

Section Two: What is the new Convention and what does it mean for me? A new Convention – A new approach

By the end of Section 2 you should

1. Understand what kind of convention the CRPD is
2. Understand why the CRPD is needed and how it was created
3. Understand what a “rights-based approach” is
4. Understand how this is new and how it can be helpful to persons with disabilities

PART 1: SOME DEFINITIONS TO BEGIN!

What is a “convention”?

Before going any further we need to define the terms that we are using. As we are going to be talking a lot about the new “convention,” it is important to understand what it is and what it is not. Often, when we talk with colleagues about a “convention” we mean a meeting of a group of people. A DPI World Assembly is an example of that kind of convention. However, this Toolkit is not about that kind of convention. Here we are talking about a very different kind of “convention,” namely a “legally binding agreement”, in writing, between two or more countries. Conventions can also be called “treaties.”

Once a convention has been “adopted” (meaning that it is now open for countries to join), countries can choose whether or not to join it. When they choose to join, they become “States Parties” and must comply with their obligations as described in the convention. When enough countries (in the case of the CRPD, 20 countries) become States Parties, then we say that the convention “enters into force” – meaning that it becomes active – and States Parties must act to implement their obligations under the convention. There are many conventions currently in force, and they cover a wide variety of topics, including trade, the environment, weapons, peace, and human rights.

What type of convention is the Convention on the Rights of Persons with Disabilities?

As noted above, there are many different kinds of conventions in international law. The Convention on the Rights of Persons with Disabilities (CRPD) is a “human rights convention.” A “human rights convention” is a convention that deals specifically with the topic of human rights. “Human rights” are the rights that everyone has just by being human. In other words, you don’t have to be a member of a particular group, and nobody needs to give you your rights. Everyone is automatically entitled to enjoy the full range of human rights just because they are human.

- Where we find human rights

The human rights that *everyone* is entitled to are set out in a number of different United Nations documents – some of them are conventions and some of them are not. (You can also find human rights documents at a “regional level,” such as the Americas, Africa or Europe. Our focus here, however, is on the United Nations documents that apply to everyone around the world.) The first, and perhaps the most famous of these, is the Universal Declaration of Human Rights ([UDHR](#)), adopted by the UN General Assembly in 1948. The UDHR is not a convention, but is now considered part of customary international law, which makes it legally binding in its own way.

- The core international human rights conventions

Because the UDHR was not originally intended to be a legally binding document, the UN drafted two conventions to describe the human rights to which we are all entitled: the International Covenant on Economic, Social and [Cultural Rights](#) (ICESCR – adopted on 16 Dec. 1966, and entered into force 3 Jan. 1976) and the International Covenant on Civil and [Political Rights](#) (ICCPR – adopted on 16 Dec. 1966 and entered into force 23 March 1976 – there are two optional protocols to the ICCPR). Together, these three important documents are known as the “[International Bill of Human Rights](#)” and, as such, form the foundation of all international human rights law.

It was originally believed that the [International Bill of Human Rights](#) would be the only thing needed to set forth the full range of human rights. However, it became clear over time that governments needed more detailed guidance. [The International Bill of Human Rights](#) addressed all the

different kinds of human rights that the international community felt everyone should be entitled to. However, it did not provide enough details for governments to know exactly how to ensure full enjoyment of human rights by all people. As a result, the international community drafted a number of additional “thematic human rights conventions.” These conventions are called “thematic” because each one deals with a particular human rights theme (like racial discrimination or torture) or a particular group of people (like women or persons with disabilities). These conventions do not create new rights, but rather they elaborate existing rights in the context of a specific group or issue area. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), for example, was not intended to create new human rights for women. Instead, it was intended to help countries better understand how to ensure that women fully enjoy the existing human rights. For example, CEDAW helps countries to understand what it means for women to fully enjoy their right to participate in political and public life, and what barriers may exist to women’s enjoyment of this right.

The following list includes all the thematic human rights conventions that have been adopted so far – you can see that some took a short period of time before they entered into force, and others took much longer:

- International Convention on the Elimination of All Forms of [Racial Discrimination](#) (ICERD – adopted 21 Dec. 1965, entered into force 4 Jan. 1969)
- Convention on the Elimination of All Forms of [Discrimination Against Women](#) (CEDAW – adopted 18 Dec. 1979, entered into force 3 Sept. 1981 – there is one optional protocol to CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or [Degrading Treatment or Punishment](#) (CAT – adopted 10 Dec. 1984, entered into force 26 June 1987 – there is one optional protocol to CAT)
- [Convention on the Rights of the Child](#) (CRC – adopted 20 Nov. 1989, entered into force 2 Sept. 1990 – there are two optional protocols to the CRC)
- International Convention on the Protection of the Rights of [All Migrant Workers and Members of their Families](#) (ICRMW – adopted 18 Dec. 1990, entered into force 1 July 2003)

- Convention on the Rights of Persons with Disabilities and its Optional Protocol (CRPD – adopted 13 Dec. 2006, not yet entered into force)
- International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 Dec. 2006, not yet entered into force)

Together with the ICESCR and ICCPR, these conventions are known as the “core international human rights conventions,” and you can see that the Convention on the Rights of Persons with Disabilities is one of the most recent core conventions to have been adopted by the UN! Although there are many other international conventions and non-binding instruments that also address human rights, the conventions listed above are considered “core” conventions because they each establish a committee of experts to monitor implementation. If you want to find out more about the various international human rights instruments and the committees that monitor the core human rights conventions, you may wish to visit the webpage of the UN Office of the High Commissioner for Human Rights:

<http://www.ohchr.org/english/law/index.htm>

PART 2: A LITTLE HISTORY!

Where did the Convention on the Rights of Persons with Disabilities come from?

We know that the CRPD is one of the core international human rights conventions, but *why* do we need it and *how* was it created?

- The need for the CRPD

The need for a convention on the human rights of persons with disabilities, as well as its historical background, is discussed in more detail in Section 2 of DPI’s Ratification Toolkit, but briefly these are some of the main reasons that compelled the international community to call for the creation of the CRPD:

1) The “invisibility” of persons with disabilities – you would think that with all the other human rights conventions and human rights instruments already in existence, there would be no need for an additional treaty specifically

addressing persons with disabilities. However, with the exception of Article 23 of the Convention on the Rights of the Child, none of the core human rights conventions even mentions persons with disabilities. Although the human rights expressed in those conventions certainly apply to persons with disabilities, governments have not done a good job of ensuring that persons with disabilities fully enjoy their human rights. At the same time, governments have not done a good job of reporting to treaty monitoring bodies about how they are applying the various human rights conventions to persons with disabilities. The monitoring bodies in turn have not done a good job of asking for this information. As a result, some people have noted that persons with disabilities have been effectively “invisible” within the UN human rights system. (This was one of the conclusions of the UN report “*Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*,” study commissioned by the Office of the High [Commissioner for Human Rights](#)). This “invisibility” has, in turn, made it difficult for disability activists to get the UN human rights system to pay attention to disability issues. It is anticipated that with the adoption of a convention specifically addressing the human rights of persons with disabilities this situation will change, by giving the system some legally binding human rights standards that clearly apply to persons with disabilities. In addition, it is anticipated that establishing a committee on the rights of persons with disabilities will bring disability expertise into the international human rights system, and then the other treaty monitoring bodies would be able to learn from this body and start addressing disability issues in their own work.

2) The need for a legally binding instrument – until the CRPD was adopted in December of 2006, none of the other human rights instruments addressing disability issues (like the UN [Standard Rules](#) on the Equalization of Opportunities for Persons with Disabilities) were legally binding. This meant that governments were not legally required to follow the recommendations of those documents. It has also been observed that some of the older instruments that address disability issues are outdated in the way that they discuss persons with disabilities. Some reinforce stereotypes of persons with disabilities as being especially “vulnerable,” or lacking in the ability to fully participate in society. For this reason it was suggested that international human rights law should be updated to be reflective of the social/cultural model of disability, and that a legally binding convention was the way to do this.

3) The role of persons with disabilities in development – in September 2000, world leaders agreed upon a set of goals and targets for combating hunger, poverty, disease, discrimination against women, and environmental damage. Collectively these goals are known as the “Millennium Development Goals” (MDGs). Shortly after the MDGs were adopted, a number of countries noted that the Goals could not be met as long as countries continued to ignore the human rights of persons with disabilities. For example, one of the MDGs calls for achieving universal primary education (also referred to as “education for all” or “EFA”), and this cannot be met as long as primary school education in many countries is inaccessible to children with disabilities. These countries (led by Mexico) argued that ensuring the enjoyment of human rights by persons with disabilities was essential to achieving their successful development as societies. It was also these countries that were largely responsible for pushing the UN to start drafting the CRPD – a process we will examine next.

What we hope the Convention will achieve

- Increase the visibility of persons with disabilities, both within the UN human rights system and in society more generally
- Clarify the human rights obligations of governments to persons with disabilities, and ensure that governments who become States Parties to the convention make legislative and programmatic changes at the national level to implement their legal obligations under the convention
- Encourage existing human rights monitoring bodies to pay attention to disability issues when they review compliance of governments with the other core human rights conventions
- Encourage other bodies within the UN system (such as UNICEF, UNIFEM, WHO, UNESCO, and others) to pay attention to disability issues in their work
- Establish systems for comprehensively monitoring the human rights situation of persons with disabilities around the world
- Establish systems for international cooperation, through which governments, disability organizations and other actors can share knowledge and ideas and work together to improve the lives of persons with disabilities.

The process to draft the CRPD

[Below is a summary of the events that occurred between December 2001 and December 2006 – [click here](#) for a full timeline of these events.]

The process to draft the CRPD began in December 2001, when the government of Mexico successfully sponsored a General Assembly resolution calling for the establishment of an Ad Hoc Committee (AHC) “to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.” Initially, some governments were opposed to the creation of the AHC, and they argued that there was no need for ‘yet another’ international human rights convention. These countries felt that there were already enough core international human rights conventions, and that it would be better to try to mainstream disability issues in the implementation of those conventions. However, when supporters of the CRPD (including both governments and disability organizations) explained the reasons why a convention was needed, eventually these countries agreed to participate in the drafting process.

The AHC met for a total of eight sessions at UN Headquarters in New York between July 2002 and December 2006, with each session lasting approximately two weeks. In addition, the AHC created a temporary body, known as the Working Group, which met for two weeks in January 2004. The task of the Working Group was to put together a draft text that would be used by the AHC in its future negotiations. This text became known as the “Working Group Text.” During further sessions, the AHC examined this text and delegations had the opportunity to propose amendments. Those amendments that gained sufficient support from members of the AHC were later incorporated into two further texts, the “Chair’s Text” (issued in October 2005) and the “Working Text” (issued in February 2006).

In August 2006 the AHC finalized the substance of the Convention and an accompanying optional protocol (which addressed some issues related to monitoring), and forwarded the text to a technical Drafting Committee. The job of the Drafting Committee was to format and proofread the text, and ensure that the text had the same meaning in each of the six official UN languages. The work of this Drafting Committee was accepted by the AHC at a brief “resume” meeting of its Eighth Session on December 5, 2006,

and immediately sent to the General Assembly (GA) for its consideration. The GA unanimously adopted the CRPD on December 13, 2006, making it, as then UN Secretary General Kofi Annan noted, “the most rapidly negotiated human rights treaty in the history of international law.”

- The vital participation of persons with disabilities

Throughout the process to draft the CRPD, persons with disabilities played an essential and extensive role. In fact, (as noted in the timeline section) persons with disabilities and their representative organizations had been calling for the creation of the convention for several decades beforehand. When the drafting process finally started, persons with disabilities rallied behind the motto “nothing about us without us” and demanded to be included in the process! Eventually persons with disabilities were included on many UN Member State delegations to the AHC, and hundreds of people from civil society participated in the AHC sessions. During the meeting of the Working Group, 12 representatives of disability organizations (including a representative of DPI) were selected to participate as members of the Group, having equal rights of participation with the government representatives. Never before had stakeholders participated so extensively in a process to draft a UN human rights convention. Many government delegates, including the two chairmen of the AHC, Ambassador Luis Gallegos of Ecuador and Ambassador Don MacKay of New Zealand, noted that the CRPD could not have been so successfully drafted without the expertise of people with lived experience of disability.

PART 3: A SHIFTING REALITY- DISABILITY IN THE NEW MILLENNIUM

Why does the CRPD represent a “new approach” and why is this important?

- A new approach for human rights

Not only is the CRPD the fastest negotiated human rights convention in the history of international law, but it is also the first such convention to have been drafted with such extensive participation by stakeholders. This means that the CRPD is a human rights convention written both *by* and *for* persons with disabilities. The CRPD also calls for persons with disabilities and their representative organizations to be involved in the implementation

and monitoring of the CRPD at all levels, and in decision-making processes that affect the lives of persons with disabilities. This explicit level of inclusion of stakeholders is unusual for a UN human rights convention, and makes the CRPD a truly unique document. It is also hoped that the guidance provided by the CRPD on ensuring enjoyment of human rights by persons with disabilities will make it easier for existing human rights treaty bodies to start including disability issues into their work. As a result, we should start to see disability issues being addressed in all areas of the international human rights system.

- A new “rights-based approach” to disability

As a human rights convention, the CRPD addresses disability issues in a human rights context. Although organizations like DPI have been calling for some time for disability to be addressed as a human rights issue (rather than a medical, charity, or social welfare issue), the CRPD is the first legally binding international document to do so. With the adoption of the CRPD, disability advocates now have a powerful tool to use in framing their advocacy in human rights terms!

But what does using a “rights based approach” really mean? According to the UN Office of the High Commissioner for Human Rights (OHCHR), rights-based approaches involve the following:

[Adapted from the OHCHR’s fact sheet on rights-based approaches to development, available at <http://www.unhchr.ch/development/approaches.html>]

1. **Express linkage to human rights** – here this means linking disability issues to the full range of civil, political, economic, social and cultural rights, and it means talking about disability issues using the language of human rights. The CRPD does this, meaning that we can use the CRPD as a helpful tool when we are thinking about how to frame our advocacy in rights-based terms. For example, when discussing the educational needs of youth with disabilities, the CRPD helps us to talk about these issues not just as “needs”, but also as *legally enforceable rights*. Also, because all human rights are interrelated and interdependent (meaning that our enjoyment of each right affects our ability to enjoy other rights), a rights-based approach would also require us to *think what other rights are important to the*

enjoyment of the right to education. For example, aside from the accessibility of schools and provision of accommodations for students with disabilities, etc., thinking in rights-based terms would prompt us to also consider issues like: liberty of movement, and whether students have access to transportation in order to get to school; the right to an adequate standard of living, and whether students have access to the food, water, shelter and clothing they need to be able to perform their best in school; the right to health, and whether students have access to the health care services that they need in order to be healthy enough to attend school and perform their best, whether such health care is provided on the basis of free and informed consent, and whether students are free from medical interventions to control behavior; and whether students with disabilities have access to supports of their own choosing. So adopting a rights-based approach to disability issues provides a useful framework that we can use to assess the full range of factors and rights that positively or negatively affect our enjoyment of specific rights.

2. **Accountability** – using a rights-based approach requires identifying *who* are the *rights-holders* (the people claiming their rights) and who are the *duty-holders* (the people who have the duty to protect and promote enjoyment of the rights in question, i.e. they must not violate the rights and they must take action to ensure enjoyment of the rights by the rights-holders). Under international law, it is governments at the national/domestic level who are ultimately responsible for the enjoyment of human rights within their countries. However, additional actors, including private actors (such as businesses, individuals, etc.), can act to promote or undercut the enjoyment of human rights. As long as governments can exercise control over them (e.g. through legislation and regulations), governments are responsible for the behavior of these private actors too. Identifying the full range of duty-holders can help us to effectively direct our advocacy and ensure that all relevant actors are held accountable for the protection and promotion of our human rights.

3. **Empowerment** – rights-based approaches focus on the empowerment of rights-holders. This is the opposite of a charitable approach, where the recipients of the charity are passive and have no say in what action is taken. The objective here is to give rights-holders the “power, capacities, capabilities and access” needed for them to claim their human rights and take charge of their own lives. *The philosophical approach of the CRPD is consistent with the need to empower persons with disabilities to actively claim their rights.*

4. **Participation** – rights-based approaches require the *full participation of all relevant stakeholders*. This requires that persons with disabilities be meaningful participants along with other stakeholders. The CRPD requires that governments consult with persons with disabilities and their representative organizations in decision-making processes that affect the lives of persons with disabilities.

5. **Non-discrimination and areas of particular attention** – rights-based approaches call for specific attention to issues like discrimination, equality, equity and persons who have been particularly marginalized. Within the disability community this not only means addressing the discrimination faced by persons with disabilities in general, but also the specific and additional discrimination faced by groups within the community, e.g. women with disabilities, children with disabilities, indigenous persons with disabilities, etc. When actions are taken to ensure the enjoyment of human rights by persons with disabilities, specific attention should be given to ensuring that *all* persons with disabilities are able to benefit from those actions. The CRPD can be helpful in identifying those who have been particularly marginalized and understanding the steps that need to be taken to eliminate the discrimination against them.

Exercise: How do we apply a rights-based approach?

The following exercise is intended to help get you thinking in terms of a rights-based approach to disability. In Section 2’s discussion of rights-based approaches we give the example of education for youth with

disabilities and some of the other human rights that can influence enjoyment of the right to education. Using the CRPD as your guide:

1) Discuss what additional human rights you think are relevant to the enjoyment of the right to education by children and youth with disabilities.

2) In your discussions for 1), *who* did you identify as the *rights-holders*, and who did you identify as the *duty-holders*? What responsibilities did the duty-holders have to protect (not violate) and promote (act to ensure enjoyment of) the right to education?

3) Rights-based approaches call for the full and meaningful participation of all stakeholders. In thinking about your discussions for 1) and 2), what do you think would need to happen in order for persons with disabilities and their representative organizations to be able to participate meaningfully in some of the activities you identified?

4) In your discussions for 1) and 2), are there specific sub-groups of persons with disabilities that you think may be subject to additional discrimination in their enjoyment of the right to education?* What specific steps do you think would need to be taken to ensure that these people are also able to fully enjoy their human right to education?

*Hint, try to think in terms of groups that are cross-disability, and span different types of impairments. For example, women and girls with disabilities, people with disabilities living in rural or remote areas, indigenous people with disabilities, etc.

- The value of a “rights-based approach” to disability

Now that we know what a rights-based approach to disability involves, what are some of the advantages of it?

1. **More effective** – applying a human rights framework to our discussion and understanding of disability issues can help us to be *more thorough* in our examination of the barriers faced by persons with disabilities in their enjoyment of human rights. It can help us to look not only at specific barriers, but also at the larger context and the reasons why those barriers exist, and the connections between them.

Furthermore, applying a human rights framework can help us to identify practical solutions, making us all *better problem-solvers*.

2. **More accountable** – using a rights-based approach and introducing the concept of “duty holders,” helps us to identify not only the actions to be taken, but also *who* is responsible for taking those actions. Because the obligations in the CRPD are legally binding for governments that become States Parties to it, this helps us to *enforce* the full enjoyment of human rights by all persons with disabilities.
3. **More empowering** – a rights-based approach demands the participation of persons with disabilities and their representative organizations in processes and activities that affect our enjoyment of human rights. It also calls for building the capacity and capability of persons with disabilities and disability organizations, so that we can *meaningfully* participate. This is much more empowering than approaches that minimize the role of persons with disabilities, or view persons with disabilities as passive recipients of charity or welfare. In addition, a rights-based approach recognizes the capability of rights-holders to not only claim their rights but to exercise their responsibilities, countering many historic misconceptions about the abilities of persons with disabilities.

Exercise: How can I apply a rights-based approach in my work?

Applying a new advocacy framework can take some getting used to, and it can be difficult to do overnight! In order to effectively apply a rights-based approach to your work, you may find that there are specific actions you need to take in order to help you do this. Some of you may already use a rights-based approach in your work, but you may be seeking to improve your application of this approach or assist other colleagues in using it effectively. Having completed the first exercise in this section (where you used a rights-based approach to discuss the issue of education for persons with disabilities), consider and discuss the following:

- 1) How did you find the exercise – did you find it challenging to think about the issues in this way? Was it interesting? Did it get you thinking about issues you might not otherwise have thought of? Did it get you thinking about any issues in a new way, and if so how?

2) If you do not currently adopt a rights-based approach to your work, how would you characterize your approach?

3) What benefits, if any, do you think a human rights approach could offer? If you do currently adopt a rights-based approach to your work, why do you do this and in what ways does it strengthen your work?

4) It can often be challenging to think about issues in a new way. If you are new to this kind of rights-based approach to disability what, if anything, do you think that you or your organization could do to help you apply a rights-based approach to your disability advocacy?

5) If you already apply a rights-based approach to your work what, if anything, do you think you could do to help you or your organization strengthen and improve its use of this framework?

RESOURCES

Here is a list of the resources mentioned in this section, as well as some additional documents that may be of interest to you:

Convention on the Rights of Persons with Disabilities and its Optional Protocol ([CRPD](#))

Universal Declaration of Human Rights ([UDHR](#))

International Covenant on Economic, Social and Cultural Rights ([ICESCR](#))

International Covenant on Civil and Political Rights ([ICCPR](#))

International Convention on the Elimination of All Forms of Racial Discrimination ([ICERD](#))

Convention on the Elimination of All Forms of Discrimination Against Women ([CEDAW](#))

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT](#))

Convention on the Rights of the Child ([CRC](#))

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ([ICRMW](#))

International Convention for the Protection of All Persons from Enforced Disappearance

[UN Standard Rules](#) on the Equalization of Opportunities for Persons with Disabilities

World Programme of Action [Concerning Disabled Persons](#)

[Beijing Declaration](#) on the Rights of People With Disabilities in the New Century

[UN General Assembly Resolution 56/168](#) (establishing the Ad Hoc Committee)

[Working Group Draft Text](#) of January 2004

[Working Text of Feb 2006](#)

"Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability," study commissioned by the Office of the High [Commissioner for Human Rights](#)

[DPI Position Paper](#) regarding a new international human rights Convention for persons with disabilities

If you have access to the internet, you may also wish to visit the websites of:

[DPI's Convention-related resources](#)

UN Office of the High [Commissioner for Human Rights](#) (in time this website will include information on the CRPD and also information about the creation and work of the Committee on the Rights of Persons with Disabilities)

UN Department of Economic and Social Affairs (where you can get more information on the process to draft the [Convention](#) and also check to get

information about the creation of the Committee on the Rights of Persons with Disabilities)

Click *here* to link to Section 3