



## **Conferencia Internacional: Cinco años de vigencia de la Convención Internacional sobre los Derechos de las Personas con Discapacidad**

Damjan Tatic  
Miembro del Comité para la CDPD

### **Implementing Convention on the Rights of Persons with Disabilities- first five years: From the perspective of a CRPD Committee expert**

Five years after its entry in force in May 2008, the Convention on the Rights of Persons with Disabilities CRPD reached a global acceptance: On April 25<sup>th</sup> 2013 there are 130 State parties to the Convention and 155 signatures of it. The Optional Protocol to the Convention also received a wide support: There are 76 State parties and 91 signatures to it. One can assert that the proclaimed purpose of the Convention, „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“ (article 1), has become more tangible to millions of persons with disabilities across the world in 2013. Persons with disabilities are certainly not „an invisible minority“ any more. Many countries that have ratified the Convention amended the existing or passed new legislation, promoting and protecting the rights of persons with disabilities. New policies and strategies have been adopted. Funds and resources, often admittedly insufficient, have been allocated for programs and activities aimed at persons with disabilities. Human rights of persons with disabilities have been included in the post – 2015 development agenda and situation of persons with disabilities is often high on the agenda of the United Nations and its’ agencies and organizations, as well as on the agendas of various regional organizations in different parts of the world, across the globe.

One must bear in mind that the Convention on the Rights of Persons with Disabilities is the first human rights treaty to be ratified by a regional organization- the EU. This sets new standards and opens up new issues, possibilities and dilemmas in international public law. For example, how will the exhaustion of the national remedies be regarded in cases of complaints against an EU member state under the CRPD Optional Protocol, as there is also competence of the EU judiciary as last instance for regional legal remedies. In the cases of individual complaints submitted against the EU member states under CRPD Optional Protocol so far, the Committee on the Rights of Persons with Disabilities did not consider legal remedies at the EU level. Coordination of implementation of the Convention at the EU level and national levels of the EU member states State parties to the CRPD has to be put in place, and a monitoring mechanism in line with the provisions of article 33 of the Convention at the EU level have to be set up.

In spite of the progress made in the implementation of the Convention, there still is a considerable gap between the ambitious text of the CRPD and often discouraging realities of life and deprivation of rights of persons with disabilities in different parts of the world. World economic crisis and austerity measures, especially in the EU, are often quoted by different authorities as an excuse for the lack of implementation of the Convention, but one also has to take into account that the paradigm shift from medical to human rights approach to disability, set forth by the CRPD, still hasn't taken place in many laws, policies, minds, ideas, attitudes ...

International monitoring is a significant part of the implementation of the Convention. That duty is assigned to the Committee on the Rights of Persons with Disabilities, 18 independent experts on disability and human rights elected by the State parties to CRPD, coming from different parts of the world. Currently experts from Australia, Chile, Denmark, Ecuador, Germany, Guatemala, Hungary, Jordan, Kenya, Mexico, Republic of Korea, Serbia, Spain, Thailand, Tunisia, Turkey, Uganda and the United Kingdom are serving on the Committee. Chairperson of the Committee is Ms. Maria Soledad Cisternas from Chile. Ms. Ana Pelaez Narvaez is the expert from Spain serving with the CRPD Committee. Committee works with the support of OHCHR and its' Secretariat.

Submission of initial reports on implementation of the Convention to the Committee on the Rights of Persons with Disabilities 2 years after its ratification is 1 of the duties of State parties under CRPD. So far, 45 State parties have submitted initial reports to the Committee (until April 15th 2013). Close to 50 State parties are unfortunately late with the submission of their initial reports which creates significant back-log in the work of the Committee. So far Committee considered initial reports of Tunisia, Spain, Peru, Argentina, China, Hungary and Paraguay (in chronological order). It issued Concluding observations to those countries. In September 2013 the Committee plans to review initial reports of Austria, Australia and El Salvador.

In majority of State parties reviewed so far there still are challenges with the definitions of disability and persons with disabilities, as they often still depict the medical model of approach to disability. Not all persons with disabilities are included in the definitions (persons with psychosocial disabilities are often excluded). Even though most countries try to consult persons with disabilities and their representative organizations in process of implementation of the Convention, these efforts are often insufficient for full implementation of the provisions of article 4.3 of the CRPD.

Many countries adopted legislation prohibiting discrimination based on disability but such legislation is often lacking, especially there are no provisions on denial of reasonable accommodation as prohibited form of discrimination, or such provisions (if they exist) are limited to the field of employment.

Most countries adopted some legislation and policies on accessibility, but accessibility is often perceived solely as access to physical environment, or to transport possibly, and not enough is done to make information, communication, services accessible. Challenges often arise with application of accessibility standards in local communities and monitoring is inefficient. Committee is preparing a General comment on article 9 of CRPD- accessibility.

Legal capacity continues to be a vexing issue. In all countries some forms of guardianship are still in place and mechanisms and framework for supported decision-making are still not

sufficiently developed, and often non-existent. Committee is preparing a General comment on article 12 of CRPD- legal capacity.

Situation of persons with disabilities in institutions and lack of free and informed consent to treatments remain causes for concern. So do violence, abuse and exploitation to which persons with disabilities are often subjected. Support services in local community are rudimentary (e.g. less than 900 personal assistants in Spain, with close to 700000 persons with disabilities in need of high degree of assistance, as stated in the dialogue with its' delegation in September 2011), or don't exist at all in different countries. Persons with disabilities are placed in institutions, with the excuse that this is more „cost-effective“, even though that is a clear violation of provisions of article 19 of CRPD.

Access to information is still a challenge, even though some countries like Hungary and Spain have made significant progress in recognition of sign languages.

In spite of shift towards inclusive education, many students with disabilities in different countries remain in special schools. Spain provides a good example for promotion of inclusive education with high percentage of children with disabilities in regular schools.

Most countries take efforts to increase the number of employed persons with disabilities, many use quotas but still number of those persons employed in the open market is relatively low.

In many countries, persons with disabilities face challenges when they try to exercise their right to vote. Voting process is often not accessible and persons under guardianship are often denied the right to vote under law.

Most State parties to the Convention still struggle trying to set up national monitoring mechanisms in accordance with the provisions of article 33 of CRPD. Spain, which authorized CERMI to monitor the implementation of CRPD, provides a positive example how a good national mechanism can be set up.

Women with disabilities often face multiple intersectorial discrimination and children with disabilities are often disadvantaged, so it's necessary to take more energetic measures to ensure their equal status in the society. Committee plans to draft a General comment on women with disabilities, Ana Pelaez Narvaez from Spain is chairing that working group.

Obviously, lot more has to be done for full and effective implementation of the Convention on the Rights of Persons with Disabilities. Significant initial steps had been taken and a solid foundation has been set up. One needs to build up on it, both globally and locally. The implementation process is like a marathon race, not a sprint, and we have just finished the early stages of the run.



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