Approved the report on the measures necessary for adapting Spanish legislation to the CRPD and recommended to diverse ministerial departments that, within their sphere of competence, they promote the reforms undertaken.

- Given its complexity, the report devotes a **special section to the question of legal capacity** and the legal transactions that will require modification in order to give meaning to Article 12 CRPD.
- The section containing the conclusions sets out the legal amendments that were subsequently implemented in the legislation currently in force.

- This report began to take shape on 10 July 2009, when the Council of Ministers approved a proposal from the Minister of Health and Social Policies to set up an **interministerial working group** to carry out a thorough study of Spanish legislation with a view to aligning it to the CRPD.
- This working group was put together to **analyse legislation and, where necessary, make appropriate technical adjustments** to adapt it and bring it into line with the provisions of the Convention.
- These adjustments were to be performed within a **global perspective** so that the Convention would reach into every sector of positive law in Spain.

- **The working group was constituted on 13 October 2009** at the Ministry of Health and Social Policies, and tasked with analysing the current state of Spanish legislation and the methods to be adopted for drawing up a final comparative study of national rules and, where necessary, drafting legislative amendments.
- From the outset, **the study carried out by the “Bartolomé de las Casas” Institute of Human Rights at Carlos III University in Madrid was taken into account.**

- **BCIHR Report**

- Published as a collective work (does not include all the texts in the report)
  - Patricia Cuenca (ed.), *Estudios sobre el Impacto de la Convention Internacional sobre los Derechos de las Personas con Discapacidad en el Ordenamiento Jurídico Español*, Dykinson, Madrid, 2010, 653 pages.
- Individual research (from doctoral dissertations to academic papers), new lines of investigation (HIV and Disability), international networks, law clinics on disability.

– The multidisciplinary report covers all aspects of the Spanish legal system:

- General Reflections on the Model (Rafael de Asís)
- Constitutional Rights (Patricia Cuenca)
- Legal Capacity (María José Santos)
- Definition of Disability (Roberto Jiménez)
- Health and Research (Miguel Angel Ramiro)
- Freedom and Security (Diego Blázquez)
- Labour Relations (Cristina Aragón)
- Access to Justice (José Antonio Colmenero)
- Culture, Leisure and Sport (José Vida)
- Taxation (Hugo López)
- Education (Carlos Lema)
- Audiovisual Media (María del Carmen Barranco)
- Anti-Discrimination Law (Silvina Ribotta)
- Mothers (María Ángeles Bengoechea)
- Immigration (Oscar Pérez)
- Childhood (Ignacio Campoy, Agustina Palacios)
- Ageing (María del Carmen Barranco)
- Collecting Statistical Data (Francisco Bariffi)

– Joint work by University + Civil Society

- Example of civil dialogue: the draft texts were discussed with representatives of persons with disabilities (Foro de Vida Independiente, CERMI, Fundación ONCE...)

– Third-party funding

- Private: Fundación ONCE, Fundación Gregorio Peces-Barba
- Public: Ministry of Education and Science, Community of Madrid, Ministry of Science and Innovation, Programme CONSOLIDER – Ingenio 2010

## Conclusions

- Without a proper underlying study (report + agreement), the right progress will not be made towards legal reforms
- Diversity of participants: Administration, Civil Society, University
- Legal reform across the board
- Some fields should have been explored in more depth
- The constitutionality of some laws is still challenged (LO 2/2010)