

# Implementation and monitoring of the Convention

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Convention on the Rights of Persons with Disabilities = The Convention

## ➤ Implementation



- States parties to the Convention must :
  - Repeal laws conflicting with the Convention (eliminate them).
  - Create new laws at national level to implement the rights guaranteed by the Convention.
  - Include persons with disabilities in all policies.

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•The ratification of the Convention by a State compels it to develop national law in accordance with the Convention. All laws, regulations, customs, practices conflicting with the Convention must be repealed. The States must also take necessary measures (new regulations, laws...) to respect all rights guaranteed by the Convention to persons with disabilities.

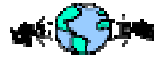
•One of the main contributions of the Convention is to compel the States to include persons with disabilities in all its policies and programs.

•States shall create a national coordination mechanism of the national policies like a interdepartmental committee, a committee of experts, a focal point, and an implementation mechanism. (See slide 6)

•See. Teaching module 5 pps 22 about the progressive realization of the economic, social and cultural rights.

## ➤ International cooperation

- transfer of resources, aid and expertise
  - Every stakeholders (States, NGOs, international organizations, private sector) in a north-south, but also south-south perspective
  - Every fields
- It should enable:
  - mainstreaming of disability issues in all development programs.
  - access to scientific and technical know ledge, cooperation in research.
  - capacity-building of all actors.



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•The concept of international cooperation has a broad signification and include notably the share of information, of practices of reference, the scientific research, the education, the cooperation between States, international organizations and civil society, in particular the disabled people organizations', the development of technology, etc... It aims to a better implementation of the Convention.

•This international cooperation must also be led in a bilateral and/or regional framework, in the framework of multilateral forum, including through specialized agencies and financial institutions, as well as in a context of exchange between actors of the South.

•International cooperation must establish relations between all actors, and linking all fields in relation with disability. It will be a multilateral and decentralized cooperation. It could be a technical and economic assistance.

•In order to avoid international cooperation becoming a provision blocking the implementation of the Convention, article 32 states that a State cannot suspend the implementation of the Convention just because international cooperation is absent or insufficient.

•An originality of the Convention is to compel States to **collect data** (art 31) (statistical, research data,...) and to disseminate them (after having taken necessary guarantees in particular the anonymization) in order to allow the identification and address the barriers faced by persons with disabilities in exercising their rights and to help assess the implementation of States Parties' obligations.

## ➤ Conferences of State Parties



- Will take place every 2 years.
- Have a cooperative character: their objective is to facilitate the implementation of the Convention.
- The civil society will have to talk with a united voice, share experiences, and give concrete suggestions.

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-The State parties shall meet regularly in order to consider any matter relating to the implementation of the present Convention. The first conference will take place at latest 6 months after the entry into force of the Convention, then at least every 2 years.

-Contrary to the sessions of the international monitoring committee which are contentious, the conferences of States Parties will be cooperative.

-In the absence of precisions in the Convention, the civil society will have to find its place in these conferences. It will be necessary from the beginning to bring its experience and its knowledge to the State parties in order to help them to implement the Convention. These conferences will be a **privileged time** to allow a united civil society to make its voice heard and to set up actions of advocacy. The conferences will have to be a time of sharing experience and practices not only between States but also between actors of the civil society and between civil society and States.

➤ Implementing the Convention requires an inclusive development

- Mainstreaming disability issues in all development programs at all levels (planning, implementation, monitoring and evaluation).
- Inclusive development can be found throughout the Convention in many articles.

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- Inclusive development, as defined here, ensures that all phases of the development cycle (design, implementation, monitoring and evaluation) include a disability dimension and that persons with disabilities are meaningfully participating in the development processes and policies.
- Inclusive development can be found throughout the Convention: in the issues of mainstreaming, participation, acknowledgment of the extra burden of poverty so prevalent with persons with disabilities... (preamble t); art 4 3); art 9 h); art 28 2);...)

See. "Inclusive Development and the Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities" by IDDC

➤ Monitoring



- creation of national mechanisms
- creation of an international monitoring committee:
  - Consideration of States reports
  - Consideration of alternative reports drafted by the civil society
  - Interpretation, explanation of the Convention

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-The monitoring is the checking of the good implementation of the Convention by the States.

-An originality of the Convention is to compel the States to create national frameworks of coordination, promotion, protection and monitoring.

There will be 2 kinds of framework fulfilling 2 distinct roles: one coordination mechanism of the State policies' related to disability and one or more mechanisms of promotion, protection or monitoring.

- The States must create within their administration a mechanism in charge of coordination of State policies' related to disability.

- The States must also create a framework having a role of implementation or monitoring of the Convention. However, in order to consider all forms of government in all States, no particular kind of mechanism is imposed. Moreover, each State can give a very different power to these mechanisms. These mechanisms can be only means of promotion of the Convention (very restricted effectiveness) or be real bodies of monitoring at the national level.

The civil society should be involved to these mechanisms, but the drafting of the text is not clear. Indeed, it could be understood that the civil society will be involved only in the monitoring mechanism, i.e. not in the roles of promotion, protection of the Convention and coordination of the policies of the State.

-As for the other International Conventions on human rights, a monitoring committee is created at the international level, the committee on the rights of persons with disabilities.

The committee will be composed eventually of 18 experts (it will be composed of 12 experts as long as 60 States will not have ratified the Convention). The experts will be elected by the States Parties for 4 years renewable once. Experts with disabilities must participate to this committee.

Each State Party submits a report to the committee every 4 years. In this report, the States must explain what are the measures taken to give effect to their obligations under the Convention. The civil society can submit **alternative reports** to give relevant information to the committee (this committee should work like the existing monitoring committees). After considering all relevant elements about one State, the international committee can make **recommendations and suggestions** to this State (they are not legally binding).

The States should make they reports widely available to the public and facilitate access to the suggestions and general recommendations relating to these reports.

The committee may invite United Nations bodies to submit reports in areas falling within the scope of their activities. The committee shall transmit, to the competent UN bodies, reports from States in case of a need for technical advice or assistance.

The international committee has a **role of interpretation** and precision of the Convention (but its interpretations are not legally binding).

**The international committee shall report** every 2 years to the General Assembly and the Economic and social council on its activities.

➤ The optional protocol



- Allows the international committee to receive individual or collective complaints:
  - Every individual or group of individuals can lodge a complaint
  - The committee can conduct an inquiry
  - The committee can make recommendations to States

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• The Convention may be ratified by a State independently of the ratification of the optional protocol. The international committee can receive and consider a communication (communication = complaint) against a State Party only if it has ratified the optional protocol.

•The complaints will be considered by the committee only if all actions at the national level failed

•Proceedings:

-an individual or a group of individuals submit a communication to the committee (see article 2 of the optional protocol for conditions).

-the committee brings the communication to the attention of the State concerned (the committee may possibly take interim measures to avoid possible irreparable damage).

-the State shall act or submit its observations to the committee within 6 months.

-the committee may possibly make recommendations or suggestion to the State concerned (the petitioner (=plaintiff) is informed).

-unless a State declare it does not recognize the competence of the committee to conduct an inquiry, the committee may conduct an inquiry which may include visit to the State's territory (inquires shall be conducted confidentially).

•The committee does not have any restraint power on the States, it can only **quote a State in his report transmitted every 2 years to the UN General Assembly** and to the Economic and Social Council. The system effectiveness rests on this single sanction which remains very soft. However the majority of States prize their reputation at the international level.

➤ In summary : the implementation process for the Convention

- Ratification
- Change of national legislation
- Change of policies
- Evolution of systems
- Evolution of services and practices
- Disabled people's lives

**Challenges: reduce the gaps between legislation / policies and practices / people's lives**

National and local level: key level for an effective implementation

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The monitoring is carried out all levels with particular attention paid to the real changes in the life of persons with disabilities.