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## BACKGROUND PAPER



# ***The United Nations Convention on the Rights of Persons with Disabilities: An Overview***

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***The United Nations Convention on the Rights of Persons with  
Disabilities: An Overview  
(Background Paper)***

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# THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: AN OVERVIEW

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## 1 INTRODUCTION

Viewing disability from a human rights perspective involves an evolution in thinking and acting by States and all sectors of society so that persons with disabilities are no longer considered to be recipients of charity or objects of others' decisions but holders of rights.

– Office of the United Nations High Commissioner for Human Rights <sup>1</sup>

The United Nations (UN) *Convention on the Rights of Persons with Disabilities* (CRPD, or the Convention) and its accompanying *Optional Protocol to the Convention on the Rights of Persons with Disabilities* (Optional Protocol) were enthusiastically welcomed by many states, civil society organizations, members of the disability community and other commentators when it was adopted by the UN General Assembly on 13 December 2006.<sup>2</sup> The Convention is considered significant for a number of reasons. Most importantly, it is intended to serve as a vehicle for helping persons with disabilities to enjoy their human rights. The Government of Canada described it as “an important means for the international community to recognize and reaffirm the need to prohibit discrimination against people with disabilities in all aspects of life.”<sup>3</sup> The Convention remains groundbreaking for the manner in which it was drafted, adopted and signed. Not only was it completed in less time than any preceding human rights treaty and received a record number of signatures from UN member States, it was negotiated with the involvement of many groups, including non-governmental and international organizations as well as national human rights institutions.

The Convention exemplifies what modern human rights instruments should be able to accomplish. Unlike many earlier international treaties that simply stated what rights are recognized by the UN, the CRPD outlines key steps and actions for States Parties to take in order to promote and protect the human rights of people with disabilities. (This paper uses the term “States Parties” as used in the Convention to refer to states that have given their consent to be bound by the Convention.) The CRPD seeks to build on the existing reporting and monitoring models from other treaties, where states are required to report on their implementation progress to the UN, while also seeking to develop more dynamic participation with civil society and closer monitoring by independent mechanisms. As described in a joint paper by the Council of Canadians with Disabilities and the Canadian Association for Community Living, the CRPD is “a tool that helps communities and governments understand why and how the rights of people with disabilities haven't been realized and it provides a framework that articulates the conditions needed to make rights a reality.”<sup>4</sup>

The Convention is still very young. Whether it proves to be a successful tool for changing society's attitudes towards disability and helping promote the rights of persons with disabilities remains to be seen. The reporting and monitoring processes, along with the assessments that will be made by non-governmental organizations, UN bodies and other States Parties, will provide much opportunity to

discuss any progress being made. Canada's first report was scheduled to be delivered in 2012, though it is not uncommon for member States to file reports to treaty bodies after the deadlines. This paper explains how the Convention was developed in a manner that represents the current approach to human rights within the UN system, and reviews the key principles and obligations contained in the Convention.<sup>5</sup>

## 2 DEVELOPING THE CONVENTION

### 2.1 THE NEED FOR A NEW CONVENTION

The CRPD does not recognize new rights per se, nor is it the only instrument to address issues pertaining to disabilities.<sup>6</sup> In 1975, the UN *Declaration on the Rights of Disabled Persons* formally recognized that persons with disabilities are entitled to the same rights as others.<sup>7</sup> Other treaties specifically mention that the rights articulated within it apply more broadly to persons with disabilities, such as the *Convention on the Rights of the Child*, or that they apply universally to all persons, such as the *International Covenant on Civil and Political Rights*.<sup>8</sup> Despite these existing instruments, the continuing discrimination many persons with disabilities face throughout the world forced the UN and its members to recognize that existing human protections were insufficient to guarantee their equality. Something was needed to better articulate not only how recognized civil, cultural, economic, political and social rights operate within a disability context, but also the obligations that states have to protect and promote these rights.

According to the UN, persons with disabilities are the most disadvantaged and marginalized minority group.<sup>9</sup> The World Health Organization says that over one billion people, or about 15% of the world's population, live with some form of disability, with between 110 and 190 million people having very significant difficulties in functioning. The number of people with some form of disability is increasing as the world population grows and ages.<sup>10</sup> Statistics pertaining to disabilities can, however, often appear to vary between different studies due to differences in how organizations define disability and the different types of disabilities that could be included in a survey (whether physical, intellectual or developmental, episodic, long-term or temporary).

While many persons with disabilities are able to find opportunities to work, play, learn, be fulfilled and contribute to their communities, many also face barriers that prevent them from doing so. Persons with disabilities are more likely to be unemployed or out of the labour force, to earn low incomes if employed, to be dependent on government transfers such as social assistance, to live in poverty, to have difficulty securing adequate housing and to face discrimination.<sup>11</sup>

States with fewer resources to put towards accessible programs and infrastructure can be particularly difficult places for persons with disabilities to fully integrate into society. For instance, the UN estimates that 98% of children with disabilities in developing countries do not attend school. Also, an estimated 30% of the world's street children live with disabilities.<sup>12</sup> Canada also has its own challenges for ensuring

equal opportunities for persons with disabilities, as set out in section 3 of this paper, “Canadian Perspective.”

Although much of the discrimination persons with disabilities experience has come from the individuals they encounter in their daily lives, some of it has also been institutionalized in government laws and policies. As noted by the Office of the High Commissioner for Human Rights (OHCHR), in order for persons with disabilities to fully achieve a substantive level of equality around the world, laws that limit their rights need to be replaced, such as “immigration laws that prohibit entry to a country based on disability; laws that prohibit persons with disabilities to marry; laws that allow the administration of medical treatment to persons with disabilities without their free and informed consent; [and] laws that allow detention on the basis of mental or intellectual disability.”<sup>13</sup>

The OHCHR has also commented that “[p]ersons with disabilities have historically been invisible in the human rights system and have been overlooked in human rights work.”<sup>14</sup> As explained by Ontario lawyer David Lepofsky at a 2011 conference on the rights of persons with disabilities, though UN treaties, constitutional rights and human rights laws all proclaim the equal rights of persons with disabilities, progress has been slow in seeing meaningful results from these guarantees of equality. For example, the burden of accessing these rights was left up to individuals with disabilities, who had to litigate against private and public sector employers and service providers. They have had to fight one barrier at a time.<sup>15</sup>

The need for legislative and policy reform, as well as the need to change prevailing attitudes that focus too often on how to fix a person’s disability rather than on how society can remove barriers impeding their participation, encouraged the quick progress made in drafting and adopting the Convention.

## **2.2 DEVELOPING A RIGHTS-BASED APPROACH**

As the approach to drafting human rights treaties has evolved to place more emphasis on clarifying the obligations of States Parties and on empowering rights holders, the idea of taking a rights-based approach to various policy issues has gained momentum within the UN. While opinions of what constitutes a rights-based approach often vary, as do theories about how such approaches should be applied in different contexts, there are a few basic and generally accepted principles. These include the principles that all rights are universal and equal, that rights holders should be participants in all decisions affecting them and that states have obligations to ensure that citizens are able to enjoy their rights.<sup>16</sup> Some commentators have stressed that the purpose of such an approach is to find ways to help individuals assert their rights and to help those who have human rights obligations to meet them (i.e., the state and its representatives). Others, such as the UN’s OHCHR, have described how the human rights-based approach serves to integrate the norms, standards and principles of the international human rights system into the UN’s work.<sup>17</sup>

The concept of using a rights-based approach emerged primarily in international development work in the 1980s, where aid policies and programs tended to focus on

economic growth and meeting the basic needs of recipients. As the United Nations Population Fund has noted, these policies “identified basic requirements of beneficiaries and either supported initiatives to improve service delivery or advocated for their fulfilment.”<sup>18</sup> As policy makers sought better ways of ensuring that more people could benefit from development programs, they concentrated on securing human rights as a critical first step in any development project. Policy began to shift from treating aid recipients as charitable objects to recognizing all persons as rights holders with an active role to play in their own economic, social and political development. As former Irish president and former UN high commissioner for human rights Mary Robinson stated, the rights-based approach “means describing situations not in terms of human needs, or areas of development, but in terms of the obligation to respond to the rights of individuals. This empowers people to demand justice as a right, not as a charity.”<sup>19</sup>

In recent years, UN agencies have developed their own policies and plans accordingly to promote human rights within their work. In 2003, the Interagency Workshop on a Human Rights based Approach in the context of UN reform developed a statement of common understanding that, among other things, underscored that all development cooperation, policies and technical assistance “should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.”<sup>20</sup> The mainstreaming of human rights throughout the UN, and a greater acceptance of the rights-based approach, helped set the stage for a new comprehensive treaty for persons with disabilities.

### **2.3 THE CONVENTION COMES INTO FORCE**

The UN General Assembly set up an ad hoc committee in December 2001 that considered proposals and held sessions to negotiate the content of the Convention.<sup>21</sup> These negotiations were completed in just three years – less time than for any other human rights treaty – and involved not just governments, but non-governmental and international organizations as well as national human rights institutions.<sup>22</sup> When the Convention and its Optional Protocol were opened for signature, a record number of UN member States signed it.<sup>23</sup>

The Convention and its Optional Protocol were adopted on 13 December 2006 during the 61<sup>st</sup> session of the General Assembly. The Convention opened for signature at the UN headquarters in New York on 30 March 2007. At the start of 2013, there were 155 signatories and 127 ratifications of the CRPD, and 90 signatories and 76 ratifications of the Optional Protocol. The Convention came into force on 3 May 2008.<sup>24</sup>

## **3 CANADIAN PERSPECTIVE**

According to Statistics Canada’s Participation and Activity Limitation Survey, about 4.4 million Canadians reported some form of activity limitation in 2006, representing a disability rate of 14.3% of the total population.<sup>25</sup> This is an increase from the 2001 disability rate of 12.4% or 3.6 million Canadians. Disability rates increase with age

and the survey revealed that Canadians aged 65 and over had a disability rate of 43.4% in 2006. According to the Participation and Activity Limitation Survey, those with learning, memory-related or emotional disabilities number 302,847, 262,488 and 353,551 respectively.<sup>26</sup>

As Canada's population is aging, the incidence of disability can be expected to continue to increase. However, population aging does not account for the whole increase from 2001 to 2006, suggesting to Statistics Canada "that a change in disability profiles, reporting practices, or some combination of the two may also be at play."<sup>27</sup> According to a 2007 Human Resources and Skills Development Canada (HRSDC) report, the rate of disability is higher among Aboriginal peoples, perhaps as high as 30%, even though their populations tend to be comparatively younger than non-Aboriginal Canadians. The report explains how Aboriginal peoples have been "disadvantaged historically and often continue to be disadvantaged today due to various social barriers" and laws, public policies and negative attitudes that have "hindered" their ability "to participate meaningfully in Canadian society."<sup>28</sup>

Canada signed the Convention on the day it opened for signature and ratified it on 11 March 2010, though it has not signed the Optional Protocol.<sup>29</sup> Canadian representatives were very much involved in the development of the CRPD. Representatives from the Government of Canada, in particular from the Department of Foreign Affairs and International Trade, Justice Canada, HRSDC and the Department of Canadian Heritage, participated in the drafting and negotiation of the Convention from 2001 onward.<sup>30</sup>

The Council of Canadians with Disabilities and the Canadian Association for Community Living have discussed in a joint paper how, during both the elaboration and ratification stages, the Government of Canada worked closely with the disability community. Their paper noted that Canada's strong contribution to the CRPD allowed certain Canadian values to be enshrined in international human rights law. As examples, the paper noted that article 5 of the CRPD (concerning equality and non-discrimination) is very consistent with section 15 of the *Canadian Charter of Rights and Freedoms*. Meanwhile, article 12 (equal recognition before the law) was "facilitated by the Canadian delegation and secures a progressive approach to legal capacity and, for the first time in international law, recognizes a right to use support to exercise one's legal capacity – a made-in-Canada solution; [and] article 24 (education) secures a right to inclusive education – a concept that Canada, in particular, New Brunswick, is seen as an international leader on."<sup>31</sup>

Prior to ratifying the Convention, the federal, provincial and territorial governments undertook reviews to ensure that the Convention was consistent with Canadian laws and policies, and that it could be implemented in conformity with the Canadian constitution. The Office for Disability Issues at HRSDC also led two roundtable public consultations with stakeholders and organizations representing persons with disabilities to obtain their views on what is most important in the implementation process. In addition, the Office for Disability Issues created a temporary public online consultation website.<sup>32</sup> It published the results of these consultations, noting that participants emphasized the importance of creating a national implementation plan, ensuring that adequate resources are available for implementing the plan and raising awareness about the Convention. One key message from participants was that the



level of engagement in post-ratification consultations with stakeholders needs to improve and that it is necessary to ensure that all government activity in this area is transparent and made public.<sup>33</sup> The federal government also consulted with Aboriginal self-governing groups on how the Convention may impact their communities.

Canada has many of its own challenges in removing the barriers that prevent persons with disabilities from participating fully in society and ensuring that they have access to appropriate services and programs. Statistics Canada has provided data over the years, reporting on such topics as the financial difficulties families with a child with a disability can face, the lower participation rates and annual work hours of persons with disabilities as compared to those of able-bodied persons, and the difficulties parents report in getting their children appropriate services.<sup>34</sup>

Canadians with disabilities also continue to face discrimination. In 2010, 44% of all complaints accepted by the Canadian Human Rights Commission related to disability.<sup>35</sup> In reasonable accommodation cases across Canada, the most common ground involved is disability.<sup>36</sup> In recent submissions to the UN, the Council of Canadians with Disabilities provided its own evidence and concluded the following.

Sadly, Canadians with disabilities on a daily basis have been experiencing barriers, challenges and disadvantages. In particular, disproportionately high rates of poverty, weak labour market attachment and inaccessibility have excluded persons with disabilities from full and equal citizenship.<sup>37</sup>

It is important to note that many of the international obligations resulting from Canada's ratification of the CRPD and other international human rights treaties fall within the jurisdiction of the provinces. Many programs for persons with disabilities are run by provinces or territories at the local or municipal level: everything from providing support services and appropriate health care, to ensuring public spaces are accessible, to offering appropriate education to meet the needs of persons with disabilities. The federal government has therefore been required to meet with provincial and territorial governments prior to ratification and during implementation of the Convention.<sup>38</sup> Though a full review of provincial responsibilities and efforts in this area would be quite extensive, Ontario and Manitoba are notable examples concerning legislation that sets minimum standards for accessibility in public spaces and services.<sup>39</sup>

## 4 SUMMARY OF THE CONVENTION

### 4.1 A BRIEF OVERVIEW OF THE CONVENTION

Article 1 of the CRPD states that the Convention's main purpose is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."<sup>40</sup>

The Convention provides a broad compendium of existing human rights recognized by the UN, though elaborated upon within the context of disability issues. It reiterates such basic rights as the freedom of expression and opinion (article 21), freedom from

torture (article 15) and the rights to life, liberty and security of the person (articles 10 and 14). It provides direction to States Parties on steps they must take to ensure that people with disabilities share the same rights as others. It clarifies the types of actions that States Parties should take to promote and protect the rights of persons with disabilities in such areas as freedom of expression and opinion, respect for home and the family, education, health, employment and access to services.

By ratifying the CRPD, a country accepts its legal obligations under the treaty and must ensure that its domestic laws fully implement them.<sup>41</sup> The obligations range from general to specific. The general obligations require States Parties to take whatever appropriate measures are required to ensure that the rights contained in the Convention are properly protected and promoted. Other general obligations include taking such steps as adopting legislation to abolish discrimination (article 4), encouraging research and development in accessible goods, services and technology for persons with disabilities (article 4), and promoting international cooperation among States Parties, international and regional organizations and civil society (article 32).

The more specific obligations in the Convention indicate what actions should be taken to promote its main principles. For instance, article 8 of the Convention begins with a general obligation for States Parties to raise awareness about persons with disabilities generally, to promote their capabilities and contributions, to foster respect for their rights, and to combat stereotypes and harmful practices. It then specifies that such measures may include running public education campaigns.

Canada has not signed the Convention's Optional Protocol, though several organizations advocating for persons with disabilities have recommended that it do so, as has Canada's Standing Senate Committee on Human Rights.<sup>42</sup> The Optional Protocol provides procedures for individuals or groups to make complaints about alleged violations of the provisions of the CRPD by States Parties. Individuals who have exhausted national remedies for alleged violations of their rights may seek to have the matter reviewed by the UN Committee on the Rights of Persons with Disabilities, who may then report on the matter and make recommendations to the member State. For more details, see section 5.1 of this paper, "The Committee on the Rights of Persons with Disabilities."

## 4.2 DEFINITIONS OF "DISABILITY"

The 1975 UN *Declaration on the Rights of Disabled Persons* defined a "disabled person" as anyone "unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities."<sup>43</sup> This definition stresses the inabilities of persons with disabilities and their dependence on assistance. Since this was written, attitudes toward disability have shifted. For instance, the term "disabled person" has been largely replaced in common use by "persons with disabilities," since the latter places emphasis on the person, and not his or her disability.

Though the Convention uses the term “persons with disabilities,” it is not included in the definitions section. The absence of a formal definition permits people to define their own relationship with disability. It recognizes, as noted in the preamble, that “disability” is an “evolving concept.” To provide some guidance, however, the Convention states in its “Purpose” section that the term “persons with disabilities” includes, but is not limited to, “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” (article 1). This wording recognizes the diverse types of disabilities, or “impairments,” that a person may have. Perhaps most importantly, it emphasizes that a person with a disability is only limited in their ability to participate in society as a result of their interaction with barriers that any society permits to exist, which may be physical obstacles, policies, legislation, or discriminatory behaviour and prejudicial attitudes.<sup>44</sup> The Convention requires States Parties to identify and eliminate these obstacles and barriers.

This considered use of language is also reflective of the rights-based approach and the shift, as noted by the UN’s Secretariat for the Convention on the Rights of Persons with Disabilities on its Enable website, from “viewing persons with disabilities as ‘objects’ of charity, medical treatment and social protection toward viewing persons with disabilities as ‘subjects’ with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.”<sup>45</sup>

### **4.3 KEY PRINCIPLES**

#### **4.3.1 EQUALITY AND NON-DISCRIMINATION**

As the Convention is intended to ensure that persons with disabilities enjoy access to human rights just like everyone else and are free from discrimination, the importance of equality is stressed throughout. The general principles that are to guide the interpretation of the Convention, as enumerated in article 3, include “[f]ull and effective participation and inclusion in society,” “[e]quality of opportunity” and “[e]quality between men and women.” The Convention addresses many areas where persons with disabilities have traditionally been discriminated against, including access to justice, participation in political, cultural and public life, education and employment.<sup>46</sup>

Legal equality is a fundamental right that ensures individuals are empowered to access justice and challenge the violation of any of their rights. The Convention states 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” (article 5). States Parties must also ensure that persons with disabilities have access to justice on an equal basis with others (article 13), including ensuring that appropriate accommodations are made to facilitate their participation in all legal proceedings (including as a trial witness, complainant or defendant).

Article 12 uses some similar language to article 5, but adds that persons with disabilities are entitled to equal recognition before the law. This provision also includes an important development not seen in previous UN instruments. It focuses on ensuring that persons with disabilities are able to exercise their own legal capacity

and that the state provides support as necessary to allow them to do so. The intention here is that persons with disabilities are to be supported in making their own decisions concerning their personal, financial or legal affairs, and their best interests are to always be considered by those assisting them.

As summarized by the Council of Canadians with Disabilities, “the Convention focuses not on whether a person has capacity to make decisions, but upon how that person can be assisted so that he or she is able to make decisions affecting their life.”<sup>47</sup> Article 12 also adds that persons with disabilities should have an equal opportunity to own and possess property, control their own financial affairs and participate in all decisions affecting them. It further requires that States Parties have sufficient legal safeguards to protect this equal legal capacity from being abused, such as through the review of important legal decisions by an impartial authority or judicial body.

Canada added a reservation to article 12 in order to permit it to continue to use substitute decision-making arrangements “in appropriate circumstances and subject to appropriate and effective safeguards.”<sup>48</sup> This refers to such cases where a person is deemed to not have the mental capacity to make decisions on their own, and therefore “supportive decision making” may not be appropriate.<sup>49</sup>

Article 2 of the CRPD covers another aspect of ensuring substantive equality for persons with disabilities by requiring that States Parties promote the principle of reasonable accommodation of persons with disabilities. In brief, this is a duty imposed on public and private employers, service providers and landlords to ensure that their policies, programs, infrastructure or operations do not have a discriminatory effect and prevent persons with disabilities from fully enjoying and exercising their rights.<sup>50</sup> If they do, then the duty holder will undertake any reasonable modifications or adjustments that do not impose an undue burden or hardship in order to provide accommodation to the person seeking it. Examples might include ensuring that a workplace is accessible to any employees with mobility impairments, providing large print menus to restaurant patrons with visual impairments or providing sign language interpretation to audience members with hearing impairments. This duty already exists in every jurisdiction in Canada.

The Convention also seeks to address the complexity of the inequalities individuals face in society by noting in the preamble that many persons with disabilities face “multiple or aggravated forms of discrimination” on the basis of sex, age, ethnicity, religion or other grounds. Two articles place special emphasis on the need for States Parties to recognize the rights of women and children with disabilities and for States Parties to take the “necessary” or “appropriate” measures to ensure they enjoy all human rights and fundamental freedoms (articles 6 and 7).<sup>51</sup>

#### 4.3.2 ACCESSIBILITY

The importance of accessibility is emphasized throughout the Convention. It is included as one of the eight general principles set out in article 3. It is underscored in numerous articles and requires States Parties to ensure access in such areas as justice (article 14), education (article 24), health (article 25), and work and

employment (article 27). Article 9 articulates the key areas where accessibility is to be promoted, and barriers and obstacles eliminated, including transportation, information and communications, and other facilities and services open or provided to the public, whether operated by the private or public sector. It also requires that States Parties not only develop minimum standards for the accessibility of facilities and services but also “promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.”

Article 28 is an important guarantee for persons with disabilities to an adequate standard of living and social protection, including through access to such necessities as clean water, affordable services and supports for disability-related needs, housing, poverty reduction and social protection programs, and assistance to families for disability-related expenses.

#### 4.3.3 PARTICIPATION AND INCLUSION

Removing the barriers that impede persons with disabilities means more than simply making places and services accessible. It also means making sure that persons with disabilities are not impeded from “[f]ull and effective participation and inclusion in society” (article 3). To promote inclusion, States Parties must consult and actively involve persons with disabilities 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” (article 4.3).

To guarantee this active participation, article 29 focuses on political and public life, including protecting the rights to vote and to participate in the conduct of public affairs (including via organizations representing persons with disabilities). Article 30 of the Convention affirms that persons with disabilities have the same rights as others to participate in and enjoy sports, the arts and other cultural activities. On one level, it is intended to ensure that such sites as theatres, museums, libraries, sport venues and children’s playgrounds, as well as such materials as books, films and recordings, are accessible to everyone. It goes further, though, and requires that States Parties take active steps to enable persons with disabilities “to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society” as well as to “participate in disability-specific sporting and recreational activities” (article 30.5).<sup>52</sup>

## 5 IMPLEMENTATION AND MONITORING

### 5.1 THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

The Convention has been designed to ensure not only that the treaty is properly implemented by a state, but that there is a follow-up process to ensure active and participatory monitoring of the state’s progress in meeting its obligations by independent mechanisms, civil society and a newly created treaty body, the Committee on the Rights of Persons with Disabilities. Within two years of ratification, each State Party will need to provide an initial report to this Committee setting out its

constitutional, legal and administrative framework for implementation. The Committee, which is made up of independent experts nominated by member States for up to two four-year terms, will make suggestions and general recommendations as part of the review of each report (article 34). Subsequent reports will chronicle progress made in realizing the rights of persons with disabilities as a result of the implementation of the Convention, while responding to the challenges, concerns and other issues highlighted by the Committee. Given that the Convention is still relatively new, many States Parties are still in the process of preparing their initial reports to the Committee.

Members of the Committee are elected at the Conference of States Parties, which meets biennially (or as required) and also considers issues regarding the Convention. As noted earlier, the Optional Protocol to the Convention gives the Committee the authority to examine individual complaints with regard to alleged violations of the Convention by States Parties to the Protocol.<sup>53</sup> Lastly, the Committee's reports may be used by the OHCHR or other stakeholders when gathering information for a member State's Universal Periodic Review of its human rights record before the United Nations Human Rights Council.<sup>54</sup>

## 5.2 CONSULTATION

Consultation was an important part of the preparation of the CRPD, and remains an important part of the implementation process. Under the terms of the Convention, States Parties are obligated to engage with persons with disabilities, in particular through their representative organizations, when developing and implementing legislation and policies that will affect them (article 4.3).<sup>55</sup> This responsibility is also extended to the reporting process to the Committee (article 35). The Council of Canadians with Disabilities and the Canadian Association for Community Living have emphasized their view that it "is essential to design the processes and structures" of implementing the CRPD to include a "robust participation strategy."<sup>56</sup> Components of such a strategy would include providing adequate resources to ensure full and effective participation by representative organizations and investing in their capacity development.

In preparations to ratify the Convention after Canada had signed the treaty, the Office of Disability Issues led a domestic review process in 2009 that engaged with persons from the disability community as well as Aboriginal self-governments.<sup>57</sup> Some participants in these consultations indicated that "they were disappointed with the lack of engagement and transparency they have experienced since Canada signed the Convention" and that "there should have been a mechanism to keep civil society and the disability community engaged and informed throughout the ratification process."<sup>58</sup> They called for the Government of Canada to develop a national implementation plan for the Convention and for it to involve stakeholders and the disability community in its development.<sup>59</sup> The Standing Senate Committee on Human Rights has also called for the Government of Canada to "ensure that there is open, transparent, and substantive engagement with civil society, representatives from organisations advocating for persons with disabilities, and the Canadian public" with respect to Canada's obligations under the Convention.<sup>60</sup>

### 5.3 INDEPENDENT MONITORING

The Convention includes provisions to ensure that a state's implementation of the Convention isn't simply monitored by the UN treaty body reporting system, but also by independent institutions within the member State as well. Canada made two reservations when it ratified the treaty pertaining to these provisions. As noted earlier in section 4.3.1, "Equality and Non-discrimination," the Convention, through article 12, reserved the right to continue to use substitute decision-making arrangements in appropriate circumstances and subject to appropriate and effective safeguards. It further reserved the right not to subject all such measures to regular review by an independent authority, "where such measures are already subject to review or appeal."<sup>61</sup>

Another reservation pertains to article 33.2, which is the main provision that sets out the obligation on States Parties to create a framework that includes one or more independent mechanisms, such as a national human rights institution, to "promote, protect and monitor" the Convention's implementation. Canada noted that this should be interpreted as accommodating the "situation of federal states where the implementation of the Convention will occur at more than one level of government and through a variety of mechanisms, including existing ones."<sup>62</sup>

To date, the federal government has not designated a national mechanism. It is possible to read these reservations as being intended to leave elements of the monitoring processes to the provinces for programs, policies and laws within their jurisdiction. Regardless, Canada's national human rights institution, the Canadian Human Rights Commission, has offered to fulfill this role, and the Council of Canadians with Disabilities and the Canadian Association for Community Living have urged that the federal government proceed to designate the commission accordingly.<sup>63</sup>

## 6 CONCLUSION

Human rights treaties have often been described as being merely "aspirational" instruments by those defending states that are accused of human rights violations. However, to borrow words from the OHCHR, the CRPD is intended to provide a road map for change.<sup>64</sup> It is intended that States Parties will take specific actions to help transform the way people view disability and to accommodate individual differences. The Convention will, however, only be as effective as its ability to prompt States Parties to build more inclusive societies.

All States Parties will face similar challenges, whether in physically transforming public spaces to be more accessible, finding ways to encourage and support the participation of persons with disabilities in society, or developing the resources to ensure that they are able to make their own decisions concerning their affairs. As Akiko Ito, Chief of the UN's Secretariat for the Convention on the Rights of Persons with Disabilities, stated before the Standing Senate Committee on Human Rights, the "real challenge" now is "to ensure that the goals and objectives of the Convention on the Rights of Persons with Disabilities are translated into practical action so that we can make a direct impact on the lives of persons with disabilities."<sup>65</sup>

## NOTES

1. Office of the United Nations High Commissioner for Human Rights [OHCHR], [Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors](#), Professional training series no. 17, New York and Geneva, 2010, p. 9.
2. UN, [Convention on the Rights of Persons with Disabilities](#), Resolution 61/106, 13 December 2006; and UN, [Optional Protocol to the Convention on the Rights of Persons with Disabilities](#), Resolution 61/106, 13 December 2006. All UN treaties are available at OHCHR, [Universal Human Rights Instruments](#).
3. Human Resources and Skill Development Canada [HRSDC], *Advancing the Inclusion of People with Disabilities – 2008 Federal Disability Report*, 2008, p. 10.
4. Council of Canadians with Disabilities [CCD] and the Canadian Association for Community Living [CACL], [“UN Convention on the Rights of Persons with Disabilities: Making Domestic Implementation Real and Meaningful,”](#) CCD–CACL Working Paper, February 2011.
5. A full review of all the rights contained in the Convention is beyond the scope of this paper.
6. Other UN examples include the [Declaration on the Rights of Disabled Persons](#), Resolution 3447 (XXX), 9 December 1975; the *World Programme of Action concerning Disabled Persons*, 1982; the [Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care](#), Resolution 46/119, 17 December 1991; the [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#), Resolution 48/96, 20 December 1993; and the [Convention on the Rights of the Child](#), Resolution 44/25, 20 November 1989.
7. UN (1975).
8. UN (1989), arts. 2 and 23; and UN, [International Covenant on Civil and Political Rights](#), 16 December 1966.
9. OHCHR and Inter-Parliamentary Union, [From Exclusion to Equality: Realizing the Rights of Persons with Disabilities](#), Handbook for Parliamentarians on the *Convention on the Rights of Persons with Disabilities* and its Optional Protocol, New York, Geneva and Le Grand-Saconnex, Switzerland, 2007, p. iii.
10. World Health Organization, [World Report on Disability](#), Geneva, 2011. World Health Organization, [10 facts on disability](#), November 2012.
11. See the following for examples: OHCHR and Inter-Parliamentary Union (2007); International Labour Office, [“Disability Discrimination at Work,”](#) *Fact sheet*, UN News Centre, [Children with disabilities more likely to face violence, says UN-backed study](#), 12 July 2012; and World Health Organization (2011).
12. OHCHR and Inter-Parliamentary Union (2007).
13. OHCHR (2010).
14. Ibid.
15. Reach Canada, [“The Evolution of Disability Rights: A Retrospective and Perspectives for the Future,”](#) Conference Proceedings, Ottawa, 16 June 2011.
16. Senate, Standing Senate Committee on Human Rights, “Children’s Rights and the Canadian Context,” Chapter 3.1 in [Children: The Silenced Citizens, Effective Implementation of Canada’s International Obligations with Respect to the Rights of Children](#), Final Report, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, April 2007.



17. OHCHR, "[What is a rights-based approach to development?](#)," *Rights-based approaches*. See also United Nations Population Fund [UNFPA], [Definitions of Rights Based Approach to Development](#), August 2003; and OHCHR, [Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation](#), New York and Geneva, 2006.
18. UNFPA, "[The Human Rights-Based Approach](#)," *Human Rights*.
19. Mary Robinson, "[Foreword](#)," in Marta Santos Pais, *A Human Rights Conceptual Framework for UNICEF*, United Nations Children's Fund [UNICEF], Florence, Italy, 1999, p. iv; also cited in Senate, Standing Senate Committee on Human Rights (2007).
20. UN Interagency Workshop on a Human Rights based Approach, [The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies](#), May 2003. See also UNICEF, "[The Human Rights-Based Approach – Statement of Common Understanding](#)," Annex B in *The State of the World's Children 2004: Girls, education and development*, New York, 2004.
21. UN, [Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities](#), Resolution 56/168, 19 December 2001.
22. Steve Estey, [The Road to the UN Convention](#), CCD, 2011.
23. UN, "[Convention and Optional Protocol Signatures and Ratifications](#)," *Enable*, 2013.
24. UN (2013).
25. Statistics Canada, [Participation and Activity Limitation Survey 2006: Technical and Methodological Report 2006](#), Catalogue no. 89-628-XIE – No. 001, Ottawa, 2007, p. 8; and Statistics Canada, [Participation and Activity Limitation Survey 2006: Analytical Report 2006](#), Catalogue no. 89-628-XIE – No. 002, Ottawa, 2007, p. 9. See also HRSDC, [Advancing the Inclusion of People with Disabilities – 2009 Federal Disability Report, 2009](#). In the Participation and Activity Limitation Survey (PALS), persons with disabilities are "those who reported difficulties with daily living activities, or who indicated that a physical or mental condition, or health problem reduced the kind or amount of activities they could do."
26. Canadian Human Rights Commission [CHRC], [Report on Equality Rights of People with Disabilities](#), 2012. This report cites these numbers, taken from the 2006 PALS survey.
27. Statistics Canada (2007), *Participation and Activity Limitation Survey 2006: Analytical Report 2006*.
28. HRSDC, *2007 Federal Disability Report: Advancing the Inclusion of People with Disabilities*, 2007, p. 85.
29. UN (2013).
30. HRSDC (2008).
31. CCD–CACL (2011). As explained in this paper in section 5.3, "Independent Monitoring," Canada did, however, include a declaration/reservation concerning this article.
32. HRSDC, *United Nations Convention on the Rights of Persons with Disabilities – National Stakeholder Consultations Report*, Gatineau, Quebec, 2011, pp. 6–8.
33. *Ibid.* (2011), pp. 9–14.
34. See the following for examples: Statistics Canada (2007), *Analytical Report 2006*; Diane Galameau and Marian Radulescu, [Employment among the disabled](#), Statistics Canada; Dafna Kohen et al., [Children with disabilities and the educational system – a provincial perspective](#), Statistics Canada; and the CHRC (2012).

35. CHRC, *Annual Report 2010*, March 2011, p. 4 (note that more recent annual reports have not examined this information); CHRC, “United Nations’ Convention on the Rights of Persons with Disabilities,” News release, 12 March 2010; CHRC, [Performance Report: For the period ending March 31, 2008](#). As most complaints are settled through the CHRC’s dispute resolution procedures, only a small number are referred to the Canadian Human Rights Tribunal for a hearing, and even fewer reach the stage where a decision is rendered.
36. Michael Lynk, “Disability and the Duty to Accommodate in the Canadian Workplace,” Paper presented at the Ontario Federation of Labour Conference on Accommodation, Toronto, 15–16 November 2002.
37. CCD, [Renewed Political Commitment and Leadership: An Imperative for the Realization of the Human Rights of Canadians with Disabilities](#), Submission to the United Nations Human Rights Council Universal Periodic Review of May 2013, 9 October 2012.
38. For more on how responsibilities for human rights matters are organized with the federal government, please see Julian Walker, [Government of Canada Responsibilities for Domestic and International Human Rights](#), Publication no. 2011-78-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 15 September 2011.
39. For examples, see Ontario Ministry of Community and Social Services, [Making Ontario Accessible](#); and Manitoba Disability Issues Office, [Accessibility](#).
40. UN (2006).
41. For more concerning the treaty-making process in Canada, see Laura Barnett, [Canada’s Approach to the Treaty-Making Process](#), Publication no. 2008-45-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 November 2012.
42. HRSDC (2011); Senate, Standing Senate Committee on Human Rights, [Level the playing field: A natural progression from playground to podium for Canadians with disabilities](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, June 2012, p. 22.
43. UN (1975).
44. The preamble states that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”
45. UN, “[Convention on the Rights of Persons with Disabilities](#),” *Enable*.
46. OHCHR and Inter-Parliamentary Union (2007).
47. Ed Montigny, “[Roundtable on the United Nations Convention on the Rights of Persons with Disabilities](#),” *ARCH Alert*, ARCH Disability Law Centre, Ottawa, 22 July 2009.
48. UN, [Status of Treaties – Convention on the Rights of Persons with Disabilities](#), Treaty Series, United Nations Treaty Collection, Vol. 2515, p. 3 (status as at 21 March 2013). According to the CCD, Canada made strong contributions to article 12; see CCD–CACL (2011).
49. For an example of a more in-depth discussion on the ways that article 12 may influence how Canadian jurisdictions handle such concerns about legal capacity, see Michael Bach and Lana Kerzner, “[Recognition of Supports and Accommodation in the United Nations Convention on the Rights of Persons with Disabilities](#),” Part I, Section II, in *A New Paradigm for Protecting Autonomy and the Right to Legal Capacity*, Law Commission of Ontario, October 2010.
50. For more on this topic, see Laura Barnett, Julia Nicol and Julian Walker, [An Examination of the Duty to Accommodate in the Canadian Human Rights Context](#), Publication no. 2012-01-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 10 January 2012.

51. For an overview of the Convention as it relates to children, see UNICEF, [\*It's About Ability: An explanation of the Convention on the Rights of Persons with Disabilities\*](#), New York, April 2008.
52. For more on article 30, see Senate, Standing Senate Committee on Human Rights (2012).
53. UN, "[Why a Convention?](#)," *Convention on the Rights of Persons with Disabilities*, 2006.
54. For more information on the Universal Periodic Review, see OHCHR, [Universal Periodic Review](#); and Senate, Standing Senate Committee on Human Rights, [Canada and the United Nations Human Rights Council: Charting a new course](#), 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, June 2010.
55. OHCHR and Inter-Parliamentary Union (2007), p. 17.
56. CCD–CACL (2011).
57. Canadian Heritage, "[Convention on the Rights of Persons with Disabilities](#)," *Background Information*, 22 February 2011.
58. HRSDC (2011), pp. 11–12; Montigny (2009).
59. HRSDC (2011). See also CCD–CACL (2011). The CCD and CACL also recommended that, among other things, "an all party parliamentary or legislative committee" be created with "a mandate to address the status of persons with disabilities and tasked with the development of the implementation action plan," a disability commissioner to monitor government policy and procedures and a federal "Minister Responsible for the Status of Persons with Disabilities."
60. Senate, Standing Senate Committee on Human Rights (2012), p. 20.
61. UN (2013).
62. Ibid.
63. CCD–CACL (2011).
64. OHCHR and Inter-Parliamentary Union (2007), p. 5.
65. Senate, Standing Senate Committee on Human Rights (2012), pp. 57–58.