

An International Convention on the Human Rights of People with Disabilities

What you need to know about
international human rights law and
efforts to gain equality and justice
for people with disabilities in the US
and abroad



An Education and Outreach Tool for
the US Grassroots Disability
Community

National Council on Disability
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A Call to Action



"This Convention must not be simply another ritual of words to allow paternalists and bit players to say they have done their duty to people with disabilities. It must guarantee stronger, not weaker, rights and remedies, and laws like ADA. If we want a meaningful convention, we must give up business as usual and fight as if the lives of billions depended on it, because they do.

"Almost all great moral revolutions have been led by apparently ordinary people who became passionate, single-minded advocates who destroyed stereotypes with the magic sword of truth, who transcended politics, hate and fear, and united the people in their personal universes, who struggled for a world of justice. You do have the power to create an international convention that will be the declaration of independence for billions of people in the 21st century. No soldier ever died for a better cause."

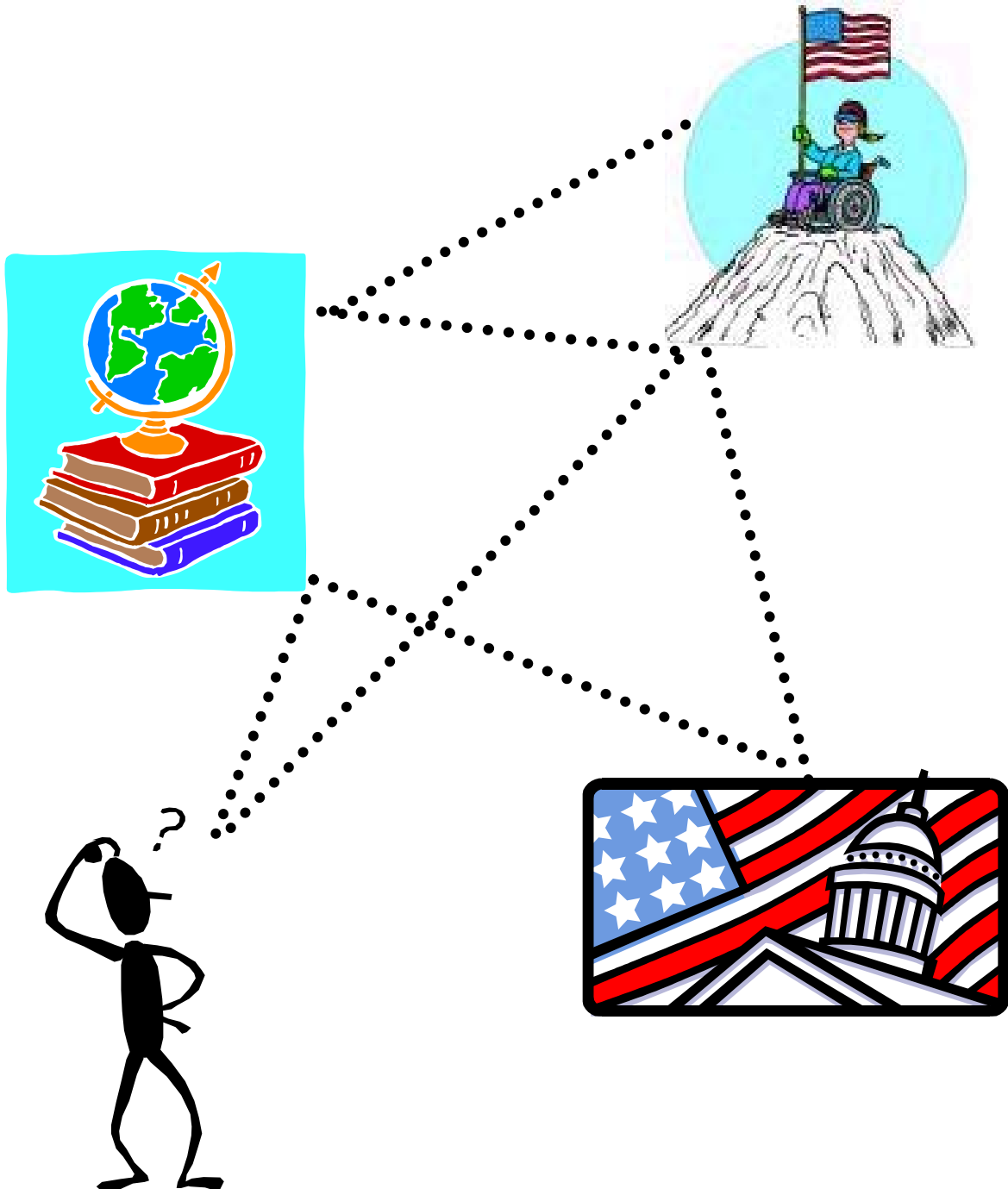
Justin Dart, April 8, 2002

Human Rights of People with Disabilities are being violated the world over

- The Constitutional Court in Thailand recently ruled 8 to 3 to uphold the ban on people with disabilities becoming judicial officials. One of the ruling judges stated that the judiciary reserved the right to recruit individuals with "optimum potential" and that "prevalent cultural values" placing preference on able-bodied people also was a factor in the decision.
- In Hungary, people with psychiatric disabilities are not protected under the anti-discrimination law (because they are considered "ill" and not disabled). They can be declared "mentally incompetent" and have their identity papers taken away. When this happens, they cannot even take a book out of a public library.
- In the US, a local politician declared "accessible" a public building that required wheelchair users to use a back entrance to enter the building, and to be escorted through non-public areas by employees and use a service elevator to access higher floors. It was argued that the aesthetics of the building would be disturbed by the addition of ramps and other accommodations.
- In Honduras, there is a law that prohibits teachers with disabilities from practicing their profession
- People in institutions in Mexico, Hungary, Armenia, and Kosovo are commonly found lying naked in filthy conditions, often covered in their own feces. In these institutions, people are regularly strapped to benches, beds, or wheelchairs due to the lack of staff.
- Aversive behavior modification procedures are used against people with mental disabilities in many institutions across the United States. This includes the use of electric shock, restraints, isolation, white noise, slapping, pinching, and putting hot pepper in the mouth. People with psychiatric disabilities are often subject to forced drugging.
- In Germany, a court awarded damages to plaintiffs who sued a hotel because they felt that their holiday had been ruined by the experience of sharing the hotel with disabled guests. Disabled travelers in Germany have since experienced difficulties booking hotels.

Connecting the dots

International human rights law, civil rights
and disability advocacy in the United States



Why all this matters to disability advocates and the grassroots disability community in the United States

The US disability community is recognized internationally as having achieved great success in advocating for progressive national legislation. The ADA is regarded as an important model by many countries as they develop or revise their domestic approach to disability.

Despite the quality of the written legislation, the promise of the ADA has not been fulfilled. Its implementation has been slow and often resisted. In many cases, federal enforcement agencies have adopted a passive approach, waiting for complaints about violations of the law instead of pursuing strategies that would promote steady progress toward compliance. Furthermore, the courts have not supported the goals of the ADA. People with disabilities who have sued to have their employment rights protected under ADA have found that 96% of court cases are decided against them. Many of these decisions have been in blatant contradiction of the spirit of this important legislation. This startling situation is recognized by lawmakers such as Senator Tom Harkin (D-IA) who asserted that "...ADA is under attack, and indeed civil rights are under attack." This is a result of both passive (lack of implementation) and aggressive (unfavorable legal decisions) forces. Andrew J. Imparato, Executive Director of the American Association of People with Disabilities stated, "The United States Supreme Court is systematically dismantling the ADA."

So, why is the ADA under attack? What makes the ADA vulnerable? Why does there seem to be no hesitation by the courts to chipping away at its protections? In one sense, these are not difficult questions to answer. The ADA requires society to adjust its behavior to include people whom society is generally accustomed to ignoring. This requires positive action and, in certain cases, commitment of resources. History teaches us that resistance to change is predictable, however unfortunate. But this is not the whole answer.

A fundamentally good and moral society overcomes its resistance to change when confronted with a notion that it considers true, just and universal. In the area of "rights", these words describe human rights. Supporters of the ADA understand that its provisions are simply methods

to protect the true, just and universal principles that are at its foundation. In other words, they see the ADA as a human rights-based document. Unfortunately, there are many people who regard the ADA simply as a list of social and legal concessions that they are required to make. It is this attitude that drives the resistance to the ADA in society, enforcement agencies and the courts.

In order to turn the tide, a concerted effort must be made to change the perception of disability rights so that they are viewed in the same way as women's rights, children's rights or racial minorities' rights. While it is true that these groups still experience discrimination, **their efforts to promote their rights as human rights** have inspired a significant change in social attitudes and increased the willingness of decision-makers to actively promote and support their rights.

The success achieved by women to have their rights recognized globally as human rights was achieved through an international movement that involved national, regional and global meetings, engagement of mainstream human rights groups (such as Human Rights Watch, Amnesty International) and efforts to promote an international convention on women's rights. Together these elements created an enormous amount of visibility, an increase in global awareness, a critical shift in thinking about the nature of women's rights, and an international legal standard of human rights for women.

An international convention on the rights of people with disabilities - and the important process of its development - would serve as a similar political catalyst and educational tool for the global disability community to bring about a change in the way disability rights are perceived. The United States disability community has much to gain from participating in this movement.

International Human Rights Law 101:

The basic principles you need to know in order to understand what an international convention is and what it does



What are human rights?

Human Rights are principles that are recognized as applying universally to all human beings without exception. A human right is a claim each person has, by virtue of being human, to those conditions and resources that are fundamental to life and dignity. They do not need to be specifically granted, nor can they be taken away. They exist for each person, regardless of the attitudes or laws that govern a society. Human rights encompass an array of political, social, economic and cultural rights.

What is international human rights law?

To promote human rights for all of the world's citizens, countries (hereafter referred to as "States", since this is what they are called in international human rights law) have come together, through the system of the United Nations, to articulate principles of human rights that are considered universal and inviolable. The UN has developed many human rights "instruments" to house these principles. Some instruments, such as Declarations, are not intended to be legal instruments. They signify a moral and political commitment to an idea or set of ideas. Treaties, often named "conventions", are international law, and States that sign and ratify them must abide by them. Some conventions require immediate compliance and others use a system of "progressive realization", meaning that States can incorporate the principles gradually.

What about civil rights law?

National governments, as the guarantors of the human rights recognized in international laws, have the international legal responsibility for enforcing them. This is accomplished through civil rights law, which expresses human rights in terms of the political and social order of a given society. In other words, the civil rights laws of a country should be designed to implement and enforce the human rights to which they relate. The Americans with Disabilities Act, for example, is a civil rights law that defines the means of accessibility and accommodation through which people with disabilities can claim their human rights to inclusion and participation in community life, as well as to employment opportunities.

Of course, not all civil rights laws are based on international human rights law. But, for those that are, civil rights law establishes:

- a) standards governing human and civil relations relevant to human rights (non-discrimination, non-violence, etc.).
- b) tools or systems necessary for people to enjoy their human rights (public education, due process, health care access, etc.); and

Who is in charge of deciding if a human rights violation has occurred?

Enforcement mechanisms, usually committees, are set up to monitor international human rights laws, and States must report to these committees. The committee evaluates each State's report of its efforts to respect, protect and fulfill the law. Sometimes non-governmental organizations also submit reports to these committees to provide another opinion on how well - or how poorly - a State is doing with respect to human rights. Some treaties also provide procedures for states or individuals to file a complaint against a state alleging a violation of a treaty.

Determining that an infringement has occurred is complicated (even for human rights law experts) and not a subject we will tackle too aggressively in this document. Generally speaking, if a State is clearly not working to conform its laws and practice to meet the obligations set forth in a convention, it is considered to be in violation of the convention. If a State establishes laws consistent with a convention, but allows persistent human rights abuses to continue, it is considered to be in violation of the convention.

What happens if a government violates human rights laws?

When a committee determines that human rights violations have occurred, it will provide guidance to the guilty government regarding changes it must make to be in conformance with the law. Enforcement is difficult and generally relies on political and moral pressure from the UN and other States, as well as from other institutions in the international community. Consequences for violations are also largely political in nature. For instance, chronic violations of human rights law often affect the

willingness of other countries to offer foreign aid. Certain human rights abuses can result in changes in diplomatic relations.

Interestingly, the closest scrutiny of compliance with human rights principles often does not come from the actual monitoring committee, but from organizations such as Amnesty International and Human Rights Watch. The annual and special reports of these organizations are taken very seriously by governments, NGOs and the United Nations.

What are some examples of international human rights law?

There are several sources of international human rights law. We will focus on the two kinds of law that are most relevant to understanding the need for, and the potential impact of, an international convention on the rights of people with disabilities.

International Customary Law

The most recognized example of international customary law is the Universal Declaration of Human Rights, which was adopted in 1948 by the United Nations General Assembly. At the time of its adoption, it was not an instrument of international law. It was a "declaration" which constituted a moral commitment, but had no legally binding effect on nations. Over time, however, global recognition and application of its principles transformed its legal status through a mechanism called "international customary law".

Customary law usually applies to a principle, not a whole document. In the case of the Universal Declaration of Human Rights, the Declaration itself is generally considered customary law since all of its principles have achieved that status.

A principle becomes customary law when it is applied widely and consistently because States feel a sense of legal obligation to that principle. Basically, International Customary Law is a result of states' practice *plus* states' sense of legal obligation. This concept has some very complicated issues and questions attached to it. For example, how do you measure States' sense of legal obligation, does the sense of legal obligation compel the State to adopt certain practices, or does following a

practice over time create a sense of legal obligation to that practice? For our purposes, this is not critical material to delve into. It might be helpful to think of customary law in the same way as "common law marriage". A couple's behavior is consistent with that of a legal marriage. They may have decided to behave this way because of an existing sense of commitment, or, they developed a sense of commitment over time as a result of the behavior. Perhaps it is a little bit of both. In any case, after a time, they acquire the same legal rights and responsibilities of legally married couples.)

Once a principle achieves the status of international customary law, a State must issue a formal objection to it in order to be legally exempted from it. A State that has not formally objected is legally obligated to abide by the standard.

International Treaties (Conventions, Covenants, etc)

An international treaty is a legal document that is binding on the States that sign and ratify it. Other names for a treaty include "convention" and "covenant". Since we anticipate that the treaty on disability will be called a "convention", we will use that term in the discussion of how a treaty works.

When the United Nations decides to develop a convention, the process usually follows a basic pattern of routine work and special events. In the beginning, there may be several drafts developed independently by people or groups. The Committee tasked with developing the convention decides which document will become the official working draft of the convention. From there, the process of developing the provisions and language for the convention can take several years. There should be opportunities for many groups and individuals to contribute ideas throughout the process, and, ideally, governments and civil society should work together to achieve the best possible results.

Once a convention is adopted by the United Nations, a State has several options. It may:

Sign: this generally signifies political approval and the intent to seek ratification by that State's governing legislature.

Ratify: this establishes a state's official consent to be bound by a convention. Through ratification, a country becomes a "States Party" (sometimes called a "member") to a convention, and must implement and enforce its principles. This means that its national laws must conform to the provisions of the convention. The process for ratification in the United States is signature by the President, with the advice and consent of 2/3 of the Senate.

Sign and ratify with reservations, understandings and declarations (RUDs): RUDs are tools used by states to create certain limits to a convention, or to make clear how a state interprets some aspect of the convention. Most conventions allow RUDs

Reservations: If a provision of a convention violates a state's domestic constitutional provisions, that state will usually file a "reservation" to the provision, so that the provision does not apply to the state. States cannot file a reservation that nullifies the main intention or spirit of the convention.

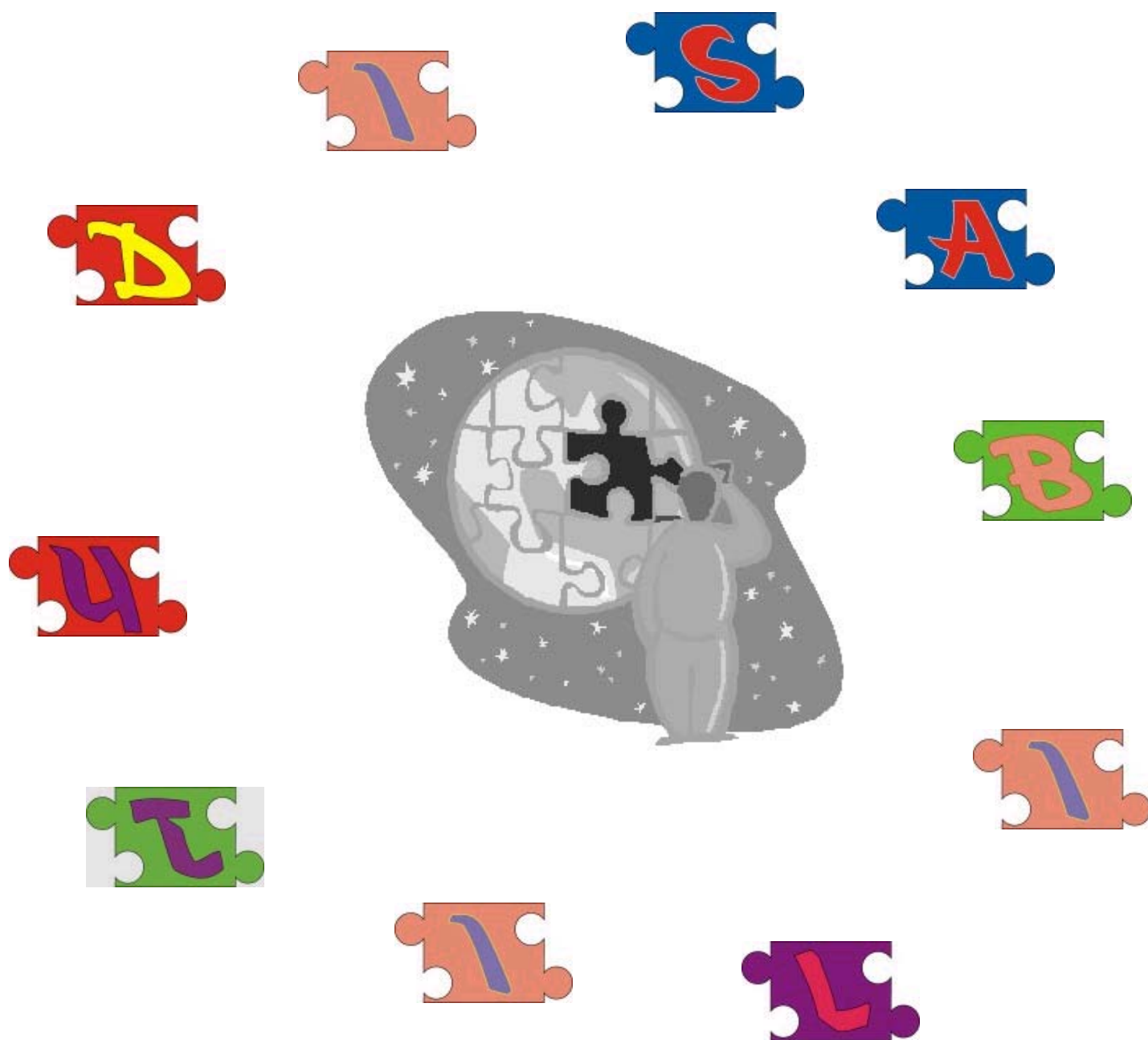
Understandings and Declarations: These are statements a State can make to clarify how it believes a particular provision should be interpreted. They do not legally exempt the State from a provision.

Accede: There will usually be a specified period of time during which states can become parties to a convention by signing and ratifying it. After this period has ended, states can typically become parties to a convention by "acceding". In the United States, accession requires the same Presidential and legislative approval process as ratification. Accession is subject to RUDs, just like ratification.

When does a convention become official law?

When an international convention is developed, a decision is made regarding how many states must become "States Parties" to it before it will "**enter into force**". Before such time, the convention is not fully enforceable on any state, even if that state has signed and ratified it. A convention assumes the full force of international law when the pre-determined number of states become states parties.

Disability Rights - The missing piece of international human rights law



The Big Picture of International Human Rights

The International Bill of Rights is a trio of documents that consists of:

- the Universal Declaration of Human Rights
- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights.

The Universal Declaration of Human Rights is **customary law** and the two Covenants are **treaties**. Together, they express the core principles of human rights law.

The remainder of human rights treaties address either:

specific problems

- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Prevention and Punishment of the Crime of Genocide
- Slavery Convention

or **specific populations**

- the Convention on the Elimination of All Forms of Discrimination Against Women
- the Convention on the Rights of the Child
- the Convention on the Protection of the Rights of all Migrant Workers

These specialized treaties are developed when it is clear that the more general treaties have either failed to protect people from a particular kind of human rights abuse, or have failed to protect the human rights of a particular population.

Disability Rights in Focus

The human rights of people with disabilities are not contained in a specialized convention. People with disabilities must rely on the general principles in the International Bill of Rights for legally binding international protections. More specific rights regarding people with disabilities are outlined in other international documents, but these are not international law. The most commonly referenced of these non-binding documents are:

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Often referred to simply as the "Standard Rules").

This document was adopted as a blueprint for States' policy-making and to provide a common frame of reference among States. The document was developed by the UN Commission on Social Development. The Standard Rules established a limited monitoring mechanism by appointing a "Special Rapporteur" who reports to the UN Commission on Social Development. The Special Rapporteur presents States with questions concerning their implementation of the Standard Rules and serves as an advisor to governments and disability organizations regarding implementation.

The Standard Rules contains important guideline that serve, for many countries, as models on which to base their policies, programs and laws. Still, while the Standard Rules is an important instrument, it is not affiliated with any human rights body of the UN and it does not proclaim to be a statement of human rights standards (although it does reference human rights in its preamble). Furthermore, it is not a legal document. Compliance by States is voluntary and global monitoring is ultimately the responsibility of one individual.

The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

This instrument, adopted in 1991 by the UN General Assembly, sets forth principles intended to serve as a common standard for human rights practices in mental health systems. Compliance is voluntary and it has no monitoring system. This document is often rejected by disability

advocates on the basis that it reflects paternalistic attitudes and the outdated "medical model" (as opposed to a rights-based approach), that it endorses involuntary detention and forced treatment and that it was developed without sufficient consultation with people with mental disabilities. The World Network for Users and Survivors of Psychiatry has called upon the UN to revoke the MI Principles.

There must be more than that!

There are, scattered throughout many other documents (both legally binding and voluntary), a few provisions regarding the rights of people with disabilities. For instance, the Convention on the Rights of the Child has a section dedicated to the rights of children with disabilities. From time to time, various UN bodies pass resolutions that pronounce their commitment to disability issues. But, on the whole, people with disabilities must rely on the general human rights treaties and the non-binding instruments that set forth guidelines for how governments might structure policies and programs.

This is not enough!

Unfortunately, as long as disability issues are marginalized in human rights law, the human rights of people with disabilities will be marginalized in the world. The hard truth is that many people - and even whole societies - in our world fail to recognize people with disabilities as whole human beings who are entitled to the human rights expressed in the general human rights treaties. Furthermore, they are not inclined to embrace suggestions in the Standard Rules regarding how to promote participation and inclusion of people with disabilities in their communities. The absence of a specialized convention means that people with disabilities have very few international legal standards that are explicitly recognized as applying to them.

Besides being legally binding, how would a convention on the rights of people with disabilities be different from the Standard Rules?

Below are just a few examples of elements that the Standard Rules does not contain but which would be core principles in a human rights based convention on disability:

- A non-discrimination clause
- Prohibitions against torture and other forms of ill-treatment
- Prohibition against slavery and other forms of exploitative labor practices
- Provisions regarding freedom from violence and protection of the right to life
- Explicit due process guarantees to ensure that people with disabilities are treated equally before the law and provided with necessary accommodations to participate fully in the legal process (sign language interpreters in court, etc.)
- Provisions explicitly geared toward enforcement of human rights standards for people with disabilities in hospitals or institutions
- Provisions protecting the reproductive rights of people with disabilities

Perhaps the clearest way to illustrate the difference between a human rights convention and the non-binding documents that people with disabilities must rely on is to examine the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Standard Rules. Below are the parts of each text that lay out the intent of the instrument:

Standard Rules

Preamble

“States...Have adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities outlined below, in order:

- To stress that all action in the field of disability presupposes adequate knowledge and experience of the conditions and special needs of persons with disabilities;
- To emphasize that the process through which every aspect of societal organization is made accessible to all is a basic objective of socio-economic development;
- To outline crucial aspects of social policies in the field of disability, including, as appropriate, the active encouragement of technical and economic cooperation;
- To provide models for the political decision-making process required for the attainment of equal opportunities, bearing in mind the widely differing technical and economic levels, the fact that the process must reflect keen understanding of the cultural context within which it takes place and the crucial role of persons with disabilities in it;

- To propose national mechanisms for close collaboration among States, the organs of the United Nations system, other intergovernmental bodies and organizations of persons with disabilities;
- To propose an effective machinery for monitoring the process by which States seek to attain the equalization of opportunities for persons with disabilities.”

The CEDAW Convention:

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

By looking at these two texts, it is easy to see that a convention uses much more powerful and direct language, and leaves little doubt about what a state must do.

For the full text of the Standard Rules and all other international instruments referenced in this tool, see the NCD website (www.ncd.gov).

What does all of this mean to me
and to my organization?



The identity of “disability” as an issue is changing. The appearance of disability on the international human rights radar, and efforts to incorporate disability rights permanently into the international legal human rights framework, marks the next step of a slow but clear perceptual shift of disability from a medical problem to a social issue and ultimately to a human rights issue. The global movement for recognition of the human rights of people with disabilities must be supported by local, national and regional efforts. While the US has achieved much by successfully focusing its energies under the banner of “civil rights”, it is clearly time to take the argument to the next level. Efforts must be made to help the public and the government see the rights of people with disabilities in the same vein as women’s rights – as a critical and legitimate piece of the human rights structure.

To that end, disability advocates and disability organizations in the United States can:

- Become familiar with the general human rights treaties/conventions. These are international standards and their protections apply to all people. Cite these documents in your public education and advocacy work.
- Participate in grassroots coalitions that are working to promote and participate in the development of an international convention on the human rights of people with disabilities.
- Share informational and educational materials on the international convention (such as this document) with other organizations (through mailing lists and websites). Build bridges across disability lines and with other groups concerned with human rights (women’s groups, civil rights groups, etc.), by emphasizing the fact that a violation of the human rights of any person or any group in any place is a threat to every person and group everywhere.
- Evaluate the UN Standard Rules and the MI Principles. Take a position on how well or how poorly these documents serve the interests of people with disabilities. Support efforts to improve or, when appropriate, to eliminate these documents from the body of international instruments relied upon by many governments for policy guidelines and strategies.
- Evaluate organizational literature and consider incorporating human rights language in your mission statements, vision statements, guiding principles, etc.
- Communicate to NCD your views on the international convention and let NCD know what types of educational materials are most helpful in your efforts to support the convention. Check NCD’s website periodically for new materials on the topic of human rights and disability.
- Seek opportunities to participate in international events. Support international exchange and education programs that allow Americans with disabilities to travel abroad to learn about disability advocacy in other countries and also programs that seek to bring people with disabilities from other countries to the United States