

THE MOVEMENT TO INCLUDE PEOPLE WITH DISABILITIES IN A HUMAN RIGHTS FRAMEWORK

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INTRODUCTION

On 16 November 1999, investigators from Disability Rights International (DRI)¹ and human rights activists from Mexico infiltrated a state-run mental hospital in Hidalgo, Mexico. There, hundreds of patients were crammed into small rooms, with no heating (temperatures were around seven degrees Celsius) and no clothes, surrounded by their own urine and faeces, living in atrocious conditions. As shocking as it might seem, this was not the first time DRI investigators had witnessed such abuses. It was however, the first time they were able to bring their findings to international attention, as their report, Human Rights & Mental Health: Mexico, brought world media attention for the human rights of people with disabilities segregated in psychiatric institutions. Since

then, DRI has investigated and exposed human rights abuses of children and adults detained in institutions² and orphanages in three dozen countries around the world.³

Building on its international media campaign, DRI has worked for 20 years to add a new criterion – the treatment of citizens with disabilities – to the list of human rights litmus tests used when judging whether a country should be considered a member in good standing of the world community.⁴ DRI began its work well before there was a specialised convention to protect people with disabilities – making the case that existing international treaties should be used to protect people with disabilities and hold governments accountable.

THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

In the year following the extensive media coverage of DRI's Mexico report,⁵ Vicente Fox, then President of Mexico, advanced a proposal for a new convention that would focus on the rights of persons with disabilities during the opening session of the 56th United Nations (UN) General Assembly in 2001. The General Assembly adopted Resolution 56/162, establishing an Ad Hoc Committee on a Comprehensive and Integral International Convention.⁶

With increasing worldwide attention on the lack of a specialised international human rights treaty to protect people with disabilities, support for the drafting process at the UN began to grow. A report by Girard Quinn and Theresia Degener, under the auspices of the UN High Commissioner on Human Rights, evaluated the ways in which people with disabilities were left out of international human rights oversight by the UN. The report made a powerful case that a special UN treaty was necessary to attain the goal of the inclusion of people with disabilities in the UN's activities.⁷

The Convention on the Rights of Persons with Disabilities (CRPD) was drafted by governments in collaboration with CSOs, including international disability rights CSOs and other human rights CSOs. The drafting process saw unparalleled involvement by people with disabilities. The outcome was a detailed legal instrument to ensure the full human rights of people with disabilities under international law. Adopted on 13 December 2006, the CRPD proved to be the first UN Treaty to have the highest number of signatories on its opening day for signature by state parties; 82 countries signed the Convention, 44 also signed the Optional Protocol⁸ and one country ratified.⁹

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

human rights treaty open for signature by regional integration organisations and the first UN treaty to have included people with disabilities in the negotiation process.¹⁰ The inclusive drafting process of the Convention sensitised governments to the importance of leadership by people with disabilities, and the process helped galvanise the creation of a truly international disability rights movement. The Convention is widely regarded as being a success in bringing attention to the rights of people with disabilities – some of the world’s most marginalised people – and promoting their full and equal human rights.¹¹

The CRPD supports a human rights-based approach toward disability (which acknowledges people with disabilities as active members of society who have the legal right to participate in society as equals to their non-disabled peers), rather than the historically common medically-based and charity-based approach, in which disability is deemed a medical problem that needs to be fixed, pitied and cared for. In keeping with the UN’s commitment to promoting human rights for all, the CRPD maintains that disability is “an evolving concept ... that results from the interaction between persons with impairments and atti-



tudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”¹²

Ratification by state parties is a crucial step in maintaining the essential freedoms of all persons with disabilities. The Convention states:

“State 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.”¹³

In many countries where laws are outdated and discriminatory, the CRPD provides for all “appropriate measures be taken into account in order to eliminate discrimination on the basis of disability by any person, organization

or private enterprise.”¹⁴ Appropriate measures include adopting legislation and modifying and abolishing existing laws, regulations, customs and practices that create discrimination against people with disabilities.¹⁵ The CRPD requires governments to report every four years to the UN Committee on the Rights of Persons with Disabilities on steps taken to implement the Convention. This allows the UN and CSOs to hold countries accountable

for their abuses against people with disabilities and influence governments to create appropriate policies and laws that protect the human rights of their disability communities. Disability rights organisations can now use the CRPD as a tool to assess compliance with international law and publicise abuses through the media, as DRI has done for many years.

The CRPD can help focus direct advocacy by and for people with disabilities to bring about change in out-dated government policies and international development programmes. In today’s interconnected world, any effort to build a more inclusive society needs to develop relationships. People with disabilities are aware of this, and many recent accomplishments are a result of the building of coalitions and strategic partnerships.

Ratification of the CRPD also contributes to realising the Millennium Development Goals (MDGs). Although the priority focus of the MDGs is to eradicate extreme poverty, the MDGs unfortunately do not explicitly mention people with disabilities, even though they are some of the world’s most vulnerable, marginalised and poverty-stricken people. The emerging post-2015 development agenda brings hope that people with disabilities can be explicitly included in global processes to eradicate poverty.¹⁶ People with disabilities have been vocal and are collaboratively working with the UN to make sure that they are included in the new development agenda.

THE MOVEMENT TOWARD RATIFICATION OF THE CRPD

For the CRPD to be effective, the disability movement has had to encourage its widespread ratification. The global attention to and publicity about the CRPD has been a crucial driver in its ratification and implementation. As of early 2014, 141 countries have ratified the CRPD, and 12 having done so in 2013 alone.¹⁷ The growing number of ratifications indicates that the disability movement is effective in advocating for their rights as equal citizens throughout the world.

Internationally, strategies by the disability movement that have been recognised in the efforts toward ratification of the CRPD include: educational campaigns targeted at the public; coalitions of disabled people's organisations (DPOs) and other CSOs working together to create one voice; pressure on local and national governments that are in violation of human rights; and youth and student outreach.

A particular focus is on encouraging the United States, which has signed but not ratified the Convention, to ratify. Within the US, in 2013 and 2014, a coalition of disability organisations, community activists and self-advocates have applied pressure on appropriate officials to ratify, including through publicity, the use of social media, creating petitions, phone calls and direct emails toward officials, as

well as setting up direct meetings with officials. The United States International Council on Disability (USICD),¹⁸ in collaboration with hundreds of other organisations, including DRI, has gathered together 800 organisations and thousands of individuals globally through consistent outreach and publicity to support ratification. In September 2013, over 100 advocates from around the US attended an educational forum convened by USICD and the National Council on Disability (NCD) on the ratification of the CRPD. This education forum, targeted at the public, included influential speakers from the government, CSOs and grassroots individuals. In the words of speaker Catalina Devandas from the Disability Rights Fund:

“Educating the public is key in creating awareness of disability and changing cultural beliefs and stigma against disability.”¹⁹

Educational campaigns and outreach towards the general public have had a crucial role in engaging a larger audience towards ratification of the CRPD. One of the most crucial aspects in driving ratification is publicity. As disability is a cross-cutting issue among diverse communities, all members of the community must be reached, from grassroots to corporate levels and within all sectors, including non-profit, for profit and public, to ensure that there is a large pool of activists collaborating towards one goal. Specific outreach has been seen through articles describ-

ing the CRPD and the importance of its ratification, published in major newspapers such as *The New York Times*, and appearances on international, national and local TV and radio news channels.

Social media and the use of technology allows for broader reach and easy access to the most up-to-date news on national movements. Media such as Facebook, Twitter, news articles and magazines help enable informed community discussions. The use of social media to spread information internationally has been of significant use in the past year to promote the ratification of the CRPD by countries such as the US.

As with DRI's continued publicity on the atrocious abuses of people with disabilities restricted to institutions, continued publicity on the abuses of people with disabilities worldwide is crucial in attaining the attention of more people and pushing for the ratification of the CRPD.

IMPLEMENTATION

The Convention states:

“In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities,

States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”²⁰

Once ratification of the CRPD has been achieved, implementation is crucial in attaining the full rights and dignity of people with disabilities. Implementation requires constant engagement to ensure the original intent of the CRPD is not undermined by weak legislation.

Since the ratification of the CRPD by Mexico in 2007, and with continued support by DRI, the disability movement there has grown remarkably and has proved that positive implementation of the Convention is possible. DRI helped establish the Colectivo Chuhcan, the country’s first organisation run by people with psychosocial disabilities.

In 2010, Mexico submitted its first comprehensive report to the UNCRPD Committee, in compliance with Article 35 of the Convention.²¹ Mexico unfortunately failed to acknowledge grave human rights violations against children and adults with disabilities imprisoned in its institutions and orphanages, as reported by DRI in 2010.²² In response to DRI’s report, Mexico adopted a general law on the “social inclusion of persons with disabilities” and launched a national tool to implement and monitor policies and action plans

for the rights of people with disabilities.²³ Unfortunately, no regulations to implement Mexico’s new law have been established, and people with disabilities remain segregated in Mexico’s institutions. DRI will present its reports directly to the UN’s CRPD Committee in September 2014 to ensure that the government is held accountable for these human rights violations.

Since its ratification, the disability movement has been actively working to seek full implementation of the CRPD. In 2013 alone the disability movement in Mexico implemented the CRPD in the following ways:

- DRI has worked with the Colectivo Chuhcan and its Women’s Committee to build the capacity of women from the Colectivo to become human rights investigators and monitors, in accordance with Article 33(3).²⁴
- Based on its 2010 report, *Abandoned and Disappeared*, human rights activists in Mexico have created a legal reform that allows for the transformation from people with disabilities being segregated in a mental health system to community integration, in compliance with Article 19, *Living Independently and Being Included in the Community*.
- In accordance with Article 16, *Freedom from Exploitation, Violence and Abuse*, DRI held a workshop to sensitise staff from Mexico City’s Human Rights Commission

and Mental Health Authorities on Mexico’s obligation to monitor institutions.

- In accordance with Article 24, *Education*, the Congressional Committee on Education recognised the proposal from the Confederación Mexicana de Organizaciones en favor de la Persona con Discapacidad Intelectual and the Asociación Pro Personas con Parálisis Cerebral to reform the General Education Law to enable equal access to public schools for children with disabilities.²⁵

Full implementation of the CRPD includes the creation of appropriate laws by governments and the eradication of inappropriate and discriminatory policies and laws. Appropriate laws and legislation allow for the legal protection of people with disabilities and allow them and other members of civil society to advocate for themselves.

Governments must work in collaboration with people with disabilities to create new laws pertaining to human rights and development. Without including those whom policies and laws directly affect, implementation of the CRPD will prove difficult. Laws and policies must be made accessible to the community to further their capacity and knowledge of their rights.²⁶

Countries that have ratified the CRPD must be open to accepting internal and external suggestions on the best practices of

implementation, in accordance with Article 32, International Cooperation.

International human rights lawyers play a crucial part in helping countries implement the CRPD. Their expertise allows for open discussion, in a legal capacity, on the needs of people with disabilities. DRI has helped government officials to reform laws to be inclusive of the rights of people with disabilities and trained local advocates to work with policy-makers in addressing the needs of their community.

DRI has pursued new approaches to CRPD implementation that leveraged the funding of international donors. One of the most innovative and important provisions of the CRPD is Article 32, which requires that international cooperation advances the “purpose and objectives” of the Convention.²⁷ This provision can be used to hold donors as well as recipient nations accountable. DRI launched an International Campaign to End the Institutionalization of Children with Disabilities to promote full implementation of the CRPD’s right to community integration. DRI has found that well-meaning international donors often perpetuate segregation by making donations to orphanages or other institutions for people with disabilities.²⁸ In response, DRI is using the CRPD to hold international donors accountable and to shift support toward community integration. DRI’s World Campaign, featured in UNICEF’s 2013 State of the

World’s Children Report, is an innovative use of the CPRD that provides another powerful reason for countries to ratify.²⁹

CONCLUSION: THE FIGHT FOR JUSTICE CONTINUES

Global governance can only be achieved when all people are included. The adoption of the CRPD has brought about growing attention to the disability community, the violation of human rights and the need for reform in governments around the world. The CRPD is a crucial part of the legal recognition of the rights of people with disabilities. Though the CRPD has brought about a necessary change in governments to begin reforming laws and policies, much still needs to be accomplished to reap the full implications of the CRPD. Gaining attention through publicity – and collaboration amongst civil society – are key factors in the ratification and implementation of the CRPD.

¹Disability Rights International, established in 1993, documents human rights abuses, publishes reports on human rights enforcement and promotes international oversight of the rights of people with disabilities. For more information, please see: <http://www.disabilityrightsintl.org/about/>.

²E Rosenthal, et al., Human Rights & Mental Health: Mexico, Disability Rights International, September 2000, available at: <http://www.disabilityrightsintl.org/work/our-reports-publications/>.

³For more information, please see: <http://www.disabilityrightsintl.org/work/>.

⁴M Winerip, The Global Willowbrook, NY Times Magazine, 16 January 2000, available at: <http://www.nytimes.com/2000/01/16/magazine/the-global-willowbrook.html>.

⁵Above fn 2.

⁶M Schulze, Understanding the UN Convention on the Rights of Persons with Disabilities: Handbook on the Rights of Persons with Disabilities, Handicap International, 18 July 2010, available at: http://www.equalityhumanrights.com/uploaded_files/human-rights/unconventionhradisabilities.pdf.

⁷The Making of the Convention on the Rights of Persons with Disabilities, Centre for Human Rights, YouTube, 5 April 2013, available at: http://www.youtube.com/watch?v=GWIf_NzpyYo.

⁸The Optional Protocol allows individual complaints to be submitted to the CRPD Committee by individuals and groups of individuals, or by a third party on behalf of individuals and groups of individuals, alleging that their rights have been violated under the CRPD.

⁹Convention on the Rights of Persons with Disabilities, GA Res. 60/106, UN GAOR 61st Sess., UN Doc. A/Res/61/106, entered into force 3 May 2008 (13 December 2006) [hereinafter CRPD]. The CRPD text, related UN resolutions, and an updated list of signatories and States Parties is posted on the United Nations Enable website at: <http://www.un.org/disabilities/>.

¹⁰Article 44: “1. “Regional integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by this Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence. 2. References to “States Parties” in the present Convention shall apply to such organizations within the limits of their competence.”3. For the purposes of Article 45, paragraph 1, and Article

47, paragraphs 2 and 3, any instrument deposited by a regional integration organization shall not be counted.⁴ Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.” Ibid.

¹¹World Report on Disability, World Health Organisation and the World Bank, 2011, available at: http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf?ua=1.

¹²CRPD, fn 7, Preamble, section e.

¹³Ibid, Article 5(1).

¹⁴Ibid, Article 4(e). C.

¹⁵Ibid, Article 4, General Obligations, 1(b). 5.

¹⁶Outcome document of the high-level meeting of the General Assembly on the Realization of the Millennium Development Goals and other internationally agreed development goals for persons with disabilities: the way forward, a disability-inclusive development agenda towards 2015 and beyond, Draft Resolution submitted by the President of the General Assembly, September 2013, UN Doc A/68/L.1 17, available at: http://www.un.org/disabilities/documents/hlmd/a_68_l1.doc.

¹⁷Above fn 7.

¹⁸The United States International Council on Disabilities is a federation of US-based non-government organisations, federal agencies and individuals committed to advocacy and action on behalf of the global disability rights agenda. For more information, please see: www.USICD.org

¹⁹C Devandas, Supporting the Empowerment of Organizations of Persons with Disabilities: A strategy to promote poverty eradication, using the Convention on the Rights of Persons with Disabilities, UNDESA, September 2013, available at: http://www.un.org/esa/socdev/egms/docs/2013/EmpowermentPolicies/Expert-paper_Catalina-Devandas.pdf.

²⁰Above fn 7, Article 6(3).

²¹Ibid, Article 26(1), “Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of

the present Convention for the State Party concerned”.

²²Abandoned and Disappeared: Mexico’s Segregation and Abuse of Children and Adults with Disabilities, Disability Rights International, 2010, available at: <http://www.disabilityrightsintl.org/work/country-projects/mexico/>.

²³L Blanchfield, et al., The United Nations Convention on the Rights of Persons with Disabilities: Issues in the US Ratification Debate 4, Congressional Research Services Report for Congress, 4 March 2013, available at: <https://www.fas.org/sgp/crs/misc/R42749.pdf>.

²⁴Above fn 7, Article 25(3).

²⁵Above fn 17.

²⁶Above fn 7 at 14’00”.

²⁷Above fn 7, Article 32.

²⁸Left Behind: The Exclusion of Children and Adults with Disabilities from Reform and Rights Protection in the Republic of Georgia, Disability Rights International, 2013, available at: <http://www.disabilityrightsintl.org/wordpress/wp-content/uploads/Left-Behind-final-report1.pdf>.

²⁹E Rosenthal and L Ahern, Segregation and abuse in institutions, The State of the World’s Children 2013, UNICEF, 2013, available at: http://www.unicef.org/sowc2013/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf.