

## **3 The United Nations Convention on the Rights of Persons with Disabilities**

### **Learning Goals**

The participants will gain a basic knowledge of:

- the text of the Convention on the Rights of Persons with Disabilities;
- the main concepts of legal protection and support for disability policies;
- the process of ratifying, monitoring and implementing the Convention.

### **3.1 The Structure, Principles and Obligations of the Convention**

#### **3.1.1 History of the Convention**

*As far back as 1987 and 1989 Italy and Sweden had put forward a proposal for a convention, which was rejected by the United Nations. Following the approval of a document at the United Nations World Conference against Racism in Durban (South Africa) in September 2001, Mexico presented a Resolution, which was approved by the General Assembly (Resolution 56/168, 19 December 2001), to form an Ad Hoc Committee that would verify the need to draw up a Convention on the Rights of Persons with Disabilities. At the 3<sup>rd</sup> session of the AHC (June 2003) it was decided that the Convention was needed and a working group was appointed to prepare a draft text (February 2004). At the 6<sup>th</sup> session of the AHC (August 2005) the chairman undertook to prepare a text summarizing the discussion so far (October 2005). At the 7<sup>th</sup> and 8<sup>th</sup> sessions the text was negotiated and approved (25 August 2006); then it was submitted to the General Assembly which finally approved it on December 13 2006. This was the United Nations Convention approved in the shortest ever time and with the greatest participation of civil society: throughout the writing and negotiating process the International Disability Caucus (which involved around 70 associations of people with disabilities and their families) played an important and at times decisive role, mobilizing energies from all over the world. In the August 2006 session 800 representatives of non-governmental organizations were present and 50 official government delegations included people with disabilities as experts.*

### **3.1.2 Description of the structure of the Convention**

*The Convention on the Rights of Persons with Disabilities consists of a preamble, which includes the motivations, references to documents and general considerations that inspired the writing of the convention, and the 50 articles, which can be divided into: general principles and obligations that apply to all the articles (Arts. 1-7); specific obligations that concern particular areas (Arts. 9-32); the national (Art. 33) and international monitoring system, with the establishment and regulation of the international Committee (Arts. 34-40); the procedures for entry into force and the amendment system (Arts. 35-50). The Convention is accompanied by the Optional Protocol, which discusses individual appeals (Arts. 1-8) and the international Committee's inquiries (Art. 6).*

### **3.1.3 The purpose, definitions and principles of the Convention (Arts. 1-3)**

*The first three articles of the Convention describe the purpose (Art. 1), essential definitions (Art. 2) and principles (Art. 3) on which the whole system is based. It is important to link these articles to the human rights-based approach (see chapter 2). In outlining the Convention it is equally important to bear in mind the motivating and clarifying points contained in the Preamble. Given the universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms, it is important to consider them, where necessary, throughout the illustration of the contents of the Convention. Furthermore, given the particular nature of the discrimination and unequal opportunities faced by people with disabilities, the responsibility of the state to treat all citizens with disabilities the same as other people can affect both individuals (who must in any case be protected) and behaviour and barriers related to society as a whole.*

### **3.1.4 Obligations of states (Art. 4)**

*Article 4 lists and defines the obligations that states take on in ratifying the Convention. These commitments make up an essential frame of reference to which each specific right must be linked. Subsection 2 underlines that, although the convention is to be applied progressively with regard to economic and social rights, this does not prejudice recognized rights "that are immediately applicable according to international law." This means that individuals must in any case not be discriminated against and are protected by the Convention. There is an important recognition of the role of organizations of people with disabilities "in the development and implementation of legislation and policies to implement the (...) Convention, and in other decision-making processes concerning issues relating to persons with disabilities."*

### **3.1.5 Knowledge of other United Nations conventions**

*The Convention on the Rights of Persons with Disabilities was written with a view to recognizing the rights that were already laid out in previous United Nations conventions, rather than introducing new rights. This means that in interpreting the text it is important to keep the text of the other conventions in mind.*

## **3.2 Recognized Rights and Compliance Methods**

### **3.2.1 Equal treatment and non-discrimination (Art. 5)**

*The Convention recognizes 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.” States ratifying the Convention “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.” “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” (Art. 2). From a legal perspective, discrimination means to differentiate between two people or treat them differently when there is actually no significant difference between them or to treat situations that are actually different in the same way. It is important to understand how the comparison between a person with a disability and another person is made, in order to reveal the discriminatory treatment. Discrimination can be direct or indirect. Direct discrimination is when a person is treated less favourably than another is, has been or would be treated in a similar situation, because of his or her disability. Indirect discrimination is when an apparently neutral provision, criterion or practice could particularly disadvantage people with disabilities compared with others. It is important to provide appropriate and easily understandable examples in the context of the country in which the course is being run.*

### **3.2.2 Reasonable accommodation (Art. 5)**

*The Convention states that “in order to promote equality and eliminate discrimination,” ratifying states “shall take all appropriate steps to ensure that reasonable accommodation is provided” to victims of violations of the human rights recognized in the Convention. “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” (Art. 2). The concept of reasonable accommodation varies from country to country, according to cultural considerations, the legal protection system, rights protection policies and existing legislation. The interpretation of the word “reasonable” is influenced by cultural and material factors (i.e. what action is considered reasonable in a particular country for a person with a disability), as is the concept of “disproportionate or undue burden” (which depends on the wealth of the country, the resources that are available and therefore investable, and the level of rights recognition); equally, the interpretation of the word “accommodation” can vary on the basis of, for example, the technology available. It should nevertheless be remembered that based on article 4 subsection 2 of the Convention (see section 3.1.4) the lack of financial resources cannot prejudice recognized rights “that are immediately applicable according to international law.” Furthermore, the “denial of reasonable accommodation” is considered discrimination (Art. 2).*

### **3.2.3 Recognition of rights present in other conventions (Arts. 10, 13-18, 29-30)**

*In the Convention there are many articles that recognize rights already recognized in other United Nations conventions, while nevertheless introducing appropriate methods of access to and enjoyment of these rights. When outlining these articles the other conventions must be kept in mind.*

### **3.2.4 New rights: Accessibility, Living Independently and Personal Mobility**

*The Convention introduces protection for rights that can only be recognized for people with disabilities, specifically “accessibility” (Art. 9), “living independently” (Art. 19) and “personal mobility” (Art. 20). This means that it actually recognizes new forms of legal protection tied to the particular nature of the discrimination and unequal opportunity faced by people with disabilities. Of particular importance is the overcoming of institutionalizing practices (Art. 19), which can be connected to the right to not be subjected to torture or cruel, inhuman or degrading treatment or punishment (Art. 15).*

## **3.3 Analysis of the Articles**

### **3.3.1 Structural articles that spell out obligations and protections (Arts. 1-5)**

*It is important to show that the reading and interpretation of the Convention is based on the understanding of what can be defined as the “structural” articles, which must be used as a basis for explaining and interpreting the obligations and protections fundamental to the rights recognized in each individual article. These articles must, therefore, always be kept in mind when outlining the contents of the Convention.*

### **3.3.2 Topic areas**

#### **3.3.2.1 Multiple discrimination (Arts. 6 and 7)**

*The Convention dedicates particular protection to people with disabilities who are subject to greater risk of discrimination, namely women (Art. 6) and children (Art. 7). These two articles must, therefore, be used as legal instruments that reinforce the protection of women and children with disabilities in all the articles of the Convention. Furthermore, given the existence of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, these documents interact with the contents of the Convention. In particular, the principles of inclusion and mainstreaming of actions and policies aimed at children with disabilities are reinforced, while the 1989 Convention relegated these principles to article 23, with a logic that was still based on special care. With regard to the protection of the rights of children with disabilities, subsections 3, 4, and 5 of article 23 (Respect for home and the family) should also be kept in mind.*

### 3.3.2.2 Physical access and Universal Design (Arts. 9, 18-21)

*Article 9 of the Convention requires ratifying states to “take appropriate measures to ensure to persons with disabilities access (...) 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” in order to “enable persons with disabilities to live independently and participate fully in all aspects of life.” This article must be linked to articles 19 (Living independently and being included in the community) and 20 (Personal mobility), as well as articles 18 (Liberty of movement and nationality) and 21 (Freedom of expression and opinion, and access to information).*

### 3.3.2.3 Access to rights and social services (Arts. 24-28)

#### 3.3.2.3.1 Education (Art. 24)

*The convention requires ratifying states to recognize “the right of persons with disabilities to education,” “without discrimination and on the basis of equal opportunity” and to “ensure an inclusive education system at all levels.” The stated aims of education are important: “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”; “development (...) of (...) personality, talents and creativity, as well as (...) mental and physical abilities” and “enabling persons with disabilities to participate effectively in a free society.”*

#### 3.3.2.3.2 Health (Art. 25)

*The Convention confirms “that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability” and requires ratifying states to “take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive.” Ratifying states must “provide persons with disabilities with the same range, quality and standard of (...) health care and programmes as provided to other persons,” and “provide those health services needed by persons with disabilities specifically because of their disabilities,” “as close as possible to people’s own communities, including in rural areas.”*

#### 3.3.2.3.3 Abilitation and rehabilitation (Art. 26)

*The convention commits ratifying states to taking “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.” This requires the organization, strengthening and extension of “comprehensive abilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services.” Abilitation and rehabilitation must “begin at the earliest possible stage” and be “based on the multidisciplinary assessment of individual needs and strengths;” “support participation and inclusion in the community and all aspects of society” and be “voluntary” and “available to persons with disabilities as close as possible to their own communities.”*

#### 3.3.2.3.4 Work and employment (Art. 27)

*The convention commits ratifying states to recognizing “the right of persons with disabilities to work, on an equal basis with others,” including “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.” Ratifying states “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.”*

#### 3.3.2.3.5 Adequate standard of living and social protection (Art. 28)

*The convention commits ratifying states to recognizing “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.” Ratifying states must ensure “equal access (...) to clean water services, and (...) ensure access to (...) services, devices and other assistance for disability-related needs,” “access (...) to social protection programmes and poverty reduction programmes” and “access (...) to assistance from the State with disability-related expenses (...), to public housing programmes (...) [and] to retirement benefits and programmes.”*

#### 3.3.2.4 Protection of the private sphere (Arts. 19, 22-23)

*Taking the right to independent living and social inclusion as a starting point (Art. 19), ratifying states recognize the right of people with disabilities to an appropriate 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.” Article 23 recognizes “the right (...) to marry and to found a family,” “to decide freely and responsibly on the number (...) of their children” and to maintain “their fertility on an equal basis with others.”*

#### 3.3.2.5 Rights taken from other conventions (Arts. 10, 13-18, 29-30)

*The right to life (Art. 10), access to justice (Art. 13), liberty and security of the person (Art. 14), the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Art. 15), the right to not be subjected to exploitation, violence and abuse (Art. 16), the protection of the integrity of the person (Art. 17), liberty of movement and nationality (Art. 18), participation in political and public life (Art. 29) and participation in cultural life, recreation, leisure and sport (Art. 30) are all rights taken from other conventions, but at last also attributed to people with disabilities.*

#### 3.3.2.6 Systemic articles (Arts. 8, 12, 31)

*The Convention identifies some areas that play an essential role in supporting the change in approach to people with disabilities as well as in transforming the social stigma attached to them.*

##### 3.3.2.6.1 Awareness-raising (Art. 8)

*In order to transform society it is vital to raise awareness of the discrimination and unequal opportunities faced by people with disabilities. The Convention requires ratifying states to “adopt immediate, effective and appropriate measures (...) 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 (...), to combat stereotypes, prejudices and harmful practices (...) [and] promote awareness of the capabilities and contributions of persons with disabilities.” The mass media, public awareness campaigns and correct information for children play an essential role, which is favoured by early and correct information about the conditions of people with disabilities.*



#### 3.3.2.6.2 Equal recognition before the law (Art. 12)

*The Convention also introduces a profound innovation in the area of legal protection for people who cannot represent themselves. It obliges ratifying states to protect all people equally before the law and to ensure support for this right by tying it to the respect for human rights. This means that any treatment of people who are unable to represent themselves will not be allowed to violate the norms contained in both the Convention and the international human rights legislation. This implies a progressive change in services and treatments, which will have to overcome practices of institutionalization and forms of rights protection limited solely to inheritances and will introduce new attention to their quality of life. This also applies for people who are temporarily unable to represent themselves such as people subject to compulsory psychiatric treatment.*

#### 3.3.2.6.3 Statistics and data collection (Art. 31)

*Collection of statistics and data related to the aims of the Convention contributes to building a different view of the conditions of people with disabilities. The Convention requires ratifying states “to collect appropriate information (...) to enable them to formulate and implement policies to give effect to the present Convention.” It is important to establish a new data collection and organization methodology based on the survey of discrimination and unequal opportunities in access to goods, services and rights. “The information collected (...) shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties’ obligations (...) and to identify and address the barriers faced by persons with disabilities in exercising their rights.” It is equally important that the processing and assessment of these data be tied to the monitoring of the Convention and the development of policies aimed at people with disabilities. It is useful to promote research to highlight the fact that people with disabilities must be able to take advantage of actions for both the development assistance and the eradication of poverty.*

### 3.3.2.7 International cooperation and emergencies (Arts. 11 and 32)

*It is particularly important that rich ratifying states use their resources for international cooperation and the promotion of human rights for people with disabilities. At the international level, this involves a “twin-track approach”: increasing the resources allotted to people with disabilities and inserting the theme of disability in all international cooperative projects and programmes. Article 32 of the Convention commits states to “ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;*

*facilitating and supporting capacity-building (...), facilitating cooperation in research and access to scientific and technical knowledge;*

*providing (...) technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies” (Art. 32). Ratifying states must “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” (Art. 11). All these cooperative measures must be carried out “in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities” (Art. 32).*

## **3.4 Ratification, Monitoring and Implementation**

### **3.4.1 Ratification process**

*The ratification process provides for the Convention to enter into force when 20 countries have ratified it, whereas for the Optional Protocol only 10 countries are required. Ratification involves signing the Convention and Optional Protocol as well as an institutional process involving the approval of a national law - varying according to each country’s institutional system - which adopts the Convention; then, it should be checked that the Convention fits with national legislation, and, if it does not, the latter will have to be modified. The Convention also recognizes the capacity of regional integration organizations, such as the European Communities, in the ratification process (Art. 44).*

#### 3.4.2.1 National monitoring systems (art. 33)

*The Convention requires ratifying states to create a disability policy monitoring system by designating “one or more focal points” and to “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.” A monitoring system based on data collection (see section 3.3.2.6.3) related to the application of the Convention allows the state to be more directly committed to developing a Disability Action Plan, a vital instrument for supporting disability policies. This action plan should be linked to national development plans or the PRSP. Here, as elsewhere, “persons with disabilities and their representative organizations (...) shall be involved and participate fully in the monitoring process.”*

#### 3.4.2.2 National reports (Arts. 35-36)

*The Convention commits every ratifying state to presenting to the United Nations “a comprehensive report on measures taken to give effect to its obligations (...) and on the progress made” towards adopting the rights included in the Convention. The first report must be presented within two years of ratification and subsequent reports at least every four years after that. Ratifying states, in preparing these reports, “shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations” (Arts. 35 and 4, subsection 3). Should organizations of people with disabilities not consider their government’s report complete, they can present their own supplementary report.*

#### 3.4.2.3 International monitoring (Arts. 34-40)

*The Convention institutes the Committee on the Rights of Persons with Disabilities, with the task of receiving, examining and making suggestions and general recommendations for the national reports on the application of the Convention, establishing guidelines for the contents of reports, assisting states in the correct drafting of reports and requesting the intervention of other specialized agencies where necessary. Where a state has not presented a report it can press the non-complying country, to the point of examining other reports from that country. The Committee submits reports on its activities every two years to the General Assembly and the Economic and Social Council, in which it “may make suggestions and general recommendations” (Art. 39). A country’s movement of people with disabilities, where it has experts with international experience in disability and human rights, can ask the government to present its candidature to the international Committee.*

#### 3.4.2.3.1 The reform of Treaty Bodies and the UN Human Rights Council

*The United Nations is currently reforming the monitoring system for all its conventions, in order to create a single monitoring strategy; it is likely that there are also going to be changes to the international Committee of the Convention on the Rights of Persons with Disabilities in the near future. In any case, it is important to develop the relationship between international monitoring systems and the UN Human Rights Council (see section 1.3.2.2).*

### **3.4.3 Implementation**

#### 3.4.3.1 The Convention and disability policies

*The impact of the Convention on disability policies will be important both for countries that already have relevant legislation and for those that do not or have only very weak legislation. When ratifying the Convention each country must examine the existing national legislation to check for conformity with the norms of the Convention, and make modifications if necessary. This is an early opportunity for the Organizations of people with disabilities to communicate with the government and relevant institutions, as these organizations must be involved in this process (see Art. 4 subsection 3, quoted in section 3.1.4). This principle also applies in the later stages of implementation, above all concerning the national reports that governments must periodically present to the Committee on the Rights of Persons with Disabilities. These procedures give the country's Organizations of people with disabilities the chance to press the government to draw up a national disability plan and oversee its application.*

#### 3.4.3.2 The relationship between the monitoring system and disability policies

*A further opportunity to request the establishment of a national disability plan is tied to the construction of the national monitoring system (see section 3.4), which should define the various areas of action on which to develop and verify the effectiveness and progress of human rights policies. It is important to link the monitoring system to, for example, international funding tied to MDGs and therefore to the PRSP. The more monitoring is tied to national and local development policies, the more it will be effective. It is clear, in any case, that the important point is the involvement of the Organizations of people with disabilities in the definition of policies (see section 3.1.4).*

### **3.5 The Opportunities of the Optional Protocol**

#### **3.5.1 Individual or group communications (Protocol Arts. 1-8)**

*The Optional Protocol contains further participation and checking instruments, and its ratification should therefore be strongly supported. Of particular significance are the individual or group communications that can be sent to the international Committee, which then starts a procedure for checking the facts presented in the communication, up to the point of censuring non-complying states.*

#### **3.5.2 Inquiries (Protocol Art. 6)**

*If the individual or group communications are verified, the international Committee can carry out an inquiry into the non-complying state. This process can make the actual conditions of the country's people with disabilities visible at a national and international level. Indeed, violating the norms of a United Nations Convention is considered more serious than violating national legislation, partly because of the international visibility that an inquiry causes.*