

## 2) What is the UN disability convention and why is it needed?

### By the end of Section 2 you should

1. Understand what a human rights convention is
2. Understand why we need a new human rights convention for persons with disabilities
3. Understand what has happened so far to draft a new human rights convention for persons with disabilities
4. Understand what may be able to happen in the future once we get a new human rights convention for persons with disabilities

### What is a “convention”?

A “convention” is 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 a convention. When they choose to join, they become “States Parties” and must comply with their obligations as described in the convention. When enough 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 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.

The human rights that *everyone* is entitled to are set out in a number of different United Nations documents. (You can also find human rights documents at the regional level, such as in the Americas and in Europe, but our focus here 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 International Bill of Human Rights

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). Together with the UDHR, the ICESCR and ICCPR are known collectively as the “International Bill of Human Rights,” and form the foundation of all international human rights law.

- The emergence of ‘thematic’ treaties

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. But, 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” human rights conventions, because each one deals with a particular human rights theme (like racial discrimination or torture), or a particular group of people (like women or migrant workers). These conventions do not create new rights, but rather they elaborate existing rights in the context of a specific group or issue area. For example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 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. 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)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT – adopted 10 Dec. 1984, entered into force 26 June 1987)
- Convention on the Rights of the Child (CRC – adopted 20 Nov. 1989, entered into force 2 Sept. 1990)
- 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)

Together with the ICESCR and ICCPR, these conventions are known as the “core international human rights conventions.” Although there are by now 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>

### Exercise: Myths and stereotypes

### Exercise: Getting to know the Universal Declaration of Human Rights

#### Why do we need a human rights convention for persons with disabilities?

With all of the human rights conventions and other human rights instruments that we already have in place, you may well wonder why some people believe that we need another new convention specifically for persons with disabilities! The problem is that, with the exception of the Convention on the Rights of the Child (Article 23), 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. Also, the monitoring bodies have not done a good job of asking for this information. Although the Committee on Economic, Social and Cultural Rights released a document (known as “General Comment No. 5”) to advise States Parties on how to ensure that persons with disabilities enjoy the rights in the ICESCR, few other monitoring bodies have addressed the situation in their comments.

- The *invisibility* issue

As a result, some people have noted that persons with disabilities have been effectively “invisible” within the UN human rights system. Other groups (such as women and children) experienced this same kind of “invisibility” in the past, and they too opted to develop thematic human rights conventions, leading to the adoption of, for example, the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

- The need for a legally binding instrument

In addition to these problems, the human rights instruments that do address disability issues (like the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities) are not legally binding. This means that governments are not legally required to follow the recommendations of those documents, and, sadly, many have chosen not to. It has also been observed that some of the older human rights instruments that address disability issues are rather outdated in the way that they discuss persons with disabilities. This may reinforce stereotypes of persons with disabilities as being especially vulnerable, or lacking in the ability to fully

participate in society. For this reason it has been suggested that international human rights law should be updated to be more reflective of the social/cultural model of disability, and that a legally binding convention is the instrument to use to do this.

## **Understanding the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities**

As you will see in the timeline in the next section, a number of non-binding UN documents addressing disability were adopted by the UN before it was decided to draft a convention. Of these different documents, the UN Standard Rules document is perhaps the most well regarded. So what are the UN Standard Rules, and what makes them different from the other documents?

The UN Standard Rules were adopted by the UN General Assembly in 1993. The Standard Rules were intended to help summarize the message of the UN's World Programme of Action Concerning Disabled Persons. Like the "standard rules" the UN has adopted on other issues, these Standard Rules were intended to provide guidance to governments on how to act – in this case, how to better address the equalization of opportunities for persons with disabilities.

The UN Standard Rules address 22 different rules in four different chapters. Here is an outline of the chapters and rules:

### **I. Preconditions for Equal Participation**

- Rule 1. Awareness-raising
- Rule 2. Medical care
- Rule 3. Rehabilitation
- Rule 4. Support services

### **II. Target Areas for Equal Participation**

- Rule 5. Accessibility
- Rule 6. Education
- Rule 7. Employment
- Rule 8. Income maintenance and social security
- Rule 9. Family life and personal integrity
- Rule 10. Culture
- Rule 11. Recreation and sports
- Rule 12. Religion

### **III. Implementation Measures**

- Rule 13. Information and research
- Rule 14. Policy-making and planning
- Rule 15. Legislation
- Rule 16. Economic policies
- Rule 17. Coordination of work
- Rule 18. Organizations of persons with disabilities
- Rule 19. Personnel training
- Rule 20. National monitoring and evaluation of disability programmes in the implementation of the Rules
- Rule 21. Technical and economic cooperation
- Rule 22. International cooperation

### **IV. Monitoring Mechanism**

As you can see, the Standard Rules address many different issues of importance to persons with disabilities. In this way the Rules are very different from the disability documents that came before, which tended to address fewer issues. The Standard Rules also established a new position to help monitor the implementation of the Rules – that position is called the “Special Rapporteur.” (One of the original founders of DPI, Bengt Lindqvist, was the first person to serve as the Special Rapporteur for the Standard Rules.) What perhaps makes the Standard Rules most unique, is that they were the first such UN document to focus on the interaction between the individual and their environment. Previous documents had often characterized the problems faced by persons with disabilities as being the result of their physical characteristics. By contrast, the Standard Rules made it clear that disability results when societies do not accommodate people with different functional capacities. They also make clear that society should not provide charity, but rather should act to accommodate and equalize the opportunities for persons with disabilities in society.

For the reasons mentioned above, over the years a number of different groups and governments have supported the idea of creating a new human rights convention for persons with disabilities. The next section of the toolkit will address in more detail who these groups and governments are, and what has happened over the last several decades to lead us to the point of actually negotiating a new convention. None of these actors would argue that the disability Convention is necessarily going to solve every problem faced by every person with a disability. However, we

#### **What we hope the Convention will achieve**

- a) Increase the visibility of persons with disabilities, both within the UN human rights system and in society more generally
- b) 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
- c) 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
- d) Encourage other bodies within the UN system (such as UNICEF, UNIFEM, WHO, UNESCO and others) to pay attention to disability issues in their work
- e) Establish systems for comprehensively monitoring the human rights situation of persons with disabilities around the world
- f) 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.

all hope the Convention will be a valuable tool for disability advocates and governments to use, to improve enjoyment of all human rights by all persons with disabilities.

These are just some of the things that we hope the new Convention will be able to achieve, but it will take hard work from all of us to ensure that it is successful! In other sections of the toolkit, we will discuss how we can take action to help make sure that our Convention is a success.

### **Three decades in the making: how did we get here?**

The following timeline reveals the key events and actors in and around the UN system that brought us to the process of drafting a new convention.

- **Lead-up to the establishment of the Ad Hoc Committee**

**1971:** The UN General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons, which promoted community living where possible

**1975:** The General Assembly adopted the Declaration on the Rights of Disabled Persons, which promoted the political and civil rights of persons with disabilities

**1976:** The General Assembly declared 1981 the International Year of Disabled Persons (IYDP), with an emphasis on full participation

**1977:** The General Assembly established the Trust Fund for the International Year and collected \$510,000 from member states

**1981:** International Year of Disabled Persons - States, local communities and organizations of persons with disabilities, undertook activities for the IYDP

**1982:** As a follow-up to the IYDP, on 3 Dec., the UN adopted the World Programme of Action Concerning Disabled Persons and proclaimed 1983-92 as the UN Decade of Disabled Persons

**1987:** Mid-decade review experts meeting in Italy – first call for a new Human Rights Convention with no success. Italy prepared a draft treaty outline that was submitted to the General Assembly at its 42nd session, in October. The General Assembly discussed the desirability of an international treaty, but reached no formal agreement to proceed.

**1989:** Second unsuccessful call for a Convention, this time following a meeting in Sweden. Again, no success on the treaty but laid the ground work for development of the Standard Rules

**1990:** The General Assembly adopted the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability

**1991:** The General Assembly adopted the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

**1993:** December 3rd named as Annual International Day of Disabled Persons (IDDP)

**1993:** The General Assembly adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities

**1994:** Mr. Bengt Lindqvist, from Sweden, appointed Special Rapporteur for the Standard Rules

**1998:** UN Commission on Human Rights passed Resolution Number 1998 / 31, entitled “Human rights of persons with disabilities” acknowledging general responsibility for PWDs in its mandate

**2000:** The World NGO Summit on Disability (attended by international and national disability organizations, including DPI) adopted the Beijing Declaration on the Rights of People With Disabilities in the New Century, calling for a new human rights convention for people with disabilities

- **Establishment of the Ad Hoc Committee**

**2001:** December 19, the General Assembly passed Resolution 56/168, introduced by Mexico, and thereby established the Ad Hoc Committee (AHC) with the following mandate:

*Who is Involved?*

The guiding principle of the process since the beginning has been full inclusion of all relevant stakeholders. From this base an impressive and diverse range of participants have been involved, including:

- UN member states
- UN observers
- Relevant UN bodies and organizations
- Special Rapporteur on Disability
- National human rights institutions
- Non-governmental organizations, including disabled people’s organizations (DPOs)

*...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.*

### **Session 1**

29 July – 9 August **2002**

- ✓ Chaired by Ambassador Luis Gallegos of Ecuador, who chaired subsequent sessions until Session 6
- ✓ Discussed rationale for convention
- ✓ Survived attempts to kill the process
- ✓ Agreed to meet again 2003

### **Session 2**

16-27 June **2003**

- ✓ Decision to proceed with drafting convention
- ✓ Discussions over process to proceed
- ✓ Decision to establish Working Group
- ✓ Decision on Working Group membership

### **Working Group (WG)**

5-16 January **2004**

- ✓ 27 governments – equally distributed across the 5 UN Regions
- ✓ 12 NGOs (including DPI)
- ✓ 1 National Human Rights Institution Representative)
- ✓ Discussions led by Coordinator (New Zealand's Ambassador MacKay)
- ✓ Produced draft text to form basis of negotiations

### **Session 3**

24 May – 4 June **2004**

- ✓ Commenced first reading of WG text
- ✓ AHC members proposed amendments
- ✓ Produced compilation of amendments document
- ✓ Decision to delay consideration of some issues:
  - Definitions
  - Monitoring
  - Final Provisions

### **Session 4**

23 August – 3 September **2004**

- ✓ Completed first reading
- ✓ Began review of suggested amendments
- ✓ WG Text Articles 1 - 15
- ✓ Conducted informal sessions with Coordinator and country facilitators to synthesize text
- ✓ WG Text Articles 4 - 7
- ✓ Agreed to meet again in 2005

### **Session 5**

24 January – 4 February **2005**

- ✓ Conducted informal sessions with Coordinator and country facilitators to synthesize text
- ✓ WG Text Articles 7(5) - 15
- ✓ Agreed to meet again in August 2005

### **Session 6**

1– 12 August **2005**

- ✓ Conducted informal sessions with Chair (1st meeting with Ambassador MacKay as Chair) to synthesize text
- ✓ WG Text Articles 15 - end
- ✓ Agreed to meet again in 2006
- ✓ Chair issued “Chair’s Text” in October 2005, synthesizing the amendments made to date

### **Session 7**

6 January – 3 February **2006**

- ✓ Conducted informal sessions with Chair to complete 1st reading of the Chair’s Text
- ✓ Revised “Working Text” issued (covering Articles Preamble – Article 33 on National Level Monitoring)
- ✓ Agreed to meet again 14- 25 August, 2006

As of February 2006, the Ad Hoc Committee has a draft Convention known as the “Working Text.” The draft text will undergo further changes and amendments before it can be adopted successfully by the UN General Assembly, and then opened for countries to join and become States Parties. At this time though, it can be said that the Convention will definitely be comprehensive in nature. It will offer more than just simple protection against disability discrimination. Instead it will address the full range of human rights of persons with disabilities.

### **Current Structure of Draft Treaty (February 2006)**

Preamble	
Article 1	Purpose
Article 2	Definitions
Article 3	General Principles
Article 4	General Obligations
Article 5	Equality and Non-Discrimination
Article 6	Women with Disabilities
Article 7	Children with Disabilities
Article 8	Awareness Raising
Article 9	Accessibility
Article 10	Right to Life
Article 11	Situations of Risk
Article 12	Equal Recognition Before the Law
Article 13	Access to Justice
Article 14	Liberty and Security of the Person
Article 15	Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment
Article 16	Freedom from Exploitation, Violence and Abuse
Article 17	Protecting the Integrity of the Person
Article 18	Liberty of Movement and Nationality
Article 19	Living Independently and Being Included in the Community
Article 20	Personal Mobility
Article 21	Freedom of Expression and Opinion, and Access to Information
Article 22	Respect for Privacy
Article 23	Respect for the Home and the Family
Article 24	Education
Article 25	Health
Article 26	Habilitation and Rehabilitation
Article 27	Work and Employment
Article 28	Adequate Standard of Living and Social [Protection]
Article 29	Participation in Political and Public Life
Article 30	Participation in Cultural Life, Recreation, Leisure and Sport
Article 31	Statistics and Data Collection
Article 32	International Cooperation
Article 33	National Implementation and Monitoring

As of the time the Working Text was issued, the draft articles address the following topics:

## **A Look ahead: where are we going?**

As you have seen, it took the international community several decades to decide to draft a new convention on the human rights of persons with disabilities, and the negotiations process itself has spanned several years. Hopefully the negotiations will come to a close soon, and we can then get down to the business of implementing the Convention! Clearly we have come a long way since the 1971 Declaration on the Rights of Mentally Retarded Persons!

With that in mind, here are some suggestions about what might happen over the next 30 years if we can be successful in implementing the Convention and helping it to fulfill its potential ...

2007 Adoption

2008 Ratification by enough countries for Convention to enter into force

Ongoing - Continuing ratification by additional countries, until all UN Member States are States Parties

2008 Establishment of the monitoring body

2010 Filing of first country reports to the monitoring body

Ongoing - States Parties embark upon drafting of national disability action plans – a process carried out with leadership from, and close consultation with, persons with disabilities and their representative organizations

2010 – 2020

States Parties embark upon implementation of national disability action plans

UN bodies such as UNICEF start to comprehensively integrate disability and persons with disabilities into all their programming

National and international development agencies start to comprehensively integrate disability and persons with disabilities into all their programming

2020 – 2030

<b>Exercise: Looking into the future – where do YOU want to go?</b>
---

## 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:

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)  
"General Comment No. 5" of the Committee on Economic, Social and Cultural Rights  
UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities  
Declaration on the Rights of Mentally Retarded Persons  
Declaration on the Rights of Disabled Persons  
World Programme of Action Concerning Disabled Persons  
Tallinn Guidelines for Action on Human Resources Development in the Field of Disability  
Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care  
UN Commission on Human Rights Resolution Number 1998 / 31, "Human rights of persons with disabilities"  
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 Disabled People

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  
UN Department of Economic and Social Affairs (where you can get more information on the status of the draft disability Convention)