

IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES:

A Huge Challenge, A Huge Opportunity

STEFAN TRÖMEL, Executive Director of the International Disability Alliance

IDA (the International Disability Alliance) is the umbrella network of organisations of persons with disabilities, currently encompassing 9 global organisations and 4 regional organisations. IDA, which played a leading role among disability organisations during the negotiation process of the CRPD, has as its main mission to promote the full and effective implementation of the Convention. Information on IDA can be found on its website: www.internationaldisabilityalliance.org.



UN PHOTO/CHRISTOPHER HERWIG

The Convention on the Rights of Persons with Disabilities (CRPD) entered into force on 3 May 2008 and has up to now been ratified by 82 States and signed by another 62 States. An Optional Protocol, allowing for individual communications and inquiry procedures, has also entered into force, which so far has been ratified by 51 States Parties.

The CRPD was negotiated between 2002-2006 in the framework of an Ad Hoc Committee established by the UN General Assembly. The negotiation process was characterised not only by the high level of consensus among all States, which led to its unanimous adoption, but also by the very active participation of organisations of persons with disabilities.

Already at the outset of the negotiation process, organisations of persons with disabilities joined forces and established the International Disability Caucus, an informal network of international, regional and national organisations that was to become a key player in the negotiation process. Its slogan 'Nothing about us without us' was a clear message to everybody that a convention addressing the rights of persons with disabilities could not be negotiated without their involvement.

Some doubts were expressed at the beginning of the process on the need for such a thematic convention in view of the fact that the rights of persons with disabilities were already covered, albeit implicitly, in the existing human rights treaties. However, a very timely report which had been commissioned by then High Commissioner for Human Rights Ms Mary Robinson clearly showed the very little attention the UN human rights system had so far paid to the rights of persons with disabilities. This analysis led the authors of the study to make the case for a thematic convention. It insisted that such a convention would not be detrimental to the mainstreaming of the rights of persons with disabilities in the UN system, as some had argued, but would instead contribute to increased attention within the overall UN human rights system to persons with disabilities.

States were permanently reminded during the negotiation process that the purpose of the convention was not to create new rights for persons with disabilities, but to ensure that persons with disabilities could enjoy the rights already established at the international level on an equal basis with others.

The Convention on the Rights of Persons with Disabilities is a comprehensive treaty. While containing very strong anti-discrimination provisions, it is not a purely anti-discrimination treaty like the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Elimination of Racial Discrimination (CERD). It is more similar in scope to the Convention on the Rights of the Child (CRC). It incorporates a very advanced approach to disability and some of its provisions, especially in the area of legal capacity of persons with disabilities, are groundbreaking and imply the need for legislative changes in all countries of the world.

Being the first human rights treaty adopted in the 21st century, it also incorporates a number of novelties compared to previous human rights treaties, including:

- A specific article on international cooperation which, while insisting that the fundamental obligation to ensure the human rights of persons with disabilities lies with each State Party, highlights the important role international co-operation can play to accelerate the enjoyment of human rights in developing countries, thus establishing also an obligation on States that provide international assistance to take into account the rights of persons with disabilities.
- An obligation that States Parties establish a national infrastructure for the implementation and monitoring of the Convention, in particular the establishment of one or more independent national mechanisms which should take into account the Paris Principles relating to the Status of National Institutions.¹
- The explicit reference to civil society, in particular to representative organisations of persons with disabilities, and their key role in the implementation and monitoring of the Convention.
- The interrelated, indivisible and interdependent nature of civil, political, economic, social and cultural rights is not only mentioned in the preamble of the Convention, but also reflected in the way in which the different types of rights are intermingled, avoiding any notion of first- and second-class rights.
- Accessibility being a key element throughout the Convention text, it is also reflected in the fact that all articles do not just have numbers but also titles, and it is required that the treaty text be made available in alternative formats.

¹ Adopted by General Assembly *Resolution 48/134* of 20 December 1993.

The Conference of States Parties to the CRPD, which has already met twice and which will continue to meet on an annual basis, is not limited in its role to the election of the members of the Committee on the Rights of Persons with Disabilities,² but has also a more substantive nature.

The Committee, the treaty body established by the Convention to monitor its implementation, has held three sessions so far in Geneva and has adopted its rules of procedure, working methods and reporting guidelines. The Committee currently comprises 12 experts, but the number will increase to 18 in January 2011. Elections will be held during the third Conference of States Parties, which will take place in New York on 1-3 September 2010.

The first reports from States Parties are due to be submitted in June 2010, two years after the entry into force of the CRPD for the first twenty States Parties, and it is expected that the first examination of State reports by the Committee will be scheduled for February 2011.

The International Disability Alliance (IDA) has been closely monitoring the work of the Committee and has as its main goal to ensure that national organisations of persons with disabilities are provided with the information and capacity to engage successfully in the reporting process of the Committee. The work done by other NGOs, in particular in the context of the Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women, has clearly been inspiring to define our future work.

Moreover, IDA is working towards increased attention to the rights of persons with disabilities in the context of other UN human rights treaties. For this purpose, IDA provides to its members and all interested stakeholders a thorough disability-analysis of all documents presented to as well as produced by the different treaty bodies. Moreover, IDA is also following closely the drafting of new General Comments by the different UN human rights treaty bodies to ensure adequate attention to the rights of persons with disabilities and consistency with the provisions of the Convention. The General Comment on non-discrimination recently adopted by the Committee on Economic, Social and Cultural Rights incorporated contributions submitted by IDA.

IDA is promoting the mainstreaming of the rights of persons with disabilities in the Human Rights Council with a special focus on the universal periodic review (UPR) and on the role of the special procedures of the Council. The Council resolution adopted in 2008 (A/HRC/RES/7/9) requests all special procedures to mainstream the rights of persons with disabilities in their work.

² The human rights treaty body established by the Convention to monitor State Parties' implementation.

IDA supports the 'Group of States Friends of the CRPD', a cross-regional grouping of States co-chaired by Mexico and New Zealand, that has contributed to the increasing attention by the Human Rights Council to the rights of persons with disabilities, not only through the annual resolution on the rights of persons with disabilities adopted at the March session, but also by including references to persons with disabilities in other relevant resolutions.

Following a very successful seminar on monitoring the rights of persons with disabilities held in Geneva in January of this year, IDA is currently producing a guidance document targeting national organisations of persons with disabilities,³ which will provide them with information on how to engage in the reporting process of the Committee, but also with the other relevant UN human rights treaty bodies as well as other UN human rights mechanisms.

The CRPD has explicitly put persons with disabilities on the human rights agenda. This is undoubtedly leading to a significant increase in the attention to the rights of persons with disabilities among mainstream human rights organisations, national human rights institutions, as well as the relevant human rights departments of governments. It is important to ensure that this increased attention is done in a way which is consistent with the CRPD, and with the full involvement of organisations of persons with disabilities. While the rights of persons with disabilities are a relatively uncontroversial issue, the main challenges to overcome are invisibility, ignorance and prejudice.

The CRPD also means the need for change for organisations of persons with disabilities, which need to acquire new skills and become familiar with new mechanisms. Organisations of persons with disabilities need to consider themselves as human rights organisations and actively participate in all mainstream human rights processes at national, regional and international levels, a participation that usually will be more effective by joining existing coalitions of human rights organisations. Undoubtedly the UPR provides a unique opportunity in such a process of alliance building.

The CRPD has filled a gap in the human rights architecture by seeking to ensure that the 650 million persons with disabilities, 10% of the world population, enjoy their human rights on an equal basis with others. The CRPD's full implementation requires the active engagement by all stakeholders and the involvement of organisations of persons with disabilities in all stages of the process. ■

³ The guidance document will be available through this link: www.internationaldisabilityalliance.org/projects-and-events/guidance-document-on-parallel-reporting

Committee on Rights of Persons with Disabilities holds 3rd session

The 3rd session of the Committee on the Rights of Persons with Disabilities (the Committee), which took place from 22-26 February 2010, was held mostly in private session, with a public meeting only on 26 February 2010 with States parties to the UN Convention on the Rights of Persons with Disabilities (the Convention), UN agencies and NGOs to discuss the reporting obligations of States parties to the Convention.¹

Committee Chairperson Mr Ron McCallum highlighted the Committee's reporting Guidelines² for States as 'an essential part of the reporting mechanism'. The Committee also emphasised the importance of States establishing national monitoring mechanisms under article 33 of the Convention to assist them in their reporting obligations, as well as the participation of civil society in the monitoring process.

In the ensuing dialogue with the Committee, States were particularly interested in the possible elaboration by the Committee of general comments on specific articles of the Convention to assist them in their reporting obligations. This included a possible general comment on Article 12 (legal capacity of persons with disabilities) following the Committee's day of general discussion on this article at its 2nd session in October 2009. Committee members expressed their hope to continue the Committee's systematic analysis of articles of the Convention, highlighting plans to hold a second day of general discussion on the issue of 'accessibility' under Article 9 during the Committee's 4th session on 6 October 2010.³

Mr McCallum also announced the election of Ms Maria Soledad Cisternas as the Committee's Special Rapporteur on individual communications under the Optional Protocol to the Convention, and that, upon the 80th ratification of the Convention by France on 18 February 2010, the Committee's membership will increase from 12 to 18 members.

¹ According to Article 35 of the Convention, States parties are required to send their initial reports to the Committee within two years of ratifying the Convention. 20 States will be legally required to report to the Committee by May 2010.

² Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities. UN Doc. CRPD/C/2/3/.

³ The 4th session is scheduled to take place from 4 to 8 October 2010.