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## **The Genesis of a new Human Rights Convention**

*– A Convention on the Rights of Persons with Disabilities*

*By Holger Kallehauge*

*"We are such stuff as dreams are made on....." (William Shakespeare)*

Ever since the UN General Assembly in 1982 adopted the World Program of Action for Persons with Disabilities the disability movement has had a dream: The dream of a Convention. Now 25 years later it has almost come true.

How did it happen and what did the disabled minority obtain?

These are the main questions, which I shall try to answer in this article. I have not only been an eyewitness but also an active participant in the entire process leading to this new Human Rights Convention.

### **Background and development**

This is a summary of the international history of the disability movement in the last 25 years. It is, at the same time, the story about how persons with disabilities gained recognition as persons with the same human rights as everyone else in the world.

Looking back on this goal it might seem as easily obtainable as it is obvious, as stated in the text below. But pursuing this goal was hard work, a fierce fight and the outcome was by no means always easy to predict. Progress has been slow and erratic.

To understand the background and history, one has to remember that persons with disabilities are a minority and, until recently, a minority which has been almost totally invisible. As long as a group is invisible, progress is unobtainable. Politicians don't care about invisible problems. As long as persons with disabilities are not visible in a politician's constituency these persons and their needs are not an issue that deserves a place on the political agenda. Considering the amount of lobbying that may be needed even for majority issues to be noticed, it is no wonder that the disabled minority has had a long way to go and a lot of barrier climbing to overcome before our dream would materialize.

There are no easy victories for minorities, and persons with disabilities are a minority in all societies.

Without positive attitudes to persons with disabilities, it is not possible to promote respect for their human rights and mainstream the disabled minority into all areas of society - schools and the complete educational system, workplaces, public transport, cultural life, leisure and sports.

Without a strong feeling of bad conscience nothing happens. A bad conscience is the mother of all good deeds. When our conscience becomes so sore that we can no longer live with it, we start to act

to redress the miseries of the human race. And that is also how the disability movement gained ground eventually.

*1981 - The UN International Year of Persons with Disabilities (IYPD):*

Even if many initiatives of importance in the field of disability were also taken before 1981 it is not wrong to consider 1981 as a break-through for the disability movement, especially at the international level. But it also became a turning point in many countries, of course more in the rich western world, where organizations of persons with disabilities had been active for some time, than in developing countries.

Some may have a bit of an indulgent attitude to such international years, thinking that they are if not much fuss about nothing, then at least about issues that are rather hopeless to deal with anyway. Such an attitude is completely wrong, failing to take into account why international years and days are held, and what these instruments can help achieve. They are aimed to focus on an issue that has so far been overlooked, or received such scant attention that not much has happened in the area, if anything at all.

They are awareness raising events, tending to awaken the conscience that will make us start improving the world. The UN has neither the competence nor the resources to act at the national level but can do quite a good job making problems more visible both to the general public and to our politicians. That was exactly what happened during 1981 and with considerable effect in many countries, giving very good support to national and international organizations of persons with disabilities.

*1982 - The World Program of Action for Persons with Disabilities:*

To write and adopt such a program of action was one of the objectives of the IYPD and in 1982 the UN General Assembly adopted the program as a resolution. This was a major achievement, thus giving the global disability movement a common program of action. It was and still is a fine program, but unfortunately not very operational, which was optimistically overlooked at that time.

*1983 -1992- The Disability Decade:*

When the IYPD was evaluated, it was more than obvious that many countries needed more time to realize the fine goals of the international year.

Governments needed more time to raise both awareness and resources and the UN therefore decided to devote a decade to disability issues. It was an act of true UN goodwill but, again, of no more effect than governments gave it around the world.

*1987 and 1989 - The first initiatives in favour of a convention:*

Italy took the First initiative in 1987, which was abortive, however, followed by Sweden in 1989 with no more success. The time was still not ripe for gaining sufficient support among UN member states to a convention, and the global disability movement was too weak to make a difference. One of the reasons for the lack of support from Western governments at that time was the slow and complicated negotiations which were still in progress on the Convention on the Rights of the Child. Embarking on another set of negotiations, about the rights of persons with disabilities, did not seem very tempting and it was, perhaps not surprisingly, turned down rather quickly.

*1993 - The UN Standard Rules on Equalization of Opportunities for Persons with Disabilities:*

The UN Standard Rules are not a legally binding instrument. They are a declaration adopted by the UN General Assembly on 20th December 1993 (Resolution 48/96). As the resolution was adopted by consensus, without a vote, it could perhaps be said to be politically and morally binding on governments. That is, at any rate, how organizations of persons with disabilities usually want to express it.

When coming to the UN Standard Rules, the global disability movement had learnt its lesson. These rules had to be short and clear to become operational. The UN Standard Rules consist of 22 rules in total: 4 rules about preconditions for equal participation, 8 about the target areas for equalization of opportunities and 10 rules about implementation measures. Each rule has a headline and a paragraph one, in which the main objective is described. When someone reads the headlines they will quickly get an overview of the content and when just reading the main rules they can grasp the meaning of the text.

The UN Standard Rules are guidelines for enhancement of the "rights" of persons with disabilities. This has been stated in various resolutions adopted by the Human Rights Commission in Geneva in 1998, 2000, 2002 and 2003, where the following text can be found in Article 1, governments:

*"recognize that any violation of the fundamental principle of equality or any discrimination or other negative differential treatment of persons with disabilities inconsistent with the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities is an infringement of the human rights of persons with disabilities".*

This text was based on a Danish proposal.

*1993 - The Report of Leandro Despouy "Human Rights and Disabled Persons":*

In 1984 The Human Rights Commission adopted a resolution in which it was recommended that a special rapporteur should be appointed to study the causal connection between serious violations of human rights and disability. Leandro Despouy was appointed as special rapporteur in August 1984 and his report "Human Rights and Disabled Persons" came in 1993. It is a comprehensive study concluded with a range of well-founded recommendations, among which should be mentioned Leandro Despouy's proposals that national legislation should be adapted to international norms and guidelines and that an international ombudsman should be appointed or that ECOSOC should be given a special mandate to protect persons with disabilities against violations of human rights. Leandro Despouy wrote, for example, that at the end of the UN Decade of Disabled Persons in 1993 "persons with disabilities are going to find themselves at a legal disadvantage in relation to other vulnerable groups such as refugees, women, migrant workers etc. The latter have the protection of a single body of binding norms....." and this was what persons with disabilities still needed so much.

Even if, unfortunately, Leandro Despouy's report did not result in actions or initiatives right away, it has no doubt been of importance as a means to convince governments of the need for action. The

evidence and documentation was there to read for all interested. Another report piling up arguments to awaken their conscience.

*1993 - The Vienna Declaration and Program of Action:*

Many initiatives were launched in 1993. The World Conference on Human Rights was also of significance to persons with disabilities, as the Vienna Declaration is the first general human rights text in which persons with disabilities are explicitly included. There have been various special UN resolutions of earlier date: About mentally retarded in 1971, about persons with disabilities in 1975 and the Convention of the Child (1989), which includes an article about children with disabilities (Article 23) but, otherwise, persons with disabilities had continued to be kept out of focus as an invisible minority. The Universal Declaration of Human Rights (1948) states in Article 2:

*"Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

Disability did not, apparently, come to anybody's mind in 1948, and it took 25 years for it to happen in Vienna in 1993, upon a Danish initiative actually. In the Vienna Declaration, Articles 63 - 65 deal with "The rights of the disabled person".

The most important messages were:

- That all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities.
- Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers.

Here, the human rights of persons with disabilities were officially recognized in a general international human rights declaration for the first time. This illustrates that it is not without good reason that the disability movement in the United States has been called the last civil rights movement.

*2001 - Mexico's initiatives to have negotiations started in the UN for a convention on the rights of persons with disabilities:*

During the Durban Conference held 31st August – 8th September 2001, i.e. the World Conference against Racism, Racial Discrimination, Xenophobia and other related Intolerance, Mexico proposed the text for Article 179, according to which the UN General Assembly had to consider opening negotiations for a convention on the rights of persons with disabilities. The wording was different, but the meaning was to try once more, and this time it was a success. Article 179 was included without much attention in the Durban Declaration. After debate in the UN Third Committee a resolution (no. 56/115) to this end was adopted on 19th December 2001 and one year later an open-ended working group was established. The Ad Hoc Committee became the forum in which the foundations of the convention were laid during the following four years, and in August 2006 the Ad Hoc Committee unanimously adopted the text for a draft convention.

## **The negotiations in the Ad Hoc Committee**

The Ad Hoc Committee, established as an open-ended working group, ended up having a membership of more than 100 government delegations and almost the same number of disabled people's organizations (DPOs). In meetings with 400 - 500 attendants, however, direct negotiations between parties in plenum were not possible, so the debate would rather be of the character of an exchange of parallel interventions, which is also the most common form in the UN. From the outset there was some discussion about the participation of the DPOs, but fortunately they were allowed to attend all meetings throughout the process. This has, no doubt, had much impact on the outcome of the negotiations. The DPOs' slogan "Nothing about us without us" was perhaps not realized one hundred percent, but to a very high degree at any rate, which is also seen quite clearly from the text of the convention.

The Ad Hoc Committee was assembled twice a year from 2003 to 2006, each time for two weeks in New York. One session, however, lasted three weeks. A working group under the excellent leadership of the Ambassador of New Zealand, Mr. John Don MacKay, wrote a draft working document in January 2003, which served as the basis for the negotiations during the following four years. Compared to other conventions, it has been a fast process. The preparatory work for the Convention on the Rights of the Child lasted almost ten years.

Several positive factors have supported the process of drafting the text for the Convention on the Rights of Persons with Disabilities. All participating governments have been acting with great commitment and flexibility and no one has tried neither to protract nor to complicate the work. There have, of course, been many differences and quite strong opposing attitudes to ways and means but not to the goal of creating a new legally binding international instrument protecting the Human Rights of Persons with Disabilities.

The most time consuming task was to build bridges that would link the many cultural, traditional, religious and national proposals, which all parties tabled as their input when discussions on each of the many draft articles started. Without the outstanding diplomatic leadership of the Chairman of the Ad Hoc Committee, Ambassador John Don MacKay, the process would have been much longer and less fruitful. His great personal commitment to the work and exceptionally fine understanding of disability issues have enhanced and improved the content of the text tremendously. All DPOs have applauded him for his efforts in favour of the global disability movement and all its millions of members.

From the very first government statements given to the Ad Hoc Committee, it was clear that no new human rights would be created. The goal was to protect and secure for persons with disabilities the same human rights and fundamental freedoms as for everyone else in the world. If anyone should wonder if this was worth spending five years to obtain, the answer from the disability movement is clearly affirmative. The minority of persons with disabilities has lacked effective enjoyment of human rights for so long that equalization of opportunities in this area is a major step forward. Theoretical rights, which are invisible too, are of no use. The convention has to make our rights clear and well known. We are moving from the low position of beggars to the status of bearers of rights on an equal footing with others. When we address our governments in future, we will

no longer ask for good will and understanding but point to our rights and claim their fulfilment. From the very first government statements given to the Ad Hoc Committee, it was clear that no new human rights would be created. The goal was to protect and secure for persons with disabilities the same human rights and fundamental freedoms as for everyone else in the world. If anyone should wonder if this was worth spending five years to obtain, the answer from the disability movement is clearly affirmative. The minority of persons with disabilities has lacked effective enjoyment of human rights for so long that equalization of opportunities in this area is a major step forward. Theoretical rights, which are invisible too, are of no use. The convention has to make our rights clear and well known. We are moving from the low position of beggars to the status of bearers of rights on an equal footing with others. When we address our governments in future, we will no longer ask for good will and understanding but point to our rights and claim their fulfilment.

It has never been a goal for the disability movement to obtain privileges. Equal opportunities and the same rights as other citizens are what we have sought to achieve, and that is precisely what the convention will provide.

### **Content of the Convention**

The aim of the convention is, as mentioned, to give persons with disabilities the same human rights as everyone else enjoys. This might have been obtained in a rather simpler way by means of links to the existing Human Rights Convention and a few more rules, especially about non-discrimination, accessibility, universal design and equalization of opportunities, as I proposed in my first draft convention in 2000. But this proved not to be enough to meet the expectations. Instead, the approach was to repeat all the basic rules in the existing core Human Rights Conventions. This looks, no doubt, much better on paper, but it also led to a far more complicated process than I guess was anticipated. To state exactly the same, no more and by all means certainly no less than current international human rights law, is easier said than done but, hopefully, achieved by the text that was ultimately agreed.

Therefore, the operative articles of the convention are numerous (33) and provide rules on many issues, including: Accessibility, the right to life, liberty and security of the person, freedom from torture or cruel, inhuman and degrading treatment, freedom from exploitation, violence and abuse, protection of the integrity of the person, liberty of movement, freedom of expression, respect for privacy, education, health, rehabilitation, work and employment, adequate standards of living and social protection, participation in political and public life and in cultural life, recreation, leisure and sport, statistics, international cooperation and national implementation and monitoring.

None of the above articles are superfluous, but if it is attempted, nevertheless, to identify the most important achievements of the convention they are in my opinion:

*that* the convention will make persons with disabilities and their rights visible,

*that* overlooking persons with disabilities will no longer be just a deplorable political mistake but an infringement of the convention,

*that* general plans, sufficiently funded and with clearly designated goals to be reached within certain time limits, are required to avoid criticism from the international monitoring body,

*that* discrimination based on disability is generally prohibited in all areas and irrespective of the reason, and

*that* the disability concept is described in the convention.

If someone would raise the question if the convention will now make the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities obsolete, the answer is no. The UN Standard Rules are a different type of instrument than the convention. They are guidelines on how to create equal Opportunities, identifying barriers and demonstrating how to remove them. This sort of guidance is needed everywhere as it has been ever since the rules were adopted in 1993 and it will continue to be so for a foreseeable time after the convention comes into force.

It should also be remembered that until a country ratifies the convention there is no other international instrument in the Field of disability than the UN Standard Rules.

As mentioned, the convention consists of 33 operative articles and 17 on the more formal aspects such as the establishment of an international monitoring committee, the reporting system, signing and entry into force, reservations, amendments and accessible formats of the convention.

An Optional Protocol is also attached to the convention covering complaints (communications) from individuals and groups of individuals.

### **Adoption of the Convention**

At the end of the Eighth Session of the Ad Hoc Committee on 25th August 2006, two hours after closing time, agreement on the text was eventually obtained. During the last days of the Eighth Session the excitement was almost unbearable. No one but the Chairman dared to believe that it was possible to finish the negotiations without another session. The cheer and rejoicing were overwhelming when, also about this final question, the Chairman proved to be right.

The text, which had been edited linguistically in a drafting committee and translated into the official UN languages during the autumn, was adopted by the UN General Assembly on 13th December 2006.

The convention is now ready to be signed during March 2007 and thereafter open for ratification.

The convention enters into force when 20 governments have deposit-ed their ratification documents with the UN General Secretary. Considering the large number of governments that played an active role during the Ad Hoc Committee's negotiations, among them the

25 EU member states, which are all expected to ratify, there is no doubt that the 20 ratifications will be obtained.

But the time when this happens is more difficult to predict, because all governments have to make sure that their national legislation is compatible with the convention. The civil and political rights

provided by the convention enter into force immediately when the convention is ratified, while the economic, social and cultural rights will have to be implemented progressively, according to the economic strength of a country. This means that the rich countries will have to implement all the rules of the convention much faster than the developing countries and countries in transition.

The EU will ratify the convention in its own capacity as a supranational organization. This has never been seen before. Only states have been ratifying conventions so far. For the EU this will mean that all future EU initiatives in the Field of disability will be based on the convention, thus enhancing its implementation.

My guess is that the convention stands a good chance of entering into force by the end of 2008.

### **Implementation of the Convention**

The national implementation of the convention is the responsibility of the ratifying country. The government has to take steps to fulfill the obligations of the convention in accordance with all its articles. In areas where matters are not already in place and fully compatible, government action has to be taken.

The states parties have to designate one or more focal points within government for matters relating to the implementation of the convention and establish a coordinating mechanism to facilitate related actions in different sectors and at different levels. Civil society, in particular persons with disabilities and their representative organizations, must be involved and participate fully in the monitoring process.

Each state party must submit to the Monitoring Committee a comprehensive initial report on measures taken to give effect to its obligations under the convention and on the progress made in that regard within two years after the entry into force of the convention.

Subsequent reports are to be submitted every four years or whenever the Committee so requests.

Reports to the Monitoring Committee have to be prepared in an open and transparent process.

Organizations of persons with disabilities will no doubt have an important role to play in the implementation process. Two different methods of involvement of the DPOs may be foreseen: Either direct membership of a government committee or membership of an alternative civil society committee. For membership of a government committee, the price might be that the DPOs are taken more or less hostage by government. The advantage of membership of an independent civil society committee is that a separate report from such a committee may more clearly reflect differing views on implementation issues.

To the international monitoring body, the differences between the two national reports will pinpoint the issues on which focusing is most needed. It is, however, up to each country to find out which way is most promising and which tools are the best suited.

## **Conclusion**

After 25 years, the dream of the global disability movement has almost come true. The UN General Assembly has adopted a legally binding instrument guaranteeing our human rights. Without the UN it would have been impossible. It took a long time but it was worth working and waiting for.

The next part of the process is the lobbying for comprehensive ratifications, aiming to achieve almost the same number as the Convention on the Rights of the Child. Also the Convention on the Rights of Persons with Disabilities is a thematic Human Rights Convention, with an equally broad perspective. There is no country in the world with less than 10 per cent disabled people in its population. Numbering more than 600 million, persons with disabilities are the greatest minority in the world. This should be more than ample reason for ratification.

The last step is the national implementation of the convention. This process will take quite a long period of time, but it has to be realized progressively in accordance with Article 4 of the convention.

Even with these huge challenges before us there is not a shred of doubt that this convention is the greatest step forward in the history of the disability movement.

*"We are such stuff as dreams are made on....."*