



2010

## The U.N. Disability Convention: Creating Opportunities for Participation

Janet E. Lord

Follow this and additional works at: [https://scholarworks.law.ubalt.edu/fac\\_articles](https://scholarworks.law.ubalt.edu/fac_articles)



Part of the [Disaster Law Commons](#)

---

# THE U.N. DISABILITY CONVENTION

## Creating Opportunities for Participation

By Janet E. Lord

Long relegated to the margins of the global human rights agenda, international disability rights law has emerged as a legitimate human rights issue, garnering the attention of the international community of States, international financial institutions, multinational corporations, the mainstream human rights community as well as disabled peoples organizations. Using the language of rights to understand disability issues was no easy matter in view of a long-standing perception that disabled persons should garner much-deserved pity and provoke our charitable impulse. Such perceptions—referred to as the “medical” or “charity” model of disability—had unfortunate, if unintended, consequences.

During the 1970s, the American disability rights movement, drawing on advocacy in support of civil rights, sought to reframe disability issues and worked to foster the view that persons with disabilities can make a meaningful contribution to society—economically, politically, socially, and culturally—if only barriers that inhibited their full inclusion were removed and their civil rights respected. Their efforts, of course, led to progressive developments in disability rights law

and, ultimately, the adoption of the Americans with Disabilities Act in 1990.

Remarkably, the first human rights treaty to be adopted in the twenty-first century, and the first to be signed by the United States in many years, is the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This treaty is serving as a much-needed impetus for countries with little or no disability rights framework at all. It is also awakening other actors to the need for serious policy and practice shifts in their organizations, with international organizations such as the World Bank adopting a more disability-inclusive stance in their approach to programming. Multilateral corporations are beginning to incorporate disability inclusion into their internal human resource policies and into their community outreach and corporate social responsibility work. The unprecedented level of disability law reform in many developing countries will trigger obligations for companies working abroad, but, more significantly, it will create opportunities for a broadened pool of trained and educated workers as the CRPD promotes empowerment for so many persons with disabilities.

### A Treaty for the 21st Century

The CRPD was adopted by the General Assembly on December 13, 2006, and opened for signature by the international community of States on March 30, 2007. Interestingly, the

initial impetus for the creation of the drafting committee working at U.N. Headquarters in New York came from Mexico and was supported by a number of developing countries such as South Africa, Ecuador, the Philippines, and India. The Ad Hoc Committee was created by the U.N. General Assembly in 2001 and began its work in 2002. A total of eight sessions lasting on average of two weeks and open to all U.N. Member States were held in New York, along with one Working Group session in 2004 that produced the first treaty draft. More than 130 States participated in the process, along with hundreds of disabilities rights agencies, U.N. agencies, and other interested organizations. The process, based on achieving consensus among States, was unusually transparent and cooperative and was likewise distinct for its dynamic rules of procedure that allowed disability advocates and their organizations to have a meaningful role in the crafting of the treaty text.

The CRPD entered into force after a requisite 20 ratifications on May 3, 2008, making it the second most rapidly ratified major human rights treaty. Its Optional Protocol, adopted and entered into force on the same date, creates opportunities for making complaints to the Committee on the Rights of Persons with Disabilities also entered into force on the same date. (The principal website for more information on the CRPD is United Nations Enable website, available at [www.un.org/esa/socdev/enable/rights/convtexte.htm](http://www.un.org/esa/socdev/enable/rights/convtexte.htm)).

---

*Lord is a partner at BlueLaw International, LLP; research associate, Harvard Law School Project on Disability; and adjunct professor of law, University of Maryland School of Law. Her e-mail is [jlord@bluelawinternational.com](mailto:jlord@bluelawinternational.com).*

At the time of this writing there are 81 “States Parties,” referring to countries that have completed the process of ratification and are therefore fully bound by its terms. More than 140 States have signed the CRPD and are in the process of ratification. The United States signed the treaty on July 30, 2009. The Optional Protocol that allows individuals and groups to submit complaints of treaty violations to the monitoring committee for the CRPD has garnered less support, but is still considered a success.

At the time of its adoption, the U.N. High Commissioner for Human Rights, Louise Arbour, heralded the CRPD as a rejection of the understanding of persons with disabilities “as objects of charity, medical treatment and social protection” and an embrace of disabled people as “subjects of rights.” At its core, the CRPD aims to bring persons with disabilities into the community, as active participants in economic development, political and public life, and social and cultural activities.

#### CRPD Overview

The general aim of the Ad Hoc Committee that drafted the CRPD was to spell out the application of

existing human rights principles to persons with disabilities. Thus, the objective was not to create new or special rights. The CRPD draws heavily on disability rights laws and policies in countries with established disability laws—the United States, the United Kingdom, and Australia—and governing areas like voting, education, employment, access to culture and sport. Given the strong parallels with the American domestic disability framework, ratification by the United States would require little in the way of legal reform and, like other human rights treaties, many of the CRPD’s provisions are less detailed and often weaker than American disability law. Rapid ratification by States with strong disability rights frameworks (nearly all States in the European Union, Canada, Australia, and New Zealand have ratified) reflects the reality that the CRPD is a treaty that will be unproblematic for States with strong disability rights traditions, and yet more challenging, especially in terms of implementation, for many States around the world with an underdeveloped or even nonexistent disability rights framework.

The CRPD follows a fairly traditional human rights convention structure and

contains an introductory set of provisions outlining its purpose and key definitions, along with articles of general application, to be applied across the treaty text. It canvasses specific substantive rights and so includes civil, political, economic, social, and cultural rights. It creates a system of monitoring and implementation at the national and international levels and includes standard final provisions that govern the operation of the CRPD. Many of its more specific obligations add disability-specific content to well-established human rights obligations (for example, creating standards on making education inclusive and elections accessible and applying nondiscrimination to all stages of the employment process) and thereby contribute to the interpretation of other instruments. Indeed, its provisions speak also to the important role of private actors, including corporations, in ensuring the implementation of the CRPD.

#### ADA for the World?

Is the CRPD essentially an Americans with Disabilities Act (ADA) for the world? Not exactly. It does, however, provide a framework for the development of disability rights in countries that is, in large part, inspired by the principles and concepts found in the ADA—nondiscrimination, inclusion, autonomy, human dignity. Like any other human rights treaty, the CRPD seeks to ensure that the human rights to which all are entitled are actually implemented for persons with disabilities. The CRPD makes several particularly important progressive contributions, not only to international disability rights, but to human rights law more generally. These include the articulation of the right to nondiscrimination on the basis of disability, together with the obligation to provide reasonable accommodation, developed first in the United States under the 1973 Rehabilitation Act and articulated in detail in the ADA. Other notable features include provisions on employment and the monitoring and implementation measures, all of which reflect innovative features and are set out in more detail in the sidebar.



*“I know that file’s here somewhere.”*

## Nondiscrimination

The explicit recognition in the CRPD of disability as a prohibited ground of discrimination, together with the obligation to ensure that reasonable accommodations are made to facilitate human rights enjoyment by persons with disabilities, represents a first expression in a human rights treaty. Nondiscrimination is expressed in Article 3 as one of eight general principles of the treaty and is intended to guide the interpretation of the CRPD.

The nondiscrimination and equality provisions are elaborated in Article 5 and require States Parties to ensure the equality of individuals with disabilities as well as prohibiting any discrimination on the basis of disability. The CRPD defines disability discrimination in Article 2 as “any distinction, exclusion or restriction on the basis of disability” that “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” and it extends to “all forms of discrimination, including denial of reasonable accommodation.” The CRPD defines the concept of reasonable accommodation as a “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden” that can ensure to disabled persons “the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” Crucially, the CRPD establishes that the failure to provide reasonable accommodation constitutes discrimination, thereby creating a permanent link between nondiscrimination and the reasonable accommodation requirement. Disability discrimination under the CRPD therefore applies not only to persons with disabilities, but also to people associated with persons with disabilities, such as family members, friends, or caregivers.

States Parties to the CRPD have a series of general obligations that must be met with measures aimed at ensuring the promotion and full realization of human rights for all persons with disabilities. States Parties also must

take measures to realize economic, social, and cultural rights progressively to the maximum extent of their available resources. The general obligations require States to (1) adopt legislative, administrative, and other measures to implement the CRPD; (2) abolish or amend existing laws, regulations, cus-

tomies and to promote others to undertake such research; (7) provide accessible information about assistive technology to persons with disabilities; (8) promote professional and staff training on CRPD rights for those working with persons with disabilities on the CRPD; and (9) consult with

### Rights Set Forth in the CRPD

- Equality before the law without discrimination (article 5)
- Women with disabilities (article 6)
- Children with disabilities (article 7)
- Right to life, liberty, and security of the person (articles 10 and 14)
- Equal recognition before the law and legal capacity (article 12)
- Access to justice (article 13)
- Freedom from torture (article 15)
- Freedom from exploitation, violence, and abuse (article 16)
- Right to respect for physical and mental integrity (article 17)
- Freedom of movement and nationality (article 18)
- Right to live in the community (article 19)
- Freedom of expression and opinion (article 21)
- Respect for privacy (article 22)
- Respect for home and the family (article 23)
- Right to education (article 24)
- Right to highest attainable health/rehabilitation (articles 25 and 26)
- Right to work (article 27)
- Right to adequate standard of living (article 28)
- Right to participate in political and public life (article 29)
- Right to participate in cultural life (article 30)

tomies, and practices that discriminate against disabled persons; (3) adopt an inclusive approach to protect and promote the rights of persons with disabilities in all policies and programs; (4) refrain from conduct that violates the CRPD and ensure that the public sector respects the rights of persons with disabilities; (5) take measures to abolish disability discrimination by persons, organizations, or private enterprises; (6) undertake research and development of accessible goods, services, and technology for persons with

and involve persons with disabilities in developing and implementing legislation and policies and in decision-making processes concerning rights.

### Employment

One of the core substantive rights in the CRPD, and one that is given fairly detailed expression, relates to employment. Drafters of the CRPD recognized that barriers to employment by persons with disabilities operate to reinforce their exclusion and marginalization. Advocates during the drafting process

highlighted these barriers and pressed for language that would help confront and break down obstacles. Such barriers include

- Physical barriers to places of work—in other words, the workplaces themselves are not physically accessible;
- Lack of accessible transportation to places of work;
- Legislation, regulations, policies, or practices that prohibit people with disabilities from working in particular jobs or that do not protect people experiencing disability-based discrimination in employment settings—most countries have no disability legislation at all;

### **Too often, persons with disabilities are subjected to slavery-like conditions in sheltered workshops.**

- Lack of accessible information about available employment opportunities;
- Lack of accommodations to facilitate communication in employment settings by people with disabilities, especially blind, deaf, deaf-blind, people with intellectual disabilities, and people with learning disabilities; and
- Attitudes about the ability of people with disabilities to work and be qualified and contributing employees.

The resulting framework, reflecting the spirit and principles of American disability rights law, addresses a range of employment issues. Article 27 contains two subsections. The first and longest of these expressly recognizes 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. It further states that the right to work should be enjoyed in a “labour market and work environment that is open, inclusive and accessible to persons with disabilities.” Article 27(1) then goes on to address some of the specific steps that States should take in promoting the realization of the right to work by people with disabilities. These include

- Prohibiting discrimination on the

basis of disability regarding all areas and forms of employment;

- Protecting the right to just and favorable conditions of work, including through equal pay for equal work, safe and healthy working conditions, protection from harassment, and resolution of complaints;
- Ensuring that people with disabilities can exercise their labor and trade union rights on an equal basis with others;
- Enabling access to general technical and vocational guidance programs and other placement and training services;
- Promoting employment opportunities and career advancement for

people with disabilities and providing assistance in finding, obtaining, maintaining, and returning to employment;

- Promoting opportunities for self-employment, entrepreneurship, developing cooperatives, and business start-up;
- Employing people with disabilities in the public sector;
- Promoting employment in the private sector through affirmative action, incentives, and other appropriate policies and measures;
- Ensuring provision of reasonable accommodation in the workplace;
- Promoting work experience for people with disabilities in the open labor market; and
- Promoting vocational and professional rehabilitation, job retention, and return-to-work programs.

Article 27(2) requires States to ensure that people with disabilities are not held in slavery or servitude and are protected on an equal basis with others from forced or compulsory labor. Too often, persons with disabilities are subjected to slavery-like conditions in sheltered workshops. Human rights organizations are increasingly documenting and reporting on these kinds of abuses that can go unnoticed given that many countries still warehouse

disabled persons in isolated institutions far from public scrutiny. The CRPD holds governments accountable for failing to monitor and address such treatment.

Other CRPD provisions serve to reinforce the employment framework. Thus, the awareness-raising obligations in Article 8 address some of the underlying determinants of disability discrimination by requiring States Parties to raise public awareness. Illustrative measures are provided, including initiating and maintaining effective public awareness campaigns, including promoting recognition of the skills, merits, and abilities of persons with disabilities, and of their contributions to the workplace and the labor market. Article 9 on accessibility seeks to dismantle barriers hindering the effective enjoyment of rights by persons with disabilities by addressing a broad spectrum of accessibility concerns within both the public and private spheres.

Corporations have worked to respond to disability inclusion, making progress in their internal policies and practices and taking positive measures to facilitate inclusion and in some instances responding to regional and international disability rights events and initiatives. As part of the 2003 European Year of People with Disabilities, and building upon earlier company initiatives, international car manufacturer Volkswagen signed an agreement pledging to better integrate disabled staff in the mainstream work process through education, training, and internal communications. As part of the 2003 celebrations, Volkswagen also released a brochure entitled “Away From Paternalism Toward Enablement,” in which it outlined a variety of steps it is taking to promote disability issues, including

- Working to ensure that its products are accessible to people with disabilities;
- Prohibiting disability-based discrimination in the work environment;
- Utilizing principles of universal design to promote a healthy and safe work environment, to integrate employees with disabilities, and to

reintegrate employees who may have become disabled during the time they have been employed with the company;

- Utilizing reasonable accommodation where universal design features do not adequately accommodate employees with disabilities; and

- Forming integration teams of different management departments and representatives of people with disabilities, in order to work cohesively toward the gradual implementation of disability policies throughout all company departments and manufacturing plants.

The CRPD provides an important framework for countries within disability employment law to use in developing new or revising outmoded disability rights protections.

### Monitoring Disability Rights

The CRPD stands out among the core human rights conventions in devoting specific language to the issue of national level monitoring. Article 33 contains four key provisions. First, it obligates States Parties to “designate one or more focal points” for respective domestic CRPD implementation. Second, States are required 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.” This latter provision is an explicit acknowledgment by the drafters that responsibility at the national level for ensuring the rights of persons with disabilities extends across a wide range of government sectors and therefore poses considerable challenges in relation to coordination and coherency of approach. Third, Article 33 requires States Parties to establish and/or support one or more independent mechanisms to “promote, protect and monitor” the U.N. CRPD’s implementation. Consistent with the principle of participation, Article 33 provides that persons with disabilities and their representative organizations must be “involved and participate fully in the monitoring process.”

The CRPD creates a mandatory

reporting system—for example, the International Covenant on Civil and Political Rights—for States Parties to the Committee on the Rights of Persons with Disabilities. In addition, the CRPD’s Optional Protocol empowers the Committee to review individual and group communications alleging violations of the CRPD asserted against participating States Parties to the Optional Protocol. Communications also may be submitted on behalf of aggrieved individuals. The Committee also may initiate investigations under the inquiry procedure in cases regarding egregious or systematic human rights violations. These procedures result in nonbinding recommendations and are to be invoked only when

live in developing countries. Donors in many countries are now adopting provisions similar to the U.S. Agency for International Development that create inclusive policies for the design and implementation of development programs.

### An Impetus for Advancing Inclusion

International businesses and international lawyers have both an opportunity as well as a challenge in working to support the implementation of the CRPD, respecting its precepts in countries that have ratified it and incorporated its provisions into national laws. American businesses are perhaps best prepared to respond, with many years of experience in working to comply

#### **For additional reading:**

Janet E. Lord and Michael Ashley Stein, *The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities*, 83 U. Wash. L. Rev. 449 (2008).

remedies at the national level have been fully exhausted or are simply nonexistent.

The CRPD creates an additional quite unique forum for addressing implementation issues, namely, the establishment of a periodic Conference of States Parties. Themes emerging from the first meetings include corporate responsibility programs that are inclusive of disability issues and exploring microfinance opportunities as a strategy for effective outreach to a community underserved by the microfinance industry.

Finally, the CRPD creates several other implementation facilitation measures, including an obligation to collect and disseminate disability data and statistics and the first ever provision in a human rights treaty requiring a development program to be fully inclusive. This is a very useful provision for countries that do not collect disability-specific data. The inclusive development provision is significant given that 80 percent of the world population of persons with disabilities

with the ADA. With the landscape for disability rights shifting rapidly with the emergence of disability rights frameworks throughout the world, inclusion and accessibility in both the public and private spheres should be on the agenda of public and private actors alike.

The CRPD, the first legally binding instrument on the rights of persons with disabilities, situates disability rights squarely within the modern international human rights framework and marks its growing relevance for businesses around the world. With rapid ratification by both developed and developing countries alike, the treaty is already generating significant law reform efforts in countries as diverse as Hungary, Mexico, Iraq, Bangladesh, and Vietnam. It is also carving out new space within which businesses can develop innovative and far-reaching corporate social responsibility programming and, most importantly, benefit from the expanded labor pool of disabled workers that the CRPD framework will foster. 

