

• What notions inspire the CRPD?

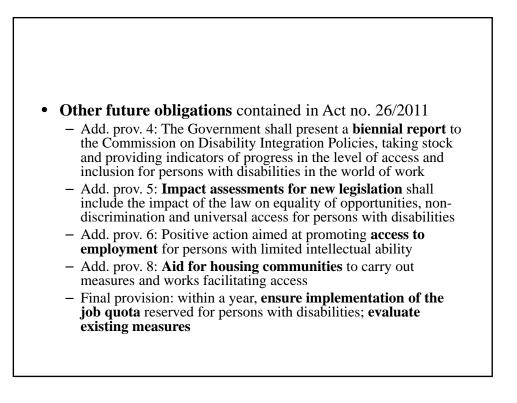
- Model of disability based on human rights (the inherent dignity of the individual)
- Persons with disabilities are subjects in law (autonomy)
 - Legal personality
 - Legal capacity
- Non-discrimination Equal conditions and opportunities to all other citizens
 - Generalized rights
 - Specific rights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

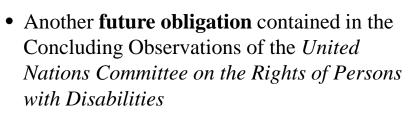
- The case of Spain: chronology
 - Future... the legislation to come in 2012 and more
 - Present... the legislation in force in 2011 and the Report to the United Nations Committee
 - Past... the preparatory work
- An open, inclusive society must exercise solidarity in altering the environment to welcome 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

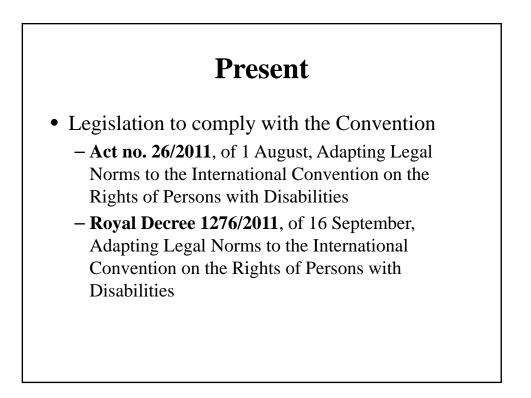
• Act no. 26/2011, of 1 August, seventh additional provision

- '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'.





 "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."



• Act no. 26/2011

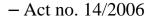
- Discards the medical/rehabilitation-based model and adopts a social perspective geared to rights and abilities, which sees disability as a complex set of conditions, many of which are aggravated by the social environment.
 Objectives:
 - to facilitate decision-making in every aspect of life, both personal 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.



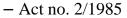
- Act no. 51/2003
 - Modifies the legal definition of 'equality of opportunities', 'person with a disability', 'civil dialogue'...
- Act no. 27/2007
 - Additional guarantees for the use of sign language
- Act no. 49/2007
 - Regulates offences and penalties relating to equality of opportunities, non-discrimination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

- RD 5/2000

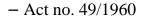
- Offences and penalties in labour relations
- Act no. 30/1979
 - Organ removal and transplant (live donor and recipient)
- Act no. 14/1986 and Act no. 16/2003
 - Non-discrimination on grounds of disability in health care
 - Early detection of disabilities
- Act no. 41/2002
 - Relevant assistance, information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



- 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



- 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



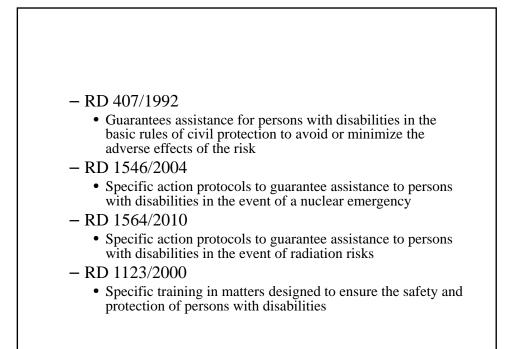
- Measures and work to create access where necessary for the appropriate use of communal facilities
- Act no. 34/2002
 - Level of access to the content of websites serving as support or channels for online social services
- Act no. 39/2007
 - Re-regulation of careers in the armed forces
- Act no. 30/2007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

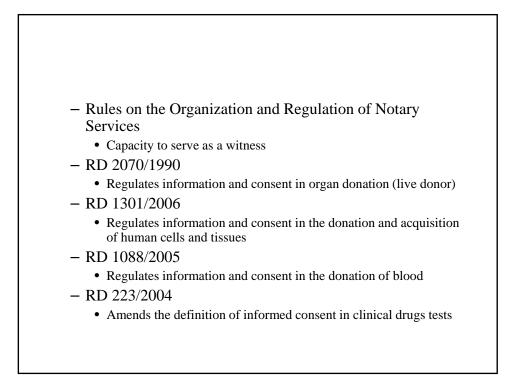
• RD 1276/2011

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

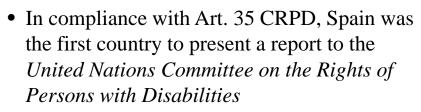
- RD 1544/2007
 - Amends the basic conditions of accessibility and nondiscrimination in access to and use of modes of transport
- RD 1494/2007
 - Regulates the basic conditions for the access of persons with disabilities to technologies, products and services related to the information society and social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





• Other measures under RD 1276/2011

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



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

• Positive aspects

- Approval for Act no. 26/2011 and Act no. 51/2003
- Independent monitoring mechanism
- 3rd 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 decisionmaking 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)

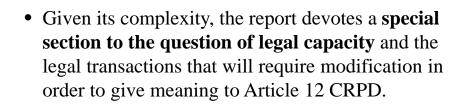
- discrimination suffered by air passengers with disabilities
- guardians representing persons with disabilities deemed "legally incapacitated" may validly consent to termination or withdrawal of medical treatment, nutrition or other life support of those persons
- no measures have been taken to replace 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)

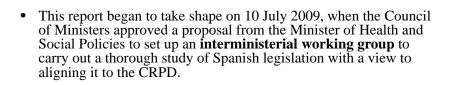
- the law for the promotion of autonomy limits the resources to hire personal assistants only to those persons who have level 3 disabilities and only for education and work
- parents challenging the placement of their children with disabilities in special education have no possibility of appeal and their 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



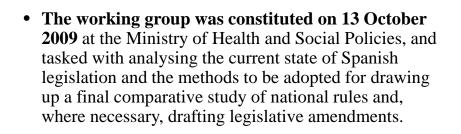
- 1st National Accessibility Plan, 2004-2012
- 3rd Action Plan for Persons with Disabilities, 2009-2012
- Global Action Strategy for the Employment of Persons with Disabilities, 2008-2012
- Council of Ministers Agreement, 30 March 2010
 - Approved the report on the measures necessary for adapting Spanish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



• The section containing the conclusions sets out the legal amendments that were subsequently implemented in the legislation currently in force.



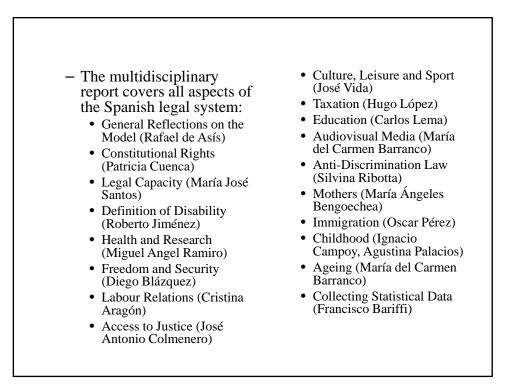
- This working group was put together to **analyse legislation and**, where necessary, **make appropriate technical adjustments** to adapt it and bring it into line with the provisions of the Convention.
- These adjustments were to be performed within a **global perspective** so that the Convention would reach into every sector of positive law in Spain.

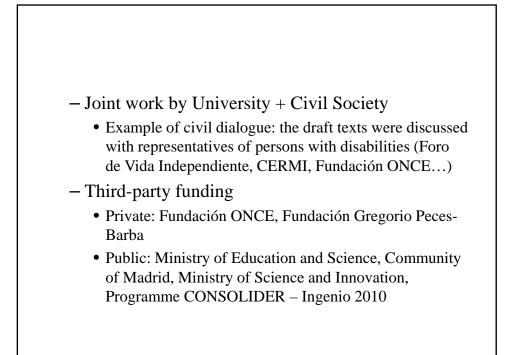


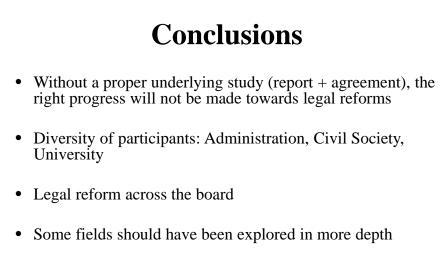
• From the outset, **the study carried out by the "Bartolomé de las Casas" Institute of Human Rights at Carlos III University in Madrid was taken into account**.

• 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 constitutionality of some laws is still challenged (LO 2/2010)