

The States Parties to the present Convention a) **Recalling** the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, b) **Recognizing** that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, c) **Reaffirming** the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination, d) **Recalling** the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, e) **Recognizing** that disability is an evolving concept and 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, f) **Recognizing** the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities, g) **Emphasizing** the importance of mainstreaming disability issues as an integral part of relevant strategies, h) **Recognizing** that the

The International Convention on the Rights of Persons with Disabilities: a New Framework

The International Convention on the Rights of Persons with disabilities

On December 13, 2006 The International Convention on the Rights of persons with disabilities was ratified. This Convention is the result of a long process in which various players had taken part: States, specialized United Nations bodies, the Special Reporter on Disability, national human rights institutions and non governmental organizations, among whom

organizations for persons with disabilities played a major role.

+ **Their objective:** to promote, protect and guarantee the full enjoyment under equal conditions of all human rights and basic freedom by all persons with disabilities and promote respect for their inherent dignity.

Some Key Concepts

Disability: The Convention recognizes that *“disability is an evolving concept and is a result of the interaction between persons with disabilities and the barriers due to the attitude and environment which prevent their full and effective participation in society, under the same conditions as others”*.

This means that the Convention does not consider individual limitations to be the origin of disability and puts the emphasis on the limitations of a society incapable of providing appropriate services to guarantee equal opportunities to all.

In addition, it highlights that *“Persons with disabilities includes those people with long-term physical, mental, intellectual, or sensory disabilities who encounter various obstacles which prevent their full*

effective participation in society, under equal conditions as others”.

Discrimination due to disability: The Convention establishes that “discrimination due to disability” refers to any distinction, exclusion, restriction due to a disability whose purpose or effect is to impede or hinder the recognition, enjoyment or exercise, under equal conditions, of all human rights and basic liberties in the political, social, cultural, civil areas or areas of any other type.

What Are The Founding Principles of The Convention?

- + Respect for the inherent dignity, individual autonomy, including the freedom to take one's own decisions and personal independence.
- + Non discrimination.
- + Full and effective participation and inclusion in society.
- + Respect for difference and acceptance of persons with disabilities as a part of diversity and the human condition.
- + Equal opportunities.
- + Accessibility.
- + Equality between men and women.
- + Respect for the development of the faculties of children with disabilities and of their right to preserve their identity.

What are the rights which the Convention foresees?

The Convention does not recognize new rights but rather adapts the regulations laid down in general humans rights treaties to the specific context of disability.

- + **Equality rights.** The right to equality and non discrimination, the right to legal capacity in all aspects of life; the right to live in an accessible environment; the right to equal access to justice.
- + **Protection rights.** The right to protection of life; the right to protection in situations of risk; the right to protection against torture and other cruel, inhuman or degrading treatment or punishment; the right to protection against exploitation, violence and abuse; the right to protection of personal integrity (physical and mental); the right to protection of privacy; and the right to protection of home and family.
- + **Freedom and personal autonomy rights.** The right to freedom and personal safety; the right to freedom of movement, to freedom to choose one's place of residence and nationality; the right to live independently and to be part of a community; the right to personal mobility with the greatest possible independence.
- + **Participation rights.** The right to freedom of expression and opinion and access to information; the right to participate in public and political life; and the right to participate in cultural life, recreation, entertainment and sport.
- + **Social rights.** The right to inclusive education at all levels and to lifelong learning; the right to the best possible standard of health; the right to special facilities to achieve maximum independence, physical, mental and social capacity; the right to have the opportunity to earn a living through a freely elected job and be accepted in a market and an inclusive, open accessible working environment; the right to enjoy an adequate standard of living and to social protection.

Main strategies for the fight against discrimination

The Convention pays special attention to certain collectives of persons with disabilities—women, children and the elderly with disabilities—and adopts the view of equality and non discrimination, which is applied throughout all its articles.

+ **The principle of universal access:** in order to ensure that persons with disabilities are able to live independently and participate fully in all aspects of life, the Convention establishes that State Parties adopt **appropriate measures to guarantee access to persons with disabilities**, in equal conditions to other individuals, in the physical environment, transport, information and communications and other

services and installations of open access and public use, both in urban and rural areas. These measures will include the identification and elimination of obstacles and barriers in different areas.

+ **The obligation to carry out reasonable compliance:** according to the Convention, this compliance involves the necessary and appropriate modifications and adaptations— which do not impose a disproportionate or undue burden when required in an specific case—to guarantee that persons with disabilities can enjoy and exercise all human rights and fundamental liberties under the same conditions as everyone other individual.

Impact of The Convention on Internal Rights

The **International Convention on the Rights of Persons with Disabilities** came into force on May 3rd, 2008. All the States which have ratified it are obliged to adapt their internal regulations to **ensure that the rights recognised by the Treaty become effective.**

In some cases, this process of adaptation will require formal modification of internal Law; in

other cases, this will not be necessary, as long as the rules and existing institutions in the different States are interpreted in the light of the Convention's text.

In some matters, there is no consensus on the significance of the Convention and hence modification of the state regulations and practices will depend on the interpretation which is given to the international text.

Main regulatory areas affected by the convention

Health and research. *The Convention interprets the treatment of disability from the perspective of rights and not from the perspective of public health.*

From this perspective, the right to health protection and the policy of prevention, treatment, rehabilitation and integration of persons with disabilities requires public authorities to not only dispose of sufficient financial means to provide the necessary material and human resources but also includes the right to personal autonomy in order for persons with disabilities to enjoy all the rights recognised by national legislation.

Impact on issues such as **clinical research, medical treatments, health and hospital services, euthanasia and abortion.**

Freedom and safety. *The Convention does not allow individuals to be **deprived of their liberty** solely for reasons of disability.*

From this viewpoint, regulations regarding the admissions of persons with disabilities must be investigated. What also must be taken into account is that the exercise of personal freedom of persons with disabilities may be endangered, not only by the direct intervention of third parties but also by determining physical and social factors, which impose just as serious limitations on personal freedom as an illegal imprisonment.

Impact on issues such as **conditions and treatment of persons with disabilities in institutions, choice of residence, personal mobility or the principles which govern penal law when a person with disabilities is involved.**

Work-employment-social services. *The Convention includes a general principle which guarantees persons with disabilities **the right to work in the same conditions as others** and, as such, to have the opportunity to earn a living through a **freely-elected job or accepted in an open, inclusive, accessible market and work environment**.*

Impact on issues such as **public employment policy, protected employment, job accessibility, reasonable adaptation measures, promotion of self-employment, non discrimination at work, labour and trade union rights, pensions and retirement and social services.**

Private law. *The Convention **does not allow disability itself to be a cause of incapacity** nor does it allow it to be a **limitation on the capacity to act.***

Incapacity should not be conceived as a legal mechanism for limiting the legal capacity of affected persons. Private law should guarantee effective access to legal capacity on the part of persons with disabilities, providing the necessary support for this.

Impact on issues such as **incapacity procedures, guardianship, representation, mandate, capacity to transfer, administer, make a will, donate, do business, etc.**

Justice. *The Convention endeavours to **guarantee persons with disabilities real access to justice and not only formal access.***

Impact on issues such as **access to justice in all its dimensions** (physical accessibility, accessibility to communications and information, accessibility in the process, the need to make reasonable adjustments) **specific and equivalent legal guardianship** (arbitration, mediation) **and specific legal guardianship of social rights.**

Public services. *The Convention calls for **equal access** of persons with disabilities to services, which requires identifying existing problems of access, eliminating obstacles, preventing new obstacles and barriers and creating experts in accessibility.*

Impact on issues such as **urban planning, transport, media, culture, leisure, sport, access to public duties and the exercise of rights in the area of public duties.**

Taxation measures. *The Convention states that for its effective implementation, fiscal policy should be used by the public authorities to **promote the fulfil-***

ment of accessibility conditions of persons with disabilities and to protect them in the exercise of their basic rights and obligations, employing extrafiscal taxation.

Impact on measures related to **situations of disability on income tax, inheritance and donations, assets, companies, added value, transfer of assets, etc.**

Political participation. *The Convention calls for the **full satisfaction of the principle of universal accessibility.** Furthermore, States are obliged to consult with persons with disabilities, through their representative organisations when drawing up and apply legislation and policies to carry out *the Convention* and when formulating all other regulations which affect the life of persons with disabilities.*

Impact on issues such as **access to information, accessibility to polling stations, voting systems, public office, political office, etc.**

Accessibility to audiovisual media. *The Convention calls for **access of persons with disabilities to the information society.***

When public authorities do not provide these right holders with access services compatible with the technical conditions in every area in which their rights are exercised, they are violating the affected rights.

Impact on issues such as access to cultural material in accessible formats, television programmes, films, theatre, other cultural activities and to educational audiovisual media.

Education. *The Convention clearly imposes a trend towards inclusive education.*

To do so requires changing the attitudes and environments which impede persons with disabilities from playing a full part in society. In addition, equality and non discrimination of persons with disabilities is a subject that should be included at all stages of education.

Impact on issues such as access to education, teacher training, methodology, curricula and study programmes.

Monitoring, application and cooperation

The Convention also calls for:

- + Establishment of state and independent monitoring and application mechanisms.
- + Implementation of an adequate system for the gathering of data and statistics.
- + Incorporation of disability into international cooperation programs.

Persons with disabilities are the 10% of the world's population. Even today, these people still suffer from discrimination and the violation of their right all over the world.

The UN endorsement of an International Convention on the rights of persons with disabilities is an important step to overcoming this situation and achieving full and effective equality in the holding, exercise and enjoyment of these rights.

What are the consequences of this endorsement of the Convention for persons with disabilities?

+ A change in the way we approach the phenomenon of disability. Disability is a human rights issue. Persons with disabilities are not the "object" of welfare policies but rather the "subject" of human rights. Therefore, the disadvantages they suffer must be eliminated because they violate the ownership and exercise of these rights.

+ Increase in the visibility of the persons with disabilities. Disability should necessarily be present in both national and international political agendas.

+ Clarification of the obligations of the State Parties towards the persons with disabilities.

+ Strengthening of the protection of their rights. Following the endorsement of the Convention, the persons with disabilities possess a binding legal instrument with which to enforce their rights.

However, the Convention is not the end point. It is only a starting point and there is much work still to be done. In order to ensure that the persons with disabilities have, not just on paper, equal opportunities is a task in which everyone-public and private authorities, the persons with disabilities themselves, the organisations representing them and civil society as a whole- must be involved.



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