

International Norms and Standards Relating to Disability

[Updated October 2003]

INTRODUCTION

This compilation provides concise analytical information on international norms and standards concerning persons with disabilities that have been adopted under the auspices of the United Nations System or other inter-governmental bodies and organizations. It is a reference tool that contains information resources on the international and regional normative standards to promote the rights of persons with disabilities in society within a broad human rights framework, encompassing the full range of human rights from civil and political to economic, social and cultural rights and the different mechanisms by which these norms and standards have been adopted in to local laws. Further, this compilation is a practical guide to putting into practice rights on behalf of persons with disabilities. It also provides an educational tool designed to assist Governments, national and international policy makers, intergovernmental organizations, international organizations, non-governmental organizations, researchers in the area of disability rights, civil society organizations concerned with disability issues and the global disability community to identify effective measures to promote, protect and integrate the rights of persons with disabilities into all areas of national legislation, policies and programmes and to promote increased awareness of internationally accepted norms on: 1) the equalization of opportunities for persons with disabilities; 2) the full and effective integration of persons with disabilities in social life and development; and 3) standards to protect and promote the rights of persons with disabilities. It is hoped that the compilation may provide a practical tool to effect the commitment of the international, national and local communities to the goals and objectives of international human rights standards pertaining to persons with disabilities, identify obstacles and challenges in implementing these rights and develop an agenda for the empowerment of persons with disabilities.

The compilation is divided into five parts. The Background to the compilation introduces international human rights norms and the specific international norms on disability rights. Part I discusses the [national framework for the protection of human rights and disability rights](#). Part II discusses the [international human rights guarantees](#), which address disability rights. Part III explores the [regional human rights mechanisms](#) available for the protection of disability rights. Part IV reviews the [different categories of rights protection for persons with disabilities](#) and Part V discusses the [rights of persons with disabilities belonging to special groups](#).

It is hoped that this draft Compilation posted on the Internet will encourage scholars, practitioners and specialists in international law and policy to make comments on this draft and generally contribute their thoughts on the innovative application of international norms and standards to advance the status of persons with disabilities.

Background to International Norms and Standards Pertaining to Persons with Disabilities

The United Nations from its very inception has been concerned with the status and rights of persons with disabilities, and has also recognized that discrimination against persons with disabilities adversely affects the economic and social development of entire communities. The United Nations has sought to promote the right of persons with disabilities in its very founding principles, which are based on fundamental freedoms and equality of all human beings.

a) General International Norms Pertaining to Persons with Disabilities

The Charter of the United Nations requires member States to respect human rights for all without any distinction as to race, sex, language or religion and forms the nucleus for the protection of rights for persons with disabilities.

Specific articles of the Charter provide the foundation on which disability rights can be built. These articles are as follows:

- Article 1 (3) states that the purpose of the United Nations is "...to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction..."

- Article 13 (1) (b) states that the General Assembly "...shall initiate studies and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational, and health field, and assisting in the realisation of human rights and fundamental freedoms for all..."
- Article 55 (a) states that the "...United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development." Furthermore, article 55 (c) provides that the "...United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all..."

The Universal Declaration of Human Rights forms the fundamental normative basis on which international norms and standards concerning persons with disabilities have evolved. The Universal Declaration contains a number of provisions, which constitute the foundation for resolutions regarding disabilities based on the principle of equal rights. They are as follows:

- Article 1 states: "...all human beings are born free and equal in dignity and rights." Article 2 provides that "...everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex...or other status"
- Articles 3 and 6 together state: "Everyone has the right to..." life, without any provisions or limitations.
- Article 7 states that "...[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to protection against any discrimination and against any incitement to such discrimination." Furthermore, article 25 of the Declaration recognises that everyone has "...the right to security in the event of unemployment, sickness, disability, (...) or other lack of livelihood in circumstances beyond his control."

Apart from the Universal Declaration of Human Rights there are six core human rights conventions that relate to the rights of persons with disabilities. The International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified in 1966 are the two basic human rights treaties and together with the Universal Declaration of Human Rights constitute the International Bill of Rights. The other four core human rights conventions are the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1949); the Convention on the Elimination of All Forms of Discrimination Against Women (1979); the Convention on the Rights of the Child (1989); and the International Convention on the Elimination of All Forms of Racial Discrimination (1966). While all six conventions stipulate the principle of non-discrimination, the last mentioned treaties specify the general rights enunciated in the ICCPR and ICESCR

The provisions on anti-discrimination in the ICCPR have special relevance to rights of persons with disabilities. These rights are as follows:

The right to life (article 6) and the right to freedom from torture and other cruel, inhuman or degrading treatment and punishment (article 7) have special relevance to disability. The right to be recognised as a person before the law (article 16) too has special significance to persons with disabilities. Both articles 14 and 15 recognise the right to access to justice, including the right to the free assistance of an interpreter in court. One of the most important rights in relation to persons with disabilities is enunciated in article 25, which establishes that citizens are entitled to "access on general terms of equality, to public service in his country".

The provisions of the ICESCR pertaining to anti-discrimination too relate to rights of persons with disabilities. Article 2, paragraph 2 of the Convention encourages states parties to, "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. According to General Comment No.3, states must take steps which are deliberate, concrete and targeted and must be taken within a reasonably short time after the Covenant's entry into force in a particular country. General Comment No.3 also emphasises that "even in times of severe resource constraint...the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes."

General Comment No. 5 is a definitive analysis of the States parties obligations under the ICESCR in the context of disability. It recognizes that:

"[t]hrough neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social

or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services."^[2]

State party obligations in relation to non-state parties are enumerated thus:

"[in] the absence of Government intervention there will always be instances in which the operation of the free market will produce unsatisfactory results for persons with disabilities, either individually or as a group, and in such circumstances it is incumbent on Governments to step in and take appropriate measures to temper, complement, compensate for, or override the results produced by market forces." ^[3]

States parties are encouraged to take affirmative action to:

" reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities." ^[4] Further, states parties are, " required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability."^[5] The General Comment No. 5 also states that, "it is also necessary to ensure that support services, including assistance devices are available for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights."^[6]

The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is of special importance in preventing disability as a result of torture. In furtherance of its obligations under the Convention, states parties are to take necessary steps under Article 2 of the convention.^[7]

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) covers all women, whether disabled or not. Women with disabilities face discrimination both because of their gender and disability. Moreover, certain gender specific cultural or traditional practices can cause disability among women as well as cause further harm to disabled women.

Unlike other human rights conventions, the Convention on the Rights of the Child in article 23 focuses directly on children with disabilities. Even though no direct obligations have been placed on state parties to take measures to ensure that children with disabilities enjoy a life of dignity, self reliance and integration with the community, article 23, paragraph 1-4 recognizes the importance of participation in the community, education, training health care, rehabilitation employment and recreation opportunities for children with disabilities.^[8] The Committee on the Rights of the Child has however established that the fact that article 23 is dedicated to children with disabilities should not mean that the rights of children with disabilities are confined to that article.

The International Convention on the Elimination of All Forms of Racial Discrimination, like CEDAW is aimed at preventing double discrimination. Persons with disabilities of particular racial or minority groups are more vulnerable to discrimination on account of both race and disability. The Convention, as noted by General Recommendation XXV covers gender related racial discrimination and by analogy, an inference could be drawn that it covers disabled persons of different racial or ethnic groups.

b) Specific Rights Pertaining To Persons with Disabilities

In the past few decades, the United Nations has given considerable attention to the rights of persons with disabilities. Increased crisis situations such as widespread hunger, wars, and ecological disasters afflicting many communities around the world have increased the numbers of persons with disabilities. Apart from general human rights conventions, the United Nations has created extensive policy on issues of disability. In 1971, the Declaration on the Rights of Mentally Retarded Persons was adopted by the General Assembly. Article 1 of the Declaration on the Rights of Mentally Retarded Persons proclaims that mentally retarded persons have the same rights as other human beings. In addition, Article 2 states that mentally retarded persons have the right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable them to develop their ability and maximum potentials. Also, mentally retarded persons have the right to economic security and a decent standard of living (article 3). Article 6 provides that mentally disabled persons have a right to protection from exploitation, abuse and degrading treatment. Furthermore, the Assembly declared that there should be legal safeguards available to protect the mentally retarded from abuse.

Article 1 of the Declaration on the Rights of Disabled Persons adopted in 1975 defines a person with disabilities as "...any person unable to secure by himself, wholly or partly, the necessities of a normal individual and / or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities." In the Preamble of the Declaration, the General Assembly called for "...national and international action to ensure that it will be used as a common basis and frame of reference for the protection of [the rights contained within the Declaration]..." Article 4 asserts broad social and economic rights for disabled persons and provides that disabled persons have the same civil and political rights as other human beings. Article 5 provides that "...disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible." Article 6 states that persons with disabilities have the "...right to medical, psychological and functional treatment (...) to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration." Article 7 provides that disabled persons have the right to economic and social security and to a decent level of living. "Disabled persons are entitled to have their special needs taken into account at all stages of economic and social planning" (article 8). Also, Article 9 states that disabled persons have the right "...to live with their families or with foster parents and to participate in all social, creative or recreational activities." The Declaration also prohibits discrimination. For example, article 10 states: "Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature." The Declaration further requires that disabled persons be "...provided with qualified legal aid where such aid is indispensable for the protection of disabled persons themselves and their property" (article 11). Finally, the Declaration states that persons with disabilities and their families have a right to receive information on the rights contained in the Declaration (article 13).

In the 1980's the activity that began in the 1970's picked up momentum and the next decade witnessed an acceleration of activity on rights on behalf of persons with disability. The year 1981 was declared the International Year of Disabled Persons [9] by a General Assembly resolution. An important United Nations Voluntary Fund on Disability was established by General Assembly Resolution 32/133 in connection with the International Year of Disabled Persons. The Fund was later renamed the Voluntary Fund for the United Nations Decade of Disabled Persons (1983-1992). The theme was Full Participation and Equality, defined as the right of persons with disabilities to participate fully in their societies, to enjoy equal living conditions, and to have an equal share in improved conditions. The resolution proclaimed that the year 1981 be devoted to the full integration of disabled persons in society; the encouragement of academic research projects to facilitate the participation of persons with disabilities in daily life; the education of the public in regard to the rights of persons with disabilities; understanding and accepting persons with disabilities; and encouraging persons with disabilities to form organizations to express their views.

One of the most important outcomes of the International Year of Disabled Persons was the formulation of the World Programme of Action Concerning Disabled Persons, which was adopted by the General Assembly in 1982. The World Programme represents the first world wide international long-term policy in relation to disabled persons. The Programme proposed three actions:

- (1) Prevention of mental, physical and sensory impairments;
- (2) Rehabilitation to assist disabled persons to reach their optimum mental, physical, and social capacities;
- (3) Equalization of opportunities for persons with disabilities in areas including housing, transportation, education, social and medical well-being and recreation.

The World Programme of Action Concerning Disabled Persons consists of three chapters:

- (1) Objectives, Background and Concepts;
- (2) An overview of the current situation of disabled persons and
- (3) Proposals for the implementation of the Programme.

The purpose of the World Programme is to promote effective measures for prevention of disability, rehabilitation and the realisation of the goals of Full Participation of disabled persons in social life and development and of Equality. The Programme adds a human rights dimension by recognising the Equalization of Opportunities as an important objective for achieving full participation by disabled persons in all areas of life.

The Programme marks a shift towards a rights based model and an explicit recognition of the right of all persons to equal opportunity.[10] The General Assembly adopted the resolution Implementation of the World Programme of Action Concerning Disabled Persons the year following the adoption of the World Programme.

The 1987 review in Stockholm of the Implementation of the World Programme of Action concerning Disabled Persons in Stockholm recommended the drafting of a convention on the human rights of persons with disabilities. In 1994, a long-term strategy was adopted to implement the World Programme of Action concerning Disabled Persons to the Year 2000.

The General Assembly declared the period of 1983 to 1992 the United Nations Decade of Disabled Persons. The General Assembly encouraged Member States to use the decade to implement the World Programme of Action. In 1989, the General Assembly adopted the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability. The Guidelines provide a framework for the education and employment of persons with disabilities within government ministries and on all levels of national policy-making. The aim of the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability is to promote the human resources development of persons with disabilities. Guideline 6 states that human resource development "...is a process centred on the human person that seeks to realise the full potential and capabilities of human beings." Guideline 9 provides that "...the abilities of disabled persons and their families should be strengthened through community-based supplementary services provided by Governments and non-governmental organizations."

The Guidelines outline a series of strategies for promoting the human resource development of persons with disabilities. These strategies include the promotion of education, training and employment for disabled persons, as well as community awareness. In particular, guideline 33 provides that "...disabled persons have the right to be trained for and to work on equal terms in the regular labour force." Guideline 23 states that "...education at the primary, secondary and higher levels should be available to disabled persons within the regular educational system and in regular school settings, as well as in vocational training programmes." Guideline 28 provides that "...in addition to being offered formal skills training and education, disabled persons should be offered training in social and self-help skills to prepare them for independent living." The thrust of the guidelines is that disabled persons are "...agents of their own destiny rather than objects of care..." (guideline 8).

In 1991, the General Assembly adopted the Principles for the Protection of Persons with Mental Illness for the Improvement of Mental Health Care. The Principles define the basic rights and fundamental freedoms of persons with disabilities and was considered a new development in the field of treatment of mental health.

The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care represent minimum United Nations standards for protecting the fundamental freedoms and legal rights of those with mental illness. They are intended to be used by Governments, special agencies, national and regional organizations, international organizations, and non-governmental organizations as a guide.

Principle 1 (2) provides that "...all persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person." Other rights of persons with mental illnesses which are included in the Principles concern the protection of minors, determination of mental illness, medical examination, confidentiality, consent to treatment, and rights and conditions in mental health facilities. Principle 23 requires States to implement these Principles through appropriate legislative, judicial, administrative, educational and other measures. According to principle 24, the Principles apply to all persons who are admitted to a mental health facility.

The major outcomes of the last decade were the designation of December 3rd as the annual International Day of Disabled Persons^[11] and the subsequent adoption of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities. The Standard Rules consist of four major sections: 1) Preconditions for equal participation; 2) Target areas for equal participation, 3) Implementation measures; and 4) Monitoring mechanisms.

The Rules summarise the message of the World Programme of Action concerning Disabled Persons and are designed to provide Governments with policy guidelines and options, which can be incorporated into national legislation. The long-term strategy presents a framework for collaborative action at the national, regional and international levels to achieve the aim expressed by the Assembly in resolution 48/99 of a society for all by the year 2010. The Strategy outlines a sequence of suggested actions by interested Governments for the period 1995-2010, together with associated targets, time-frames for action and an ancillary set of support measures at the regional and international levels to realize that aim.

Although The Standard Rules on the Equalization of Opportunities for Persons with Disabilities are not legally binding and do not have the full force of law, they have been adopted by a large number of States

and imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for disabled persons. The Standard Rules is, in fact, the first universal instrument to refer specifically to disabled persons, as well as to contain an extremely broad statement of the rights to equal opportunities.

The first chapter of the Rules, Preconditions for Equal Participation, consists of four preconditions for equal participation: these are awareness raising (rule 1), medical care (rule 2), rehabilitation (rule 3) and support services (rule 4).

Rule 1 provides that "States should take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution." An important component of awareness raising is to focus the education campaign on children as a means of shaping a positive attitude towards persons with disabilities among future generations (rule 1 (9)).

Rule 2 provides that States should ensure the provision of effective medical care to persons with disabilities.

Also, rule 3 states that in order to assist disabled persons "...to reach and sustain their optimum level of independence and functioning," States should ensure the provision of rehabilitation services to persons with disabilities. Rule 4 provides further that States should ensure the development and supply of support services, including assistive devices for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights. Together, these two Rules aim to ensure that persons with disabilities are able to achieve a level of functioning that allows them to interact in general society.

The second chapter of the Standard Rules deals with Target Areas for Equal Participation (rules 5 to 12). The selected target areas include accessibility, education, employment, income maintenance and social security, family life and personal integrity, culture, recreation and sports, and religion. The notion of accessibility involves the creation of a physical environment, which is appropriate for people with disabilities. Rule 5 asks States to introduce (a) programmes of action to make the physical environment more accessible and (b) undertake measures to provide access to information and communication.

Rule 6 of the Standard Rules, stipulates that States are requested to "...recognise the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system." Rule 6 (8) provides that in countries where the general school system does "...not yet adequately meet the needs of all persons with disabilities, special education may be considered."

To attain independence, appropriate employment for disabled persons is essential. As stated in Rule 7 of the Standard Rules, "States should recognise the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment." One of the key aspects in social policy reform in recent years has been the recognition that disabled persons have been excluded from access to employment in the public and private sector for reasons unrelated to their ability to do the job. Rule 7 (1) provides that employment laws "...must not discriminate against persons with disabilities and must not raise obstacles to their employment." The Standard Rules also encourage States to actively support the integration of persons with disabilities into open employment (7 (2)); design and adapt workplaces and premises so that they become accessible to disabled persons (7 (3) (a)); support the use of new technologies and the production of assistive devices, tools and equipment (7 (3) (b)); and provide appropriate training and placement and ongoing support such as personal assistance and interpreter services (7 (3) (c)).

Rule 8 concerns income maintenance and social security. The Preamble to Rule 8 provides that States are responsible for the provision of social security and income maintenance for persons with disabilities. Rule 8 (3) encourages States to also provide income support and social security protection to individuals who are involved in caring for a disabled person. However, pursuant to Rules 8 (4) and (5), social security systems should include incentives to restore the income-earning capacity of persons with disabilities and incentives for disabled persons to seek employment. Thus, social security programmes should be structured to encourage people to seek and secure employment and should not be provided as a substitute for employment.

Rule 9 (2) encourages States to promote the full participation of persons with disabilities in family life. In particular, persons with disabilities must not be denied the opportunity to express their sexual identity and experience parenthood.

Rules 10 - 12 require States to ensure that people with disabilities have equal opportunities to participate in cultural activities, recreation and sports, and religious life. True equalization of opportunities means that disabled persons are ensured equal participation in all areas of life, including cultural, recreational, sports, and religious life.

Chapter III of the Standard Rules stipulates the various implementation measures for States to follow. States are responsible for:

- a. Collecting and disseminating information on the living conditions of persons with disabilities (rule 13);
- b. Ensuring that disability aspects are included in all relevant policy-making and national planning (rule 14);
- c. Creating the legal basis for measures to achieve the objectives of full participation and equality for persons with disabilities (rule 15);
- d. Financing national programmes and measures to create equal opportunities for persons with disabilities (rule 16);
- e. Establishing and strengthening national co-ordinating committees to serve as a national focal point on disability matters (rule 17);
- f. Recognising the right of the organizations of persons with disabilities to represent persons with disabilities at national, regional and local levels (rule 18);
- g. Ensuring the adequate training of personnel involved in the planning and provision of programmes and services concerning persons with disabilities (rule 19);
- h. Continually monitoring and evaluating the implementation of national programmes and services concerning the equalization of opportunities for persons with disabilities (rule 20);
- i. Co-operate in and take measures for the improvement of the living conditions of persons with disabilities in developing countries (rule 21) and
- j. Participate actively in international co-operation concerning policies for the equalization of opportunities for persons with disabilities (rule 22).

The final chapter of the Standard Rules (chapter 4) describes a monitoring mechanism designed to further the effective implementation of the Rules. Paragraph 2 of Chapter 4 provides that the Rules are to be monitored within the framework of the sessions of the Commission for Social Development. In addition, a Special Rapporteur is to be appointed to monitor the implementation of the Rules. The Special Rapporteur, assisted by the Secretariat, shall prepare reports for submission to the Commission for Social Development (paragraph 8) and provide advisory services on the implementation and monitoring of the Rules (paragraph 6).

Rule 15 of Chapter III deals explicitly with legislation. It provides: "States have a responsibility to create the legal basis for measures to achieve the objectives of full participation and equality for persons with disabilities."

Apart from specific United Nations resolutions on disability, two major studies have influenced disability rights in the last two decades. The first was a report entitled Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill- Health or Suffering from Mental Disorder (1986), prepared by Erica –Irene A. Daes who was appointed Special Rapporteur by the Sub-Commission on Prevention of Discrimination and protection of Minorities. In 1993, Leandro Despouy a Special Rapporteur appointed by the Sub-Commission prepared a report entitled Human Rights and Disabled Persons (1993). This report examines human rights abuses in the area of disability and look at certain human rights abuses as causes of disability.

Within the United Nations Secretariat, a number of offices also assist in co-ordinating national and international efforts in the field of disability. The offices include the Division of Human Rights (DHR), the Department of International Economic and Social Affairs (DESA), the Department of Public Information (DPI), the Division of Narcotic Drugs (DND) and the United Nations Conference on Trade and Development (UNCTD).

Other organizations and programmes of the United Nations have also adopted approaches related to development that are of significance to the World Programme of Action concerning Disabled Persons, inter alia:

1. The United Nations Children's Fund (UNICEF) and its efforts to strengthen family and community resources to assist disabled children in their natural environments
2. The Office of the United Nations High Commissioner for Refugees (UNHCR) and its work for disabled refugees
3. The Office of the United Nations Disaster Relief Co-ordinator (UNDRC) has advanced specific measures of disaster preparedness and prevention for those already disabled and of the prevention of permanent disability as a result of injury or treatment received at the time of disaster
4. The United Nations Centre for Human Settlements (HABITAT) with its concerns about physical barriers and general access to the physical environment

The specialised agencies of the United Nations involved in promoting, supporting and carrying out field activities have an important advisory role to perform. The work of these agencies includes disability presentation, nutrition, hygiene, education of children and adults, vocational training and job placement.

[Return to top](#)

[2] General Comment No.5, para 15.

[3] Id at para 12.

[4] Id at para 9.

[5] Id at para 5.

[6] Id at para 33.

[7] Article 2 of the Convention reads as follows: 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior office or a public authority may not be invoked as a justification of torture.

[8] Article 23 of CRC reads as follows:

1) States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. 2) States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3) Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or other caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development. 4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experiences in these areas. In this regard, particular account shall be taken of the needs of developing countries.

[9]. G/A/RES 31/123 of 16 December 1976

[10] In paragraph 12, the WPA defines “ equalization of opportunities” as, “ the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, are made accessible to all.”

[11]. G/A/RES 48/98 of 20 December 1993.

Part I. National Frameworks for the Protection of the Rights of Disabled Persons

This section explores the framework for the protection of rights of persons with disabilities at the national level. This exploration covers the adoption of international law in to municipal law, the available mechanisms under national law for the protection of rights violations and the role of non-governmental organizations in monitoring the protection of the rights of persons with disabilities.

In an effort to give legal recognition to normative rights, States follow different practices in “internationalizing” treaty norms, that is, incorporating treaties within the state’s legal structure so that the provisions can be implemented by state authorities.

1. International Law and National Frameworks

This section explores the framework for the protection of rights of persons with disabilities at the national level. This exploration covers the adoption of international law into municipal law, the available mechanisms under national law for the protection of violations of human rights and the role of non-governmental organizations in monitoring the protection of the rights of persons with disabilities.

In an effort to give legal recognition to normative rights, States follow different practices in "internationalizing" treaty norms, that is, incorporating treaties within the state's legal structure so that the provisions can be implemented by state authorities.

International human rights law can have a great impact on national systems, regardless of which of the two scenarios described above applies. National courts may look at international and regional human rights norms in deciding how to interpret and develop national law. International and regional human rights law can be used in national human rights mechanisms in different ways including, basing the human rights claim on international or regional law, where such law is part of national law, or has otherwise been incorporated into national law; using the international and regional human rights law as an aid to the interpretation of national law provisions and using international human rights law as the minimum standard of protection which national law should attain.

The next sections set out how and by what means or methods, international human rights law and its implementation in national law has developed.

1.1 Sources of International Law:

Article 38 of the Statute of the International Court of Justice sets out the following sources of international law: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b) international custom, as evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations; d) judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for determination of rules of law.

1.2 The Role of Custom

Customary law is critical to the role of human rights law. The domestic enforceability of customary international law is manifest in the case of *Filartiga v. Pena-Irala*: "In the twentieth century the international community has come to recognize the common danger posed by the flagrant disregard of basic human rights ... In the modern age, humanitarian and practical considerations have combined to lead the nations of the world to recognize that respect for fundamental human rights is in their individual and collective interest..." (630 F. 2d 876, 89 (2d Cir.1980)). Two issues were made clear by this case. Firstly, customary international law is a matter of universal jurisdiction, so that any national courts may hear extra-territorial claims brought under international law. Secondly, domestic court may discover international legal principles by consulting executive, legislative and judicial precedents, international agreements, the recorded expertise of jurists and commentators, and other similar sources.

There also exists a class of customary international law, *jus cogens*, that has peremptory force and cannot be abrogated by domestic law or treaty. *Jus cogens* is generally deemed self-executing. When domestic courts apply treaty law and other rights established by express accord, they usually look to the language and legislative history of the norms involved to locate the intent to enforce them locally. If such an intent exists, these agreements are regarded as self-executing.

1.3 The Role of Treaties

Even though the sources of international law are not hierarchical, treaties gain some degree of primacy among the sources of international law. Treaties serve different purposes. Some treaties have far reaching political impact such as peace settlements, alliances and nuclear testing bans. Others though less political, involve relationships between governments or government agencies and affect private parties. Most significantly, human rights conventions have sought to extend protection to all persons against governmental abuse. A treaty is formed by the express consent of its parties. A treaty's text may permit some reservations,

thus allowing a greater number of States to enter into a treaty at the sacrifice of certain objectives and purposes of the treaty.

1.4 International Law in Municipal Law

Even though international law requires a State to carry out its international obligations, the processes used by a State to carry out its international obligations will vary for example, from legislation, executive and/ or judicial measures.

States also follow different practices in incorporating treaties within the state's legal structure so that the provisions can be implemented by state authorities. In some countries, international (and at times regional) human rights law automatically becomes a part of national law. In other words, as soon as a state has ratified or acceded to an international agreement, that international law becomes national law. Under such systems treaties are considered to be self-executing. In other countries, international human rights law does not automatically form part of the national law of the ratifying state. International law in these countries is not self-executing, that is, it does not have the force of law without the passage of additional national legislation.

States incorporate treaties and norms into their domestic laws by specific "transformational" devices. The automatic incorporation of ratified treaties by constitutional provision, which has been called general transformation, mandates domestic enforcement without legislative action beyond ratification. A second method, special transformation, requires legislation in order to give treaties domestic effect.

In the absence of special agreements, a State will decide how to carry out its international obligations. For example, in the United States, the Federal government will decide whether an agreement is to be self-executing or should await implementation by legislation or appropriate executive or administrative action.

In the United States unless a court deems a treaty to be self-executing, the treaty will bind domestic courts only if Congress has passed legislation for the specific purpose of implementing the treaty provisions domestically. Another promising route for directly incorporating international human rights norms into U.S. law is the argument that these norms are binding as customary international law or *jus cogens*, a subset of customary laws that are so fundamental that they are non derogable. The human rights values embodied in the U.N. Charter, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights are all elements of customary international law that are rapidly establishing themselves as *jus cogens*, if they have not already achieved their status.

The case of *Filartiga v. Pena Irala*, heralded a trend towards the domestic incorporation of customary international law. The *Filartiga* court recognized that the law of nations is a dynamic concept, which should be construed in accordance with the current customs and usages of civilized nations, as articulated by jurists and commentators. It held specifically that U.S. law directly incorporated customary international law principles prohibiting deliberate government torture. Moreover, in the most controversial aspect of its opinion, the *Filartiga* court held that an old rarely invoked federal jurisdictional statute, the Alien Tort Statute, created an implied right of action for violations of customary international law. In *Paquete Habana* (175 U.S. 677, 20 S.Ct.290), the Court reaffirmed the domestic status of customary international law in the United States. Relying on scholarly sources, the Court acknowledged a long-held customary norm against seizing the coastal fishing vessels of a belligerent. The court held that international law is part of the United States law, and must be ascertained and administered and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination.

1.5 Locating Human Rights Law in Municipal Law

Any law that can be used to promote or protect human rights may be considered to be part of human rights law. Human rights law can be found in national constitutions, legislation and unwritten common law. National constitutions increasingly reflect a commitment to human rights. At times the rights are listed in a separate section generally known as a bill of rights.

1.6 Two Basic Conceptions about Constitutions

A Constitution is a body of rules that establishes and regulates a Government by laying down checks and balances and limitations of governmental authority. Most constitutions also include a Bill of Rights. These rules are sometimes justiciable in a court of laws and sometimes merely aspirational and hortatory but no

less effective in regulating Government than the law *stricto sensu*. A second kind of constitution is an unwritten constitution for example such as in England, New Zealand, Canada and Israel. These countries have no written constitution in one single document, but rather a number of Basic Laws, that are primary laws guiding society. In the absence of a formal codified set of laws, tradition and existing legal and political systems may provide enduring constitutional principles.

If the rights of disabled persons have been recognised within the Constitution, the political powers of the nation must respect them, as long as the Constitution is not modified. There is, therefore, supremacy of Constitutional Law over any other inconsistent law which voids any law or any act of Government which violates the Constitution.

1.7 International Law and Municipal Law Interface

An international treaty seldom stipulates how the States should implement its provisions, leaving it to each State to decide how that obligation will be executed on the domestic plane. One notable exception involves the right of access and to effective remedies guaranteed in human rights treaties. There is no rule of general international law that all treaties must have effect in domestic law. Many treaties have no domestic legal consequences and do not require implementation through the national legal systems of the States Parties. The freedom to choose some methods of implementation is also guaranteed in the [International Covenant on Civil and Political Rights](#), article 2: "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant." However, article 14 and 50 guarantee a right of access to courts.

Four main methods are generally available for the implementation of international human rights instruments in domestic law:

- a. Direct incorporation of rights recognised in the international instruments into a *bill of rights* in the national legal order;
- b. Enactment of different legislative measures in the civil, criminal and administrative laws to give effect to the different rights recognised in human rights instruments;
- c. Self-executing operation of international human rights instruments in the national legal order; and
- d. Indirect incorporation as aids to interpret other law.

For States that are not Parties to the relevant human rights treaties, generally accepted standards of human rights are legally binding upon them according to customary international law.

The relationship of international law to municipal law rests on two principal schools of law. The *dualists* regard international law and municipal law as separate and municipal law can apply international law only when it has been incorporated into municipal law. Incorporation can result from an act of parliament or other political act, or given effect by the courts. On the other hand, *monists* regard international law and municipal law as parts of a single legal system. According to this theory, municipal law is subservient to international law.

England is an example of the *dualist* model of international law. A treaty has no effect in English domestic law, unless it is made part of it. Once a treaty is incorporated into English Law, it is fully enforceable in the courts. But the fact that a treaty is part of the English Law will not necessarily mean that individuals have a cause of action arising from the treaty. There will only be incorporation if the treaty changes domestic law, or if it requires the raising of revenue or alteration of taxation. As in the case of many treaties in the field of foreign relations, ratification is a formality and incorporation is not required. An unincorporated treaty has no formal standing in English Law. If it conflicts with statute or common law, the latter will prevail. An incorporated treaty becomes part of the law of the land, but it has no special position. The relationship between incorporated treaties and other legislation is the same as the relationship of two statutes to each other. Parliament is supreme in the sense that it can pass legislation that is inconsistent with any international treaty obligations which, nevertheless binds the United Kingdom at the international level.

An example of a *monist* model is the Netherlands legal system. For the operation of treaties and the orders of international organizations within the legal system, no national order is required to convert international law into national law. International law operates automatically, as such, within the national legal system. Therefore, certain treaties are considered constitutional law where they limit or extend the powers of Dutch

offices based on national constitutional law. Examples of this are the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) and the [International Covenant on Civil and Political Rights](#).

Finally, between these two models there are a number of variants; however, many of them are only theoretical constructions. In the United States, for instance, treaties are expressly supreme law of the land and can be self-operative, creating individual rights and duties in domestic legal processes.

In the United States, ratified human rights treaties and customary international law are both law of the land. The Supremacy Clause of the United States Constitution makes all Treaties made or which shall be made under the Authority of the United States... the "Supreme Law of the Land" (U.S. Const.art. VI Cl. 2). Under the Supremacy Clause, the law of the land is binding on the federal government as well as on state and local governments. According to the U.S. Supreme Court, the treaty power authorizes Congress to legislate under the Necessary and Proper Clause in areas beyond those specifically conferred on Congress (*Missouri v. Holland* 252 U.S. 416 (1920)).

In the U.S. not all treaties, by their terms, mandate domestic applications that affect private parties. Such treaties, therefore, are not self-executing, even though they are ratified and are part of the law of the land according to the Supremacy Clause. Since a private right is largely contingent on the existence of a right of action, additional legislation is needed to grant individuals private rights pursuant to such treaties.

Self-executing treaty doctrine stipulates that not even the few U.S. ratified human rights treaties would necessarily be binding on domestic courts. Unless a court deems a treaty to be self-executing, the treaty will bind domestic courts only if Congress has passed legislation for the specific purpose of implementing the treaty provisions domestically.

While the U.S. Constitution assigns the power to make and adopt treaties to the federal government, several state and local governments have adopted human rights treaties. For example, in the absence of federal ratification on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), San Francisco has incorporated principles of CEDAW into binding local law.

In order to achieve an effective improvement in the exercise of disabled persons human rights, it is important to understand the mechanisms that exist and the remedies they can provide. Much of this Resource addresses the potential of human rights mechanisms in this context. Before analysing the available international instruments in the area of disability, an examination of the procedure and remedies provided by the national level will be made.

1.8 The Role of the Constitution in Municipal Law

National constitutions increasingly reflect a commitment to human rights. At times the rights are listed in a separate section generally known as a bill of rights. Drafters of recent constitutions often consider the language of international and regional norms in fashioning their guarantees. Some of the possible constitutional provisions that affect human rights are:

- Right to non-discrimination
- Right to equal treatment in specified spheres, such as employment or the court system, or in all spheres of life
- Right to freedom from violence
- Other civil and political rights available to people including, for example, the right to assembly, to free speech, to worship as one chooses, to privacy etc.
- Other economic and social rights available to all people, including for example, the right to health care, housing and education

1.9 The Supremacy of the Constitution

The Constitution is said to be the supreme law of the land (For explicit claims, see inter alia, the Constitution of Australia, Preamble; the Canadian Constitution Act, 1982, Art.552; the Constitution of Italy, Art.1; the Constitution of Ireland, Art.6; the Constitution of Japan, Art. 98; and the Constitution of the United States, Art. 6. For implicit claims, see inter alia, the Constitution of India, Arts. 251 and 254; the Basic Law of Federal Republic of Germany, Arts. 20 (3), 23,28 (1) and (3), 37, 56, 64(2), 70, 87 a(2), 98(2), and 142). The Constitution is the source of all political power within the nation.

The logical consequence of the superiority of the Constitution is that all acts of the legislature, repugnant to the Constitution will be void. Therefore, these acts will not bind either the courts or the citizens. The constitutionality of every law and every act of the Government is one of the most important political principles of democracies and universally accepted rule of law norms. Consequently, including the civil rights of persons with disabilities within the Constitution seems to be the most effective way in which to protect their human rights and fundamental freedoms of persons with disabilities.

1.10 Judicial Review of Legislation

The right of a constitutional court or the highest court of the land to declare certain laws unconstitutional is termed the power of judicial review.

The very essence of civil liberty consists of the right of every individual to claim the protection of the laws, whenever one receives an injury; one of the main duties of government is to protect the rights of all persons. Access to courts and the right to an effective remedy are fundamental rights included in article 8 of the [Universal Declaration of Human Rights](#) and articles 2 and 14 of the [International Covenant on Civil and Political Rights](#).

A successful rights claim may have wider impact and lead to the reform of legislation or policies found to violate the rights of persons with disabilities. Advocates can thus take test cases or impact litigation cases to court to challenge policies or laws, which discriminate against disabled persons.

2. The Legislative Process

One of the dominant features of the 20th century jurisprudence has been the recognition of law as a tool for change. An important feature of an effective legal system is its capacity to reflect the changing needs and demands of a society in which it operates. Although legislation is not the only means of social control, it definitely is one of the most powerful vehicles of change and development. Continuous law making becomes a natural response of a developing legal system to new challenges and needs. Today, almost every area of national legislative concern is affected in one way or another by international treaty standards. While an international framework of rules and standards is important, one should not disregard the importance of national legislation, a fundamental link in the fulfilment of the international law making. The next section sets out some examples of national legislation in relation to persons with disabilities (Americans with Disabilities Act of 1990, 42 USC Sec. 12101 (1999); Canadian Charter of Rights and Freedoms, The Canadian Human Rights Act, R.S.C., Ch.H. 6 Sec.1 (1998); Disability Discrimination Act (1992) Aust, Aus. Cons.art.7 (1997); Law of the Peoples Republic of China on the Protection of Disabled Persons (1990); Law on Equal Opportunities for Persons with Disabilities (1996) (Costa Rica); Grundgesetz (constitution) art 3 (3) (FRG); Disability Discrimination Ordinance, Cap. 487 (1995) ((H.K); Act xxvi on Provisions of the Rights of Persons Living with Disability and their Equality of Opp. (1998) (Hung.); The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act (1995 No. 1 of 1996) India; Employment Equality Act of 1998, Equal Status Bill of 1999 (Ir.); Equal Rights for People with Disabilities Law, 5758-1998 (Isr.); Act Relating to Employment Promotion etc. of the Handicapped, Law No. 4219 (1990) (S. Korea); Human Rights Act of 1993 (N.Z); Republic of Malawi (constitution) Act of 1994, chap.111.sec.13 (g); Magna Carta for Disabled Persons (Republic Act No. 7277) (1991) (Phil); Disability Discrimination Act (1995) U.K.; S. Afr.const. Sec. 9 (1996); Protection of the Rights of Persons with Disabilities Act. No. 28 of 1996 (Sri L); Law on the Prohibition of Discrimination Against Persons with Disabilities in Employment SFS No. 1999-132, (1999) (Swed.); Uganda Const. chap. Iv, sec. 21 (2) 1995; Disabled Persons Act of 1992 (Zimb.)).

2.1 Equal Protection

The Canadian Constitution was the first to include a comprehensive equality clause that mentions disability. It states: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Throughout the world today, people with mental disabilities suffer abuse, mistreatment, discrimination, stigmatization, and even death on account of their disabilities. Forced sterilization is one such example. On the other hand, certain countries have passed anti-discrimination laws prohibiting discrimination against persons with disabilities.

In Germany, after reunification, the **Constitution of the Federal Republic of Germany** was amended. In addition to the general equal protection clause, a new phrase was added: "No one may be disadvantaged on account of his disability."

The Fifth Amendment of the **Constitution of the United States of America** provides: "No person (...) shall be deprived of life, liberty, or property, without due process of law" and the Fourteenth Amendment to the United States Constitution provides: " No state shall (...) deny to any person... the equal protection of the laws."

The **Americans with Disabilities Act** (ADA) prohibits discrimination against people with disabilities in employment, public services and transportation and places of public accommodation. In the employment context, the ADA essentially prohibits discrimination against qualified individuals with a disability who can perform the essential functions of the position held or desired with or without reasonable accommodation, which does not impose an undue hardship on the employer.

The **Constitution of the Portuguese Republic** states: "Citizens who are physically or mentally disabled shall enjoy all the rights and be subject to all the duties embodied in the Constitution, except for the exercise or performance of those for which their disablement unfits them" (article 71). It also establishes that "...[t]he State shall carry out a national policy for prevention and for the treatment, rehabilitation and integration of handicapped persons, shall develop a form of education to make society aware of its duties of respect for them and solidarity with them and ensure that they enjoy their rights fully, without prejudice to the rights and duties of their parents or guardians."

In similar terms, the **Spanish Constitution** provides: " The public authorities shall implement a policy of prevention, treatment, rehabilitation and integration of those who are physically, sensory and mentally handicapped, who shall be given the special attention which tries to require and afford them special protection for the enjoyment of the rights which this Title grants to all citizens."

Finally, the **Constitution of Uganda** provides: " Society and State shall recognise the right of persons with disabilities to respect and human dignity."

2.2 Affirmative Action

The *equal protection clause* is one of the fundamental principles of the Constitution. It guarantees that those similarly situated will be dealt equally by the Government and by law. It does not reject, however, the Government's ability to classify persons or draw lines in the creation and application of laws. However, it does guarantee that those classifications will not be based upon impermissible criteria or arbitrarily used to burden a group of individuals. Therefore, those who are treated less favourably by the legislation are not denied equal protection of the law because they are not similarly situated to those who receive the benefit of the legislative classification. There is a higher public interest that justifies this differential treatment.

Affirmative action policies in the United States are generally directed towards members of a special class. Where government action treats a member of such a class differently from the general population on the basis of being a member of that class, the state action will be *strictly scrutinised*. That means that the differing treatment will be upheld only if the State can show a *compelling governmental interest* and that no less discriminatory alternatives exist that would serve this interest as well (*San Antonio Independent School District v. Rodriguez*, 411 US 1.28.1973). Generally, in the United States, benign classifications of "discrete and insular" groups such as persons with mental disabilities will pass a rational basis review, meaning that they will not be strictly scrutinized by the courts.

To achieve *equal protection*, for persons who are disadvantaged because of sex, race or disability, the Governments must, sometimes, use affirmative action policies in employment and education. In addition, governments use quotas, subsidies and other incentives.

In Australia, the **Disability Discrimination Act** allows federal, state and local Governments to enact special measures in favour of less advantaged groups. In some cases, persons pertaining to dominant groups filed complaints asserting that they were being discriminated against by positive action measures. The Australian Courts held that special and preferential treatment may be justified to achieve the purpose of equal opportunities (*Proudfoot v. Human Rights and Equal Opportunities Commission*, ALR 199.100.557).

The **Constitution of the Portuguese Republic** establishes that "...the State shall carry out a national policy for prevention and for the treatment, rehabilitation and integration of handicapped persons, shall develop a form of education to make society aware of its duties of respect for them and solidarity with them and ensure that they enjoy their rights fully, without prejudice to the rights and duties of their parents or guardians."

The **Spanish Constitution** provides: "The public authorities shall implement a policy of (...) integration of those who are physically, sensory and mentally handicapped, who shall be given the special attention which they try to require and afford them special protection for the enjoyment of the rights which this Title grants to all citizens".

In India, the **Persons with Disabilities Bill** implements a scheme of positive discrimination in favour of persons with disabilities through a quota system, reserving a certain number of places for persons with disabilities in the training and employment programs of public and private sector entities. It also provides incentives to establishments promoting the employment of disabled persons and preferential treatment through tax concessions, subsidies and grants

France also operates a quota system for persons with disabilities. Public private sector offices employing at least 20 staff members are called upon reserve six per cent of full time or part-time positions for persons with disabilities. There are exceptions from these provisions, most of which have financial implications.

Germany too requires employers with at least 19 employees, to reserve a quota for persons with disabilities.

2.3 Integration Policy: Education and Professional Training

Certain jurisdictions have adopted positive steps to integrate persons with disabilities into the community.

In the United States, the **Americans with Disabilities Act (ADA) (1990)** provides that public opportunity providers may not discriminate against otherwise qualified individuals with disabilities. An employer violates the ADA if the employer can show that the accommodation would impose an undue hardship on the operation of the employer's business. Further, the ADA prohibits an employer from denying an employment opportunity to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the employer's need to reasonably accommodate an employee or applicant's physical or mental impairment. The term reasonable accommodation is defined in the ADA to include: making existing facilities accessible; job restructuring; part-time or modified work schedules; reassignment to a vacant position; modification of equipment or devices; adjustments or modifications of examinations, training materials or policies; and provision of readers, interpreters and attendants. The ADA sets forth a three-pronged definition of disability: a) a physical or mental impairment that substantially limits one or major life activities of such individual; b) a record of such an impairment; or c) being regarded as having such an impairment. Evaluating the issue of equal protection, the United States Supreme Court has established major standards.

In the United Kingdom's the 1944 **Disabled Persons Act (Employment)** originated from the need to make provisions for people disabled in the Second World War. The objective of the Act was to improve the employment prospects of people with disabilities. The Act defined a disabled person as someone who "...on account of injury, disease or congenital deformity, is substantially handicapped in obtaining or keeping employment, or in undertaking work on his own account, of a kind which apart from that injury, disease or deformity would be suited to his age, experience and qualifications." The act provided for the registration of disabled people; the establishment of employment quotas; the designation of certain occupations as reserved for persons with disabilities; sheltered employment; vocational training and rehabilitation; and the establishment of a national body to advise on the employment situation of persons with disabilities.

The U.K.'s 1995 **Disability Discrimination Act** introduced a new definition of disability and repealed the quota, registration, and designated employment provisions of the **Disabled Persons Act (Employment)**. For a number of years it had been recognised that these provisions were not working as originally intended. For example, the requirement for employers with twenty or more employees to meet a 3% quota of registered disabled persons proved difficult for employers to fulfil since only a third of those in the workforce eligible to register did so. The quota only took account of recruitment but did nothing to promote effective employment policies by considering issues such as training and promotion.

In the United States, the **ADA** prohibits an employer from denying an employment opportunity to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the employer's need to reasonably accommodate an employee or applicant's physical or mental impairment. The term reasonable accommodation is defined in the ADA to include: Making existing facilities accessible; job restructuring; part-time or modified work schedules; reassignment to a vacant position; modification of equipment or devices; adjustments or modifications of examinations, training materials or policies; and provision of readers, interpreters and attendants. Thus an employer may be required to modify a particular job so that a person with a disability can perform the position's essential functions. This can be accomplished by eliminating the job's nonessential elements, redelegating assignments, exchanging assignments with another employee, or redesigning procedures for task accomplishments.

In India, the **Persons with Disabilities Bill** ensures free and compulsory education to children with disabilities through different forms of education, such as special, integrated and non-formal education. It also provides financial assistance in the form of distribution of equipment free of charge or at a subsidised cost, promotes research to develop enabling technology and teaching methods for the education of persons with disabilities, and adapts and modifies education syllabi to enhance disabled persons' access to education. The Bill also implemented a scheme of positive discrimination in favour of persons with disabilities through a quota system reserving a certain percentage of places for persons with disabilities in the training and employment programs of public and private sector entities. It also provided incentives to establishments promoting the employment of disabled persons and preferential treatment through tax concessions, subsidies and grants.

2.4 Health care and Social Security

The **Constitution of Denmark** provides that "...any person unable to support himself or his dependants shall, where no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by Statute in such respect."

In Japan, the **Fundamental Law for Countermeasures for Mentally and Physically Handicapped Persons** provides that the State and local public bodies should take measures to provide mentally and physically handicapped persons with medical benefits which are necessary for them to restore or obtain their function. They should also accommodate handicapped persons in institutions or have them attend the same, according to their age, kind and degree of their handicaps. This is necessary in order to provide them with appropriate protection, medical care and training and to promote research and development of medical care, guidance, training, and other tools.

The **Constitution of Venezuela** provides that "...persons who lack the economic means and who are not in a position to obtain them shall have the right to social assistance if they are incorporated in the social security systems."

2.5 Housing

Physical disability may restrict the opportunities for the person concerned and his or her family, to fully participate in the life of the community. Disabled persons in developing, as well as industrialised countries, find barriers in the planned environment, which restrict their independence. The problem is how to integrate disabled persons in the economic and social life from which they have so far been excluded by both cultural and physical barriers. It is important, therefore, that those who develop policies for both building and urban planning should take account of the needs of persons with disabilities.

The guide **Designing with Care** was prepared as a result of the implementation of the 1981 **Plan of Action of the International Year of Disabled Persons**, which calls for the preparation of a series of Manuals covering different aspects of barrier free environment for disabled persons. The Guide is the result of the joint co-operation between the Swedish International Development Authority (SIDA), the United Nations and the United Nations Centre for Human Settlements (HABITAT).

2.6 Fashioning Remedies for Violations of the Right of Persons with Disabilities

Legislation on disability will be meaningless without corresponding enforcement mechanisms and remedies for rights violations. The domestic remedies should afford a real opportunity for review and reparation, while basic norms of impartiality and independence of the judiciary and of due process should prevail. If the domestic remedies fail to provide an effective remedy, the individuals still have recourse to the international machinery for protection of human rights. The effectiveness of international complaint procedures can be questioned, but a complaint process itself becomes an advocacy effort which creates greater awareness on disability rights

The first place an advocate or victim of a human rights violation may look for recourse in one's own country or residence, is to the courts, commissions or other judicial bodies. There are two ways in which to raise issues involving violations of the right to legal assistance in international human rights law. First the advocate can use domestic law in the domestic courts. The second course of action is the invocation of an international mechanism for the protection of human rights norms.

There are several ways in which domestic law incorporates international law into its operations. Advocates can argue the effectiveness of international law in the following ways:

- **Treaties in Domestic Law:** Advocates can argue that a treaty creates new or additional legal obligations with regard to rights of persons with disabilities.
- **Customary International Law in Domestic Law:** Customary international law is a combination of the practice of states and a collective sense of legal obligation, usually expressed through court decisions or other recognized legal authorities. Customary international law is binding in domestic courts. Sometimes, even when there is no treaty on the issue, advocates may use customary law arguments to articulate new obligations for disabled persons.

- Jus Cogens in Domestic Law: This is a principle that is so fundamental that it invalidates rules made by treaty or custom.
- International Law as a Means of Informing Domestic Law: International law can always be used to bolster or interpret domestic law principles.

The right to an effective remedy is also recognised in the [International Covenant on Civil and Political Rights](#), article 2 (3), which stipulates that each State Party to the Covenant undertakes to ensure that any person whose rights have been violated shall have an effective remedy before a competent authority provided for by the legal system of the State. An advantage of bringing matters to the courts is that the courts can bring attention to disability matters and in this way enhance legislative changes. This can also encourage different national actors to take up action on disability issues.

Most human rights systems at the regional and international level require that before a claim for redress for an alleged violation of human rights is entertained at those levels, national remedies must be exhausted.

3. Remedies for Rights Violations

Every state has the primary responsibility within its territory to ensure human rights are guaranteed to all members. By signing and ratifying human rights conventions, governments at national and local levels must commit to avoiding any actions that would violate or lead to a violation of human rights. In addition, most treaty obligations require the government to take positive steps to adopt affirmative measures, to ensure or protect the enjoyment of human rights. They may also require enacting and enforcing legislation or adopting other appropriate measures to ensure that individuals and other entities respect human rights. Many countries create human rights enforcement systems, which may include a human rights commission to investigate claims and special adjudicative bodies to hear cases. Also, human rights claims may be heard through regular course of a civil or criminal case. Finally, ad hoc or permanent commissions may be established to monitor and write reports on immediate or ongoing issues.

To ensure enforcement of human rights obligations, various mechanisms exist at national, regional and international levels. At the international level, most of these mechanisms provide vehicles for monitoring compliance. Some offer petition procedures which allow individuals to challenge breaches by the state of their human rights obligations. In some cases mechanisms are linked to constitutions and national legislation, in others to human rights treaties and in still others to specialized agencies of the UN charged with the enforcement of specific rights, such as labour refugee and health rights. Mechanisms linked to national constitutions and legislation may offer more concrete and enforceable remedies and should usually be tried first, before turning to international petition procedures.

3.1 Due Process

The concept of procedural due process refers to the process by which all rights are implemented by the State. Most of the formal protections of due process are linked to the conduct of a fair hearing. All persons are, according to the [International Covenant on Civil and Political Rights](#), entitled to a fair and public hearing, and at trial stage, to be informed promptly and in a language in which he / she understands the nature of the charge (article 14). These norms are relevant in the context of disability in three respects. Firstly, they are critically relevant in the civil commitment context. Secondly, they are obviously relevant in the context of ordinary criminal proceedings against individuals who happen to have disabilities. Thirdly, they are relevant in the sense of affording a right to the court to vindicate other rights. Thus, the right to a court might be used offensively to establish and vindicate rights.

International law also recognises that a person is entitled to certain minimum standards of due process in judicial proceedings. Article 10 of the [Universal Declaration of Human Rights](#) stipulates that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

3.2 Locus Standi

Most of the international recourse procedures require from the petitioner prima facie personal involvement in the matter. The claim of being a victim is a condition laid down in most of the conventions that provide for remedies. However, the Human Rights Committee (of the ICCPR) has agreed to consider communications submitted on behalf of alleged victims by others, when the victim has been unable to submit the complaint himself. This opens the complaint system of the Covenant to a vast number of victims who cannot contact a lawyer. The petitioner must show authority to act on the behalf of the victim; in practice the Committee has opened the door only for persons showing a close family connection. The [American Convention on Human Rights](#) recognises explicitly *actio popularis* in its article 44, stipulating that: "Any person or group of persons, or any non-governmental entity legally recognised in one or more Member States of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violations of this Convention by a State Party."

Individuals whose rights have been violated are victims and, therefore have the right to vindicate their rights in courts or other relevant judiciary bodies. However, persons with disabilities may lack the possibility of effectively pursuing their rights. The rules of *locus standi* can be radicalised to broaden access to courts to those who hitherto could not come before the court due to poverty or social or physical disability. This can be done by extending standing to any member of the public or social action group to bring an action on behalf of the person or group of persons to whom the harm was caused. In order to circumvent the time consuming

and expensive writ petition, claimants could perhaps be permitted to address a letter to the court in order to commence action.

3.3 Recourse Procedures at the National Level

Persons with disabilities may lack resources required to hire legal aid. The [Declaration on the Rights of Disabled Persons](#), paragraph 11, states that "...disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and properties." The States should provide legal aid to persons with disabilities, as well as for other vulnerable sections of society. Persons with disabilities may have difficulties in financing the costly lawyers' fees. One solution to this problem could be a socialisation of legal services where the lawyers would be obliged to handle certain cases of important social nature at a considerably reduced fee.

Article 14, para 3 (d) ICCPR states that "To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him, in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it."

The European convention on Human Rights states in article 6, para 3 (c) that "... to defend him self in person or through legal assistance of his own choosing, or if he has not sufficient means to pay for legal assistance, to be given it for free when the interests of justice so require".

Many advocacy organizations, including several outside European countries rely on the human rights case of the European Court, *Airey v. Ireland* (ECHR Decision of 11 September 1979, Series A no. 32). In, the Court found that the obligation of states to make access to the courts possible and effective includes a right to free legal assistance in civil matters when the procedure involved is so complex as to require legal assistance in order to ensure access to the court. The *Airey* precedent, and decisions that followed it, have led to extensive reform of European domestic law in order to protect access to the courts for the indigent in civil legal matters.

Another barrier to seek recourse in a court of law can also be the formal structure of the courts. The atmosphere should be encouraging and humanising for its clients. Participation in the legal process and the formal court procedure is often one of the most fundamental human rights.

Controversial disability matters, such as the sterilisation of mentally retarded children, might fall within the jurisdiction of special family courts. These courts are aimed at providing informal and speedy relief in family law matters. Family court counselling staff may assist in the process. Out of court settlements are encouraged. Conciliation and mediation are other informal methods of dispute settlement.

3.4 National Courts

Human rights, in the first instance must be enforced through domestic courts. The reasons are:

- While most human rights treaties provide for independent supervisory procedures and organs, few states -perhaps with the exception of the parties to the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#)- have accepted the optional clauses or protocols concerning the right of individuals to have recourse before such organs (the American System, however, is different).
- Even where contracting parties have allowed such individual rights, the role of domestic courts remains critical, since, as a general rule, the route to international remedies remains blocked until full exhaustion of domestic remedies has occurred.

Most states have some type of laws protecting human rights guarantees. Countries that are signatory to regional and international human rights documents are obligated to abide by their provisions. At times national laws directly refer to human rights and many states copy international and regional guarantees virtually word for word into their national law. Many countries create human rights enforcement systems, which may include a human rights commission to investigate claims and special adjudicative bodies to hear cases.

Mechanisms linked to national constitutions and legislation may offer more concrete and enforceable remedies and usually should be tried first, before turning to international petition procedures. At the national level the weight of the nation's legal system can be brought to bear on the enforcement of human rights.

The types of mechanisms and procedures vary from country to country. For example, human rights commissions exist in some countries while they are unheard of in others. Similarly, constitutional courts exist in some countries but not in others. States may also establish administrative bodies to monitor and carry out compliance with international and regional agreements.

The greater the extent to which international norms on disability are widely known, the greater the possibility of domestic courts complying with these norms. National courts could become a promoter and protector of international human rights of persons with disabilities. Furthermore, judicial initiatives can propel the executive and legislative branches of Government to reform the law.

The domestic court system serves an important function in ensuring the rights of persons with disabilities. Aggrieved disabled persons may bring an action when their rights are violated. They may sue for damages where appropriate. The court may then decide whether the rights of the claimant have been infringed. Judgements of the court can be enforced by ordinary means. Courts also may bring matters to legislative attention and encourage various interest groups to take up action on certain issues. National human rights systems can be important for two reasons:

- They are more easily accessible to large numbers of persons with disabilities and advocacy groups in each country;
- Where jurisdiction for human rights claims lie with a superior court (such as the High Court, Court of Appeals or Supreme Court) a decision in favour of disability rights establishes law that can, in turn, be used by other persons with disabilities whose rights are violated. This is the doctrine of judicial precedent- a common law rather than a civil law, approach.

International and regional human rights law can be used in national human rights mechanisms in different ways including:

- Basing the human rights claim on international or regional law, where such law is part of national law or has otherwise been incorporated into national law.
- Using the international and regional human rights law as an aid to the interpretation of national law provisions. Judges in many countries can and have been guided by international law in their interpretation of specific legal provisions.
- Reminding the state that if it has, through ratification of a treaty, freely assumed an obligation, national enforcement mechanisms should be under a duty to interpret national law so as not to conflict with the state's international or regional obligations.
- Using international human rights law as the minimum standard of protection which national law should attain. Advocacy for law reform and responsive judiciaries can endeavour in the first instance to bring national law in line with internationally accepted standards for the protection of disability rights.

National Laws and mechanisms can be used to advance disability rights by examining:

- Which provisions of the constitution or basic laws protect disabled persons rights and what provisions of other legislation are important for disabled persons rights
- Are there special constitutional or other legal provisions covering the right to non-discrimination and or to equality?
- Which human rights conventions has the country agreed to enforce? When did the convention come into force in the country?
- Are human rights treaties "self -executing"? That is, do they automatically form part of the local law as soon as they are signed or must supplemental legislation be passed?
- What direct mechanisms exist to protect human rights: constitutional courts, offices of civil rights, human rights commissions, ombudspersons, etc.? Do any of these bodies have officers focusing specifically on women?
- Have advocates raised international human rights claims in national courts in the past? If yes, how did the judges respond? Would your local judges take notice of international norms even though they may not be directly applicable.

In certain jurisdictions like Chile, a number of judicial precedents show that Chilean courts have tended to rely on international law in deciding a case. There are also important cases in which the automatic incorporation of customary international law has been recognised by the courts and applied accordingly. There are also cases where the courts have upheld domestic law above international law. This is particularly the case when the conflict arises between a treaty and a subsequent contradictory statute, since the court may be inclined to apply the rule enacted later in time. This is yet another consequence of having assigned a treaty the same legal hierarchy as a domestic statute. If the conflict arises between a rule of international law and a provision of the Constitution, the situation will be further complicated by the fact that courts will generally approach the question with added caution. This, of course, is not a peculiarity of the Chilean case, but of many other legal systems, as well. There is no question that from the viewpoint of international law, the argument that constitutional provisions prevail over treaties would not stand. From the point of view of a constitutional court, however, it is most probable that the Constitution will be upheld, unless its very clauses might provide for the supremacy of the international rule.

In Germany, international human rights and fundamental rights guaranteed in the Basic Law overlap to a large extent. The Basic Law begins with a catalogue of fundamental rights which opens in article 1 paragraphs 1-3 with a pledge of the German State to respect and protect individual rights: "The dignity of man shall be inviolable. To respect and protect it shall be the duty of all State authority." The German people, therefore, acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. In Germany, international law stemming from non-treaty sources is introduced into the German legal system via article 25 of the **Constitution of the Federal Republic of Germany**, which contains the following incorporation clause: "The general rules of public international law shall be an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory." This means that no additional implementing legislation is required. These general rules are accorded a rank above all other domestic laws in the hierarchy of norms. In litigation, where doubts arise about the existence of a general rule of international law, this issue can be solved by way of reference to the Federal Constitutional Court.

In Japan, treaties have the force of law and override statutes by the Japanese parliament. Because treaties have such a privilege status in Japan, the country is extremely wary of acceding to a human rights treaty. Although Japan has not ratified many human rights conventions, it has ratified some of the most important ones within the last fifteen years. Upon ratification of these treaties, Japan revised its laws extensively to bring them into conformity with the requirements of the treaties.

Even though international law has domestic legal force in Japan, those international human rights instruments, which lack a legally binding character are not regarded as having the force of law. Binding character under international law is a prerequisite for the domestic force of law.

The drawbacks of the national system:

National human rights systems can also have significant limitations. Common limitations of national human rights systems may include:

- Dependency on the political environment. In countries where the government of the day is oppressive and does not protect human rights, it is unlikely that the national human rights mechanisms will effectively protect such rights;
- Where national laws are discriminatory, the national mechanisms may offer no redress for the violation;
- Where courts or other agencies do not function properly, are corrupt and/ or where officers are not sensitive to human rights issues, there may not be any redress at the national level.

4. Responsibilities of States

The International Court of Justice gave currency to this idea in the *Barcelona Traction Case* by recognizing that basic rights of human persons create obligations *erga omnes*. Since the judgement of the International Court of Justice in the *Barcelona Traction Case*, there has been growing acceptance in contemporary international law of the principle that all States have a legitimate interest in and the right to protest against human rights violations wherever they might occur. It might be argued that violations of human rights, condemned by the Security Council of the United Nations, amount to international crimes. Some international criminal treaties expressly address what are human rights violations, including genocide, torture, hostage-taking, apartheid, war crimes, the disappearance of individuals, slavery and certain forms of terrorism. Often there is a human rights dimension to international crime. The European Court of Human Rights held the Netherlands responsible in *X and Y v. The Netherlands* (91 Eur. Ct. H.R. (Ser.A) 1885), for not having enacted appropriate criminal legislation to vindicate the rights of a mentally handicapped girl who had been raped.

Apart from ensuring a forum to redress rights violations, states should play an active role in preventing such rights violations and enforcing protective measures on behalf of persons with disabilities.

The implementation of legislation depends to a large extent on the political will of States to comply with international standards. A network of governmental, non-governmental and international support should work to ensure the effective implementation of international norms and standards. The following is a list of advocacy actions that can help improve the status of persons with disabilities.

4.1 Collection of Statistics

Collection of information and data on persons with disabilities is important to understand the situation of disabled persons in each country. Analysis of this information will give policy makers and legislators the necessary background and is helpful in the formulation of effective policies. In Rule 13 of [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) States are urged to collect information on the living conditions of persons with disabilities. Such data should be collected at regular intervals as part of the official statistical system of countries. Data collection on prevalence of disability may be included in national census material, giving possibilities for its correlation with data on income, level of education and other relevant variables. Data can also be collected through household surveys, which can be undertaken in close collaboration with, inter alia, universities, research institutes and organizations of persons with disabilities. The data collection should include questions on programmes and services and their use.

The Statistics Division of the United Nations Secretariat works towards the development of a realistic and practical system of data collection in countries and to prepare technical manuals and documents on how to collect such statistics. The Statistical Commission of the United Nations decided in 1997 to include disability as a topic in the **Principles and Recommendations for Population and Housing Censuses**. However, the Secretary-General stated in his report **2000 World Population and Housing Census Programme** that the method to be preferred when collecting data on disability is to conduct a specialised disability survey.

States should consider establishing a database on disability, which would include statistics on services and programmes, as well as data on different groups of persons with disabilities. The United Nations disability statistics database provides a framework that countries can use in preparation of their own national statistical databases. The United Nations disability statistics database is an essential resource when it comes to monitoring progress made on the international level concerning the situation of disabled persons.

4.2 Awareness-raising

In [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) (rule 1), it is stated that "States should take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution." States should also distribute information on available services and programmes that would reach all concerned, disabled persons as well as the general public. Information directed to persons with disabilities should be available in forms that can be used and understood by people with visual, hearing or other communication limitations.

States should initiate information campaigns and public education programmes concerning disability issues, conveying the message that persons with disabilities have the equal rights and obligations as others. Persons with disabilities and their families should be involved in the making of public information and education programmes. States should also, according to Rule 1, aim at raising the level of awareness of persons with disabilities concerning their rights and potential. Increased awareness will assist persons with disabilities to take advantage of the opportunities available to them. The [World Programme of Action concerning Disabled Persons](#) (paragraph 154) stipulates that disabled persons and their organizations should be given equal access, employment, adequate resources and professional training with regard to public information, so they may express themselves freely through the media and communicate their points of view and experiences to the general public.

4.3 Policy-making and Planning

When policymakers and the legislators have information of the status of disabled persons they will be able to more readily address national policy concerning disabled persons. States should ensure that disability aspects are included in all relevant policy-making and national planning. This is stated in rule 14, in [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#). States should initiate and plan adequate policies for persons with disabilities at the national level; nevertheless, action at regional and local levels should be stimulated and supported by the State. The needs and concerns of persons with disabilities should be incorporated into general development plans and not be treated separately. National long-term programmes on achieving the objectives of the [World Programme of Action concerning Disabled Persons](#) should be an integral component of the State's general policy for socio-economic development. Local communities should be encouraged to develop programmes and measures for persons with disabilities.

States should involve organizations of persons with disabilities in all decision-making relating to plans and programmes concerning persons with disabilities or affecting in any way their economic and social status. According to rule 18 in [The Standard Rules](#), States should recognise the right of the organizations of persons with disabilities to represent disabled persons at national, regional and local levels. Member States should recognise the advisory role of these organizations, and direct contact with them should be established. This way the organizations can influence Government policies and decisions in areas that concern them.

Moreover, the Consultative Expert Meeting on Law and Disability Policies, held in Berkeley (USA), 8-12 December 1998, elaborated goals which are expected to assist interested countries better to plan, design and carry out practical action concerning persons with disabilities in at least three key areas:

- Improved formulation of legislative frameworks that will promote application of
- relevant international norms and standards concerning the rights of persons with disabilities
- Increased awareness and understanding of the situation of persons with disabilities that will contribute to decisions by policy-makers and program planners and managers, in both substantive and policy dialogues, to incorporate international norms and standards concerning persons with disabilities in legislative mandates and administrative guidance
- Empowered civil society for disability action so that it can participate effectively and knowledgeably in discourses on law and policies concerning persons with disabilities.

4.4 Ombudsman

The Swedish idea of a high ranking official vested with jurisdiction to inquire into claims of administrative and human rights violations has been adopted in many parts of the world. Through informal enquiry the ombudsman is often able to ascertain the facts of a complaint much more expeditiously than a court. The reports of the ombudsman carry great weight and Governments feel obliged to act upon them. The reports of the ombudsman are published. The ombudsman is able to handle many kinds of administrative enquiries which courts are reluctant to undertake. The ombudsman could have a very important role regarding claims of persons with disabilities.

4.5 National Committees

Disability is a multidimensional issue that concerns many different actors; therefore, there is a need for co-ordination of work between all actors. The [World Programme of Action concerning Disabled Persons](#) and rule 17 of [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) require

States to establish national co-ordinating committees, or similar bodies, to serve as a national focal point on disability matters. The **Guidelines for the Establishment and Development of National Co-ordinating Committees on Disability or Similar Bodies** elaborates in a more detailed way the role and functioning of national co-ordinating committees. The national co-ordinating committees or similar bodies should be permanent and based on legal, as well as appropriate administrative regulation. The committee's function is to review, co-ordinate and advice on the activities of all agencies and non-governmental organizations working for and on behalf of persons with disabilities. It acts in a professional advisory capacity in relation to Government and policy-makers on all issues affecting the well being of persons with disabilities. The national co-ordinating committee should be provided with sufficient autonomy and resources to fulfil its responsibilities. The national co-ordinating committee should be composed of representatives from different sectors of society. Representatives could be drawn from government ministries concerned with social and medical welfare, employment, transport, housing, education, culture and planning, from non-governmental organizations and from organizations of persons with disabilities. Organizations of persons with disabilities should have considerable influence in the national co-ordinating committees in order to ensure proper feedback of their concerns.

The International Meeting on the Roles and Functions of National Co-ordinating Committees on Disability in Developing Countries, held in Beijing, 5 - 11 November 1990, adopted **Guidelines for the Establishment and Development of National Co-ordinating Committees on Disability or Similar Bodies**. The goals of these guidelines aimed at developing national policy and legislation on disability and at inspiring effective measures for the prevention of disability, for rehabilitation and for realisation of goals of full participation of persons with disability in social life and development. These Committees have a very important role to play in the monitoring of these national policies, legislation or measures.

4.6 Personnel Training

Rule 19 in [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) stipulates that States are responsible for ensuring the adequate training of personnel, at all levels, involved in the planning and provision of programmes and services concerning disabled persons. States should also see to it that all authorities providing services in the disability field give adequate training to their personnel. When developing training programmes, States should consult organizations of persons with disabilities. Disabled persons should be involved as teachers, instructors or advisers in personnel training programmes. On a regional level, the regional commissions of the United Nations should also provide for personnel training.

The training of community workers is also of great strategic importance. It should involve disabled persons and include the development of appropriate values, competence and technologies. States should ensure that community workers receive, in addition to specialised knowledge and skills, comprehensive information concerning the social, nutritional, medical, educational and vocational needs of the disabled persons. Community workers can provide most of the services needed by disabled persons if they are provided with adequate training and supervision. This can be a valuable asset in overcoming personnel shortages. States should also expand the knowledge and responsibilities of persons working in related fields who provide other services, such as teachers, social workers, administrators and community leaders.

4.7 The Role of Non-Governmental Organizations

One of the most important roles of Non Governmental Organization (NGO)'s is to monitor human rights protections in their own or in other countries and advocate for the protection of these rights with national Governments and international bodies. The role of NGO's is essential for the effective protection of human rights at both national and international levels, as it is NGOs that raise public awareness on human rights, as well as hold responsible parties accountable for rights violations.

An advocacy effort generally include the following:

- Identifying a clear issue, concern or problem that citizen action play a role in resolving;
- Investigating the nature and extent of the problem/concern;
- Defining a clear position and desired outcomes (e.g., articulate the entitlements or the rights desired and offer policy or legislative proposals, etc.);
- Articulating the strategy (goals, target and actions to be taken);
- Building alliances in support of the proposition;
- Educating the public and lobby for the changes needed.

At the Global Meeting of Experts, held in Stockholm in 1987, the participants agreed on the importance of encouraging non-governmental organizations, as they often act as a vehicle for self-development, and at the same time can effectively influence certain decisions made by Governments and other sectors of society. NGOs are not confined to protect rights, but have also undertaken other activities, such as promotion of equality of opportunity through the provision of certain services (e.g. leadership training, vocational training).

The role of non-governmental organizations in monitoring state parties actions and making sure states parties comply with international norms is one of the most important mechanism in the protection of human rights. This can be done in the following manner:

- a. The channelling of independent information to members of treaty bodies. No States' report can be examined adequately without reference to other sources of information.
- b. Promoting knowledge and understanding of the reporting process. NGOs play the lead role in encouraging individuals and groups to reflect on their situation in the context of their rights and in channelling any submissions they might wish to make to members of treaty bodies.
- c. NGOs are also crucial to the ongoing effectiveness of the reporting process following the examination by the treaty bodies. Without their lobbying and campaigns of public information, there is a danger that recommendations of the treaty bodies may either remain unimplemented or be carried through in an inadequate manner.

NGO participation in the reporting process may occur at different stages. The stages are set out below.

4.8 NGO Action Before Submission of a Report

A problem with the reporting process is that most of the treaty bodies suffer from a failure of many States to submit reports in conformity with the periodicity requirements. Skilful dissemination and employment of all relevant information by NGOs can do much to encourage tardy States in meeting their responsibilities. Sometimes, the delay in the submission of reports is due to the fact that the State Party is overwhelmed in attempting to meet the reporting obligations under a range of instruments or simply lacks the technical expertise to compile reports, which meet the reporting requirements. In those cases, NGOs can explore with Governments the extent to which they might offer assistance, either through the provision of training or direct participation in the drafting process.

4.9 NGO Participation in the Reporting Process in the Context of the Examination by a Treaty Body

Independent submissions are usually accepted by members of the treaty bodies as an aid towards the carrying out of the scrutiny of State reports. The impact of such submissions can be greatly enhanced by the making of direct contact with Committee members. Possibilities range from formal interventions in Committee meetings or professional working groups to informal encounters outside the sessions. Whatever the forms of the meetings, they can prove invaluable assistance in emphasising certain matters such as the situation of women with disabilities and providing fuller background briefings.

NGOs organizations can immediately contest any inaccurate or misleading statements made by government representatives. Also, by attending the meetings NGOs have the opportunity to make new submissions based on the direction taken by the proceedings. An NGO might consider drafting its own *alternative concluding observations* in the hope that they might be of assistance to the Committee.

4.10 NGO Action Following Examination of a Report

It is essential that NGOs ensure that attention continues to be paid to the treaty body proceedings. In this context, the role of the NGO is to disseminate, promote, publish and interpret international human rights that prohibit discrimination against persons with disabilities.

4.11 NGO Monitoring

Monitoring assists Governments to measure progress while holding governments accountable for rights protection. Monitoring provides an opportunity for challenges to be identified so that suitable measures can be implemented to overcome the obstacles. Persons with disabilities, lawyers, legislators, representatives of government ministries, health care personnel and other experts from NGOs may then survey and evaluate

existing legislation and recommend legislative reforms and new procedures for the effective implementation of the legislation.

Some international instruments require countries to set up monitoring mechanisms. As examples, we can refer to the [World Programme of Action concerning Disabled Persons](#) and [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#):

Paragraph 194 of the [World Programme of Action](#) states that monitoring and evaluation should be carried out at periodic intervals at international and regional levels, as well as at the national level. It states, after pointing out the obligation of governments to establish a focal point to look into and follow the activities of various ministries, other government agencies and NGOs, that Member States should increase their assistance to organizations of persons with disabilities and help them organise and co-ordinate the representation of the interests and concerns of persons with disabilities. NGOs composed of disabled persons or representing their interests have one of the most important roles to play in implementing the Plan and achieving the objectives of the Decade.

Rule 20 of [The Standard Rules](#): "National Monitoring and evaluation of disability programmes in the implementation of the Rules: States are responsible for the continuous monitoring and evaluation of the implementation of national programmes and services concerning the equalization of opportunities for persons with disabilities.

1. States should periodically and systematically evaluate national disability programmes and disseminate both the bases and the results of the evaluation.
2. States should develop and adopt terminology and criteria for the evaluation of disability-related programmes and services.
3. Such criteria and terminology should be developed in close co-operation with organizations of persons with disabilities from the earliest conceptual and planning stages.
4. States should participate in international co-operation in order to develop common standards for national evaluation in the disability field. States should encourage national co-ordinating committees to participate also.
5. The evaluation of various programmes in the disability field should be built in at the planning stage, so that the overall efficacy in fulfilling their policy objectives can be evaluated."

The monitoring implementation of rights and recommendations can be appreciated at the national level, the regional level and the international level.

4.12 Special Rapporteur

The office of the Special Rapporteur on Disability of the Commission for Social Development was set up by the UN in 1994, in accordance with the [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#). The work of the Special Rapporteur consists of monitoring the implementation of the Standard Rules through communicating directly with States and NGOs, and generally advancing the status of persons with disabilities throughout the world. The Special Rapporteur works with a panel of experts on disability issues, and is assisted by the UN Secretariat. The first Special Rapporteur, Bengt Lindqvist (Sweden), was appointed in 1994, and his mandate was renewed twice, in 1997 and 2000, by resolutions of the Economic and Social Council. For the period 2003-2005, the Secretary-General appointed Ms. Hessa Al-Thani (Qatar) as [the new Special Rapporteur on Disability](#).

Part II. The International Human Rights System

1. Introduction to the International Human Rights System

The human rights movement grew out of the disasters of World War II and is at the basis of international law theory and practice.

1.1 Exhaustion of Local Remedies

The international rule of exhaustion of local remedies before taking to international remedies is one of the basic rules in international law. The object of the rule is to enable the respondent State the first opportunity to correct the harm and to make redress. The application of the rule of domestic remedies to the protection of human rights depends on conventional provisions.

A person whose rights have been violated should make use of domestic remedies to right a wrong, rather than first address the issue to an international committee, court or other tribunal. Access to an international organ should be available, but only as a last resort, after the domestic remedies have been exhausted. A person should seek redress from domestic remedies because these are normally quicker, cheaper and more effective than the international ones.

If no domestic remedies are available or there is unreasonable delay on the part of national courts in granting a remedy, clearly, a person should have recourse to international remedies. The rule of local remedies should not constitute an unjustified impediment to access to the international remedies.

1.2 Disability Rights at the International Level

This section reviews the six core United Nations Conventions (International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) and International Labour Organisation (ILO) conventions) followed by a discussion of other United Nations Conventions which have a bearing on the rights of persons with disabilities.

In some cases, individuals have the right to complain directly about human rights violations to expert bodies established under the UN human rights conventions. Three such expert committees currently allow individual complaint procedures:

- " The Human Rights Committee under the Optional Protocol to the ICCPR
- " The Committee on the Elimination of Racial Discrimination under Article 14 to CERD; and
- " The Committee Against Torture, under Article 22 of CAT.

All of these procedures are contingent upon the state parties recognizing the competence of the expert committee to hear individual complaints. The procedure under the ICCPR has been the most visible and effective of the complaint procedures administered by human rights treaty bodies since the optional protocol entered into force in March 1976, over 500 cases have been registered under the procedure.

The international community lacks the constitutionally institutionalised machinery of law-making typical to domestic legal orders. Legal provisions on the international level are enacted in accordance with the 1969 [Vienna Convention on the Law of Treaties](#). It codified customary rules related to treaties; hence, at large, the same body of rules apply to both Parties and non-parties to the Vienna Convention. A majority of States have ratified the convention. For States not Parties to the Vienna Convention, the legislative process is governed by customary international law. The Vienna Convention governs only treaties concluded between States.

The [Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations](#) applies to treaties concluded between States and international organisations, or between international organisations. However, this Convention has not been accepted by the international community (adopted in 1986, but not entered into force), contrary to the 1969 Vienna Convention.

There are no human rights treaties, which apply solely to persons with disabilities, but the treaties will apply to disabled persons via the anti-discrimination clauses provided within each treaty and are legally binding on those States which ratify those conventions.

The [ICCPR](#) and the [ICESCR](#) came into force in 1976 and together are the most comprehensive international code of binding legal provisions in the human rights area. They develop and supplement the provisions of the [Universal Declaration of Human Rights](#) (UDHR) and together these three instruments form the **International Bill of Human Rights**.

Neither the [ICCPR](#) nor the [ICESCR](#) contain provisions specifically related to disability. Nevertheless, the general human rights guarantees as embodied in the Conventions apply to all persons; therefore, equal attention should be given to the protection of these rights and their application to disabled persons. Thus, the provisions of both Conventions may be invoked for the protection of the rights of persons with disabilities.

2. The International Covenant on Civil and Political Rights (ICCPR)

2.1 Review of provisions

Article 8 of the UDHR underlines the sweeping customary requirement that everyone has the right to an effective remedy at law for acts violating the "...fundamental rights granted him by the law and the Constitution."

The ICCPR restricts in article 2 (3) the right to an effective remedy at law to a redress only of the rights and freedoms recognised by the Covenant itself. But this text legitimately requires direct observance of its provisions without regard to national laws or constitutions. Article 14 also recognizes the customary right of access to courts, as supplemented by the Human Rights Committee's General Comments.

The right to life constitutes the most fundamental of rights to the extent that it is the pre cursor to all other human rights guarantees. Article 6 of the ICCPR states that the "...inherent right to life (...) shall be protected by law...", and that no one can be arbitrarily deprived of his / her life.

The other rights of disabled persons are protected by article 2 (1) which states that each State Party "...undertakes to respect and to ensure to all individuals in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national, or social origin, property, birth, or any *other status*." (emphasis added). Article 2 (3) (a) provides that States Parties to the Covenant undertake to ensure that any person whose rights or freedoms "...are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Thus holding governments accountable not only for rights violations but also when the government has failed to provide protective measures.

Article 7 is also relevant to the protection of rights of disabled persons. The article states: "...no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." It further provides that "...no one shall be subjected without his or her free consent to medical or scientific experimentation."

Article 9 (1) provides that everyone has the right to liberty and security of person, and that no one shall be subject to arbitrary arrest or detention. This article is of relevance to persons with mental disabilities who may be susceptible to arbitrary arrest and detention in breach of article 9 (1) and / or who may not be fully informed of the reasons for his or her arrest in breach of article 9 (2). Furthermore, this article is of relevance to those who may be unable intellectually to take proceedings in a court to challenge the lawfulness of his or her detention in breach of article 9 (4).

Article 17 (1) states that "...no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation."

Article 23 (2) recognises the right of men and women of marriageable age to marry and to found a family. It could be argued that this right is violated when mentally disabled persons are compulsorily sterilised and compulsory institutionalised.

Article 25 establishes the right of everyone "...to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and be elected at periodic elections and to have access, on equal terms, to public service in his (or her) country." These rights apply without any of the distinctions mentioned in article 2 and without unreasonable restrictions. Unreasonable restrictions may include inadequate access to polling booths for disabled persons.

Another important provision, which relates to disability is article 26 embodying the customary principle of equality and non-discrimination. Article 26 states: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any such ground as (...) birth or *other status*." (emphasis added). Disability is clearly an *other status* for the purposes of this provision.

2.2 Reporting Procedure Under the ICCPR

Article 40 of the [ICCPR](#) obliges States Parties to submit an initial report within one year of the Covenant coming into force for the States concerned, and thereafter, every five years. The reports should indicate measures adopted to give the effect to rights in the Covenant. It should also indicate the factors and difficulties affecting the implementation of those rights. The Committee expects the States Parties to indicate in their reports the manner in which human rights knowledge is promoted at every level of society within that State. (Guidelines are to be found in *Manual on Human Rights Reporting*).

The obligations of the States include undertakings by them not only to respect, but also to actively ensure all the rights mentioned in the Covenant to individuals within their territory. This calls for affirmative action by the States to deal with the Covenant violations wherever they occur, in the private or in the public sector. After consideration of the reports, the Committee proceeds to draft and adopt its *comments* comprising a critique of the report, noting positive factors, drawing attention to matters of concern and making suggestions and recommendations.

2.3 Emergency Procedure Under the ICCPR

This procedure based on article 40 of the Covenant, was developed by the Committee in 1991. In case of an exceptional situation, the Committee, when it is not in session, may make a request through the chairman that a report be submitted. In most of those cases, the States Parties are requested to submit the reports within three months. The reports are then considered by the Committee at the next scheduled session. Concluding comments may include a provision whereby the Secretary General of the United Nations is requested to bring grave human rights violations to the attention of the competent organs of the UN, including the Security Council.

2.4 Individual Communication Procedure

This procedure permits individuals to complain directly or through representatives to the Committee, about a State Party in circumstances where they are the alleged victims of violations of the Covenant, and the State Party has ratified the Optional Protocol to the Covenant. Nevertheless, it should be noted that the Committee is not a court; it does not issue judgements. It can only issue views which are published with the Committee's Annual Report, but it has no means to enforce any views, which it might adopt. However, since 1990, the Committee gives States 180 days to respond and if they fail to do so or do not provide a satisfactory remedy for the victim, the country will be listed in the Committee's Annual Report. The Committee also asks States to provide information about redress for violations in their periodic reports. A member of the Committee, the Special Rapporteur for the Follow-up of Views, is charged with maintaining contact with the Parties to observe the manner in which effect is given to the action of the Committee. The Committee also welcomes information from NGOs as to what measures the State Party has taken. The 'Special Rapporteur' recommends appropriate action for victims and communicates directly with the victims and the States.

A case must negotiate two stages, those of consideration for admissibility and on the merits. The admissibility requirements are as follows:

- a. Cases may only be taken by an individual who claims to be a victim of violations of the rights guaranteed under the Covenant;
- b. The alleged victim must have been subject to the jurisdiction of the State Party at the time of the alleged violation;
- c. The alleged violation must be of rights in the Covenant;
- d. The alleged violation must have occurred after the State Party acceded both to the Covenant and to the Optional Protocol;
- e. The State Party must not have *contracted out* of the specific provisions by means of a reservation or by a declaration under article 4;
- f. Cases may only be taken against a States Party. It is necessary to indicate culpability on the part of the State;
- g. Cases may not be taken which are subject to consideration by another redress mechanism; and
- h. All relevant domestic redress procedures must have been exhausted. This requirement is waived if it can be shown that the pursuit of the local remedy would be ineffective.

On average, once a case is found to be admissible, it can take from two and a half to four years for the case to negotiate its way through the process. Nevertheless, the Committee may at any state of the process,

request that the State take interim measures to safeguard the alleged victim. Such a request has no binding force.

Pursuant to the decision on admissibility, comes a period of exchanging views between the State Party, the alleged victim, and the Committee. Afterwards, the matter may be put before a Rapporteur or working group of the Committee before going the plenary meeting for the adoption of the view on the merits. Where the Committee is of the view that there has been a violation, it will give suggestions as to how the matter might be rectified. Such suggestions may indicate that compensation be paid.

3. The International Covenant on Economic Social and Cultural Rights

3.1 Review of provisions

Article 6 of the [ICESCR](#) provides that States parties recognise "...the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...". Article 7 (a) refers to the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, fair wages and equal remuneration for work of equal value without distinction of any kind and a decent living for workers and their families.

Article 10 (2) states that "...special protection should be accorded to mothers during a reasonable period before and after childbirth." Such protection is important for the prevention of disabilities, as many disabilities occur as a result of problems associated with pregnancy and childbirth.

Article 11 (1) has special significance. "States Parties recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

Article 12 (1) concerns the "...right of everyone to the enjoyment of the highest attainable standard of physical and mental health." In relation to disabled persons, this right may be violated when necessary measures are not taken to prevent malnutrition; when appropriate medical care and rehabilitation services are not provided for disabled persons; when immunisation campaigns to prevent diseases are not carried out; and when people live in overcrowded conditions not conducive to mental health.

Article 13 (1) provides that "States Parties recognise the right of everyone to education." This can be interpreted to mean that disabled persons must have effective access to education, which is appropriate to their abilities.

Article 15 (1) (a) recognises the "...right of everyone to take part in cultural life." This right is violated, for example, when access to facilities in which cultural activities take place is inappropriate, like for cinemas, theatres, libraries, sports stadiums, museums etc. or when disabled persons are excluded from participating in cultural life on account of prejudices.

3.2 1503 Procedure of the Economic and Social Council

The reporting procedure under the [ICESCR](#) is very similar to that of the [ICCPR](#), but unlike the Human Rights Committee, the Committee on Economic, Social and Cultural Rights cannot receive complaints. States submit an initial report within two years of ratification and periodic reports every five years. NGOs can also submit reports on countries to be examined by the Committee. The Committee has taken the step also to examine the situations in countries that have not submitted reports to ensure their accountability. The Committee's Annual Report is forwarded to the Economic and Social Council.

The reason that no complaints procedure exists for this Covenant, is that the implementation of economic, social and cultural rights is progressive in nature, and therefore violations would be difficult to identify because of each country's different level of development. However, it is becoming increasingly accepted that violations to the [ICCPR](#) are possible. For example, its non-discrimination clause is of immediate application, and so is the fact that States must take measures for the implementation of the Covenant. This means that not taking any measures towards meeting their obligations, or taking discriminatory measures, or measures that are retrograde instead of progressive, would constitute violations of the Covenant. The theory of minimum core obligations also leads to the violation approach to economic, social and cultural rights. According to this theory, States are obliged to ensure minimum levels of each right, irrespective of their level of development (The Committee's General Comment 3 explains States' implementation obligations in detail). In fact, a UN working group has been working on an Optional Protocol instituting a complaints mechanism for the ICESCR.

4. The Convention on the Rights of the Child

4.1 Review of provisions

The **CRC** is concerned with protecting children from injury and providing disabled children adequate protection. Article 2 states that the rights set forth in the Convention must be applied "...without discrimination of any kind, irrespective of (...) *disability* (...)" (emphasis added) and furthermore article 4 concerns the right to life. Article 19 provides for the protection of "...the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (...)".

The central provision of this Convention concerning the rights of disabled children is article 23. Article 23 (1) provides that "States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self reliance and facilitate the child's active participation in the community." Article 23 (2) concerns the right of the disabled child to special care. Article 23 (3) provides that assistance to the child and those responsible for his or her care "...shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development ". Services for disabled children should, wherever possible, be provided free of charge (article 23 (3)). Article 23 (4) states that States Parties shall promote " the exchange of appropriate information in the field of preventative health care and of medical, psychological and functional treatment of disabled children ". Article 24 (2) (d) of the Convention is relevant to the prevention of disabilities in that States Parties undertake to ensure appropriate prenatal and post-natal health care for mothers.

4.2 Reporting Procedure

A Committee is established pursuant to the provisions of article 43 of the Convention. The members of the Committee serve in their private capacities, just as the members of the other treaty based committees.

States Parties are obliged, under article 44, to submit reports to the Committee two years after the Convention comes into effect for the States, and thereafter, every five years, on the measure they have adopted to give effect to the rights in the Convention and on the progress made in the enjoyment of those rights.

The initial reports should categorise material as follows:

- a. General measures of implementation: information should be provided on implementation of articles 4,42 and 44, paragraph 6;
- b. Definition of the Child: information pursuant to article 1;
- c. Civil rights and freedoms: should be provided on implementation of articles 7,8,13,14,15,16,17,37 (a);
- d. Family environment and alternative care: information should be provided, with particular attention paid to the principles of *the best interest of the child and respect of the views of the child* concerning articles 5, 18, paragraphs 1, 2, 9, 10, 27, paragraphs 4, 20, 21, 11, 19, 39, and 25;
- e. Basic health and welfare;
- f. Education, leisure and cultural activities; and
- g. Special protection measures (articles 22, 30, 32-40).

Before being considered by the Committee, reports first receive the attention of an informal working group. The purpose is to identify areas in the reports, which require clarification or give cause for concern, and to prepare a list of issues for transmission to the State Parties, with a request for written replies to be considered together with the report. Afterwards, reports are considered by the Committee at public sessions and in dialogue with representatives of the State.

Towards the end of the discussion, the Committee summarises the observations and may make suggestions and recommendations. Following the consideration, the Committee adopts its *Concluding Observations*. These comments comprise a critique of the State report, noting positive factors and drawing attention to matters of concern. Comments are then issued as public documents and are also included in the Committee's biennial report to the General Assembly of the United Nations.

Unlike other Committees, the Committee on the Rights of the Child has recognised the special role of NGOs in the reporting process. NGOs had an important role in drafting the Convention, and according to article 45, the Committee can receive information from 'competent bodies' including NGOs. The NGO Group for the [Convention on the Rights of the Child](#) forwards information from NGOs to the Committee. NGOs of a country to be examined usually form a coalition and submit an alternative report to the Committee.

4.3 Thematic Consideration of Issues

According to Rule 75 of the Committee's Rules of Procedure, the Committee may devote one or more of its regular sessions to a general discussion on one specific article of the Convention or related subject in order to enhance a deeper understanding of the content and implication of the Convention. The Committee has based a series of *Days of General Discussion* on a wide range of topics, including the situation of the girl child. In 1995, the conclusion of the discussion of the girl child influenced the content of the final document of the Fourth World Conference on Women. In 1997, the Committee held a Day of General Discussion on Children with Disabilities. On the basis of the discussion, the following recommendations, among others, were formulated:

- a. The Committee should highlight the situation of disabled children the need for concrete measures and monitoring in its examination of States parties reports;
- b. The Committee should consider drafting a general comment on disabled children;
- c. The various bodies providing information to the Committee should include information on disabled children;
- d. States should review and amend laws affecting disabled children that are not compatible with the principles and provisions of the CRC;
- e. States should actively challenge attitudes and practices which discriminate against disabled children and deny them equal opportunities to the rights guaranteed by the CRC;
- f. States should ratify the 1997 Convention on the prohibition of anti-personnel mines;
- g. The Committee should promote the Standard Rules for the full implementation of the CRC;
- h. The promotion of inclusive education;
- i. The promotion of alternatives to institutionalisation;
- j. Research into provision of statistics;
- k. Disabled children should be consulted;

A working group was set up for a follow-up to the discussion, with the main task to strengthen and support the work of the Committee in monitoring and promoting the rights of children with disabilities.

4.4 Missions

The Committee on the Rights of the Child has undertaken a number of regional and sub-regional missions. During those trips, members have had the opportunity to discuss all aspects of the implementation of the Convention with representatives of States, and also with NGOs and international organisations. The missions are of use in alerting the Committee to particular and regional problems and challenges and in indicating the existence of local organizations.

5. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

5.1 Review of provisions

The United Nations General Assembly adopted [CEDAW](#) in December 1979, and it entered into force in September 1981. Under Article 2 of the Women's Convention states assume "obligations to act by a specific means toward the achievement of aspirational goals and obligations to achieve results by whatever means are determined to be appropriate."

The means specified in Article 2 requires states:

- To embody the principle of 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 the principle;
- To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting discrimination against women;
- To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunal and other public institutions the effective protection of women from any act of discrimination;
- 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 their obligations;
- To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and
- To repeal all national penal provisions which constitute discrimination against women.

The main provisions of the Convention concern the elimination of discrimination against women in specified areas, such as health care, education, employment, treatment under the law, and rights in the marriage and family.

A considerable number of States have made reservations to the provisions of the Convention.

5.2 Reporting Procedure

The Committee on the Elimination of Discrimination Against Women is in charge of the monitoring process of [CEDAW](#). As with the other conventions, the Committee is composed of elected experts who serve in their individual capacity. Unlike the other Committee's which are based in Geneva, the CEDAW Committee is based in New York. The Committee is heavily overburdened. States are to submit an initial report within a year of ratification of the Convention, and then every four years. NGOs are also welcome to submit information, but generally have been more reluctant to use this option than with other conventions, especially the CRC.

State reports should indicate factors and difficulties affecting the degree of fulfilment of the obligations which have been undertaken, as well as the legislative, judicial and administrative or other measures which have been adopted to give effect to the provisions of the Convention. The Committee may make suggestions of an informal nature regarding specific countries or general situations, and general comments of a formal nature regarding general situations. At the outset of each session, the Committee adopts concluding comments, which resemble those adopted by the Human Rights Committee. CEDAW reports annually to the General Assembly, via the Economic and Social Committee, on its consideration of country reports.

In 1987, CEDAW decided that it was authorised to make suggestions and general recommendations addressed to individual States. This decision constitutes a major advance over other human rights treaty committees that have not yet decided to issue formal comments on individual States.

5.3 Exceptional Reporting Procedures

Pursuant to article 18 of the Convention the Committee requested in 1993 reports on an exceptional basis from certain States of the former Yugoslavia. With regard to the reports, which have been submitted by these States, the Committee has adopted the procedure of:

- a. Tabling the reports at the upcoming session without sending them for attention of the working group;
- b. Permitting the State representatives to orally introduce the report at the session;

- c. Inviting questions by members;
- d. Permitting responses by the State representatives;
- e. Adopting and publishing brief comments for inclusion in the annual report, together with a summary of the discussions in the case of periodic reports.

5.4 Complaint Procedure

The Optional Protocol to CEDAW instituting an individual complaint procedure was adopted in 1999 and entered into force in 2000. The Protocol contains two procedures: a communications procedure allowing individual women, or groups of women, to submit claims of violations of rights to the Committee on the Elimination of Discrimination against Women; and an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights. In either case, States must be party to the Protocol. The Protocol includes an "opt-out clause", allowing States upon ratification or accession to declare that they do not accept the inquiry procedure. Article 17 of the Protocol explicitly provides that no reservations may be entered to its terms.

This procedure puts the Convention on an equal footing with the [ICCPR](#), [CERD](#), and especially [CAT](#), which also includes an inquire procedure.

6. The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

6.1 Review of Provisions

CAT contains universally applicable standards, which are relevant to persons with disabilities, as torture can lead to disabilities, and discrimination against persons with disabilities can lead to cruel or other similar treatment. Pursuant to article 2 (1), States Parties undertake to adopt effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Article 2 (2) provides that no exceptional circumstances whatsoever may be invoked as a justification for torture. Therefore, under no circumstances may any order from a superior officer, or circumstances in a state or threat of war, or internal political instability be a justification for torture.

Article 14 of the Convention concerns the provision of compensation for victims of torture. States Parties must ensure legal remedies to victims of torture whereby victims may obtain redress and compensation, including the means for as full rehabilitation as possible. Therefore, persons disabled as a result of torture must be provided with legally enforceable rights to compensation to assist in their rehabilitation.

6.2 Reporting Procedure

Article 17 of the Convention establishes a Committee. As is required of the other treaty based Committees, the States Parties have to submit reports to the Committee. Initial reports should be submitted in two parts. The first part should do the following:

- a. Describe the general legal framework to prohibit torture and other inhuman treatment;
- b. Indicate national or international binding obligations on the State to provide greater protection than that afforded by the Convention;
- c. Indicate national redress procedures for victims of violations of the Convention and provide information on cases dealing with by those authorities.

The second part of the report should provide information on the implementation of articles 1 to 16 of the Convention, indicating the following:

- a. The legislative, judicial and administrative measures in force which give effect to the relevant provisions;
- b. Any factors and difficulties affecting the practical implementation of the provisions; and
- c. Statistical data on cases where measures giving effect to the respective provisions have been enforced, including descriptions of actual cases.

Subsequent periodic reports should provide information additional to that in initial reports on new measures taken. Before being considered by the Committee, the reports receive the attention of the member designated as Country Rapporteur, who undertakes a detailed analysis in preparation for the consideration by the Committee, and to both identify key issues and prepare questions and comments to be put to the representatives of the Government. After consideration by the Committee, it adopts its *Conclusions and Recommendations*, which comprises a critique of the State report, noting positive factors, but also drawing attention to subjects of concern. This is the only Committee that is expressly empowered to make comments on individual state reports (article 19), which can be included in its Annual Report to the General Assembly.

6.3 Investigative Procedure

All State Parties to the Convention are bound by the terms of article 20, unless they have, at the time of ratification or accession, declared and not subsequently withdrawn such declaration that they do not recognise the competence of the Committee under the article.

The article 20 procedure provides for the investigation of well-founded indications of the systematic practices of torture in a State Party. In order to initiate this procedure, information provided must indicate the systematic practice of torture (article 20, paragraph 1). Once the information is deemed to meet the criteria of article 20, paragraph 1, the Government concerned is invited to comment within a stated time limit. The Committee may then decide to conduct an enquiry. This would be conducted by one or more of its members, assisted by appropriate independent specialists. It may also invite the Government to afford its co-operation, including, if appropriate, the provision of facilities for the conducting of visiting missions. The enquiry may

involve the conducting of sworn hearings. The Governments are requested that such proceedings are not interrupted and that those heard are not intimidated.

After examining the findings of the enquiry, the Committee sends the findings, together with its comments and recommendations, to the State Party, inviting it to indicate action, which it intends to take. Finally, the Committee may decide to publish a summary of the proceedings in its annual report.

6.4 Individual Complaints Procedure

This procedure permits individuals to complain to the Committee about a State Party in circumstances in which they are the alleged victims of violations of the Convention, and the State Party has made the necessary declaration under article 22. Nevertheless, it should be noted that the Committee is not a court. Thus, the Committee only adopts views but cannot issue judgements and has no possibilities to enforce the views it adopts.

Before a case can be considered on its merits, it is necessary for it to have been found admissible. The admissibility requirements are similar to those of the individual complaints procedure before the Human Rights Committee. Once the case has been found admissible and the Committee is of the view that it has gathered sufficient information, it proceeds to a consideration of the merits and the adoption of the views. Unlike the Human Rights Committee, it can invite parties to attend an oral hearing. The UN and specialised agencies may also be requested to provide additional information. If the victim is in imminent danger, the Committee can request interim measures. The Committee communicates its views to the complainant and the State. These are then published in the Committee's Annual Report to the General Assembly. All steps of the procedure under article 22 are confidential until the point where the Committee adopts its views or otherwise concludes the case. Unlike the Human Rights Committee, it has no follow-up mechanism.

7. The International Labour Organization (ILO)

The International Labour Organisation (ILO) was founded in 1919 under the Treaty of Versailles. The only element of the League of Nations to survive World War II, the ILO is now a specialized agency of the United Nations. It has its own constitution and membership and its own organs, budget and staff. It has concluded an agreement with the United Nations, which governs their mutual relations and cooperation.

7.1 The Complaints Procedure

There are four types of complaint procedures under the ILO Constitution and conventions:

1. Representations (articles 24, 25 and 26 (4) of ILO Constitution);
2. Complaints (articles 26-to 29 and 31 and 34);
3. Special Procedures for freedom of association (Conventions No.87, 98);
4. Special surveys on discrimination.

Usually the ILO procedures are not available to individual complainants- only to a government, a trade union, an employees association or a delegate to the ILO. The procedures tend to be used most often in cases in which there is an allegation of a widespread violation of rights.

A complaint must also be based on an ILO convention that the country in question has ratified. A complaint may be brought by:

1. governments
2. delegates to the International Labour Conference and
3. the Governing Body of the ILO.

The Governing Body then decided whether or not to appoint a Commission of Inquiry. The report of the Commission of Enquiry is then sent to the Government concerned, published and transmitted to the Governing Body. The Committee of Experts on the Application of Conventions and Recommendations follows up on implementation of the recommendations. The government(s) concerned may refer the complaint to the *International Court of Justice* for final decision.

7.2 ILO Provisions on the Rights of the Migrant Worker

Several Conventions and Recommendations provide for the protection of persons with disabilities.

Article 6 of the [Convention concerning Migration for Employment \(Revised\)](#) (ILO Convention No.97) states:

"Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(...)

(b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national law regulations, is covered by a social security scheme)..."

The [Recommendation concerning Migrant workers, 1975](#) (ILO Recommendation No. 151) states in Part B, article 20 that "...all appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed."

Article 5 of the [Convention concerning Discrimination in Respect of Employment and Occupation](#) (ILO Convention No. 111) provides: " Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination."

The provisions of the [Convention concerning Vocational Rehabilitation and Employment \(Disabled Persons\), 1983](#) (ILO Convention No. 159), [Recommendation concerning Vocational Rehabilitation of the Disabled,](#)

1955 (ILO Recommendation No. 99) and the [Recommendation concerning Vocational Rehabilitation and Employment \(Disabled Persons\), 1983](#) (ILO Recommendation No. 168) apply to all disabled workers. These Conventions (and Recommendations) aim to protect disabled workers in order to help them to participate in national policies on vocational rehabilitation and employment.

8. Other International Norms and Standards

The Preamble to the [Universal Declaration of Human Rights](#) refers to the customary norms of "...the inherent dignity and (...) equal and inalienable rights of all members of the human family." Further, article 1 states that every kind of discrimination has to be extinguished. The rights in the Declaration include negative rights such as "...no one shall be subjected to torture or to cruel, inhuman or degrading treatment..." (article 5). They also include positive rights such as article 3: "Everyone has the right to life, liberty and security of person." Other rights included in the Declaration are positive rights such as the right to work, the right to receive equal pay for equal work, the right to education and the right to equal access to public service. The term *disability* is found only once in the Declaration in the context of the right to security and an adequate standard of living in the event of "disability". (article 25 (1)).

Some provisions of the [International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families](#) may be regarded as relevant to the prevention of disabilities among migrant workers and their families. Firstly, article 16 (2) provides that "...migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions."

Secondly, under article 28 of the Convention, migrant workers and members of their families have "...the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned."

The [Geneva Convention relative to the Treatment of Prisoners of War](#) and the [Geneva Convention relative to the Protection of Civilian Persons in Time of War](#) have special significance to the rights of persons with disabilities. Article 3 of the conventions states that "...Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely with out any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any similar criteria." Article 3 (1) (a) prohibits "...violence to life and person (mutilation, cruel treatment and torture." Article 3 (2) states that the wounded shall be cared for.

Moreover, the [Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts](#) says in its Part II. under the headline Human Treatment that "All Persons who do not take a direct part or who have ceased to take part in hostilities, (...) are entitled to respect for their person, honour and convictions and religious practices (article 4). Further on, the article mentions that "...violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;" shall be prohibited at any time and in any place whatsoever.

The [Convention Against Discrimination in Education](#) guarantees equal access to education of all types at different levels and prohibits the limitation of any person or group of persons to education of an inferior standard.

Article 32 of the [Beijing Declaration](#) provides that the Governments participating in the Fourth World Conference on Women are determined to "...intensify efforts to ensure equal enjoyment of all human rights and fundamental for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their (...) *disability*..." .

Article 15 (h) of [The Copenhagen Declaration and Programme of Action](#) states: "One of the world's largest minorities, more than 1 in 10, are people with disabilities, who are too often forced into poverty, unemployment and social isolation." Included in the Declaration are ten commitments for the achievement of social progress and development. For example, the participating Governments commit to eradicate poverty, promote the goals of full employment, social integration, full respect for human dignity, universal and equitable access to quality education and the highest attainable standard of physical and mental health. Clearly, these commitments are of particular relevance to disabled persons who have historically been denied equitable access to such services.

In the Preamble of the [Declaration on the Elimination of Violence against Women](#), the General Assembly states its concern "...that groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women,

women in institutions or in detention, female children, *women with disabilities*, elderly women and women in situations of armed conflict, are especially vulnerable to violence." (emphasis added).

Article 10 of the [Declaration on Social Progress and Development](#) states that "...social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms...", through the attainment of the Declaration's main goals. These goals include the assurance of a steady improvement in levels of living, the achievement of the highest standards of health and the provisions of health protection for the entire population, if possible free of charge.

Article 11 of this Declaration states that social progress and development shall aim at the progressive attainment of the following goals:

- a. The establishment and improvement of social security and insurance schemes for all persons, who because of disability, are unable to earn a living, with a view to ensuring a proper standard of living for such persons and their families; and
- b. The protection of the rights and the assuring of the welfare of the disabled and the provision of protection for the physically or mentally disadvantaged.

The [Declaration on the Right to Development](#) states in Article 1 (1) that "...the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, rights and fundamental freedoms can be fully realised." Article 2 (1) of the Declaration provides that the human person is the central subject of development and should be the active participant and beneficiary of the right to development. This obviously applies to disabled, as well as non-disabled persons. Article 8 provides that "States should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure (equality of opportunity for all in their access to basic resources, educational health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating social injustices."

In the [Declaration on the Protection of Women and Children in Emergency and Armed Conflict](#), the General Assembly calls for strict observance of the Declaration by the Member States. In article 1, the Declaration states that "...attacks and bombings on the civilian population, including incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited and condemned." Article 2 condemns the use of chemical and bacteriological weapons in the course of military operations. The Declaration also states that "...all efforts shall be made by States involved in armed conflicts (to spare women and children from ravages of war." It also provides that "...all necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children."

Article 1 of the **Declaration on the Rights of Deaf-Blind Persons** (Adopted by the Helen Keller World Conference on Services to Deaf-Blind Youths and Adults on 16 September 1977) states that "...every deaf-blind person is entitled to enjoy the universal rights that are guaranteed to all people by the Universal Declaration of Human Rights and the rights provided for all disabled persons by the Declaration of the Rights of Disabled Persons."

In Chapter B, Part II of the [Vienna Declaration and Programme of Action](#), the Conference stated that "...all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities ", e.g. the right to life and welfare. Any direct discrimination or other negative discriminatory treatment of a disabled person is, therefore, a violation of his / her rights. The World Conference on Human Rights calls on "Governments, where necessary, to adopt or adjust legislation to assure access to these and other rights for disabled persons." (paragraph 63).

With the [Proclamation of Teheran](#), the Conference on Human Rights noted that it is imperative that members of the international community fulfil their obligations under the Universal Declaration of Human Rights to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind (paragraph 1).

The [Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment](#) apply for the protection of all persons under any form of detention or imprisonment; this includes disabled persons. Principle 1 states: "...all persons under any form of detention (...) shall be treated in a humane manner and with respect to the inherent dignity of the human person." Principle 2 proclaims that "...detention shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorised for that purpose."

In 1979, the General Assembly adopted the [Code of Conduct for Law Enforcement Officials](#) and transmitted it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials. Article 5 states that "...no law enforcement official may inflict, instigate or tolerate any act torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment."

The first principle of the [Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) provides: "Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained." This may be particularly relevant for disabled prisoners who commonly require ongoing medical assistance and care.

Principle 2 states: "It is a gross contravention of medical ethics as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment." This provision is relevant to the prevention of disabilities.

Article 4 of the [Basic Principles on the Role of Lawyers](#) provides that special attention should be given to assisting the poor and *other disadvantaged persons* so as to enable them to assert their rights and where necessary call upon the assistance of lawyers. Arguably, disabled persons may be classified as disadvantaged persons for the purposes of this provision and, therefore, should be given special assistance.

The Rule 51 of the [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#) states that medical services provided to juveniles should seek to detect and treat any physical or mental illness or other condition that may hinder the integration of the juvenile into society. Rule 52 provides that the authorities should be notified if, in the opinion of a medical officer, a juvenile may be injuriously affected by continued detention. Pursuant to Rule 4, the Rules are to be applied "...impartially, without discrimination of any kind as to (...) *disability*." (emphasis added).

9. Other International Mechanisms

9.1 The Commission on Human Rights

The Commission on Human Rights is the most important human rights body established by the Economic and Social Council (ECOSOC). It is composed of representatives of Member States and it meets yearly for six weeks. It receives reports on and discusses human rights situations in specific countries and also specific human rights issues. It is assisted in its work by the Sub-Commission, a body of independent experts who serve in their individual capacities. Under Resolution 1235 the Commission can examine information relevant to gross violations of human rights in specific countries. There needs to be a consistent pattern of violation. The procedure is public and widely used. This procedure has allowed the establishment of Special Rapporteurs or Representatives to carry out fact-finding missions. Information can be received by any individual, group or state in any form. Another procedure is that established by Resolution 1503. This procedure is also designed narrowly to address situations which appear to reveal a widespread pattern of gross human rights abuses, but the examination is confidential. Communications cannot be anonymous; they cannot be politically motivated; they cannot be based exclusively on mass media reports; they must explain how the domestic remedies have been exhausted; and they must be submitted within reasonable time of the exhaustion of domestic remedies.

The Commission's thematic mechanisms are Special Rapporteurs, such as the Special Rapporteur on Disability, and Working Groups. They analyse a particular human rights question by examining information which they receive and visiting countries. They submit annual reports to the Commission, informing it of their activities.

9.2 The Commission on the Status of Women

The Commission on the Status of Women was established by the ECOSOC in 1946. The 32 members are representatives of their Governments. Its original charge was to prepare recommendations and reports to ECOSOC on promoting women's rights in different fields.

Currently, the Commission's major function is to promote the role of women in economic and social development adopted by the world conferences. It regularly adopts resolutions on topics such as elimination of discrimination against women and exercise of all their rights, women and development, elderly women, etc. A second function of the Commission is to make recommendations, via ECOSOC to the Secretary-General and appropriate UN-Bodies concerning increased participation of women within the UN system and implementation and co-ordination of UN programs to advance the rights of women. Since 1987, the Commission assumes a third function, namely, making policy recommendations to ECOSOC concerning *priority themes* of the **Forward-looking Strategies for the Advancement of Women**, Adopted by the World Conference to Review and Appraise the Achievements of the UN Decade for Women, held in Nairobi in July 1985.

10. Human Rights and Humanitarian Law

10.1 Persons with disabilities and armed conflicts

The evolution of international law related to the protection of war victims and to the conduct of war has been strongly affected by the development of human rights protection after the Second World War. The adoption of important international instruments in the field of human rights contributed to affirm the idea that everyone is entitled to the enjoyment of human rights, whether in times of peace or war. In times of peace human rights are the fundamental principles for the protection of all persons in all contexts, but the different circumstances during wartime require special protection for the individual-civilians as well as combatants.

Today, the impact of armed conflicts on civilians is one of the major causes of disability. The nature and extent of the harm suffered by victims of a situation of an armed conflict depends to a large extent on the combat methods used and the use of certain particularly harmful weapons. Often violations of humanitarian law, such as ill treatment of prisoners of war or civilians and illegal military operations, lead to an increased number of disabilities among the population, and especially permanent disabilities.

The United Nations Security Council, expressing its belief in the connection between holding individuals responsible for international crimes and future prevention, established the **Ad hoc International Criminal Tribunals for the Former Yugoslavia and Rwanda**, as well as the permanent **International Criminal Court**. The **United Nations Voluntary Fund for Victims of Torture** was established to meet the immediate medical, psychological, and financial needs of survivors. This Fund redistributes voluntary contributions of donor governments primarily to nongovernmental programs providing direct medical and psychological treatment and economic, social and legal assistance to survivors of torture.

10.2 Human Rights in Times of Emergency

The enjoyment of some human rights may be restricted during times of war or public emergency. The international instruments on human rights define a state of emergency as a "...public emergency which threatens the life of a nation.", like article 4 of the [International Covenant on Civil and Political Rights](#). Accordingly, war is the greatest public emergency; the emergency must be actual, affect the whole population and the threat must be to the very existence of the nation. The declaration of emergency must also be a last resort and a temporary measure.

Three of the most important human rights conventions, the [International Covenant on Civil and Political Rights](#), the **European Convention on Human Rights** and the [American Convention on Human Rights](#), contain derogation clauses with specific standards on human rights in states of emergencies, e.g. Article 4 of the [International Covenant on Civil and Political Rights](#) allows States to take measures temporarily derogating from some of their obligations under the Covenant "...in times of public emergency which threatens the life of a nation." but only to the "...exigencies of the situation."

Certain rights have been considered so important that they are non-derogable. In the three conventions there exist four common non-derogable rights. These are the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude and the right to be free from retroactive application of penal laws. These rights are also known as peremptory norms of international law or jus cogens norms.

The basic object of both human rights law and humanitarian law are to extend protection to the human person in all circumstances and in all types of conflicts. The most relevant of the laws of war as far as human rights are concerned are the four **Geneva Conventions** and the two **Additional Protocols**. The Geneva Conventions and Protocols try specifically to protect all human beings affected by armed conflict, especially those who are not, or no longer, directly engaged in hostilities. These persons hors de combat are the wounded and sick, shipwrecked, prisoners of war and civilians. The Conventions also contain specific provisions covering the four common non-derogable rights of human rights treaties. Accordingly, the rights protected in the Geneva Conventions and Protocols overlap to a certain extent with those included in the human rights treaties.

The **1863 Lieber Code** and the first **Geneva Convention of 1864** can be regarded as the foundation of international humanitarian law. A need to broaden the scope of the Geneva Convention and to take the changing character of warfare into account, soon resulted in the adoption of several international conventions. In the aftermath of the Second World War, the international community wanted to update

international humanitarian law to the changing character of warfare. New conventions were drawn up covering, respectively, the sick and the wounded on land (**First Convention**), wounded, sick and shipwrecked members of the armed forces at sea (**Second Convention**), prisoners of war (**Third Convention**) and civilian victims (**Fourth Convention**). The four Geneva Conventions remain in force today, and are considered to reflect customary law, but new forms of armed conflicts called for further action. Two Additional Protocols to the 1949 Conventions were adopted in 1977. Additional Protocol I concerns the victims of international conflicts and the Second Protocol concerns the victims of internal conflicts. The vast majority of states have adopted the above-mentioned conventions.

10.3 Civilians and Persons *Hors de Combat*

The four Geneva Conventions of 1949 established the principle of international humanitarian law that a distinction should be made between combatants and civilians, who take no active part in hostilities. This customary rule of non-combatant immunity is also codified in the [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts \(Protocol 1\)](#). Article 51 contains specific rules for the protection of civilians. Civilians shall enjoy general and specific protection from military operations and indiscriminate attacks. The provisions of Protocol I, relating to civilian protection, are of great significance because they establish concrete rules; non-combatant immunity is no longer an abstract formulation.

The Common Article 3 of the **Third and Fourth Geneva Conventions of 1949, relative to the treatment of Prisoners of War and the Protection of Civilian Persons in Times of War**, and customary law also in international conflicts, provides that "...persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria." The same article prohibits violence to life and person, particularly murder, , cruel treatment or torture, humiliating and degrading treatment.

10.4 Special Protection for the Wounded and Sick

Article 12 of the **Geneva Convention of 1864** states that "...Members of the armed forces and other persons (...) who are wounded or sick, shall be respected and protected in all circumstances. They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments...". The Parties to the Geneva Conventions also have to search for and collect the wounded and sick and to ensure them protection and care (article 15).

In Common Article 3 of the **Third and Fourth Geneva Conventions of 1949, relative to the treatment of Prisoners of War and the Protection of Civilian Persons in Times of War** special protection is given to wounded and sick persons in an internal conflict. The article states that "...the wounded and sick shall be collected and cared for (...) they shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions or any other similar criteria." The parties to the Conventions also have to search for and collect the wounded and sick and to ensure them protection and care (article 15).

The definition of wounded and sick for the purpose of the [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts \(Protocol 1\)](#) is "...persons, whether military or civilians, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility." The wounded and the sick shall be respected and protected. They shall be treated humanely in all circumstances, and they shall receive the medical care they require. It is prohibited to carry out physical mutilations, medical experiments or removal of tissue or organs, if the medical state of the wounded does not require it.

If the civilians and combatants are not protected by the Protocol or by other international agreements, they remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of the public conscience (article 1).

10.5 Victims of Land Mines and Armed Conflicts

Anti-personnel land mines are primarily designed to cause severe injury to a person. Mines are also deployed to hinder access or usage of farmlands, roads, waterways and other public utilities. It is estimated that over 2,000 people are killed or injured by mine explosions every month, most of the victims are civilians after the hostilities have ended, especially women and children. The victims of mine explosions, who survive, suffer the loss of one or more limbs in almost all cases. This is why anti-personnel landmines are a major cause of disability. It is estimated that more than 110 million active mines are scattered in 70 countries and since a land mine can remain active up to 50 years after it has been planted, one can speak of a global crisis that requires the attention of the international community.

The use of anti-personnel land mines is regulated under international humanitarian law both by custom and by treaties. The existing customary and treaty law was not able to give protection in an effective way, and a total ban on anti-personnel land mines enjoyed widespread support of the international community. The efforts of the United Nations, governments and non-governmental organisations to ban landmines resulted in the [Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction](#). The Parties to the Convention undertake never under any circumstances to use anti-personnel mines or to develop, produce or otherwise acquire anti-personnel mines (article 1). Each Party also undertakes to destroy anti-personnel mines. To ensure that the substantive obligations of the Convention become reality in practice, the Convention contains a provision on national implementation measures. Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited under the Convention (article 9). The Convention also provides for on-site inspections if a Party is suspected of breaching its obligations under the Convention. Under the Convention, each State Party in a position to do so has a duty to provide assistance to mine victims. In addition to care and rehabilitation, social and economic reintegration should also be provided (article 6). Such assistance may be provided through the United Nations System, the International Committee of the Red Cross (ICRC) or different organisations. A State Party also has the right to seek assistance from others in its efforts to care for its mine victims (article 6).

The Convention is an important step in banning this method of warfare, which causes injury and unnecessary suffering. However, the problem is far from being resolved. The level of ratification is still low and with millions of mines already planted, civilians will continue to be killed or injured. National societies play an important role in ensuring that the provisions of the Convention are implemented and respected at the national level. Through discussions and co-operation with their Governments, Parties can work to promote adoption of effective national legislation or other administrative measures in order to ensure that the objectives of the Convention are achieved.

Part III. The Regional Human Rights System

When domestic institutions fail to uphold the law and are in some cases the violators of law, it may be possible or necessary to seek redress beyond national boundaries. In order to achieve an effective improvement in the exercise of the rights of disabled persons, it is important to understand the regional and international mechanisms that exist and the remedies they provide.

Legal provisions at the regional level are generally created according to the rules on treaty making in public international law as laid down in the Vienna Convention on the Law of Treaties. For those States who are not Parties to the Convention, the substantive rules embodied in the Convention may be applicable as part of customary law.

The [World Programme of Action Concerning Disabled Persons](#) paragraph 34 states that "...the regional commissions of the United Nations and other regional bodies should encourage regional and sub-regional co-operation in the area of prevention of disability, rehabilitation of disabled persons and equalisation of opportunities."

1. Europe

1.1 The Council of Europe - instruments

The Council of Europe is a regional intergovernmental organization whose main role is to strengthen democracy, human rights and the rule of law throughout its Member States of 40 countries. The Council of Europe is also active in enhancing Europe's cultural heritage in all of its diversity. Finally, it acts as a forum for examining a whole range of social problems, such as social exclusion, intolerance, the integration of migrants, the threat to private life posed by new technology, and bio-ethical issues.

The Council of Europe comprises:

- A decision making body: the Committee of Ministers
- A deliberative body: the Parliamentary Assembly
- A voice for local democracy: the Congress of Local and Regional Authorities of Europe.

More than 160 European Conventions serve as a basis for reforming and harmonising Member States' legislation. For issues that do not lend themselves to conventions, the Committee of Ministers adopts recommendations to Governments on what line of action to take.

The Council of Europe established the **European Convention on Human Rights and Fundamental Freedoms**, which entered into force in 1953, and is the main European human rights convention. It deals with civil and political rights, and is in that sense similar to the ICCPR. Several additional Protocols have added to its substantive and procedural provisions. The **European Social Charter** deals with economic and social rights.

Although these are the main European human rights conventions, the Council of Europe has adopted numerous other conventions pertaining to human rights, covering a wide range of areas including, migrant workers, torture, national minorities, and children, and gender equality.

The Council of Europe has not adopted any specific human rights instruments on disabled persons. It has to be recognised, though, that for a long time the [European Social Charter](#) was the first human rights treaty in which disabled persons were explicitly mentioned as bearers of Human Rights.

Other remarkable documents have been adopted within the machinery of the Council of Europe which are legally non-binding but worth mentioning, because they emphasise the Human Rights aspects of disability legislation and policy.

The [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) is designed to protect individuals' fundamental rights and freedoms. This Convention contains the classical human rights guarantees, including the right to life (article 2), the right not to be subject to torture or to inhuman or degrading treatment or punishment (article 3), the right to liberty and security of person (article 5), and the right to respect for private and family life, home and correspondence (article 8). These rights apply to all persons, including disabled persons.

Two articles are particularly interesting in regard to disability. Indeed, according to article 5 (e), "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save the following cases and in accordance with a procedure prescribed by law: ... e) the lawful detention of persons (of unsound mind ". That means that the right to liberty and security may be restricted on grounds of mental disability. While the anti-discrimination clause of article 14 refers to sexual, racial, lingual, religious, or political discrimination, disabled persons are not explicitly mentioned. But disabled people must be contained in the formulation *any other status* at the end of article 14.

The [European Social Charter](#) has led to legal reforms in such areas as the family, the protection of young workers, trade union rights and social insurance. It lays down twenty-three fundamental rights. It contains in Part I, a declaration of aims which contracting states shall pursue by all appropriate means. Each state party agrees to be bound by at least six of nine articles specified in Part II of the Charter. The nine articles are: the right to work; the right to organize; the right to bargain collectively; the right of children and young persons to protection; the right to social security; the right to social and medical assistance; the right of the family to social, legal and economic protection; the right of migrant workers and their families to protection and assistance; and the right to equal opportunities and equal treatment in matters of employment and

occupation without discrimination on the grounds of sex.

Part II has a set of articles which to a large extent correspond to the provisions in the ICCPR. States can choose from a menu of obligations (10 out of the 19 articles in Part II, or 45 out of the 72 numbered paragraphs of which the 19 articles consist). Furthermore, according to article 20 (Undertakings), "Each of the Contracting Parties undertakes: (b) To consider itself bound by at least five of the following articles of Part II of this Charter: articles 1, 5, 6, 12, 13, 16 and 19." Regarding the issue of disability, three articles are worth mentioning: article 11 (the right to protection of health), article 13 (the right to social and medical assistance) and article 15 (the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement). It is important to note that articles 11 and 15 are not part of the list of article 20 (b).

Articles 11 and 13 are rights applicable to all persons that may be of particular concern to disabled persons. Article 11 states that "...the Contracting Parties undertake (1. To remove as far as possible the causes of ill-health; 2. To provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; 3. To prevent as far as possible epidemic, endemic and other diseases." Article 13 states that "...the contracting Parties undertake: 1. To ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and in case of sickness, the care necessitated by his condition; 2. To ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights; 3. To provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want ". Pursuant to Article 15, Contracting Parties undertake to take adequate measures for (1) the provision of training facilities for disabled persons, and (2) the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment.

As one can see, the concept of human rights and disability as contained in the European Social Charter is based on the traditional institutional approach to disability. It has been revised in order to update and adapt the substantive contents of the Charter in order to take into account, in particular, the fundamental social changes, which have occurred since the text was adopted. The new article 15 of the Revised Charter (adopted by the Council of Europe, 3 May 1996) reads as follows:

"The right of persons with disabilities to independence, social integration and participation in the life of the community:

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

- to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
- to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for a creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
- to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure."

This version is more comprehensive than the previous one and is based more on a human rights approach. It will enter into force after the "...three Member States of the Council of Europe have expressed their consent to be bound by this Charter." (article K).

Beside the above mentioned norms there are several other European Council instruments that concern persons with disabilities more specifically, including:

- a. [Recommendation on the Situation of the Mentally III](#) (EC Recommendation No. 818),

- b. **Recommendation on Rehabilitation Policies for the Disabled** (EC Recommendation No. 1185)
- c. [Recommendation on a Coherent Policy for the Rehabilitation of People with Disabilities](#) (EC Recommendation No. (92) 6).
- d. [Recommendation Towards full social inclusion of people with disabilities](#) Recommendation 1592 (2003)
- e. [Towards concerted efforts for treating and curing spinal cord injury](#) - Parliamentary Assembly Recommendation 1560 (2002)
- f. [Towards full citizenship of persons with disabilities through inclusive new technologies](#) Resolution, ResAP(2001)3
- g. [Resolution on a Charter on the Vocational Assessment of People with Disabilities](#) (AP (95) 3)

The [Recommendation on a Coherent Policy for the Rehabilitation of People with Disabilities](#) adheres to the principle of independent living and full integration into society. This recommendation is extremely progressive in that it recognises the rights of disabled persons to be different. It is the first international/regional instrument, which applies the right to be different to the situation of disabled persons, in particular with respect to the whole rehabilitation process.

1.2 The Council of Europe - Remedies under the European conventions

The machinery for enforcement of human rights agreements under the European Convention is the most developed in Europe and one of the most efficient human rights systems in the world.

Protocol 11 of the [European Convention on the Protection of Human Rights and Fundamental Freedoms](#), established a single permanent Court replacing and simplifying the previous mechanism composed of the European Commission on Human Rights and the European Court of Human Rights. The new machinery also abolished the Committee of Ministers' adjudicative role. It oversees the implementation of the European Convention on Human Rights through State and individual complaint systems. There is no periodic report mechanism for the European Convention.

The European Court of Human Rights is a judicial body composed of a number of judges equal to the number of states that are current members of the Council of Europe. There is no restriction on the number of judges of the same nationality. Judges are elected by the Parliamentary Assembly of the Council of Europe for a term of six years. Any Contracting State (State application) or individual claiming to be a victim of a violation of the Convention (individual application) may lodge directly with the Court an application alleging a breach by a State Party of one of the Convention rights. The procedure before the Court is adversarial and public. Hearings, which are held only in a minority of cases, are public, unless the Chamber decides otherwise on account of exceptional circumstances. Individual applicants may submit applications themselves, but legal representation is recommended, and even required for hearings or once an application has been declared admissible. The Council of Europe has set up a legal aid scheme for applicants who do not have sufficient means. The admissibility of each case is decided by a Chamber of seven judges or a Committee of three judges. Chambers or the Grand Chamber in serious cases decide on the merits of a case found admissible.

Decisions are taken by majority vote. Judgements of Chambers shall become final, unless a party requests, within a period of three months from the date of the judgement, that the case be referred to the Grand Chamber. A panel of five judges shall decide whether or not the case should be examined by a Grand Chamber. The Court's decision "shall, if necessary, afford just satisfaction to the injured party" (Article 50), if a state party is determined to have violated the European Convention, and if the country's domestic laws do not provide for adequate redress. The Court may thus issue a declaration and /or award monetary damages, including costs and expenses or pecuniary and non-pecuniary damages. Final judgements are legally binding for States Parties and their execution will be supervised by the Committee of Ministers.

The [European Social Charter](#) sets out its system of supervision and enforcement, providing for a monitoring and reporting procedure and a system of collective complaints. The European Committee of Social Rights is a committee of independent experts, which examines reports and decides whether the situations in the countries concerned are in conformity with the Charter. State parties are required to submit copies of their reports to "the international non-governmental organizations which have consultative status with the Council of Europe and have particular competence in the matters governed by". The Committee may also "hold, if necessary, a meeting with the representative of a Contracting Party either on its own initiative or at the request of the Contracting Party concerned"(Article 24(3)). The Committee's decisions ("conclusions") are published every year.

The 1995 Additional Protocol allows the Committee also to consider collective complaints. The Committee decides on the admissibility and merits of the case. Both the State and the organisation concerned are asked to provide written explanations and information to the Committee. A hearing, which is public, may be held at the request of one of the parties. The Committee's decision is transmitted to the Committee of Ministers and the Parliamentary Assembly, and it is made public.

1.3 Economic Commission for Europe

The Economic Commission for Europe (ECE) is involved in the monitoring implementation of rights of disabled persons. It has published the "**European Handbook for Persons with Disabilities**" and is involved in projects on rehabilitation, settlement and housing of the disabled.

1.4 The European Union

The European Union (EU) is a regional organisation with currently 15 democratic member States voluntarily joined by a political desire to present a united front to the great challenges of our age. These challenges include: promoting European unity, improving living and working conditions of citizens, fostering economic development, balanced trade and fair competition, reducing economic disparities between regions, helping developing countries, and preserving peace and freedom. The EU institutions and bodies are the following: the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the Central Bank of Europe and the European Investment Bank.

Although the mandate of the organisation has been expanded by the **Treaty on European Union** (Treaty of Maastricht), further amended by the Treaty of Amsterdam - the new **Treaty for Europe** (signed in 1997, entered into force in 1999) the EU's main concern lies in the field of economic, monetary and political issues. Accordingly, disability issues have been mostly dealt with as a matter of social policy, the main emphasis being in the field of employment. The [Recommendation on the Employment of Disabled People in the European Community](#) is based on the principle that disabled people have the right to equal opportunity in training and employment. The Council of the European Communities, the Commission, and the Committee of Ministers have adopted various resolutions on an appropriate policy for the rehabilitation of disabled people, in which Member States are called on to step up preventive measures to eliminate impairments, disabilities and handicaps, implement a comprehensive and co-ordinated policy of rehabilitation, and encourage the full participation of disabled people in their rehabilitation and in the life of the community. Another significant resolution was passed by the European Parliament in April 1993 following an upsurge of violence against handicapped persons (Official Journal of the EC No. C 150/270).

However, the EU has also done considerable work in the area of non-discrimination and human rights for persons with disabilities. The Council of Ministers has adopted resolutions to combat discrimination against people with disabilities in different areas of life, such as education, employment and access to information technology (See e.g. Resolution of the Council and the Ministers for Education meeting within the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education, Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council of 20 December 1996 on equality of opportunity for people with disabilities, Council Resolution of 17 June 1999 on equal employment opportunities for people with disabilities, Council resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, and Council Resolution on 6 February 2003 "eAccessibility" - improving the access of people with disabilities to the knowledge based society), and the European Parliament has adopted resolutions on the rights of persons with disabilities ([Resolution on the rights of Disabled People](#), and [Resolution on the human rights of disabled people](#)). The EU also has a **Disability Strategy**, pursuant to the Standard Rules, and endorsed in a Resolution of the Council of Ministers in 1996. The EU works on mainstreaming disability in policy formulation.

2. The Americas

The **Charter of the Organisation of American States** established the Organisation of American States (OAS), which has among its principles and purposes the strengthening of peace and security, ensuring peaceful settlement of disputes, providing for a common action in the event of aggression, and promoting economic, social and cultural development.

It also proclaims the fundamental rights of the individual without distinction as to race, nationality, creed or sex. It was within the framework of the OAS that the Inter-American Commission on Human Rights was established, and that the 1948 [American Declaration on the Rights and Duties of Man](#), as well as the 1969 [American Convention on Human Rights](#), were elaborated.

There is no reference regarding disability in the **Charter of the Organisation of American States**, but some articles might be relevant to the rights of all persons including those with disabilities. According to article 2: "The Organisation of American States, in order to put into practice the principles on which it is founded and to fulfil its regional obligations under the [Charter of the United Nations](#), proclaims the following essential purposes: (f) to promote by co-operative action, their economic, social and cultural development ".

Furthermore, article 31 states that "...to accelerate their economic and social development (the Member States agree to dedicate every effort to achieve the following basic goals: (...) (g) Fair wages, employment opportunities and acceptable working conditions for all; (h) rapid eradication of illiteracy and expansion of educational opportunities for all; (i) protection of man's potential through the extension and application of modern medical science; (k) adequate housing for all sectors of the population; (l) urban conditions that offer opportunities for a healthful, productive, and full life ".

Two articles of the [American Declaration on the Rights and Duties of Man](#) refer to general statements that apply to disabled people. Article 1 states: "Every human being has the right to life, liberty and the security of his person." Furthermore, article 2 provides that "...all persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." Two other articles of the American Declaration of the Rights and Duties of Man are clearly relevant. Article XI states that "...every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources." In addition, article XVI proclaims the right of every person to enjoy the protection of the State from the consequences of "...unemployment, old age and any disabilities arising from causes beyond his control that make it physically and mentally impossible for him to earn a living." The American Declaration is binding through the OAS Charter, even if States have not ratified the American Convention. It also reflects customary law.

2.1 The Inter American Convention on Human Rights

The [American Convention on Human Rights](#) does not explicitly address the subject of disability. However, it is referred to implicitly and contains the classical human rights guarantees, as does the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), for example, article 27 (2) forbids suspension of guarantees essential to the protection of non-derivable human rights, among which includes the right to life, included in article 4 (1).

Article 18 of the 1988 [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights](#) ("Protocol of San Salvador") specifically refers to the rights of disabled persons. It states that disabled persons are entitled to special attention to help them achieve the greatest possible development of their personality. Pursuant to article 18, States Parties agree to undertake programs aimed at providing disabled persons with resources needed to attain the greatest possible development of their personality. States Parties also agree to provide special training to the families of the handicapped.

2.2 Inter- American Convention on the Elimination of all forms of Discrimination against Persons with Disabilities

The Inter American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities was adopted by the General Assembly of the Organisation of American States in 1999. The Convention entered into force in 2001. The Convention is in four parts; 1) the objectives concerning the prevention and elimination of discrimination and the integration of persons with disabilities into society; 2) the

obligations by States parties; 3) definitions of discrimination and disability; and 4) implementation mechanisms.

2.3 The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights (IACHR) is one of three bodies in the Inter-American System for the promotion and protection of human rights. Its mandate is found in the **Charter of the Organisation of American States** and the [American Convention on Human Rights](#). While the Charter applies to all members of the OAS, the Convention applies only to those that have ratified it.

In 1965, the IACHR was expressly authorised to examine complaints or petitions regarding specific cases of human rights violations. Up until 1997, the IACHR has received thousands of petitions, which have resulted in 12,000 cases, which have been processed or are currently being processed. The IACHR has the principal function of promoting the observance and the defence of human rights.

The Commission receives a petition from any person, group of persons or non-governmental organisations alleging violations of the rights protected in the [American Convention on Human Rights](#) and / or the [American Declaration on the Rights and Duties of Man](#). The Commission may only process individual cases where it is alleged that one of the Member States of the OAS is responsible for the human rights violation at issue. If domestic remedies were exhausted, the petition must be presented within six months after the final decisions in the domestic proceedings. When a case is opened and a number is assigned, the pertinent parts of the petition are sent to the Government with a request for relevant information. During the processing of the case, each Party is asked to comment on the responses of the other Party. The Commission also may carry out its own investigations, conducting on-site visits or requesting specific information from the parties. The Commission may also hold a hearing during the processing of the case. When the processing of the case is completed, the Commission prepares a report, which includes its conclusions, and also generally provides recommendations to the State concerned. This report is not public. The Commission gives the State a period of time to resolve the situation and to comply with the recommendations of the Commission.

Upon the expiration of this period of time granted to the State, the Commission has two options. The Commission may prepare a second report and the State is given a second period of time to resolve the situation. Rather than preparing a second report for publication, the Commission may decide to take the case to the Inter-American Court. If it wishes to take the case to the Court, it must do so within three months from the date in which it transmits its initial report to the State concerned. The Commission will appear in all proceedings before the Court.

As detailed above, the Inter-American Commission can issue a recommendation to the offending party to rectify the human rights situation. The Inter-American Commission also collects and receives information about human rights violations in the country from individuals, human rights groups and other groups, as well as the government. Every individual or human rights group in the Americas has the right of access to this enforcement mechanism. Access is achieved through participating in one of the Inter-American Commission's on-site visits to a country where it is studying human rights violations; providing information to the Commission during its study; or pressuring the Commission to conduct such a visit. Advocates can influence both the process and the report by directly contacting the Commission and asking it to examine human rights violations of disabled persons.

Some of the prominent attributes of this system include the principle derived from the Velasquez- Rodriguez case, which provides that governments have an affirmative legal obligation to investigate, prosecute and punish human rights violators (including persons who are not agents of the government) through their national judicial apparatus. Secondly, under the Inter-American system, the right to judicial enforcement of human rights violations can never be derogated from.

2.4 The Inter-American Court of Human Rights

The Ninth International Conference of American States, held in Bogota, 1948, in its resolution XXXI entitled "**Inter-American Court to Protect the Rights of Man**", considered that the protection of these rights "...should be guaranteed by a juridical organ, in as much as no right is genuinely assured unless it is safeguarded by a competent court." and that "...where internationally recognised rights are concerned, juridical protection, to be effective, should emanate from an international organ."

The OAS General Assembly, in 1979, approved the **Statute of the Court** (Resolution 448). Article 1 defines the Court as "...an autonomous judicial institution whose purpose is the application and interpretation of the [American Convention on Human Rights](#)." The Court has adjudicatory and advisory jurisdiction. Regarding its adjudicatory jurisdiction, only the Commission and the States Parties to the Convention are empowered to submit cases concerning the interpretation and application of the Convention. In addition, in order for a case against a State Party to be brought before the Court, the State Party must recognise the jurisdiction of the Court.

3. Africa

3.1 African Human Rights Instruments

The African human rights system is the "youngest" regional system. One of the most distinctive features of the African Charter on Human and Peoples' Rights is its recognition of collective rights. It views individual and peoples rights as linked. The other distinctive feature is the recognition of the right to development.

The **African Charter on Human and Peoples' Rights** was ratified by an absolute majority of States after an energetic consciousness-raising campaign conducted by certain Heads of State of the OAU and certain NGOs. The Charter contains a list of the prerogatives and obligations, and also of the organs for the protection and defence of those same values. Part I includes rights and duties applying to individuals and groups alike, e.g. the right to life (article 4). The Charter places special emphasis on the rights and duties of the community, especially the family, society and nation. Lastly, the Charter accords a place to the so-called third generation rights, mainly the rights to peace, solidarity, a healthy environment and development.

Article 18 (4) of the Charter provides that the disabled have the right to special measures of protection in keeping with their physical or moral needs. Article 16 (1) provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.

The **African Charter on the Rights and Welfare of the Child**, ratified in 1999, also includes special mention to persons with disabilities. Article 13 on Handicapped Children provides for special measures of protection, together with principles of self-reliance, participation and access. Most of the provisions of the African Children's Charter are modelled after the articles of the CRC. The main difference lies in the existence of provisions concerning children's duties, in line with the African Human Rights Charter.

3.2 The African Commission on Human and Peoples' Rights

Article 30 of the [African Charter on Human and Peoples' Rights](#) provides for the establishment of an African Commission on Human Rights within the Organisation of African Unity. The mandate of the Commission is to promote Human and Peoples' Rights. In particular, it collects documents; undertakes studies and research on African problems in the field of human and peoples' rights; organises seminars, symposia and conferences; disseminates information; encourages national and local institutions concerned with human and peoples' rights; and make recommendations to Governments (article 45, 1). The Commission also ensures the protection of human and peoples' rights under conditions laid down by the [African Charter on Human and Peoples' Rights](#) (article 45, 2).

The Commission receives communications from a State, when this State believes that another State Party has violated the provisions of the Charter (article 49). The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted (article 50). The Commission shall prepare a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government (article 52). The Commission also receives other communications, which have to be brought to the knowledge of the State concerned. The Commission also makes a report on the other communications, as well (article 55-59).

The applicable principles of Commission are as follows: "The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the **Charter of the United Nations**, the **Charter of the Organisation of African Unity**, the **Universal Declaration of Human Rights**, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the parties to the (African Charter) are Members."

For inter-state communications, the African Charter emphasizes the need to exhaust all domestic remedies unless the Commission decides that local remedies either did not exist or the procedure for achieving them is unduly long. A state can, by written communication, draw another state's attention to the violation of the provisions of the African Charter by the state.

Individuals or groups submit written communications to the African Commission alleging violation of the provisions of the African Charter by a state. When the Commission undertakes an investigation, whether of an inter-state communication or other complaint, it has the right to choose any appropriate method of

investigation. This opens a channel for disability rights advocates to educate the Commission on issues relating to disabled persons human rights.

Advocates can also bring any issues relating to human rights violations to the monitoring arm of the African Commission. This may result in in-depth examination of issues relating to human rights in a particular country and to recommendations to the government to improve the rights of disabled persons.

Since the adoption of the "**African Children's Charter**", the Commission has also been mandated to receive reports and investigate violations with regards to rights protected by that Charter. Originally a separate monitoring body was to be established, but this failed due to the financial difficulties of the OAU.

A 1997 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights establishes a Court that would complement the mandate of the Commission, and therefore resemble the Inter-American system of protection of human rights. The Protocol is not yet in force.

So far, the African human rights monitoring system has been the less effective than the European and Inter-American ones, partly because of the political climate and preference for diplomatic solutions, and partly because of some weaknesses in the language used in the African Charter on Human and Peoples Rights, and because of the focus on promotion of human rights instead of monitoring by the Commission.

3.3 Africa Decade of Disabled People (2000-2009)

The decade 2000-2009 has been proclaimed the *Africa Decade of Disabled People*. It is an initiative of the non-governmental community in Africa. The goals of the Decade are to promote awareness and commitment to full participation, equality and empowerment of persons with disabilities in Africa.

In February 2002, the OAU organized at Addis Ababa, in collaboration with regional organizations of persons with disabilities, the Pan-African Conference on the Africa Decade of Disabled Persons to consider a "Plan of Action for the Decade". The Action Plan calls upon OAU member States and Governments to study the situation of persons with disabilities with a view to formulating measures favouring equalization of opportunities, full participation and their independence in society.

4. Asia

4.1 Regional Seminars and Meetings

No particular instruments on disability have been adopted in Asia, but important workshops have been organised within Asia, such as the United Nations Workshop for the Asian-Pacific Region on Human Rights Issues, Jakarta, 26-28 January 1993. In 1999, *the Interregional Seminar and Symposium on International Norms and Standards Relating to Disability* was held in Hong Kong Special Administrative Region of the People's Republic of China. The Interregional Seminar and Symposium brought together policy makers, practitioners and representatives of the non-governmental community to exchange views on international norms and standards relating to disability and to develop recommendations for the further equalization of opportunities for persons with disabilities. The *Interregional Seminar and Symposium* built upon the meeting of international experts held in December 1998 at Boalt Hall Law School, University of California at Berkeley. The Interregional Seminar and Symposium was divided into three clusters. Cluster one focused international norms and standards relating to disability; Cluster two focused on capacity building to promote and monitor the implementation of norms and standards for persons with disabilities; Cluster three addressed the different approaches to the definition of disability.

Cluster one acknowledged the importance of international disability rights law in designing strategies to advance disability rights in the domestic sphere and to interpret broad treaty obligations relevant to persons with disabilities. Cluster two focused on importance of training in human rights advocacy among disability rights NGO's. Cluster Three concentrated the different legal definitions of disability and how these definitions can serve different purposes. For example, the medical model will be useful in the context of clinical care, while this model may be inadequate in advancing the civil rights of persons with disabilities. The Interregional Seminar provided a further opportunity for experts from fifty countries to exchange ideas on current law reforms in disability issues.

Regional meetings were also held in relation to the elaboration of a new convention on the rights of persons with disabilities, in preparation for the second session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities (Second Session, New York, 16-27 June 2003). These were the [Expert Group Meeting and Seminar on an International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities](#) in Bangkok (Bangkok, Thailand, 2-4 June 2003), the [Arab regional meeting on norms and standards related to development and the rights of persons with disabilities](#) in Beirut (Beirut, Republic of Lebanon, 27-29 May 2003), and "Promoting the Rights of People with Disabilities: Towards a New UN Convention", organised by the Asia Pacific Forum of National Human Rights Institutions, the British Council and the National Human Rights Commission of India (New Delhi, India 26-30 May 2003).

4.2 Asian and Pacific Decade of Persons with Disabilities (1993-2002)

In April 1992, the Economic and Social Commission for Asia and the Pacific proclaimed the decade (1993-2002) the *Asian and Pacific Decade of Disabled Persons*. This regional decade of disabled persons aimed to help to promote the human rights of disabled persons in a region which has probably the largest number of the world's disabled persons. The **Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region** and the **Agenda for Action for the Asian and Pacific Decade of Disabled Persons, 1993-2002** contain some of the major topics of the [World Programme of Action concerning Disabled Persons](#) and [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#).

5. Other Regional Organizations

5.1 The Economic and Social Commission for Asia and the Pacific

The Economic and Social Commission for Asia and the Pacific (ESCAP) and several Members' Governments of the region established a Trust Fund to promote the *Decade of Disabled Persons in the Asia and Pacific Area* (1993-2002) due to the scarce resources devoted to rehabilitation of persons with disabilities. Regional action should create self-help organisations for persons with disabilities, promote non-handicapped environments and facilitate regional and / or sub-regional co-operation on production of low-cost, high quality technical aids. During the UN Decade, ESCAP organised training workshops on management of self-help organisations to carry out surveys, prepare technical guidelines and regional conferences of non-Governmental organisations to promote the *Decade for Disabled Persons in the Asia and Pacific Area*.

5.2 The Economic and Social Commission for Western Asia

Since 1981, the Member States of the Arab Gulf Programme for the United Nations Development Organisations, the Economic and social Commission for Western Asia (ESCAW), in co-operation with the UN Voluntary Fund on Disability have been financing projects and programmes for disabled persons world-wide.

5.3 The Economic Commission for Africa

The Economic Commission for Africa (ECA) organized the African Regional Conference on the International Year of Disabled Persons in 1980 for the development of regional programmes for the socio-economic integration of disabled persons in Africa.

5.4 The Economic Commission for Latin America

In Latin-America, the Economic Commission for Latin America (ECLAC)'s efforts focus upon financial constraints and elimination of negative cultural factors on the image of disabled persons.

Part IV. Towards a Rights Based Perspective on Disability

This part looks at the rights of persons with disabilities under the broad categories of civil and political rights, and economic, social and cultural rights.

1. Civil and Political Rights

1.1 Right to Liberty and Security of the Person

The right of everyone to "...life, liberty and security of person..." is stated in the article 3 of the Universal Declaration of Human Rights, whereas article 9 forbids "...arbitrary arrest, detention or exile." These provisions are of great importance for mentally disabled persons who are subject to unlawful detention. Furthermore, article 8 of the [International Covenant on Civil and Political Rights](#) states "... except on such ground and in accordance with such procedures as are established by law..."

Article 4 of the [Declaration on the Rights of Mentally Retarded Persons](#) deals with the obligation to insure a normal family life to mentally disabled persons, and to make them remain in their family surrounding.

Article 9 of the [Declaration of the Rights of Mentally Retarded Persons](#) deals with the right to live with one's own family and to benefit from the same treatment as everyone else, except for special health requirements of persons with disabilities.

Articles 9 and 10 of the [International Covenant on Civil and Political Rights](#) develop the basic right to liberty, protection against arbitrary detention, and the right to expose the conditions of living in the penitentiary system.

Article 9 of the [Convention on the Rights of the Child](#) forbids separation between a child and his / her parents, except for what is in the best interest of the child. Even a disabled child should not be separated from his / her parents to go to a specialised establishment if it is not absolutely necessary. Article 20 concerns the family environment, which is supposed to be the best frame for liberty and security of the person, for disabled people as well as for anyone else and article 25 develops and completes article 20.

Article 5 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) speaks of the basic principles of right to liberty and security of the person at a regional level. Also of relevance are article 7 of the [American Convention on Human Rights](#) and article 6 of the [African Charter on Human and Peoples' Rights](#).

1.2 Right to Equal Protection Before the Law

Article 6 of the [Universal Declaration of Human Rights](#) proclaims the right of everyone to be recognised as a person before the law. It focuses on the legal position of the individual. *Everyone* includes disabled people even if it is not specifically stated. Article 7 recognises the right to equality before the law and to the equal protection of the law without discrimination.

The [International Covenant on Civil and Political Rights](#) speaks in article 16 of the rights of every person to recognition as a person before the law. Article 26 develops that statement stating that the law shall prohibit any discrimination and guarantee effective protection against discrimination. Even if disability is not expressly included in the grounds belonging to the article, it can be included under other status.

Article 24 of the [American Convention on Human Rights](#) states the right to equal protection. Article 14 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) deals with equality before the Convention, and the prohibition of any discrimination in the enjoyment of the rights and freedoms set forth in this Convention.

1.3 Right to Freedom of Assembly

All persons have the right to freedom of peaceful assembly and association, and no one can be compelled to belong to an association.

Another aspect of this right constitutes a right to take part in the government of one's country, directly or through freely chosen representatives.

Article 20 of the [Universal Declaration of Human Rights](#) provides the right, clearly and basically. It is the reference article that is less controversial. It uses some precise words and expressions, without provisions.

Article 21 of the [International Covenant on Civil and Political Rights](#) deals with the right of peaceful assembly. It introduces some provisions due to the necessity to protect a democratic system, the interest of national security or public safety, public order, health, morals, and protection of the rights or freedom of others. Article 22 of the text reiterates the right to freedom of association, and provides for the right to join trade unions. It emphasizes the role of trade unions in the defence of the workers and the prevention of all kinds of disabilities due to working conditions.

Article 15 of the [Convention on the Rights of the Child](#) provides that States shall assure the right to express their views freely and in all matters affecting the disabled, especially disabled children. Their views should be given due weight, in accordance with their maturity, in cases of mental disability. Article 15 recognises their right of assembly and association. No restrictions are allowed, except as imposed by law.

Article 11 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) provides everyone the right of peaceful assembly and association, and to protect his / her interests. However, it does not explicitly tackle the right to take part in the Government of his / her country, or the right of equal access to public service.

Article 15 of the [American Convention on Human Rights](#) states the right of peaceful assembly and forbids any restrictions as far as it is not imposed in conformity with the law. Article 16 states the right of association for any purpose, and with the exception of legal restrictions necessary in democratic societies.

Article 11 of the [African Charter on Human and Peoples' Rights](#) provides for the same right of assembly, but it introduces in the list of restrictions one provision about the interest of ethics which is an important first step towards the recognition of the rights of persons with disabilities.

1.4 Right to be Free from Torture

Some deliberately inflicted forms of punishment and other such treatments are a major cause of disability. They belong to the kind of practices that are identified as serious violations of international law, including human rights. One can discern the following practices, which are serious violations: amputation as punishment, institutional abuse, forced sterilisation, castration and female circumcision, and blinding of detainees.

No religious tenet or any other cultural practice can justify or excuse such acts. They are contrary to basic human rights, and obviously to the right to equal individual worth and human dignity, as well as to the integrity of the body. Therefore, certain punishments, which are deliberately intended to disable the individual, are contrary to international human rights and humanitarian law.

The right is protected by the following instruments:

Article 5 of the [Universal Declaration of Human Rights](#) forbids torture and cruel, inhuman or degrading treatment or punishment. So does article 7 of the [International Covenant on Civil and Political Rights](#), which further forbids medical and scientific experiments against one's will. The [Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) is of great importance to determine what constitutes cruel or unusual treatment. Article 2 defines this as, "...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person." There is also the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which supplements article 3 (prohibition of torture) of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) by creating a Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which conducts on-site investigations to examine the treatment of persons deprived of their liberty. The prohibition of torture, cruel and inhuman and degrading treatment is also included in article 5 of the [American Convention on Human Rights](#), article 5 of the [African Charter on Human and Peoples' Rights](#), article 16 and 17 of the African Children's Charter, article 37 of the [Convention of the Rights of the Child](#).

Other articles are related to the prohibition of torture, cruel and degrading treatment: For example, article 4 of the [Universal Declaration of Human Rights](#) and article 8 of the [International Covenant on Civil and Political Rights](#) prohibit slavery, servitude and slave trade, and article 8 forbids forced or compulsory labour. Additional protocols to the American and European Human Rights conventions, as well as to the ICCPR, prohibit capital punishment (Protocol to the American Convention on Human Rights to Abolish the Death Penalty, O.A.S. Treaty Series No. 73 (1990), adopted on 8 June 1990, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, as Amended by Protocol No. 11, adopted on 28 April 1983, and [Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty](#), G.A. res. 44/128, annex, entered into force on 11 July 1991). All these texts relate to disability issues.

1.5 Right to Freedom of Expression

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media. It also includes the right to freedom of thought, conscience and religion. It deals also with freedom to change one's religion or belief and to engage in the teaching, practice, worship and observance, either in public or private, alone or in community. Disabled persons have the same right to freedom of expression as any other person.

Article 19 of the [Universal Declaration of Human Rights](#) provides for the liberty of opinion and expression, and consequently the liberty to hold opinions without any interference.

Article 19 of the [International Covenant on Civil and Political Rights](#) reiterated this statement. Article 20 sets out a limitation on freedom of speech. It asks States to forbid any kind of propaganda constituting an incitement to discrimination, hostility or violence. Disability is not included in the grounds of the article that prohibits *advocacy of national, racial or religious hatred*, but the prohibition of discrimination can be extended to this issue.

Rule 1 of The [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) provides that States "...should initiate and support information campaigns concerning persons with disabilities." It reiterates that persons with disabilities are citizens with the same rights and obligations as others. It justifies, consequently, measures to remove all obstacles to full participation. Rule 12 deals with freedom of religion and asks States to encourage measures for equal participation by persons with disabilities in the religious life of their communities. It also prohibits any kind of discrimination based on the physical aspect to become a priest or a monk in any religion.

Article 14 (1) of the [Convention on the Rights of the Child](#) states the right of the child to freedom of thought, conscience and religion. And furthermore, article 14 (2) deals with the rights and duties of the parents to provide directions to the child in the exercise of their rights and freedoms, in a manner consistent with the evolving capacities of the child.

Article 12 of the [American Convention on Human Rights](#) deals with the Freedom of Conscience and Religion. It states the same right as the [Universal Declaration of Human Rights](#) does, at a regional level. Limitations to the freedom to manifest one's religion and beliefs are not allowed, except for those that are prescribed by law in order to protect public safety, order, health or morals, or the rights of other people. A similar article is included in the European Convention on Human Rights (article 10), but with a longer list of possible limitations. The [African Charter on Human and Peoples' Rights](#) states in article 9 the right of every individual to receive information, and to express and disseminate his/her opinions within the law.

1.6 Freedom from Discrimination

Freedom from discrimination is one of the underlying principles of human rights, which are based on the equal worth and dignity of all human beings. It is included in all international and regional human rights conventions.

Article 1 of the [Universal Declaration of Human Rights](#) states that "...all human beings are born free and equal in dignity and rights." (emphasis added). Article 2 provides that "...everyone is entitled to all the rights and freedoms set forth in this Declaration, *without distinction of any kind...*". Article 7 states: "*All* are equal before the law and are entitled *without any discrimination* to *equal protection* of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such

discrimination" (emphasis added). Article 16 speaks of the equal right of men and women to marry. Article 23 (2) states that "...everyone, without any discrimination, has the right to equal pay for equal work." (emphasis added). Article 25 (1) is of particular importance for disabled women: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the even of *unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*" (emphasis added). Article 26 provides a right to education for all. And Article 27 provides a right to cultural life in the community for all.

Article 14 of the European Convention on Human Rights prohibits discrimination in the application of the articles of the Convention on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Article 1 of the [American Convention on Human Rights](#) lists the following grounds for discrimination which are prohibited: race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. In article 1 (2), it affirms that 'person' means every human being. Article 2 of the [African Human Rights Charter](#) includes the following which are prohibited: distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. Moreover, according to article 28, "Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance".

Article 2 of the [International Covenant on Economic, Social and Cultural Rights](#) and of the [International Covenant on Civil and Political Rights](#) include similar lists of prohibited grounds of discrimination as the regional instruments. Although none of these instruments mention disability specifically, it is implicitly included in "other status" in each of these conventions.

The [Convention on the Rights of the Child](#) is the only international human rights convention that expressly includes discrimination based on disability in its list included in its article 2 (1).

Other international instruments concern discrimination based on disability more specifically, for example in the field of employment:

The [Convention concerning Vocational Rehabilitation and Employment \(Disabled Persons\)](#) guarantees that disabled persons are not subjected to discrimination at work. Article 4 of the Convention states: "The vocational rehabilitation and employment policy shall be based on the principle of equal opportunity between disabled workers and workers generally (...) special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers."

The ILO also adopted the [Convention concerning Discrimination in Respect of Employment and Occupation](#), which deals with discrimination against persons with disabilities in employment. Article 1(1) of the Convention contains a definition of the term *discrimination*.

The [Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources](#) also contains a non-discrimination clause in article 1 (5). Another ILO agreement, which is legally binding, is the [Recommendation concerning Vocational Rehabilitation and Employment \(Disabled Persons\)](#). Paragraph 7 of this instrument provides that "...disabled persons should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment." Furthermore, paragraph 4 states that "...vocational rehabilitation measures should be made available to all categories of disabled persons."

Paragraph 2 of the [Declaration on the Rights of Disabled Persons](#) provides that persons with disabilities shall enjoy the right of the declaration related to employment "... without distinction or discrimination (...) either to the disabled person himself or herself or to his or her family." Paragraph 10 consists of a positive duty of a Member State to adopt necessary measures to protect disabled persons: "Disabled persons shall be protected against (...) all treatment of a discriminatory, abusive or degrading nature."

Moreover, the [Standard Rules for the Equalization of Opportunities for Persons with Disabilities](#) provides important guidance in the area of discrimination against disabled persons in employment. Rule 7 (1) provides that: "Laws and regulations in the employment field must not discriminate against persons with disabilities and must not raise obstacles to their employment."

Paragraph 63 of the [Vienna Declaration and Programme of Action](#) states that all human rights are universal and that "...every person is born equal and have the same right to (...) work (...) any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her human rights." The Declaration also refers to [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#).

1.7 Access to the Judicial System

It has often been argued that the right to legal assistance is the cornerstone for all other human rights. The right to legal assistance exists within the broader mandate of the right to a fair trial. The right to legal assistance is also grounded on broader principles of international human rights law. Even though there is no explicit provision in human rights treaties discussing access to courts as a principle of international human rights law, the concept has been found to be implicit in the statement that "all persons shall be equal before the courts and tribunals", found in all major human rights treaties.

Article 14, para. 3 (d) of the [ICCPR](#) states that all persons has the right

"to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him, in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it."

In addition to the treaties and the international criminal tribunals, the United Nations has been active in adopting detailed standards in the criminal area, primarily through the work of the United Nations Crime Prevention and Criminal Justice Program.

The most important documents with provisions relating to legal services for the poor are the following:

- [UN Basic Principles on the Role of Lawyers](#);
- [UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment](#);
- [UN Basic Principles for the Treatment of Prisoners](#);
- [UN Minimum Standards on the Administration of Juvenile Justice \(Beijing Rules\)](#).

Principle 3 of the [UN Basic Principles on the Role of Lawyers](#) provides that:

"Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources."

1.8 Participation in Political Life

Article 21 of the [Universal Declaration of Human Rights](#) provides that everyone has the right to take part in the Government of his country, either directly or indirectly, through freely chosen representatives. Periodic and genuine elections shall be open to every citizen of the country, with universal and equal suffrage. Voting stations shall be fully accessible to disabled people.

Article 25 of the [ICCPR](#) states that every citizen has the right without unreasonable restrictions to take part in the conduct of public affairs, and to vote and be elected at genuine periodic elections. It also requires equal access to public services in the country.

Article 23 of the [American Convention on Human Rights](#) states the right to participate in Government that belongs to every citizen of the country. Article 23 (2) deals with the law regulation of the exercise of this right, only on the basis of age, nationality, residence language, education, civil and mental capacity. Mentally disabled people cannot be legally denied the right to participate in the Government, following this Convention.

Article 13 of the [African Charter on Human and Peoples' Rights](#) states that every citizen shall have the right to participate freely in the Government of his country.

Article 16 of the European Convention on Human Rights protects the political activities of aliens.

1.9 Freedom of Religion

A right to freedom of religion is contained in the [Universal Declaration of Human Rights](#). Article 18 confers that everyone shall have the right to freedom of religion. This right includes freedom to change one's religion or belief, and freedom to manifest one's religion or belief. Article 9 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) confers the right to freedom of religion as well as article 12 of the [American Convention on Human Rights](#) and the [African Charter on Human and Peoples' Rights](#) which guarantees free practice of religion (article 8).

A right to religion is contained also in the [International Covenant on Civil and Political Rights](#) (article 18). This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 14 of the [Convention on the Rights of the Child](#) grants a right to freedom of religion for children. As in other conventions, freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedom of others.

Paragraph 48 of the [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#) states that every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life.

Rule 12 of The [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) provides that States must encourage measures for equal participation by persons with disabilities in the religious life of their communities.

Paragraph 136 of the [World Programme of Action concerning Disabled Persons](#) provides that States must ensure that persons with disabilities are able to fully participate in the religious life of the community.

1.10 Access to Information

The [Universal Declaration of Human Rights](#) states in article 19 that the right to freedom of expression includes the right to seek, receive and impart information. This right is one of the biggest issues that persons with disabilities have to face, because of frequent problems in accessing current information and the media.

Article 19 of the [International Covenant on Civil and Political Rights](#) adds that the exercise of this right carries with it special duties and responsibilities.

Article 13 of the [American Convention on Human Rights](#) deals with this right, and 13 (2) prohibits prior censorship and imposes liability. It forbids "...indirect methods or means such as the abuse of government or private controls over any equipment used in the dissemination of information." It emphasizes the prohibition to impede the communication and circulation of ideas and opinions. Consequently, it means that every person, even those with disabilities, shall have equal access to information.

Article 13 of the [Convention on the Rights of the Child](#) also includes this right, linked with the right to freedom of opinion and expression.

Principle 13 of the [Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care](#), which deals with the rights and conditions in mental health facilities recognizes the right of the patients to purchase or receive items for daily living, recreation and communication. It includes communication as the basic need of persons with disabilities.

The [Vienna Declaration and Programme of Action](#) calls on Governments to adopt or adjust legislation to assure access for disabled people. There shall be available services and programs for persons with disabilities, and provision of information adequate to needs.

Principle 11 of the [Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care](#) deals with the consent to treatment for mentally disabled people. The patient has to be informed of his / her treatment in order to give informed consent. Informed consent is a consent obtained freely,

without threats or improper inducements, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on:

- a. The diagnostic assessment;
- b. The purpose, method, likely duration and expected benefit of the proposed treatment;
- c. Alternative modes of treatment, including those less intrusive; and
- d. Possible pain or discomfort, risks and side-effects of the proposed treatment.

1.11 Right to Private and Family Life

Article 16 of the [Universal Declaration of Human Rights](#) states that men and women of full age are entitled to marry and found a family and are entitled to equal rights to marry. The family is proclaimed as the " natural and fundamental group unit of society". The state and the society shall protect it. The right to marry cannot be limited for reasons due to race, nationality or religion. Article 16 (2) states that spouses have to give their free and full consent to the marriage.

Article 23 of the [International Covenant on Civil and Political Rights](#) reaffirms these rights; furthermore, it assures the rights of the children in a case of dissolution.

Article 17 of the [American Convention on Human Rights](#) reiterates these statements, adding that the right is recognised if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of non-discrimination established in this Convention. Article 11 states the right to privacy for everyone and the right to have one's dignity recognised. Article 11 (2) prohibits any arbitrary or abusive interference with the private life, the home, or the correspondence.

Article 18 of the [African Charter on Human and Peoples' Rights](#) states the same right, saying in article 18 (3) that the State shall ensure the elimination of all discrimination against women or children.

Article 8 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) states the right to respect for private and family life. Article 8 (2) deals with the fact that a public authority cannot interfere with the exercise of the right, except in accordance with the law or the principles of a democratic society. Article 12 states the right to marry, which is universal and cannot be denied to any person because of one's disabilities.

Article 16 of the [Convention on the Rights of the Child](#) guarantees the same rights to children. In addition it addresses the child's right to family life, and contact with the family in articles 6, 8, 9, 10, 22, 37.

Principle 7 of the [Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care](#) underlines the role of community and culture, saying that every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.

1.12 Property Rights

The right to own and dispose of property which relates to all persons, including persons with disabilities is outlined in the following instruments:

A right to property is contained in the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#). Article 1 confers that "...every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

Article 21 of the [American Convention on Human Rights](#) confers that "...everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society."

Article 15 of the [African Charter on Human and Peoples' Rights](#) confers that "...the right to property shall be guaranteed. It may only be encroached upon in the interest of public or in the general interest of the community and in accordance with the provisions of appropriate law."

1.13 Freedom of movement

Everyone has the right to freedom of movement and residence within the borders of each State, the right to leave any country and to return to any country, and to seek and enjoy asylum from persecution in other countries.

The drafters of the [International Covenant on Civil and Political Rights](#) considerably watered down its provisions on this question because of opposition by many States. Article 12 restricts this right of movement, and consequently of residence, to persons "...lawfully within the territory of a State..." and introduces restrictions when "...provided by law, necessary to protect national security, public order, public health or morals on the rights and freedom of others."

The right to freedom of movement is also included in general terms in article 3 of the [Universal Declaration of Human Rights](#).

Article 10 of the [Convention on the Rights of the Child](#) states that a child or his / her parents, is allowed to enter or leave a state for the purpose of familial reunification. And it underlines, above all, the right to maintain on a regular basis, direct contacts with both parents who reside in different states.

1.14 Right to Seek Asylum

Article 14 of the [Universal Declaration of Human Rights](#) assures that everyone has the right to seek and enjoy asylum from persecution in any other country. Deportation for reason of disability cannot be accepted anywhere and from any country or Government. This text however, does not confer a right to be granted asylum.

Article 22 (7) of the [American Convention on Human Rights](#) provides for the right to seek asylum as well as to be granted asylum "in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes".

The [Convention Relating to the Status of Refugees](#) provides, in article 33 (1), for the right of non-refoulement.

Article 23 of the [Vienna Declaration and Programme of Action](#) reaffirms that "...everyone is entitled to the right to seek and to enjoy in other countries asylum from persecution , as well as the right to return to one's own country." Human rights violations, particularly during armed conflicts, are a major cause of disabilities.

2. Economic, Social and Cultural Rights

2.1 Right to Work

2.1.1 General provisions on the right to work

Despite the statistical existence of unemployment in every country in the world, work continues to be an essential part of the human condition. For many, it represents the primary source of income upon which their physical survival depends. Not only is it crucial to the enjoyment of *survival rights* such as food, clothing, or housing, it affects the level of satisfaction of many other human rights, such as the rights to education, culture and health.

Many persons with disabilities are denied employment or given only menial or poorly remunerated jobs. This is true even though it can be demonstrated that with proper assessment, training and placement, the great majority of disabled persons can perform a large range of tasks in accordance with the prevailing work norms. In times of unemployment and economic distress, disabled persons are usually the first to be discharged and the last to be hired. Therefore, measures are needed to ensure that disabled persons have equal opportunities for productive and gainful employment in the open labour market.

Article 6 (1) of the [International Covenant on Economic, Social and Cultural Rights](#) provides: "State Parties to the present Convention recognize the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."

The right to work is also contained in regional instruments. Article 1 of the [European Social Charter](#) provides that "...everyone shall have the opportunity to earn his living in an occupation freely entered upon."

Article 6 of the [Additional Protocol to the American Convention on Human Rights](#) in the Area of Economic, Social, and Cultural Rights states that "...everyone has the right to work."

Article 15 of the [African Charter on Human and Peoples' Rights](#) provides for a basic "...right to work ... for everybody."

Concerning persons with disabilities specifically, the [Declaration on the Rights of Mentally Retarded Persons](#) in Paragraph 3 states that persons with disabilities have "...the right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities."

Similarly, Paragraph 7 of the [Declaration on the Rights of Disabled Persons](#) states that persons with disabilities have the "...right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation...".

Rule 7 of The [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#), describes under the heading Employment that the Member States "...should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment." This statement clarifies that people with disabilities have a fundamental right to work. Rule 7 also emphasizes that "...in both rural and urban areas, they [persons with disabilities] must have equal opportunities for productive and gainful employment in the labour market."

2.1.2 Right to Develop Work Skills

The development of work skills is important for persons with disabilities in that the improvement of work skills enhances independence and builds self-esteem. Needless to say, the development of skills through vocational training increases the opportunities for persons with disabilities in the world of work.

Paragraph 132 of the [World Programme of Action concerning Disabled Persons](#) consists of a list of services that should be provided by Governments to ensure that disabled persons have equal opportunities for productive and gainful employment. Such services should include, vocational assessment and guidance, vocational training, placements and follow-up.

The [Tallinn Guidelines for Action on Human Resource Development in the Field of Disability](#) states in paragraph 33: " Disabled persons have the right to be trained for and to work on equal terms in the regular labour force."

Paragraph 6 of the [Declaration on the Rights of Disabled Persons](#) states that "...disabled persons have the right to (...) education, vocational training and rehabilitation, (...) which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration."

According to Article 1 (5) of the [Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources](#) (ILO Convention No. 142) States are to implement programmes and policies to "...encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work...".

More specifically, the Convention provides that States shall "...adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training " (article 1). Article 3 (1) specifically refers to disabled persons: "Each Member shall gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to (...) handicapped and disabled persons."

The [Recommendation concerning Vocational Rehabilitation of the Disabled](#) (ILO Recommendation No. 99) outlines various principles and methods of vocational guidance, vocational training and placement of disabled persons. Paragraph 2 provides that vocational rehabilitation services should be made available to all disabled persons. Paragraph 3 states that "...all necessary and practicable measures should be taken to establish or develop specialized vocational guidance service for disabled persons requiring aid in choosing or changing their occupations." Paragraph 5 states that the principles, measures and methods of vocational training generally applied in the training of non-disabled persons should apply to disabled persons in so far as medical and educational conditions permit.

The [Recommendation concerning Vocational Rehabilitation and Employment \(Disabled Persons\)](#) aims to encourage Members to improve vocational rehabilitation and employment assistance for disabled persons. Article 15 and articles 31 to 37 emphasize the important role of employers' and workers' organizations and the community itself in vocational rehabilitation and employment assistance. Article 20 provides that particular efforts should be made to ensure that vocational rehabilitation services are provided for disabled persons in rural areas and remote communities at the same level and on the same terms as those provided for urban areas. Part VII concerns the contribution of disabled persons and their organisations to the development of vocational rehabilitation services. Article 38 outlines suggested measures to be taken to involve disabled persons and their organizations in the development of vocational rehabilitation services.

Rule 19 (3) of [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) provides states that "States should develop training programmes in consultation with organisations of persons with disabilities, and persons with disabilities should be involved as teachers, instructors or advisers in staff training programmes."

Paragraph 4 (1) of the [Recommendation concerning Vocational Guidance and Vocational Training in the Development of Human Resources](#) (ILO Recommendation No. 150) provides that "Members should adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services." Paragraph 5 (1) provides that Member States should establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the formal education system or outside. Paragraph 5 (2) ensures that all have access to vocational guidance and vocational training. Paragraph 7 (1) provides that Members should aim to provide appropriate programmes for all handicapped and disabled persons. Particular attention is paid to persons with disabilities in Chapter VII: "Whenever they can benefit by it, disabled persons should have access to vocational guidance and vocational training programmes provided for the general population. Otherwise, specially adjusted programmes should be provided."

Article 9, 10 and 15 of the [European Social Charter](#) enunciate a right to vocational guidance and training. Article 9 provides that States should "...provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity...". This assistance

should be available free of charge, both to young persons, including school children, and to adults. Article 10 states: "... the Contracting Parties undertake: (...) To provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organizations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude." Article 15 outlines the right of persons with physical or mental disabilities to vocational training, rehabilitation and social resettlement.

2.1.3 Equitable Recruitment Measures and Policies

Fair employment policies must include the recruitment of persons with disabilities. The recruitment of persons with disabilities necessitates the possibility for persons with disabilities to work at a level corresponding to their abilities, and attention to their (re) integration in to the workforce. This should involve measures to ensure access to employment by direct recruitment, and to ensure higher numbers of workers with disabilities in the free labour market.

For recruitment policies to be fair for persons with disabilities, they must also positively encourage their employment. In fact, affirmative action policies are necessary measures in order to ensure equal opportunities for disabled persons to compete on an equal basis with non-disabled persons.

The definition of discrimination in article 1 of the [Convention concerning Discrimination in Respect of Employment and Occupation](#) (ILO Convention No. 111) does not specifically include a distinction based on the disability of a person. However, under article 1 (2), the term discrimination includes "...such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations..." Thus, discrimination on the ground of disability can be within the provisions of the Convention, if so determined by the Member.

Article 5 of the Convention emphasizes the taking of special measures for the protection of disabled persons in employment: "Any member may after consultation with representative employers' and workers' organizations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as (...) disablement (...), are generally recognized to require special protection or assistance, shall not be deemed to be discrimination."

The [Convention Concerning Vocational Rehabilitation and Employment \(Disabled Persons\)](#) (ILO Convention No. 159) outlines the rights of persons with disabilities to appropriate training and employment, not only in specialized institutions and workshops, but alongside non-disabled people in mainstream training centers and in open labour markets (article 3). The Convention stipulates that employers' and workers' organizations, together with Governments and organizations of disabled persons share responsibility for helping disabled persons to realise their rights. Article 7 states: "The competent authorities shall take measures with a view to providing and evaluating other related services to enable disabled persons to secure, retain and advance in employment..." Article 4 clarifies that positive action undertaken to equalize opportunities for disabled workers cannot be regarded as discrimination against non-disabled workers. Articles 2 and 5 provide that organizations of employers and workers shall be consulted on the implementation of national policies on vocational rehabilitation and employment of disabled persons. Article 8 states that measures shall be taken to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities.

The [Convention Concerning Vocational Rehabilitation and Employment \(Disabled Persons\)](#) contains a description of recruitment policies.

Also, the Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons) describes a duty for States to support full access to the open labour market through recruitment policies (paragraph 11 (a)). It also recognizes that this is not always possible and includes: "Appropriate government support for the establishment of various types of sheltered employment for disabled persons for whom access to open employment is not practicable" (paragraph 11 (b)).

Article 15 (2) of the European Social Charter provides that State Parties must provide "...adequate measures for the placing of disabled persons in employment, such as specialised placing service, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment."

The Recommendation concerning Vocational Rehabilitation of the Disabled outlines various methods of widening employment opportunities and sheltered employment for persons with disabilities. Paragraph 28 states that "...measures should be taken, in close co-operation with employers' and workers' organisations, to promote maximum opportunities for disabled persons to secure and retain suitable employment." Paragraph 29 states that measures should be based on the following principles: "Disabled persons should be afforded an equal opportunity with the non-disabled to perform work for which they are qualified; disabled persons should have the full opportunity to accept suitable work with employers of their own choice; and emphasis should be placed on the abilities and work capacities of disabled persons and not of their disabilities." Paragraph 30 specifies that the measures to be taken include research designed to analyse and demonstrate the working capacity of disabled persons and widespread and sustained publicity. Paragraphs 32 and 35 deal especially with sheltered employment.

Paragraph 35 of the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability states that the opportunities of employment "...can be promoted, primarily, by measures relating to employment and salary standards that apply to all workers and secondarily by measures offering special support and incentives. In addition to formal employment, opportunities should be broadened to include self-employment, co-operatives and other group income-generating schemes." The paragraph continues: "Where special national employment drives have been launched for youth and unemployed persons, disabled persons should be included. Disabled persons should be actively recruited, and when a disabled candidate and non-disabled candidate are equally qualified, the disabled candidate should be chosen."

The [World Programme of Action concerning Disabled Persons](#) states in paragraph 128 how Member States should "...adopt a policy and supporting structure of services to ensure that disabled persons in both urban and rural areas have equal opportunities for productive and gainful employment in the open labour market." Paragraph 129 consists of proposed methods in which States can support the integration of disabled persons into open employment. Paragraph 131 concerns co-operation at the central and local level between Government and employers' and workers' organisations "in order to develop a joint strategy and joint action with a view to ensuring more and better employment opportunities for disabled persons." And "...[w]hen acting as employers, central and local Government should promote employment of disabled persons in the public sector. Laws and regulations should not raise obstacles to the employment of disabled persons" (paragraph 133).

The [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) ask States and other organisations to support the aim of ensuring such recruitment policies. Paragraph 7(2) provides that States should actively support the integration of persons with disabilities into open employment and lists ways in which States could fulfil this aim. Rule 7 (6) proclaims: "States, workers' organisations and employers should co-operate to ensure equitable recruitment and promotion policies..." Rule 7 (7) summarizes: "The aims should always be for persons with disabilities to obtain employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be assessed in terms of their relevance and sufficiency..." Rule 7 (8) adds that "...measures should be taken to include persons with disabilities in training and employment programmes in the private and informal sectors."

2.1.4 Fair and Equitable Employment Conditions

To realise equitable rights for persons with disabilities, especially in the area of work, it is necessary to enforce international norms dealing with equitable employment conditions and fair wages. Equitable employment conditions include special measures to ensure that persons with disabilities can perform their work effectively and safely in appropriate conditions.

Paragraph 7 of the Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons) provides that "...disabled persons should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment...". Paragraph 10 proclaims that "...measures should be taken to promote employment opportunities for disabled persons, which conform to the employment and salary standards applicable to workers generally." Paragraph 11 provides a wide range of possible measures, which should be adopted.

The [International Covenant on Economic, Social and Cultural Rights](#), states in article 7 that States recognise the right of everyone to the enjoyment of just and favourable work conditions. This includes four main components: remuneration; safe and healthy working conditions; equal opportunity to be promoted to an appropriate higher level; rest, leisure and reasonable limitation of working hours, as well as periodic holidays with pay and remuneration for public holidays.

Protection of conditions of work is also provided by the European Social Charter in articles 2 and 3, and in the Protocol of San Salvador, article 7.

The Recommendation Concerning Vocational Rehabilitation of the Disabled states in Paragraph 25 that disabled persons should not be discriminated against in respect of wages and other conditions of employment if their work is equal to that of non-disabled persons.

The Standard Rules for the Equalization of Opportunities for Persons with Disabilities provide in Rule 7 several different measures, which should be adopted to realise and ensure fair and equitable employment conditions. Rule 7(3) provides that States' action programmes should include, "Measures to design and adapt workplace and work premises in such a way that they become accessible to persons with different disabilities; support for the use of new technologies and the development and production of assistant devices, tools and equipment for persons with disabilities to enable them to gain and maintain employment; and provisions of appropriate training and placement and ongoing support such as personal assistance and interpreter services."

The World Programme of Action concerning Disabled Persons links recruitment policies with "measures to improve the work environment" (paragraph 131). It also describes in several paragraphs measures which should be adopted to ensure work protection and avoid work-related injury / illnesses. Paragraph 95 of the Programme states that "...the technology to prevent and control most disablement is available and improving but is not always fully utilised. Member States should take appropriate measures for the prevention of impairment and disability and ensure the dissemination of relevant knowledge and technology."

The report Disability prevention and rehabilitation (Outcome of the WHO Expert Committee on Disability Prevention and Rehabilitation, WHO, Geneva 1981) gives an overview of rehabilitation services, rehabilitation technology and the problems which are combined with such a task, e.g. organisation, manpower or administrative problems.

2.2 Right to Education

Persons with disabilities are often excluded from mainstream education. As basic education is essential for employment in many spheres and a prerequisite to economic independence, the right to education is of particular importance for disabled persons. Education is also an important part of the rehabilitation process, as persons with disabilities develop their capacities to become more independent and integrated into mainstream society.

The most important step for the integration persons with disabilities into mainstream life is through education. A legal provision stating the right for everyone to receive education has little significance if no positive measures are taken to ensure that children, youth and adults with different types and levels of disabilities have access to quality education at the primary, secondary and tertiary levels. It is important that no obstacles - legal, physical or psychological - should exist to hinder the access of disabled persons to education, that special education be provided when necessary, and that education should as far as possible be given in integrated settings. It is necessary to consider the special educational needs of disabled persons and the socio-political realities of each country.

It is also important to point out the importance of education not only as part of rehabilitation, but also as part of prevention. A high percentage of disability is the direct result of lack of information, poverty and low health standards, and can therefore be prevented by means of adequate education.

2.2.1 Access to Education

Access to education is the most fundamental aspect of the right to education. It is therefore important to ensure that all legal and technical obstacles to it are removed and that positive measures are taken to facilitate access for all persons with disabilities. Several international instruments call for equal access to education for disabled persons. General statements can be found in the Convention against Discrimination in Education (article 1), in The Salamanca Statement (paragraph 2), in the Sundberg Declaration (article 1) and in The Copenhagen Declaration and Programme of Action in Commitment 6. The purpose of this commitment to universal access to education is to eradicate poverty, promote full and productive employment and foster social integration.

The Convention Against Discrimination in Education confers a whole range of duties on States in order to eliminate and prevent discrimination in education. Although the notion of disability is not explicitly mentioned in Article 1 as one of the criteria according to which distinction is prohibited, disability can be taken as one factor determining the social origin of a particular person, and distinction based on social origin is expressly prohibited by Article 1. Article 3 obliges States Parties to eliminate and prevent discrimination in education. Article 4 requires that States Parties promote equality of opportunities in education.

Some international instruments provide more specific guidelines and areas of concern in relation to access to education. The Universal Declaration of Human Rights (article 26) calls for free and compulsory education "...at least in the elementary and fundamental stages..." and article 13 of the International Covenant on Economic, Social and Cultural Rights adds that "...secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by progressive introduction of free education." The Convention on the Rights of the Child (article 23) also stresses the need to provide services "...free of charge, whenever possible, and taking into account the financial resources of the parents or others caring for the child." Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights confers a general right to education including free and compulsory primary education; Article 13 (3) (e) requires States Parties to provide for programmes of special education as adapted to the special needs of persons with disabilities. Article 17 of the African Charter on Human and Peoples' Rights confers that every individual shall have the right to education.

Rule 6 of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities emphasizes that States should give special attention to certain vulnerable groups of persons with disabilities such as very young children, girls, women and persons with the most serious disabilities.

Article 3 (1) of the World Declaration on Education for all - Meeting Basic Learning Needs outlines the principle that basic education should be provided to all children, youth and adults. In particular, article 3 (5) provides that the learning needs of the disabled demand special attention and that steps need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system.

Special attention to different groups of persons with disabilities implies that equal opportunities should be made available to them at all levels of education: pre-school, primary and secondary schools, university and adult education programmes. This is one of the concerns expressed by the World Programme of Action concerning Disabled Persons. The World Programme of Action also calls for special attention to persons with disabilities in rural areas and draws attention to problems caused by traveling distances.

The right to education relating to children is emphasized by the International Conference on Children's Rights in Education (Convened by the Danish Ministry of Education, Copenhagen (Denmark) 26-30 April 1998), which was based on the Convention on the Rights of the Child. Herein the conference elaborated the following issues especially concerning disabled children:

- Education is a right, not a privilege;
- The child's participation and full development must be supported in all educational goals, setting and practices;
- Existing identifiable barriers to implementation of the child's rights to education can be overcome;
- Education must respect individual, contextual and cultural differences.

The Sundberg Declaration is concerned with the education of persons with disabilities Article 1 provides: "Every disabled person must be able to exercise his fundamental right to have full access to education, training, culture and information." Article 2 provides that Governments and national and international organizations must take effective action to ensure the fullest possible participation by disabled persons. Article 5 provides that persons with disabilities shall have access to educational programmes adapted to their special needs. Pursuant to article 11, disabled persons must be provided with the facilities and equipment necessary for their education and training.

2.2.2 Quality of Education

The quality of education should be equal to that of persons without disabilities and should meet the special needs persons with disabilities. Similarly, the quality of education should be the same irrespective of gender, age or degree of disability.

International instruments stress the need to guarantee high standards for education of all: The Universal Declaration on Human Rights (article 26 (2)) and the International Covenant on Economic, Social and Cultural Rights (article 13 (1)) state that "Education shall be directed to the full development of the human personality." In the same spirit, the Sundberg Declaration states that education has to promote the self-fulfillment of all disabled persons and their full participation in social life. The Convention on the Rights of the Child (article 23) provides that "...the disabled child has effective access and receives education (...) in a manner conducive to the child's fullest possible social integration and individual development, including his or her cultural and spiritual development." Article 6 of the Convention Against Discrimination in Education lays down the purposes of education, which include the full development of the human personality and the strengthening of respect for human rights and the promotion of understanding, tolerance and friendship among all nations.

The Salamanca Statement asks Governments to "...give the highest policy and budgetary priority to improve their education systems..." (point 3). The content of education should be geared to high standards and the needs of individuals with a view to enabling them to participate fully in development.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Rule 6) states that "...[t]he quality of such education should reflect the same standards as general education and should be closely linked to it."

World Programme of Action concerning Disabled Persons, Paragraph 122, states that educational services for disabled children and adults should be comprehensive, individualized - leading to specific curriculum goals that are regularly reviewed and revised - and offering a range of choice commensurate with the range of special needs in any given community.

Paragraph 2 of the Declaration on the Rights of Mentally Retarded Persons confers the right of mentally retarded persons to receive such education as will enable them to develop their ability and maximum potential.

Paragraph 6 of the Declaration on the Rights of Disabled Persons states that disabled persons have the right to education, which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.

The Tallinn Guidelines for Action on Human Resources Development in the Field of Disability, in paragraphs 27 and 28 provide that the content and quality of education should be such as to prepare the disabled student for independent living as well as for the transition into the economic mainstream.

2.2.3 Integrated Education

Integrated education means that persons with disabilities have the right to be educated in the same schools and follow the same curriculum as non-disabled students. Integrated education can include special education if that education is given in special classes in regular schools or in the form of support teaching in regular classes and resource rooms. Integrated education is the key to equal educational opportunities for persons with disabilities. It maximizes disabled persons opportunities for participation in society and facilitates the transition from school to work.

Many international instruments focus on the integrating function of education: according to the Sundberg Declaration (article 6), "Education, training, culture and information programmes must be aimed at integrating disabled persons into the ordinary working and living environment." The Convention on the Rights of the Child also supports the inclusion of disabled children in mainstream educational and social environments.

The World Programme of Action concerning Disabled Persons (paragraph 120) calls for States to adopt policies "...which recognize the rights of disabled persons to equal educational opportunities with others." More explicitly, it states that "...the education of disabled persons should as far as possible take place in the general school system."

The Salamanca Statement on special needs education calls for inclusion to be the norm in the education of all disabled children. According to the Statement and the Framework of Action, all children, regardless of their physical, intellectual, social, emotional or other conditions should be accommodated in ordinary

schools. The framework of action adds that "...regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all. Moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system."

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities also support inclusive education. Rule 6 provides that "States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. The rule also recognizes that the education of persons with disabilities is an integral part of the educational system." This implies that "...general educational authorities are responsible for the education for persons with disabilities in integrated settings..." and that "...education for persons with disabilities should form an integral part of national education planning, curriculum development and school organisation."

The United Nations Children's Fund has estimated that 90 percent of disabled children can join regular education programmes if a limited number of prerequisites are complied with. Regular schools are expected to educate all children with a slight disability who require little support, but it is preferable if all disabled children can get access to the general school system. This of course requires special measures in order to meet the needs of disabled students.

First of all, as pointed out in The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (rule 6), it is necessary that States should have a clear policy understood and accepted at the school level and by the wider community. These policies and financial arrangements should encourage and facilitate the development of inclusive schools, and the removal of barriers that impede movement from special to regular schools. Educational policies should take full account of individual differences and situations and special attention should be given to the needs of children and youth with severe or multiple disabilities.

Second, according to The Salamanca Statement and its Framework of Action, it is necessary to make changes at the level of school management. Local administrators and heads of schools should be given the necessary authority and adequate training to play a major role. They should be invited to develop more flexible management procedures, to re-deploy instructional resources, to diversify learning options, to mobilize child-to-child help, to offer support to pupils experiencing difficulties and to develop close relations with parents and community. School heads should have the primary responsibility for promoting positive attitudes throughout the school community and arranging for effective co-operation and teamwork between teachers and support staff.

International instruments also stress the need for curriculum flexibility, addition and adaptation. Curricula should be adapted to children's needs following the principle that all children should be provided with the same education adapted to suit different individual needs.

Support services are needed to enable disabled children to receive the same education as non-disabled children in mainstream schools. Facilities and equipment necessary to meet the needs of disabled pupils are described in international instruments. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities mention the provision of interpreter services. The Salamanca Statement and its Framework of Action indicate the need for special materials and support teachers. There should be support programmes within the school and, where necessary, provision of assistance from specialist teachers and external support staff. Appropriate and affordable technology should be used when necessary to enhance success in the school curriculum and to aid communication, mobility and learning. To facilitate the provision of support services, training institutions and special schools can be useful. They can provide access to specific resources that are not provided in regular classrooms. The Sundberg Declaration (article 11), concerned by the accessibility to the necessary equipment, points out the importance to enable developing countries manufacture such equipment.

2.2.4 Special Education

Not all persons with disabilities can follow education in mainstream schools, and need, therefore, a special form of education. This special education can be provided for in boarding special schools or day special schools and divided in different categories according to the specific needs of disabled persons with different impairments. Special education should receive at least the same level of educational resources as education for students without disabilities, and a common administrative structure should be organized.

The purpose of special education is to allow "...all persons with handicaps, especially those with communication problems..." to have access to educational programmes adapted to their specific needs "...so as to put the maximum of their capacity at the service of the society" (article 5 of the Sundberg Declaration). However, special education should only be directed to students with severe or multiple disabilities, and should be aimed at preparing them for education in the general school system by integrating special education services into mainstream education (rule 6 (8) of The Standard Rules of Equalization of Opportunities for Persons with Disabilities).

According to The Standard Rules of Equalization of Opportunities for Persons with Disabilities, Rule 6 (9) states that special education might be adequate especially for the deaf and / or blind people because of their special communication needs. This education could be provided in special schools, or special classes in regular schools. In any case, special education should not prevent them from following the general school curriculum, although it is important that at an early stage attention should be given on instruction "...that will result in effective communication skills."

Paragraph of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty guarantees that every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

2.2.5 Teacher Training

Teacher training is especially necessary to enable disabled children and youth to fully enjoy the advantages of the mainstream educational system. The Salamanca Statement asks Governments to ensure that teacher education programmes address the provision of special needs education in inclusive schools. The Sundberg Declaration (article 9) states that educators and other professionals responsible for educational programmes must be qualified to deal with the specific situations and needs of disabled persons. "Their training must, consequently, take account of this requirement and be regularly brought up to date." Expressing the same concern, The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Rule 6 (6) (c)) call States to provide ongoing teacher training and support teachers to ensure that the education of persons with disabilities is an integral part of the educational system.

Also, the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability in paragraph 29 states that general teacher-training curricula should include a course of study in skills for teaching disabled children and young persons in regular schools. Paragraph 30 requires Governments to develop national plans for training and employing an adequate number of personnel including persons with disabilities.

Pre-service and in-service training programmes should provide all students and teachers an orientation on disability. The knowledge and skills required include: assessing special need; adapting curriculum content; utilising assistant technology; individualising teaching procedures, etc., always keeping in mind that the priority is to meet pupils' needs. Specialised training in special needs education should encompass all types of disabilities, prior to further specialisation in one or more disability-specific areas.

Universities have a major role to play as regards research, evaluation, preparation of teacher trainers, and designing training programmes and materials. Written materials should be prepared and seminars organised for local administrators, supervisors, head teachers and senior teachers to develop their capacity to provide leadership in this area and to support and train less-experienced teaching staff. Co-operation should also be established between teachers, specialists and parents. Disabled persons should be involved in research and training roles. It is also important that education systems recruit education personnel who have disabilities to provide students with disabilities with examples of disability empowerment.

2.2.6 Vocational Training

Laws are also needed to assure equal access for persons with disabilities to vocational training. The transition from school to work is most successful when it is already incorporated in the education programme. In that sense, the right to education can be seen as a corollary to the right to employment.

The norms and standards on vocational training in relation to the employment of persons with disabilities are included above: 2.1.2 Right to Develop Work Skills. Specific instruments in this area are the Convention

Concerning Vocational Rehabilitation and Employment (Disabled Persons), the Recommendation concerning Vocational Guidance and Vocational Training in the Development of Human Resources.

2.3 The Right to Health

Legislation should be aimed at ensuring the effective exercise of the right to health, without any discrimination. All persons should have security in health matters, and the availability of necessary help without financial barriers.

Governments within their national health care system should give priority and address the special needs of the disabled. Responsibility must be recognized at all levels of policy-making so that priorities in overall national development take into account the need and strengthen those aspects of life that are a prerequisite to health. Before launching or reforming their national health care system Governments should determine what types of health care financing to utilize in order to increase the resources allocated to health.

There should be public and private financing. The national health care system should encourage the participation of public agencies and private and non-governmental organizations involved in the sector in planning and monitoring its execution and access.

A primary health care system should provide a wide-range of curative, rehabilitative and other support services to meet the basic health needs of the population and give special attention to vulnerable groups such as the disabled.

Article 25 of the Universal Declaration of Human Rights states that each person has "...the right to security in the event of (...) sickness...". Article 10 (f) of the Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social, and Cultural Rights urges States to satisfy the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

Article 18 (4) of the African Charter on Human and People's Rights states that the disabled should have the right to special measures of protection in keeping with their physical needs.

Article 13 of the European Social Charter urges States to ensure that any person who is without adequate resources and who is unable to secure such resources be granted adequate assistance and the care necessary in the case of sickness.

Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and that provides for States' obligation to create conditions which will assure to all medical service and attention in the event of sickness.

Article 23 (3) of the Convention on the Rights of the Child states that whenever possible, the disabled child should be provided health care services free of charge.

Article 7 of the Convention concerning Employment Promotion and Protection against Unemployment urges States to secure persons the provision of benefit in respect of a condition requiring medical care of a preventive or curative nature. According to Article 10 the benefit shall include at least: (a) general practitioner care:

- a. Specialist care at hospitals;
- b. The necessary pharmaceutical supplies and
- c. Hospitalisation.

Article 13 urges States to secure persons the provision of sickness benefit. According to Article 16 sickness benefits shall be a periodical payment.

Article 5 (4) (g) of the Convention concerning Employment Promotion and Protection against Unemployment encourages States to ensure the provision of medical care to persons in receipt of unemployment benefit and their dependants. Article 23 notes that a State whose legislation provides for the right to medical care and makes it directly or indirectly conditional upon occupational activity shall endeavour to ensure, under

prescribed conditions, the provision of medical care to persons in receipt of unemployment benefit and to their dependants.

Article 7 of the Convention concerning Medical Care and Sickness Benefits states that the contingencies covered by the Convention should include:

- a. Need for medical care of a curative and preventive nature and
- b. Incapacity for work resulting from sickness and involving suspension of earnings, as defined by national legislation.

Article 8 states that medical care shall comprise at least:

- a. General practitioner care;
- b. Specialist care at hospitals;
- c. The necessary pharmaceutical supplies;
- d. Hospitalisation and
- e. Medical rehabilitation.

Article 18 states that sickness benefits are in periodical benefits. Sickness means any morbid condition, whatever its cause. Article 22 and 23 set forth that a periodical payment shall be such as to attain at least 60 percent of the total previous earnings of the beneficiary or 60 percent of the total wages of an ordinary adult male labourer. Article 29 states that the claimant shall have the right of appeal in the case of refusal of benefit or complaint as to its quality or quantity.

Paragraph I of the Declaration of Alma-Ata provides that health, which is a state of complete physical, mental and social well-being, is a fundamental human right. Paragraph II refers to the existing "...gross inequality in the health status..." of persons both between developed and developing countries and within developed countries. Article V states that Governments are responsible for the health of their people which can be attained by the provision of adequate health and social measures. The main social target is the attainment of all peoples a level of health that will permit them to lead a socially and economically productive life. Article VII (6) states that those in need should have priority in health care and article VIII urges Governments to formulate national policies, strategies and plans of action to launch and sustain primary health care as part of a comprehensive national health system and in co-ordination with other sectors. The Declaration is important for disabled persons as the promotion of primary health care will result in the prevention of disabilities and the improvement of rehabilitative services for disabled persons.

Article 10 (d) of the Declaration on Social Progress and Development states that social progress and development should aim at the achievement of the highest standards of health and the provision of health protection for the entire population. In addition, article 19 notes that free health services, adequate preventive and curative facilities, and welfare medical services are the means to achieve the above goals.

Paragraph 118 of the World Programme of Action concerning Disabled Persons encourages the establishment and development of a public system of social care and health protection. Paragraph 96 urges States to co-ordinate programmes for prevention of disability which include community-based primary health care systems that reach all segments of the population, and for public health activities that will assist people in attaining lifestyles that will provide the maximum defense against the causes of impairment.

2.4 Right to Social Security and Social Services

2.4.1 Right to Social Security

The social security system of a State is the primary vehicle in administering economic benefits. Social insurance programs such as worker's compensation, disability insurance, and unemployment insurance are intended to provide a social safety net for the disabled who are unable to meet their needs. Public funding should be available to cover the extra cost for specially designed housing, transport, medical and health care, food and other amenities to live a normal life of work and recreation, for the disabled.

Social security and insurance systems should not discriminate against persons with disabilities, but instead provide services dealing with the special needs of persons with disabilities, especially in the labour market in order to encourage a policy of equitable employment.

Article 9 (1) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights confers that "...everyone shall have the right to social security protecting him from the consequences (...) of disability, which prevents him, physically or mentally, from securing the means for a dignified and decent existence".

Article 9 of the International Covenant on Economic, Social and Cultural Rights states that everyone has a right to social security, including social insurance.

Article 26 (1) of the Convention on the Rights of the Child recognizes a child's right to social insurance.

Chapter II, General principles, paragraph 1, of The Vancouver Declaration on Human Settlements states that the improvement of the quality of the life of humans begins with the satisfaction of the basic needs, which includes social security without discrimination.

Paragraph 118 of the World Programme of Action concerning Disabled Persons states that where social security exists for the general population, it should not exclude or discriminate against disabled persons. The same statement is included in Rule 8 (2) of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

Article 6 of the Convention concerning Employment Promotion and Protection against Unemployment urges States to ensure the equality of treatment for all persons in the disbursement of social security benefits, without discrimination on the basis of disability. The preceding should not prevent the adoption of special measures to meet the specific needs of categories of persons who have particular problems in the labour market, in particular disadvantaged groups.

Paragraph 29, Commitment 2 (d) of The Copenhagen Declaration and Programme of Action recommends the implementation of policies to ensure that all people have adequate economic and social protection during disability.

Paragraph 23 of the Recommendation concerning Vocational Rehabilitation of the Disabled states that "...disabled persons should be enabled to make use of all rehabilitation services without losing any social security benefits which are unrelated to their participation in these services."

Paragraph 7 of the Declaration on the Rights of Disabled Persons states that disabled persons have the right to economic and social security.

2.4.2 Social Security and Insurance related to Employment

There should be a strong commitment to enact legislation that equalizes employment opportunities for persons with disabilities. Enacting legislation that provides employment opportunities will in the long term be more cost effective because persons with disabilities would over time become self-sufficient. Provisions on income-restoration for persons with disabilities are included in Rule 8 of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, which provides that "States are responsible for the provision of social security and income maintenance for persons with disabilities." Rule 8(4) states that "...social security systems should include incentives to restore the income-earning capacity of persons with disabilities." In addition, Rule 8 (5) notes that "...social security programmes should also provide incentives for persons with disabilities to seek employment in order to establish or re-establish their income-earning capacity."

States should encourage the implementation of measures and programmes that ensure that these persons' entitlements are equal to others. Such measures should include worker's compensation, disability insurance, and unemployment insurance.

It is important to ensure that social systems provide employment assistance and economic support to those who are involuntarily unemployed. Unemployment is rampant among persons with disabilities. Unemployment insurance will help disabled persons find employment through special programmes geared to their particular problem, while providing economic support during the interim period.

Other special measures that are designed to meet the specific needs of persons with disabilities who have a particular problem entering the labour market could include the following:

- a. Long- term cash benefit to compensate for loss of income due to disability;
- b. Financial assistance as a supplement in the case of low income due to disability;
- c. Income maintenance during rehabilitation periods; and
- d. Supplementary or special benefits in cash or in kind to compensate for extra expenses due to disability.

When injury or harm is caused by occupational accidents or disease, compensation is generally covered by, 1) private insurance, 2) Social insurance and 3) Civil liability or tort law.

Persons with disabilities should be able to get compensation by using either one or all three of these avenues. However, worker's compensation is the easiest and most inexpensive avenue for disabled workers to utilize. In enacting legislation, several issues have to be addressed, such as how to determine contribution to the worker's compensation funds and how the benefits will be distributed.

Disability insurance ensures economic and social protection during disability. Legislators must determine what type of benefits are to be covered, i.e. medical treatment, rehabilitation, and restoration of earning capacity.

Article 25 of the Universal Declaration of Human Rights confers that each person has the right to security in the event circumstances beyond one's control affect one's livelihood. Article XVI of the American Declaration of the Rights and Duties of Man proclaims the right of every person to enjoy the protection of the State.

Article 19 of the Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social, and Cultural Rights states that employees' right to social security should cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease.

Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women urges States to take appropriate measures to eliminate discrimination against women in the field of employment. Article 11 (1) (e) states that such measures are taken in order to ensure the right to social security in cases where there is an incapacity to work.

Article 31 of the Convention concerning Minimum Standards of Social Security urges States to secure to employees workmen's compensation. According to Article 34, the benefits should include general and specialist practitioner care, nursing care, medical and pharmaceutical supplies, and hospitalization. Article 35 provides that Governments administering medical care shall co-operate with the general vocational rehabilitation services, with a view to the re-establishment of handicapped persons in suitable work.

Article 4 of the Convention Concerning Benefits in the Case of Employment Injury states that national legislation concerning employment injury benefits shall protect all employees in the public and private sectors. Article 6 sets forth the contingencies covered due to an employment injury:

- a. a morbid condition;
- b. incapacity for work resulting from such a condition and involving suspension of earnings, as defined by national legislation;
- c. total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty and
- d. the loss of support suffered as the result of the death of the breadwinner by prescribed categories of beneficiaries.

Articles 7 and 8 urge States to define industrial accident and prescribe a list of diseases to be regarded as occupational diseases in their legislation. Article 9 provides that States shall secure to the persons protected the provision of the following benefits:

- a. Medical care and allied benefits in respect of a morbid condition and;
- b. Cash benefits in respect of the contingencies specified in article 6 (b), (c) and (d).

Article 9 also states that eligibility for benefits may not be made subject to the length of employment, to the duration of insurance or to the payment of contributions and that benefits be granted throughout the contingency.

Articles 13 and 14 state that cash benefits or periodical payments will be made in respect of temporary loss of earning capacity or initial loss of earning likely to be permanent.

Article 16 states that increments in periodical payments or other supplementary or special benefits shall be provided for disabled persons requiring the constant help or attendance of another person.

Articles 19 and 20 state that in the case of a periodical payment, the rate of the benefit shall be as such as to attain, in respect of the contingency in question, for the standard beneficiary, at least the percentage indicated therein of the total of the previous earnings of the beneficiary, or at least the percentage indicated therein of the total wage of an ordinary adult male labourer. Article 23 (1) states that every claimant shall have a right of appeal in the case of refusal of the benefit or complaint as to its quality or quantity.

The Convention Concerning Employment Promotion and Protection against Unemployment recognizes the importance of ensuring that social security systems provide employment assistance and economic support to those who are involuntarily unemployed. Article 2 urges States to take steps to co-ordinate its system of protection against unemployment and its employment policy. The policy shall seek to ensure that its system of protection against unemployment, and in particular the methods of providing unemployment benefit, contribute to the promotion of full, productive and freely chosen employment, and are not such as to discourage employers from offering and workers from seeking productive employment.

Article 7 encourages States to declare as a priority objective a policy designed to promote full, productive and freely chosen employment by all appropriate means, including social security. Such means should include employment services, vocational training and vocational guidance. Article 8 adds that States should establish special programmes to promote additional job opportunities and employment assistance and to encourage freely chosen and productive employment for disadvantaged persons having or liable to have difficulties in finding lasting employment such as disabled persons.

Article 24 sets forth that when a State provides unemployment benefits that the periods which benefits are paid should in its calculation take into account disability. Article 27 provides that in the event of refusal, withdrawal, suspension or reduction of benefit or dispute as to its amount, claimants shall have the right to present a complaint to the body administering the benefit scheme and to appeal thereafter to an independent body. The appeal procedure shall enable the claimant to be represented or assisted by a qualified person of the claimant's choice or by a delegate of representative workers' organization or by a delegate of an organization representative of protected persons.

Article 21(b) of the Recommendation concerning Vocational Rehabilitation of the Disabled sets forth that financial assistance is an appropriate measure to be taken to enable disabled persons to make full use of all vocational rehabilitation services. Furthermore, paragraph 22.1 states that financial assistance be provided in order to facilitate the preparation for and retention of suitable employment.

Article 11(a) of the Declaration on Social Progress and Development states that social progress and development should aim for the implementation of insurance schemes for all persons who, because of illness, disability, or old age, are temporarily or permanently unable to earn a living.

Rule 8 (1) of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides that states that income support should be extended to individuals who take care of a person with a disability, and that income support should only be reduced or terminated when persons with disabilities achieve an adequate and secure income.

Paragraph 131 of the World Programme of Action concerning Disabled Persons encourages co-operation at the central and local level between government and employers' and workers' organisations in order to develop measures for rehabilitating employees impaired in the job.

2.4.3 Social Services

It is important that social services be organized for persons with disabilities at the community and governmental levels. The government has the main responsibility for providing social services, but it can also encourage communities to do so, especially through financial assistance.

Strengthen communities' own programmes for persons with disabilities should be a national priority, as working through the community helps to integrate persons with disabilities into society and the community to understand and learn about the plight of persons with disabilities. It is important to enlist the active participation of local government and community organisations, such as citizen's groups, trade unions, women's organizations, consumer organizations, religious bodies, political parties and parents' associations in the recognition and enforcement of rights of persons with disabilities.

Paragraph 17 of the Recommendation concerning Vocational Rehabilitation and Employment urges community leaders and groups to co-operate with government authorities in identifying the needs of the disabled in the community and ensuring that, wherever possible disabled persons are included in activities and services available generally. According to paragraph 18, "...vocational rehabilitation and employment services for the disabled should be integrated into mainstream of community development and where appropriate receive financial (...) support."

Sections of the World Programme of Action concerning Disabled Persons deal with community action. States are encouraged to provide financial assistance to local communities for the development of programs that help persons with disabilities, and to encourage co-operation among local communities in order to facilitate the exchange of information. The paragraphs note that it is important to enlist the active participation of community organisations.

Paragraph 41 of the Tallinn Guidelines for Action on Human Resource Development states that specific strategies for the prevention of disability should be included in community awareness programmes. Also, Government efforts aimed at early identification, intervention and prevention should be strengthened through community awareness and community involvement programmes on disability.

Governmental services are necessary in addition to ones organised by the community. Governments should provide services that will reduce the disabling effects of physical impairments and help persons with disabilities function to the best of their abilities. Governments must recognise the essential role of local authorities in providing services and empowering people to secure economic development and social welfare for their communities, and the role of international co-operation among local authorities. Governments should introduce adequate measures to realise equal opportunity policies and the prevention of disabling conditions.

2.5 Right to an Adequate Standard of Living

The right to an adequate standard of living is included for example in article 25 of the Universal Declaration on Human Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights, and article 27 of the Convention on the Rights of the Child. This right includes inter alia the right to food, clothing and housing. It is closely linked to the right to social security and social services.

2.5.1 Housing

Adequate shelter is an important component of economic and social rights. Inadequate or lack of shelter contributes to loss of health, security and dignity. Governments should develop policies and guidelines and provide services that would enable persons with disabilities to be housed in appropriate settings.

Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises that everyone has the right to an adequate standard of living, including housing, and that States should take appropriate steps to ensure the realisation of this right.

Article 27 (3) of the Declaration on Social Progress and Development urges States to provide assistance programmes such as housing to parents and others responsible for a child.

Article 18 (d) recognises the implementation of low-cost housing programmes in rural and urban areas as an appropriate means in trying to achieve the objectives of social progress and development.

General principle I, paragraph 1 of the Recommendation concerning Workers' Housing states that the Recommendation applies to the housing of workers, including handicapped persons.

General Principle II, paragraphs from 1 to 5 urges States to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that

adequate and decent housing accommodations and a suitable living environment are made available to all workers and their families. Priority should be given to those whose needs are most urgent; to upkeep, improve and modernise existing housing and related community facilities; to provide adequate and decent housing that does not cost the worker more than a reasonable portion of income, whether by way of rent, or by way of payments towards the purchase of, such accommodation; and, to implement housing programmes that provide adequate scope for private, co-operative and public enterprise in house building.

General principle III, paragraph 8 encourages States to set up a central body with which should be associated all public authorities having some responsibility relating to housing. The body's responsibilities should include, studying and assessing the needs for workers' housing and related community facilities and formulating workers' housing programmes.

General Principle V, paragraphs 13 through 17 discuss financing methods. States are urged to ensure that private and public facilities are made available for loans at moderate rates of interest, and that such facilities be supplemented by other suitable methods of direct and indirect financial assistance. This would include subsidies, tax concessions, and reduction of assessments, to appropriate private, co-operative and public owners of housing, to encourage co-operative and similar non-profit housing societies. States are also urged to: ensure that public and private facilities for loans on reasonable terms are made available to workers who wish to own or build their dwellings, and they should take such other steps as would facilitate home ownership; to establish national mortgage insurance systems or public guarantees of private mortgages as a means of promoting the building of workers' housing; and to stimulate saving and encourage investment. Paragraphs 19 through 25 of Suggestions Concerning Methods of Application mention other financing schemes, such as encouraging provident funds and social security institutions to use their reserves available for long-term investment. Further schemes include: providing facilities for loans for workers' housing; rendering special financial assistance to workers who are unable to obtain adequate accommodation by reason of inadequate income; and to protect the worker in the case of loans against the loss of his/her financial equity in his/her house on account of unemployment or other factors beyond his control.

Chapter III paragraph 24 of The Habitat Agenda recognises the obligation of Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods.

Paragraph 25 urges States to ensure consistency and co-ordination of macro-economic and shelter policies, as a social priority within the framework of national development programmes and urban policies; to promote broad, non-discriminatory access to open, efficient, effective and appropriate financing for all people, including mobilising innovative financial and other resources - public and private - for community development; to increase the supply of affordable housing through appropriate regulatory measures and market incentives (P. 44); and to promote shelter and support basic services for persons with disabilities.

Paragraph 30 urges States to strengthen existing financial mechanisms in order to finance shelter and human settlements. Paragraph 31(g) urges States to foster the accessibility of the market for those who are less organised and informed or otherwise excluded from participation by providing subsidies, where appropriate, and promoting credit mechanisms and other instruments to address their needs. Paragraph 44 (vi) urges States to create and promote market-based incentives to encourage the private sector to meet the need for affordable rental and owner-occupied housing. Paragraph 49 (d) encourages States to use public policies such as expenditure, taxation, monetary and planning policies, to stimulate sustainable shelter markets. Paragraph 51 provides that States should adopt policies that ensure that persons with disabilities have access to new public buildings and facilities, and public housing. Furthermore, during renovation of existing buildings, similar measures should be adopted.

Housing finance institutions serve the conventional market, but do not always respond adequately to the different needs of large segments of the population, particularly those belonging to vulnerable and disadvantaged groups, like the disabled. In order to improve existing housing finance systems, paragraph 61 states that Governments should:

1. Adopt policies that increase the mobilisation of housing finance and extend more credit to people living in poverty, while maintaining the solvency of credit systems;
2. Establish a comprehensive detailed body of property law;
3. Encourage the private sector to mobilise resources to meet varying housing demands, including rental housing, maintenance and rehabilitation;
4. Decentralise the lending operations of mortgage markets and encourage the private sector to do the same in order to provide greater physical access to credit.

Paragraph 68 states that improving the quality and reducing the cost of production, housing and other structures will last longer, be better protected against disasters, and be affordable to low-income populations and accessible to persons with disabilities, which will provide a better living environment.

Paragraph 8 of The Vancouver Declaration on Human Settlements states that "...adequate shelter and services are a basic human right which places an obligation on Governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action." (Chapter III, Guidelines for Action).

Global Strategy for Shelter to the Year 2000, Annex I, sets forth guidelines Governments can keep in mind when formulating a national shelter strategy. These guidelines are outlined below:

1. A national shelter strategy should spell out clear operational objectives for development of shelter conditions both in terms of the construction of new housing and the upgrading and maintenance of existing housing stock and infrastructure and services.
2. The adequate standard aimed at should be identified on the basis of an analysis of the standards and options affordable to the target population.
3. The objectives of the shelter sector need to be linked to the goals of the overall economic policy.
4. Direct Government support should mainly be allocated to the most needy population groups.
5. The public sector is responsible for developing and implementing measures for national shelter policies and for the adoption of measures that stimulate the desired action by other sectors.
6. The development of administrative, institutional and legislative tasks that are the direct responsibility of the Government, for example, land registration and regulation of construction.
7. An analysis of affordability will provide the criteria for defining the right priorities and appropriate approaches for public sector involvement.
8. Mechanisms for co-ordinating inter- and intra-agency activities need to be developed. Also, arrangements for the continuous monitoring, review and revision of the strategy must be developed.

2.5.2 Food

Government legislation should include provisions that increase food production and improve the distribution of food. Governments could increase access to food through primary health care approaches. Hunger is one of the main factors responsible for the rising number of persons with disabilities, and increasing access to food through methods such as subsidies to rural areas to increase production, trade, affordable prices and other measures will help prevent disability.

The attainment of food security involves the eliminating current hunger facing hundreds of millions of people today, and reducing the risks of future hunger. Every effort must be taken to address both the symptoms and causes of hunger.

Food aid is an essential resource for saving and sustaining life. However, direct transfer of food must be followed by actions aimed at post-crisis rehabilitation of affected households and at sustainable livelihoods. Greater attention needs to be paid to the establishment of improved preparedness mechanisms against future disasters and appropriate investments aimed at reducing vulnerability to crisis situations.

Food insufficiencies must be complemented by efforts in areas such as nutrition, health, education, skills training, reproductive health, asset creation and income-generation, i.e. by investing in people. Food aid can provide direct assistance to people who lack purchasing power, and can strengthen markets by building transport infrastructure or enhancing marketing systems through local magnetisation and local food purchases.

Article 25 of the Universal Declaration of Human Rights recognizes the right to food.

Article 12 of the Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social, and Cultural Rights states that everyone has the right to adequate nutrition, which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. In addition, article 12 urges States to improve the distribution of food.

Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises that everyone has the right to adequate food and to be free from hunger, and that States either individually or with

international co-operation, should implement measures to realise this right. The Measures include specific programmes that improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources.

Article 27 (3) of the Convention on the Rights of the Child urges States to undertake programmes such as nutrition to assist parents and others responsible for the child.

Article 10 (b) of the Declaration on Social Progress and Development sets forth the elimination of hunger and malnutrition as a goal in social progress and development.

Paragraph 4 of the Universal Declaration on the Eradication of Hunger and Malnutrition sets forth that each State should remove the obstacles to food production and should provide proper incentives to agricultural producers. Effective measures such as agrarian, tax, credit and investment policy reform and the reorganisation of rural structures should be implemented. Furthermore, paragraph 11 urges States to readjust their agricultural policies to give priority to food production.

The World Food Summit of Africa, an outcome of the FAO Regional Conference for Africa in 1996, through its draft Policy Statement calls on all parties to reaffirm their commitment to policies that will ensure the availability and stability of adequate food supplies as well as access to an adequate diet for all. The WFS draft Action Plan stresses the need for each country to choose its own strategy for attaining food security since individual circumstances vary so widely, but nevertheless the following aims have to be reached:

- a. Enabling Political and Economic Environment for Food Security
- b. Improving Food Access to Poor and Vulnerable Groups
- c. Accelerating Agricultural and Rural Development
- d. Ensuring Adequate and Timely Food Aid and Emergency Assistance
- e. Enhancing Domestic Food Supply Capacity
- f. Enhancing Export Earning Capacity to Meet Import Needs

The World Food Summit of Europe, held in 1996 in Tel Aviv, emphasized several goals including the following:

- a. Ensuring the Political and Economic Environment for Food Security
- b. Securing Sustainable Safety Nets and Social Support Systems for the Food Insecure
- c. Ensuring the Availability of Adequate Food Supplies
- d. Strengthening the Role of Europe in Improving Global Food Security

2.5.3 Transportation

Mobility is one of the most crucial factors in the rehabilitation of disabled persons. It contributes to their life in dignity and to their standard of living. It is linked to general environmental accessibility. There should not be discrimination against the disabled in the provision of public transportation services, and there should be specific measures to enable them to move freely and access the workplace and other public places.

States should enact legislation that ensures the accessibility to transport services for persons with disabilities. These Government initiatives are vital to the integration of disabled persons into mainstream society and to the right to work.

Governments could provide these services in different ways such as: making public transport system accessible; remodelling pedestrian routes in order to make them more accessible to disabled persons, especially those utilising wheelchairs; priority parking for disabled persons; or providing incentives for employers and community organisations to provide transport.

Other measures such as cash subsidies, improvement to existing public transport system, and specially adapted automobiles and the transfer of new technology in transport is also very important in ensuring the integration of persons with disabilities into mainstream society.

Article 18(e) of the Declaration on Social Progress and Development encourages the development and expansion of the system of transportation, particularly in developing countries.

Paragraph 11(h) of the Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons) states that disabled persons should be provided an adequate means of transport to and from the places of rehabilitation and work.

Paragraph 104 (a) of The Habitat Agenda states that Governments should support an integrated transport policy approach that explores the full array of technical and management options and pays due attention to the needs of all population groups, especially those whose mobility is constrained because of disability, age, poverty or any other factor.

Paragraph 114 of the World Programme of Action concerning Disabled Persons encourages States to make sure that disabled persons have access to all new public transport systems. Furthermore, it is recommended that States adopt measures that encourage access to existing public transport systems.

2.6 Right to Social Integration

The overall purpose of disability policy is to promote social integration of disabled persons. Thus, the principle of social integration, with the aim of creating equal opportunities for all, is incorporated in all major instruments related to disability issues.

Paragraph 9 of the Declaration on the Rights of Disabled Persons confers that persons with disabilities have the right to live with their families or with foster parents and to participate in all social activities. Article 23 of the Convention on the Rights of the Child asks States Parties to ensure that disabled children enjoy conditions which facilitate the child's active participation in the community. Under Commitment 4 of The Copenhagen Declaration and Programme of Action, States commit themselves to promote social integration. And under Commitment 1, States commit themselves to creating accessibility to the social environment for persons with disabilities.

Paragraph 22 and 63 of the Vienna Declaration and Programme of Action provides that States should ensure the active participation of persons with disabilities in all aspects of society.

The overall aim of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities is the social integration of persons with disabilities by creating equal opportunities in all fields of society. The main goal of the World Programme of Action concerning Disabled Persons is also to create equal opportunities for persons with disabilities and thus integrate them into society.

2.7 Right to Participate in Cultural Activities

The right to participate in cultural activities should apply to all people, including those with disabilities. In reality, however, persons with disabilities are often denied the opportunities of full participation in the activities of the cultural life of the community to which they belong. This deprivation comes about through physical and social barriers that have evolved from ignorance, indifference and fear.

Article 27 of the Universal Declaration of Human Rights confers a general right to participate in cultural life of the community. A right to participate in cultural life is contained in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights. Article 14 outlines the right of everyone to take part in the cultural and artistic life of the community. Article 17 (2) of the African Charter on Human and Peoples' Rights guarantees a right to every individual to take part in the cultural life of his community.

Article 15 of the International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to take part in cultural life. This right is violated, for example, when access is not possible to facilities in which cultural activities take place (cinemas, theatres, libraries, sport stadiums, museums, etc), and when disabled persons are excluded on account of prejudices in respect of their ability to participate.

Rule 10 of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides that States must ensure that persons with disabilities are integrated into and can participate in cultural activities on an equal basis.

The World Programme of Action concerning Disabled Persons in its paragraph 135 provides that States should commit themselves to ensure that disabled persons have the opportunity to utilise their creative, artistic and intellectual potential to the full, not only for their own benefit but also for the enrichment of the community. To this end, access to cultural activities should be ensured.

2.8 Right to an Accessible Physical and Information Environment

For persons with disabilities, most human rights, including the freedom to receive information, the freedom of movement, the right to work or social integration depend on accessibility. Many persons with disabilities are excluded from active participation in society because of doorways that are too narrow for wheelchairs; steps that cannot be mounted leading to buildings, buses, trains and aircraft; telephones and light switches that cannot be reached; sanitary facilities that cannot be used. Similarly, other types of barriers can exclude persons with disabilities, for example, oral communication, which ignores the needs of the hearing impaired and written information, which ignores the needs of the visually impaired. Such barriers are the result of the ignorance and lack of concern; they exist despite the fact that most of them could be avoided at no great cost by careful planning. Although some countries have enacted legislation and launched campaigns of public education to eliminate obstacles, the problem remains a crucial one. Legislation is required to set standards for a sufficient access to information technology and to public places that takes account of the needs of persons with disabilities.

2.8.1 Information on Standards of Accessibility

The majority of information exchanges and resources that we have encountered are based on the experience of the industrialized countries. As member States adopt initiatives to implement the UN's priority issue of accessibility, as set forth in the Standard Rules among other documents, there is an evident need to expand traditional definitions of accessibility solutions and develop effective and realistic accessibility policy options for developing countries. Based on our research, we believe that a virtual venue must be established to facilitate the exchange information among policy makers, the disabled community and the building industry on accessibility issues to explore the particular requirements of creating barrier free environments in all nations.

Resource List

Organization	Website	E-mail	Standard type	Accessibility info description	Countries	Comments
SNIP	http://www.snip.com/general/index.html	--	Accessibility	National standards for accessible design	Russia	--
Columbian Institute for Standardization and Certificate	http://www.icontec.org.co/preing.html	Does not work	Standards Institute	not know	Columbia	Recognized as National Standardization body for Columbia
Pan-American Commission for Technical Standards	http://www.copant.org	--	--	--	--	--
International Standards Organization	http://www.iso.ch/iso/en/ISOOnline.openerpage	--	--	--	--	--
Andrea System for Standardization	http://www.comunidadandina.org/ingles/trade/technical.htm	--	--	--	--	--
Columbian Technical Standards	--	--	--	--	--	--
Disabled Peoples' International	http://www.dpi.org/links.html	--	--	--	--	--
International Conference of Building Officials	http://www.codes.org	--	Standards Institute	not known	--	--
Council of American Building Officials	http://www.cabo.org	--	Institute	not known	>USA	Umbrella organization for BOCA, ICBO and SBCCI
Building Officials and Code Administrators International	http://www.bocai.org	--	Institute	not know	USA	US organization dedicated to the development of model building codes (NBC) for central and northeastern US
Construction Law Forum	http://www.constrlaw.com	--	--	--	--	Info on legal issues relating to design and construction
International Code Council	http://www.intlcode.org	--	Institute	not known	USA	Non-profit organization dedicated to develop single set of national codes in US
Southern Building Code Congress Intl	http://www.sbcci.org	--	Institute	not known	USA	Developers of Standard Building Code used throughout the southeast of US
DPA Singapore	http://www.dpa.org.sg/DPA/access/95prefac.htm	--	Accessibility	Code on Barrier-free accessibility in	Singapore	Currently undergoing revisions - contact Prof. Harrison

				building 1995		
Associacao Brasileira de Normas Tecnicas	http://www.abnt.org.br	--	Standars institute	National standards	Brazil	--
Acesso e Eliminacao de Barreiras Arquiteticas	http://www.mbonline.com.br/cedipod/w61elimsp.htm	--	Accessibility	Municipa legislation - Sao Paulo	Brazil	--
Comite MERCOSUL de Normalizacao	http://www.abnt.org.br/mercosul.htm	does not work	Standards Institute	not known	South America	Look into comite setorial mercosul de acessibilidade
Uniform Accessibility Standards	http://www.access-board.gov/ufas/ufas-html/ufas.htm	--	--	--	--	--
American National Standards Institute	http://www.ansi.org	--	Standards Institute	--	USA	--
Center for Universal Design	--	Standards Institute	Universal design	--	--	--
National Council for Welfare of Disabled Persons	http://www.ncwdp.org.ph	council@ncwdp.gov.ph	Accessibility	Magna Carta for Disabled Persons (Rep. Act#7277)	Philippines	Received publications on accessibility law
National Council for Welfare of Disabled Persons	http://www.skyjet.net/users/ncwdp/publications.htm	ncwdp@skynet.net - does not work	Accessibility	Accessibility Law (Batasan Pambansa Bilang 344)	Philippines	Includes original and amended implementing rules and regulations
National Council for Welfare of Disabled Persons	see above	see above	Disability policy	Agenda for action for Asian and Pacific Decade of Disabled Persons 1993-2002	Philippines	--
National Council for Welfare of Disabled Persons	see above	see above	Disability policy	Philippines Handbook on Community-Based Rehabilitation	Philippines	First CBR handbook developed by NCWDP
National Council for Welfare of Disabled Persons	see above	see above	Product catalog	Catalogue of Assistive Devices for Persons with orthopedic disabilities	Philippines	Listing of locally available assistive devices
National Council of Welfare of Disabled Persons	see above	see above	Handbook	handbook on paper-based technology	Philippines	assistive devices made out of paper products
National Council for Welfare of Disabled Persons	see above	see above	Disability policy	Proclamation No. 125	Philippines	Presidential proclamation on national wide observance of Decade of Disabled Persons

CIB	http://www.independentliving.org/cib/cibharare5.html	--	Accessibility	Report on CIP Seminar: Accessibility-South Africa	South Africa	--
CIB	http://www.independentliving.org/cib/cibharare4.html	--	Accessibility	Report on CIP Seminar: Accessibility-Zambia	Zambia	--
Disabled People's Association Singapore	http://www.dpa.org.sg/DPA/access/sia.html	--	Accessibility	SIA/HWA meeting on Barrier-free design	Singapore	--
Disabled People's Association Singapore	http://www.dpa.org.sg/DPA/access/sia.html	--	Accessibility	DPA Access Committee Minutes - 8/25/94	Singapore	--
Building Owners and Managers Association	http://www.boma.org/prsponsr.htm	mjawer@boma.org - does not work	Accessibility	Universal Accessibility conference 12-13/6/97	USA; International	Seminar to develop international standards
Loken Consultants	http://www3.sk.sympatico.ca/loken/webdoc1.htm	--	Accessibility	Accessibility Legislation in Saskatchewan	Canada	3 doc's control accessibility: NBC, UB and Accessibility Standards Act, and S. Human Rights code and regulations
Together Foundation and UNCHS	http://www1001.together.com/html/index2.html	does not work	Case studies	Best Practices Database	International	Case studies = application of accessibility standards in devel countries
Iowa State University	http://publis.iastate.edu/usbilling/ada.htm	does not work	Resource	ADA links	USA	Web links, info, resources
Building Owners and Managers Association	http://www.boma.org/graccess.htm	--	Accessibility	Accessibility laws, Codes and Standards	USA	--
The Center for Universal Design	http://www.design.ncsu.edu/cud	--	Accessibility	US Accessibility Standards and Regulations	USA	Universal Design and US Standards
Amazonian Parliament	http://www.webmediaven.com/parlamaz	--	Regional parliament	--	--	Research work on accessibility if any
Andean Parliament	http://www.parlamentoandino.org	--	Regional parliament	--	--	Research work on accessibility if any
Asia-Pacific Parliament Forum	--	--	Regional parliament	--	--	Research work on accessibility if any
Assembly of the Western European Union	http://www.assembly-weu.org/en/accueil.php	--	Regional parliament	--	--	>Research work on accessibility if any
Commonwealth Parliament	http://www.cpahq.org/expert/barb01.htm	--	Regional parliament	--	--	Research work on

Association						accessibility if any
European Parliament	http://www.europarl.eu.int/home/default_en.htm	--	Regional parliament	--	--	Research work on accessibility if any
Parliament Assembly of the French-Speaking World	http://www.francophonie.org/apf	--	Regional parliament	--	--	Research work on accessibility if any
Latin American Parliament	http://www.parlatino.org.br/index.php	--	Regional parliament	--	--	Research work on accessibility if any
Nordic Council	http://www.norden.org/start/start.asp?lang=6	--	Regional parliament	--	--	Research work on accessibility if any
Botswana Council for the Disabled	http://www.wn.apc.org/SAIE/saie29/botcd.htm	--	National	Development sectors & economic	Botswana	Research work on accessibility if any
OSCE Parliament Assembly	http://www.osce.org/pa	--	Regional parliament	--	--	Research work on accessibility if any
Parliamentary Assembly of the Council of Europe	http://assembly.coe.int	--	Regional parliament	--	--	Research work on accessibility if any
Canadian Institute for Barrier-Free Design	http://www.arch.umanitoba.ca/cibfd/information.htm	woodland@cc.umanitoba.ca	Accessibility	--	--	--

2.8.2 Access to Public Places

Legislation is also required to set standards for building both private and public facilities that take into account the needs of persons with disabilities. Physical barriers are often a hindrance to the full integration of persons with disabilities into public life.

The [Copenhagen Declaration and Programme of Action](#), Section B 26 (I) provides that States should take efforts to make the physical environment accessible for persons with disabilities. The following themes are emphasized in this declaration:

- a. Access Regulations like architectural building codes,
- b. Public Housing like homeless shelters and
- c. Public Transportation like traveling with disabled passengers.

Moreover, the guide [Designing with Care: A guide to Adaptation of the built Environment for Disabled People](#) (United Nations, International year of Disabled Persons (IYDP) 1981) provides technical and architectural guidelines to build in both, private and public areas, with special attention to disabled persons.

Paragraph 11 (g) of the Recommendation concerning Vocational Rehabilitation and Employment states that all barriers and obstacles affecting transport of disabled persons and access to and free movement in premises for their training and employment be eliminated.

Paragraph 17 of The Habitat Agenda states that the one of the goals of the Agenda is to increase the accessibility of persons with disabilities to shelter, thereby improving their quality of life. According to Chapter III paragraph 25 (d), it states that the standards for accessibility must be in accordance with [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#).

Paragraph 23 of the [World Programme of Action concerning Disabled Persons](#) states that "...anyone in charge of any kind of enterprise should make it accessible to people with disabilities." This includes public agencies, non-governmental organizations, and private firms and individuals. Paragraph 113 states that States should adopt a policy of observing accessibility aspects in the planning of human settlements, including programmers in the rural areas of developing countries.

2.9 International Co-operation

The implementation of economic, social and cultural rights requires resources. So does in fact the implementation of civil and political rights, as those rights require, for instance, setting up a functioning judicial system or providing accessible information for persons with disabilities. Article 2 of the [International Covenant on Economic, Social and Cultural Rights](#) provides that each State Party is to undertake "steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized" in the ICESCR.

The Convention on the Rights of the Child also calls for international co-operation in the implementation of specific provisions, such as article 4 concerning the implementation of economic, social and cultural rights, or article 23 concerning the dissemination of information concerning health care, rehabilitation, educational and vocational services for children with disabilities.

At the World Summit on Social Development, it was agreed that the Copenhagen Declaration on Social Development and Programme of Action would be implemented with the help of the 20/20 initiative, by which 20 percent of national budgets and 20 percent of development assistance would be allocated to basic social services.

Co-operation is therefore crucial if progress is to be achieved in all parts of the world. Co-operation should exist at all levels, including:

- a. co-operation and co-ordination among countries,
- b. multilateral and bilateral assistance agencies,
- c. international financial institutions, such as the World Bank and regional development banks,

- d. international organizations, and various organs and bodies of the United Nations system,
- e. including South-South, North-South and South-North exchanges of best practices and the
- f. continuous development of tools and instruments for policy, planning and management.

Bilateral and multilateral donors should set aside adequate resources for the disability component in their financial assistance. Also, donors may tie their aid to disability projects. For example, a donor will send financial assistance if a certain percentage of the aid would be used to satisfy the needs of persons with disabilities.

Donor agencies must establish working relations with disabled persons and/or their organizations. The staff of donor agencies needs to be sensitized about disabled person's concerns. One method would be to organize joint workshops, which would facilitate the implementation of policy guidelines that adequately take into account the concerns of disabled persons.

Paragraph 12 of the [Vienna Declaration and Programme of Action](#) urges the international community to help alleviate the external debt burden of developing countries in order to help developing countries attain the full realization of the economic, social, and cultural rights of their people.

Article 23 (c) of the Declaration on Social Progress and Development states that the achievement of the objectives of social progress and development requires the implementation of the provision of technical, financial and material assistance, both bilateral and multilateral, to the fullest possible extent and on favorable terms, and improved co-ordination of international assistance for the achievement of the social objectives of national development plans.

Paragraph 7 of the Universal Declaration on the Eradication of Hunger and Malnutrition notes that in order to give impetus to food production in developing countries, international action should be taken to provide them with sustained additional technical and financial assistance. In addition, all donor countries should implement the concept of forward planning of food aid and make all efforts to provide commodities and/or financial assistance.

Paragraphs 147 and 148 of The Habitat Agenda state that the international community should support Governments. It should promote:

- a. Co-ordination of macroeconomic policies at all levels to achieve an international financial system that is conducive to economic and social development, as components of sustainable development
- b. An environment in all countries that attracts foreign direct investment and encourages savings and domestic investment
- c. Capacity building in all developing countries
- d. Financial assistance to developing countries to promote sustainable development
- e. Facilitate access to international financial resources for all developing countries to benefit from the growing international financial markets in order to promote development

Paragraph 179 of the [World Programme of Action concerning Disabled Persons](#) states that donor countries should be responsive to requests for assistance in the area of disability. Donor countries are urged to include disability assistance in their bilateral and multilateral assistance programmes.

Paragraph 174 urges international organizations or multilateral financial institutions collaborating with Member States in financial ventures to give priority to programmes that assist the disabled. Multilateral and bilateral aid agencies should include in their programmes measures that ensure the allocation of increased resources for both capital investment and recurrent expenditure for services related to prevention, rehabilitation and equalization of opportunities.

Paragraph 53 of the [Tallinn Guidelines for Action on Human Resources Development in the Field of Disability](#) states that international development assistance programmes should include a specific component that ensures the participation of persons with disabilities in such schemes.

Part V. Persons with disabilities and multiple discrimination - Rights of special groups.

In the field of human rights, growing attention has been devoted to the rights of persons belonging to specific groups, often called "vulnerable groups". People belonging to these groups have certain common characteristics or are in a situation that have been shown to make these people more vulnerable to discrimination. They are especially "vulnerable", because these grounds for discrimination have been overlooked or insufficiently addressed in general human rights instruments. New instruments are therefore needed to protect and promote the rights of these people, focussing on specific characteristics and situations, such as age, gender, social situation etc. These groups include indigenous peoples, ethnic minorities, refugees, migrant workers, women, children, people with HIV/AIDS, persons with disabilities and older persons.

Whereas the concept of a special regime for certain groups has been developed during the last few years by the UN the human rights and fundamental freedoms of marginalized and vulnerable people remain vastly underserved. Persons with disabilities are often affected by this lack of protection, as many of them suffer double or multiple discrimination, due to their disability, their age and social status, for instance. Among the most marginalized of these groups, such as ethnic minorities, refugees or persons with HIV/AIDS, the rate of disability is higher than among the rest of the population.

When specific instruments do exist, such as the Convention on the Rights of the Child, or the Convention on all Forms of Discrimination against Women, persons with disabilities should benefit from the protection they offer, in addition to disability-specific instruments.

This part looks at the rights of special groups with disabilities who are doubly vulnerable to discrimination.

1. Rights of the Child

One of the most vulnerable groups among persons with disabilities are children. They are more vulnerable to wars, exploitation, malnutrition, physical and psychological ill-treatment, trafficking etc., and rely on adults for the enforcement of their human rights mechanisms have taken a significant interest in the protection of disabled children.

1.1 General International Instruments Pertaining to the Rights of the Child

The [Convention on the Rights of the Child \(CRC\)](#) is the most complete statement of children's rights and is the first to give these rights the force of international law. A child is defined in the Convention as a person under the age of 18, unless national laws mandate an earlier age of majority.

The [CRC](#) provides in its Article 2 that States parties must respect the rights in the Convention "...without discrimination of any kind, irrespective of (...) race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, *disability*, birth or other status". (emphasis added). Article 19 (1) states that the child shall be protected from "...all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse...." Article 23 Concerns the rights of children with disabilities. Article 24 (2) (d) of the Convention requires States to ensure the appropriate prenatal and post-natal health care for mothers.

The [Optional protocol on the involvement of children in armed conflict](#) and the [Optional protocol on the sale of children, child prostitution and child pornography of 2000](#) supplement the [CRC](#).

Other international instruments on the rights of the child include:

The [Universal Declaration of Human Rights](#) states in Article 25 (2) that "...motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection."

The [International Covenant on Civil and Political Rights](#) state in Article 24 (1) that , "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State...".

The Article 10 of the [International Covenant on Economic, Social and Cultural Rights](#) states that "...special protection should be accorded to mothers during a reasonable period before and after childbirth...Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law."

The Section II paragraph 21 of the [Vienna Declaration and Programme of Action](#) urges States to ratify and implement the [Convention on the Rights of the Child](#). In addition, in all actions concerning children, non-discrimination and the best interests of the child should be primary considerations.

The [Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts](#) states in Part II, Article 4 (3) (a) that children "...shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care." Article 4 (3) (b) states that all appropriate steps shall be taken to facilitate the reunion of families temporarily separated. Article 4 (3) (c) provides that "...children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."

Furthermore, Article 4 (3) (d) states: "...measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being."

Other international instruments concerning the rights of the child include:

- the World Declaration on the Survival, Protection and Development of Children and its Plan of Action adopted at the 1990 World Summit for Children,
- the outcome document of the of the UN General Assembly Special Session on Children ("A World Fit for Children".)
- follow-up meeting to the World Summit for Children,
- the 1990 United Nations Guidelines for Prevention of Juvenile Delinquency ("Riyadh Guidelines"),
- the 1985 [United Nations Standard Minimum Rules for the Administration of Juvenile Justice](#) ("Beijing Rules"),
- the 1990 [United Nations Rules for Protection of Juveniles Deprived of their Liberty](#),
- International Convention for the Suppression of Traffic in Women and Children (1921),
- and ILO conventions
 - on minimum age (Industry, No.5, 1919 and No.59, 1937), (Sea, No.7, 1920 and No.58, 1936), (Agriculture, No.10, 1921), (Trimmers and Stokers, No.15, 1921), (Non-industrial Employment, No.33, 1932 and No.60, 1937), (Fishermen, No.112, 1959), (Underground Work, No.123, 1965), ([Minimum Age, No.138, 1973](#)),
 - on night work of young persons (Industry, No.6, 1919 and No.79, 1946), (Non-industrial employment, No.90, 1948),
 - on medical examination of young persons (Non-industrial Occupations, No.79, 1946), (Underground Work, No.124, 1956),
 - and the [ILO Convention on the Worst Forms of Child Labour](#) (No.182, 1999).

1.2 General Regional Instruments Pertaining to the Rights of the Child

The [European Social Charter](#) states in Article 7 that, " right of children and young persons to protection: With a view to ensuring the effective exercise of the right of children and young persons to protection, the contracting parties undertake,

"the following:

1. To provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals and education;
2. To provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;
3. To provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. To provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

(...)

9. To provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

10. To ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work."

Article 17 obliges the States Parties to take measures to provide economic and social protection for children:

"The right of mothers and children to social and economic protection: With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services."

Though there were no fundamental changes in the Revised Form of the [European Social Charter](#), in article 7 the age limit goes up from 16 to 18 years of age and states:

"The right of children and young persons to social, legal and economic protection: With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties

undertake, either directly or in Cupertino with public and private organisations, to take all appropriate and necessary measures designed:

1.
 - a. To ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - b. To protect children and young persons against negligence, violence or exploitation;
 - c. To provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support; and
2. To provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools."

Article 19 of the [American Convention on Human Rights](#) provides that, 'Every minor children with a right to protection: "Every minor child has the right to measures of protection required by his condition as a minor on the part of his family, society, and the state."

The [Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social, and Cultural Rights](#) proclaimed in Article 15 (3) (b) and (d), States undertake to guarantee adequate nutrition for children and to help create an environment in which children receive and develop the values of understanding, solidarity, respect and responsibility. Article 16 outlines a comprehensive set of rights for children including the right to special protection, the right for the young child, save in exceptional circumstances, not to be separated from his mother, the right for children to remain under the protection of their parents, and the right to free and compulsory education.

Article 18 (3) of the [African Charter on Human and Peoples' Rights](#) provides: "The State shall ensure the elimination of every discrimination against women and also censure the protection of the rights of the woman and the child as stipulated in international declarations and conventions...".

More specific instruments also exist at the regional level. The [African Charter on the Rights and Welfare of the Child](#) is based on the [CRC](#), but adapted to the regional context. The **European Convention on the Exercise of Children's Rights** focuses on procedural aspects in the enforcement of existing rights of children.

Other instruments include *inter alia* the **1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption**, the **1980 Convention on the Civil Aspects of Child Abduction**, the **1975 European Convention on the Legal Status of Children Born out of Wedlock** and the **1980 European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of Custody of Children**. However, most of these are private international law treaties dealing with questions of jurisdiction, and not substantive law.

1.3 International Instruments Specifically Relating to Disabled Children

The [CRC](#) is the first international treaty, which recognises the rights of disabled children.

The most important article for the protection of disabled children is article 23 (1) which states that "States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community."

Article 23 (2) provides: "States Parties recognise the right of the disabled children to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition, and to the circumstances of the parents or others caring for the child."

Article 23 (3) provides that "...assistance shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child. Assistance shall be designed to ensure that the disabled child has effective access to and receives education, training, health, care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the

child's achievement the fullest possible social integration and individual development, including his or her cultural and spiritual development."

And further on: "States parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries".

Other articles in this convention are also of special relevance to the protection of disabled children. These include: article 24 (the child is entitled to the highest attainable standard of health), and article 19 (States shall protect children from physical or mental harm and neglect, including sexual abuse or exploitation). Most importantly, the Convention's general principles: article 2 (non-discrimination), article 3 (the best interests of the child), article 6 (life, survival and development), and article 12 (respect for the views of the child) are also crucial for the protection of the rights of children with disabilities.

The [African Charter on the Rights and Welfare of the Child](#) has a very comprehensive approach regarding the protection of disabled children. Indeed, article 13 refers to handicapped children:

"Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to."

2. Rights of the Youth

In Article 15 (3) (c) of the [Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social, and Cultural Rights](#) States undertake to adopt special measures for the protection of adolescents in order to ensure the full development of their physical, intellectual and moral capacities.

The goals mentioned in the [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#) are protections provided specifically for juveniles. Related instruments that apply to youth are United Nations Guidelines for Prevention of Juvenile Delinquency ("Riyadh Guidelines") and the [United Nations Standard Minimum Rules for the Administration of Juvenile Justice](#) ("Beijing Rules").

3. Rights of the Aged

Article 4 of the [Additional Protocol to the European Social Charter](#) provides that States Parties must ensure the effective exercise of the right of elderly persons to social protection.

Also, the [Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social, and Cultural Rights](#) confers in Article 17 the right to special protection for the elderly.

The Preamble of the [Declaration on the Elimination of Violence against Women](#) states "...that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, *elderly women* and women in situations of armed conflict, are especially vulnerable to violence" (emphasis added).

4. Rights of Women with Disabilities

4.1 The Situation

Women suffer from double discrimination by virtue of their sex, as well as their disability. This results in many women and young girls being denied their basic human rights.

The combination of male preference in many cultures and the universal devaluation of disability can be deadly for disabled females. Selective abortion is a related reproductive rights issue of great concern to women with disabilities. Today, in both industrialized and developing nations with access to reproductive technology, it is becoming easier to utilize selective abortion if a foetus is considered "imperfect" by medical profession's or society's standards. Legislation which permits sterilization of people with disabilities, threatens both the rights of disabled women to procreate and the very existence of children born with disabilities. Certain countries have laws which mandate the forced sterilization of persons with genetic defects. In 1996, the American Congress amended the law to include forced sterilization as grounds for refugee status.

In developing countries, women are too often denied access to education, rehabilitation, labour protection, and health care because of cultural preferences for males. It is seen as a waste of resources to help disabled women become productive members of society. Consequently, women with disabilities are the last priority in these countries, and are condemned to live their lives knowing that they will not improve. Disabled women's lack of access to health care will aggravate their disability and make it difficult for them to be rehabilitated quickly; this in turn, ensures that their positions will not improve.

Violence perpetrated against women is one of the major causes of disability among women in developing countries. Moreover, women who are already disabled are even more vulnerable to violence. Rape of women and girls in situations of armed conflict, whether civil or international, constitutes by definition a grave breach of international human rights and humanitarian law. Article 27 of the **Fourth Geneva Convention** states that "...women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." Article 147 includes in the list of acts constituting grave breaches of the Convention "...wilfully causing great suffering or serious injury to body or health."

These violations of the rights of women with disabilities have led to mobilisation for their cause. For the first time, hundreds of women with disabilities joined non-disabled women in Beijing, China for the UN Fourth World Conference on Women and specifically addressed issues of particular concern to women with disabilities. Two hundred women with disabilities and their allies from over thirty nations at the First International Symposium on Issues of Women with Disabilities outside of Beijing the day before the opening ceremony for the NGO Forum. This meeting marked the largest international gathering of women with disabilities anywhere, ever. Armed with a commitment to the ideals of inclusion, freedom and independence for women with disabilities, activists worked to translate into action workable strategies for change. In the wake of the NGO forum, international groups such as Women's International Linkage on Disability (WILD) were formed to work on local and international disability rights issues affecting women.

International instruments have also been adopted, and one of the main challenges has been to agree on a common definition of *discrimination against women* through these instruments, as States do not all agree on what constitutes discrimination. Roles may be assigned to women that vary from culture to culture, and these different cultural roles may or may not be discriminatory from one culture to the next.

4.2 International Norms Concerning Women with Disabilities

Rule 9.3 of [The Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#) provides that States "...should promote measure to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of *girls and women with disabilities*, which still prevail in society." (emphasis added).

Article 45 of the [World Programme of Action concerning Disabled Persons](#) speaks of the special situation of women with disabilities. It speaks of social, cultural and economic obstacles that affect the health of women. Disabled women have a lack of access to health care, vocational training and employment.

More general human rights instruments or instruments pertaining to women are also applicable to women with disabilities.

The second paragraph of the [Charter of the United Nations](#) provides that the people of the United Nations are determined "...to reaffirm their faith in fundamental human rights in the dignity and worth of the person (and in) the equal rights of men and women...." Article 1 (3) sets out one of the purposes of the United Nations as: "...promoting and encouraging respect for human rights and fundamental freedoms for all without discrimination as to (...) sex..." (emphasis added).

Article 13 calls for the General Assembly to initiate studies and to make recommendations for the purpose of "...assisting in the realisation of human rights and fundamental freedoms for all without distinction as to (...) sex..." (emphasis added). Article 55 (c) provides that the United Nations shall promote "...universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to (...) sex..." (emphasis added). Furthermore, article 56 states that "...all members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55." As recognized since the 1970 Declaration on Principles of International Law, this creates a Charter-based duty to respect and to observe human rights.

The Preamble of the [Convention on the Elimination of All Forms of Discrimination against Women](#) states that "...discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic, and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity." The Convention is also concerned that women in poverty have the least access to food, health, education, training, and opportunities for employment and other needs.

Article 1 gives a definition of discrimination against women: "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 (a) provides that States Parties undertake to "...embody the principle of 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 realisation of this principle." Article 2 (b) states that States Parties undertake "...to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women."

Different areas are covered in the convention: education (Article 10), employment (article 11), access to health care (article 12), and civil rights (article 15).

The [International Covenant on Civil and Political Rights](#) specifically guarantees certain rights to women, lists a broad spectrum of rights to be applied equally to men and women, and prohibits all discrimination based on sex. Article 2 states that the rights recognised in the Covenant are to be recognised "...without distinction of any kind, such as (...) sex(...) or other status" (emphasis added). The term other status may apply to persons with disabilities. Article 3 speaks of the equal rights of men and women. Article 26 states that all persons are entitled "...to equal protection of the law regardless of (...) sex (...) or other status."

Part II, article 2 (2) of the [International Covenant on Economic, Social and Cultural Rights](#) requires member States to "...undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (emphasis added). Part II, article 3 states that the Parties undertake to "...ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant." Part III, Article 7 of the ICESCR states: "...equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work." Article 10 states that special protection should be given to mothers during childbirth.

The Preamble of the [Declaration on the Elimination of Violence Against Women](#) states "...that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, *women with disabilities*, elderly women and women in situations of armed conflict, are especially vulnerable to violence." (emphasis added). Article 4 provides that States should condemn violence against women. Violence against women is defined as "...any act of gender based violence that results in, or is likely to result in physical, sexual or physical harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." (article 1).

The [Beijing Declaration](#) promotes fundamental human rights for women. Article 9 provides that the Parties are committed to: "...ensure the full implementation of the human rights of women and of the girl child as an alienable, integral and indivisible part of all human rights and fundamental freedoms." Article 13 speaks of the full participation of women in all spheres of society. Article 14 provides that women's rights are human rights. Article 17 is of significant importance in that it recognises a woman's right to control all aspects of her health. Article 26 addresses the problem of women and poverty. It states that the Parties are determined to "...eradicate the persistent and increasing burden of poverty on women...". Article 29 focuses on preventing and eliminating all forms of violence against women and girls. Article 32 provides that Parties commit to "...intensifying efforts to ensure equal enjoyment of all human rights and fundamental freedoms for *all women and girls* who face multiple barriers to their empowerment and advancement because of factors such as (...) *disability*." (emphasis added).

Article 2 of the [Beijing Platform for Action](#) states that: "...the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal rights (...) the Platform seeks to promote and protect the full enjoyment of all human rights and the fundamental freedoms of all women throughout their life cycle." Chapter IV, article 46 recognises that women "...face barriers to full equality and advancement because of factors such as their (...) *disability*." (emphasis added).

Paragraph 5 of the [Vienna Declaration and Programme of Action](#) states that human rights are universal, indivisible and independent. Paragraph 18 provides for the elimination of gender-based violence and all forms of sexual harassment and exploitation. In addition, it calls for the eradication of all forms of discrimination on grounds of sex.

In The [Copenhagen Declaration and Programme of Action](#), pursuant to Commitment 5, States Parties commit themselves to achieving equality and equity between men and women. At the national level, States will "...promote changes in attitudes, structures, policies, laws and practices in order to eliminate all obstacles to human dignity, equality and equity in the family and in society, and promote full and equal participation of urban and rural women and *women with disabilities* in social, economic, and political life,

including in the formulation, implementation and follow-up of public policies and programmes..." (emphasis added). Commitment 6 provides that States Parties commit themselves to ensure full and equal access to education for girls and women in order to obtain social equality.

4.3 Regional Instruments Pertaining to Women with Disabilities

Regional human rights conventions have been applied less often to issues regarding women's rights. However, there are certain advantages available at the regional level, which can not be attained at the international level, such as geographical proximity, cultural similarity and economic interdependence. Regional systems may have certain organs in place to deal with women's rights, such as the Council of Europe's Steering Committee for Equality between Women and Men and the Organisation of American States' Commission on Women.

Article 1 of the [American Convention on Human Rights](#) and article 3 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) provide that the parties to the Convention undertake to ensure the rights in these conventions, "without any discrimination for reasons of (...) sex..." (emphasis added). Article 17 of the American Convention on Human Rights deals with the rights of the family and states that the "...right of men and women of marriageable age to raise a family shall be recognised." and that "...no marriage shall be entered into without the free and full consent of the intending spouses."

Article 6 of the [Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social, and Cultural Rights](#) provides that States Parties are to "undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work". Article 9 provides for maternity leave. Article 15 (3) (a) provides that States Parties should provide special care and assistance to mothers during a reasonable period before and after childbirth.

The [European Social Charter](#) obliges States Parties in article 4 to recognise equal remuneration for women and men for equal work. Article 8 deals with the right of employed women to protection. Article 17 provides that State Parties are to take measures for the social and economic protection of mothers.

Article 1 of the [Additional Protocol to the European Social Charter](#) prohibits discrimination in employment matters on the grounds of sex.

Article 18 (3) of the [African Charter on Human and People's Rights](#) contains an anti-discrimination clause with regard to women. It provides: "...the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

5. Rights of Refugees with Disabilities

Disabled persons who have to leave their countries find themselves in particularly disadvantaged situations. Disabled refugees are an extremely vulnerable group and are, therefore, in need of special attention. However, there are no legal instruments at an international level, as such, to protect the rights disabled refugees. Disabled refugees can only refer to scattered provisions of conventions, instruments and international humanitarian law.

According to the [Convention relating to the Status of Refugees](#), the legal definition for a refugee is "...a person who is outside his country of origin and cannot return to it owing to a well-founded fear of persecution for reasons of race, religion, nationality, or political opinion." Indeed, Article 1 states:

"The term refugee shall apply to any person who: (...)
(2) as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it".

The 1951 dateline originated in the wish of Governments, at the time the Convention was adopted, to limit their obligations to refugee situations that were known to exist at that time, or those which might subsequently arise from the events that had already occurred. By accession to the **1967 Protocol**, States undertake to apply the substantive provisions of the Convention to refugees as defined in the Convention, but without the 1951 dateline.

The Refugee convention applies to all refugees, equally. Some of the basic provisions can be stated as follows:

- a. Article 24 of the Convention relating to the Status of Refugees: "The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters: (...)
- b. Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by social security scheme), subject to the following limitations:
 - o there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - o national laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension."
- c. Other provisions to which disabled refugees will refer for their protection will be the following ones: Articles 3 (non-discrimination), 7 (exemption from reciprocity), 17 (wage-earning employment), 18 (self-employment), 19 (liberal professions), 31 (refugees unlawfully in the country of refuge), 33 (principle of *non refoulement*).

The [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#), in Rule 21, require that measures to achieve the equalisation of opportunities of disabled refugees should be integrated into general development programmes.

The Trust Fund for Handicapped Refugees was set up with funds originating from the Nobel Peace Prize granted to the UNHCR in 1981. Before this, little was known of disabled refugees, many of whom became disabled through violent encounters. Since then, the UNHCR has helped many disabled refugees by covering the costs of social, medical and rehabilitative assistance when these were not provided by the home country of the refugee, or when access and facilities were denied to disabled refugees.

The Guidelines for Educational Assistance to Refugees emphasise that all "...measures for disabled refugees are based on all the concept of community-level care and are incorporated into the overall Care and Maintenance Programme."

5.1 Rights of Refugee Children

Article 22 of the [Convention on the Rights of the Child](#) states: "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee (...) shall (...) receive appropriate protection and humanitarian assistance in the enjoyment..." of rights recognised in the Convention.

The **1951 Convention** does not mention children specifically, but some of its provisions, such as that on education, are especially important to refugee children. UNHCR has, however, made children a policy priority, and has adopted several documents to guide its work in that area.

The **1987 Conclusion on Refugee Children** (Conclusion No. 47 (XXXVIII)) stresses that "... the need for internationally and nationally supported programmes geared to preventive action, special assistance and rehabilitation for disabled refugee children and encouraged States to participate in the "Twenty or More" Plan providing for the resettlement of disabled refugee children." The "Ten or More" plan created in 1973 and increased in 1984 to the "Twenty or More" plan, together with other special programmes, gives the highest priority to children who are disabled or victims of torture.

The 1997 **Conclusion on Refugee Children and Adolescents** (Conclusion No.84) is concerned with the prevention of sexual violence, exploitation, trafficking and abuse. It addresses the rights of child and adolescent victims through provision and appropriate legal and rehabilitative remedies.

The UNHCR has also adopted Guidelines on Refugee Children in 1988, which are incorporated into UNHCR Policy on Refugee Children.

5.2 Rights of Refugee Women

UNHCR adopted a Policy of Refugee Women in 1990 and Guidelines for the Protection of Refugee Women in 1991. The Guidelines review refugee women's legal and physical protection needs. They give concrete recommendations on how to involve refugee women in decisions affecting their security and how to identify particularly risky situations. The Guidelines emphasize safety and suggest mechanisms to improve the reporting of physical and sexual protection problems and programmes for improved protection.

5.3 Regional Instruments Applicable to Refugees

Article 4 of the **Convention Governing the Specific Aspects of Refugee Problems in Africa** states: "Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions." (emphasis added).

The [Addis Ababa Document on Refugees and Forced Population Displacements in Africa](#) states in the recommendation 8 states that "...the international Community, the UN, the UNHCR and other relevant organisations, should support and assist host Governments in fulfilling their responsibilities towards refugees in a manner consistent with the principles of refugee law on the one hand, and legitimate national security, social and economic interests on the other hand. In particular, financial, material and technical assistance should be made available to (...) provide food, water, shelter, sanitation and medical services on a timely basis so that refugees and local populations alike are not put in a life-endangering situation."

The **Cartagena Declaration on Refugees** calls for improved "protection afforded to refugees, safeguarding their human rights and implementing projects aimed at their self-sufficiency and integration into the host society". In addition, it asks for a study on the "possibilities of integrating [persons with disabilities] into the productive life of the country by allocating to the creation or generation of employment the resources made available by the international community through UNHCR, thus making it possible for refugees to enjoy their economic, social and cultural rights.

6. Rights of Indigenous Populations

The rate and risk of disability among indigenous people are higher because of dangerous working conditions, lower standards of living, and the poor quality of the preventive medical services available to them. Above all, disabled persons belonging to such groups do not usually have access to suitable rehabilitation services.

The first instrument concerning indigenous populations was the **1957 ILO Convention on the Protection and Integration of Indigenous and other Tribal and Semi-Tribal populations in Independent Countries**. However, it was ratified by less than thirty countries. The first International Conference of NGOs on Indigenous Issues was held in Geneva in 1977 and a second conference took place in 1981. The decisive step was the establishment of the UN Working Group on Indigenous Populations in 1988, under the auspices of the Sub-commission on the Prevention of Discrimination and Protection of Minorities of the UNHCR. The Working Group drafted a (Draft) Declaration on the Rights of Indigenous Peoples in 1994, which will be considered by the General Assembly.

The International Decade of Indigenous People (1995-2004) has led to the creation of the Permanent Forum on Indigenous Issues, and in 2001, a Special Rapporteur was appointed to receive information and communications on the situation of the human rights of indigenous people.

The [Vienna Declaration and Programme of Action](#) as the final document of the World Conference on Human Rights focuses on the rights of indigenous populations, including persons with disabilities. Section II, paragraph 20 obliges States to ensure the full and free participation of indigenous people in all aspects of

society. Additionally, States should ensure respect for all human rights and fundamental freedoms of indigenous people. It also requires legislative reform to "...assure access to these and others rights of disabled persons."

The [Copenhagen Declaration and Programme of Action](#) gives special emphasis on disadvantaged groups, such as disabled persons and indigenous peoples. Commitment 4 provides that in order to promote social integration, States should respect the rights of indigenous peoples to maintain and develop their identity, culture and interests. Furthermore, States must ensure that indigenous peoples are able to participate in the social, economic, and political life of their country. Commitment 6 requires States to recognise the right of indigenous people to education that is responsive to their specific needs, aspirations and cultures. States must also ensure that indigenous peoples have full access to health care.

7. Rights of Ethnic Minorities

Often, persons belonging to minority groups who are disabled are discriminated on the basis of their race or ethnicity as well as their disability.

In 1992, the United Nations General Assembly adopted the **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, and in 1995, a Working Group on Minorities was established.

Article 27 of the [International Covenant on Civil and Political Rights](#) states that persons belonging to any kind of minority in any State shall not be denied any of their specific rights.

The [Vienna Declaration and Programme of Action](#) provides in section II, paragraph 19 that States are obliged to ensure that persons belonging to minority groups can effectively exercise all of their human rights and fundamental freedoms without any discrimination.

The Commitment 4 of the [Copenhagen Declaration and Programme of Action](#) provides that States undertake to promote and protect the rights of persons belonging to ethnic minorities.

The [Convention on the Elimination of all forms of Racial Discrimination](#) provides protection for persons with disabilities against discrimination based on their race. Racial discrimination is defined in the Convention as "any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin, which has the purpose of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

8. Rights of the Poor

8.1 Disability and Poverty

Poverty can greatly increase the chance of a person becoming disabled, and a person with disabilities has a greater chance of experiencing poverty. There are many reasons why those who are living in poverty experience more disabilities than those who are not poor. Among these are:

- a. Poor people may not have adequate food;
- b. They may live in unhealthy environments;
- c. They may have low-paying or dangerous jobs, if any at all; they may be victims of violence;
- d. They have less access to medical treatment;
- e. They are less educated and, therefore, may not learn about treatment.
- f. Poor people lack access to information, influence and resources, which may cause them to live in poor living conditions and without proper medical care.

8.2 United Nations instruments and measures for the eradication of poverty

The whole United Nations system has a major role to play in the area of eradicating poverty. Addressing poverty issues has been the major theme at many United Nations International Conferences such as:

- The World Summit for Children (New York 1991)
- The Earth Summit (Rio de Janeiro, 1992)
- The World Conference on Human Rights (Vienna, 1993)
- The International Conference on Population and Development (Cairo, 1994)
- The Social Summit (Copenhagen, 1995)
- The Fourth World Conference on Women (Beijing, 1995); and
- The United Nations Conference on Human Settlements (Habitat II) (Istanbul, 1996)

The United Nations Development Programme (UNDP) supports programmes that assist governments and organisations of civil society in developing economic and social policies and programmes to address the whole range of factors that contribute to poverty. These programmes seek to increase food security, improve the availability and quality of shelter and basic services, and generate opportunities and sustainable livelihoods. UNDP assistance supports efforts to identify and prioritise poverty eradication needs at the country level, targeting current gaps and weaknesses in the capacity of government and civil society institutions to address poverty issues.

In 1992, the General Assembly adopted a resolution proclaiming October 17 as the **International Day for the Eradication of Poverty** (General Assembly resolution 50/176 of December 1992). The United Nations proclaimed the year of 1996 as the **International Year for the Eradication of Poverty** (General Assembly resolution 48/183 of December 1993). The General Assembly recognised that "...poverty is a complex and multi-dimensional problem with origins in both the national and international dimensions, and that its eradication in all countries, in particular in developing countries, has become one of the priority development objectives for the 1990's in order to promote sustainable development." The United Nations then proclaimed the period from 1997 to 2006 as the **First United Nations International Decade for the Eradication of Poverty** (General Assembly resolution 50/107 of December 1995). The General Assembly decided by resolution that in 1996 that the theme would be the eradication of poverty as an "...ethical, social, political and economic imperative of humankind" (General Assembly resolution 51/178 of December 1996). The resolution also declared *Poverty, environment, and development* as the theme for 1997 and *Poverty, human rights and development* as the theme for 1998. The objective for the decade is to eradicate absolute poverty, and reduce overall global poverty through decisive national action and international co-operation in implementing fully and effectively all relevant agreements, commitments and recommendations of major United Nations conferences since 1990. The General Assembly recommended that the causes of poverty be addressed through action in the areas of environment, food security, population, migration, health, shelter, human resources development including clean water and sanitation, rural development and productive development, and by addressing the needs of vulnerable groups.

In order to help eradicate this problem of poverty and its endless cycle, Governments may turn to several instruments for assistance and guidance.

Commitment 2 of [The Copenhagen Declaration and Programme of Action](#) provides that States commit themselves to eradicate poverty. In this context, the States must take efforts to provide for the basic needs of all. Moreover, pursuant to commitment 2, at the national level States must ensure that people living in poverty have access to productive resources, including credit, land, education and training, technology, knowledge and information, as well as public services. At the international level, states must "...strive to ensure that the international community and international organisations, in particular, the multilateral financial institutions, assist developing countries in need in their efforts to achieve our overall goal of *eradicating poverty* and ensuring basic social protection." (emphasis added).

Article 15 (h) states that "...one of the world's largest minorities, more than one in 10, are people with *disabilities*, who are too often forced into poverty, unemployment and social isolation." (emphasis added). In the Declaration, the participating governments commit to eradicate poverty.

Paragraph 23 provides that "...poverty has various causes, including structural ones. Poverty is a complex multi-dimensional problem with origins in both the national and international domains. No uniform solution can be found to tackle poverty and international efforts supporting national efforts, as well as the parallel process of creating a supportive international environment, are crucial for a solution to this problem (...). The

eradication of poverty cannot be accomplished through anti-poverty programmes alone, but will require *democratic participation and changes in economic structures* in order to ensure access for all to resources and opportunities." (emphasis added).

Paragraph 27 states that "The international community, the United Nations, the multilateral financial institutions, all regional organisations and local authorities, and all actors of civil society need to positively contribute their own share of efforts and resources in order to reduce inequalities among people."

Paragraph 82 states: "Nothing short of renewed and massive political will at the national and international levels to invest in people and their well-being will achieve the objectives of social development."

Paragraph 96 talks about the need for inter-agency collaboration and states that "The United Nations system, including technical and sectoral agencies and the Bretton Woods institutions, should expand and improve their co-operation in the field of social development to ensure that their efforts are complementary and, where possible, should combine resources in joint initiatives for social development built around common objectives of the Summit."

As articulated by the World Summit for Social Development, the eradication of poverty requires political commitment and action among all sectors of society.

Articles 5-6 of the **Beijing Declaration** recognise that the unequal status of men and women is due in large part to the increasing poverty that is affecting the lives of the majority of the world's people, including women and children. Article 26 focuses on measures to address poverty.

The **United Nations Report of the World Social Situation 1997** sets forth national strategies for dealing with the eradication of poverty:

1. Promoting the high and sustained rates of economic expansion and employment creation through policies designed to create an enabling environment for poverty reduction;
2. Increasing incomes and participation in the economy by the unemployed and working poor through targeted measures to improve their skills and training and upgrade their health status and living conditions;
3. Expanding opportunities for the poor to engage in gainful economic activity by widening their access to land, credit and other productive factors;
4. Targeting those localities and intervening in those areas where the poor reside and where needs are greatest in terms of priorities for poverty reduction;
5. Addressing the pressing economic and social problems of the aged, the disabled, the infirm and those otherwise unable to engage in productive activity through programmes of public assistance and income maintenance.
6. Channelling the benefits from increased participation in the world economy towards the poorest segments of the population through policies promoting an expansion of labour-intensive exports and a reduction of trade restriction on consumer goods.

Article 4 of the [Basic Principles on the Role of Lawyers](#) provides that "...special attention should be given to assisting the poor so as to enable them to assert their rights and where necessary call upon the assistance of lawyers."

The **United Nations Millennium Declaration** gives guidelines for poverty eradication and development, and sets concrete goals. To implement the Declaration, the international community has agreed on Millennium Development Goals, which include the eradication of extreme poverty and hunger, achieving universal primary education, promoting gender equality and empowering women, reducing child mortality, improving maternal health, combating HIV/AIDS, malaria and other diseases, ensuring environmental sustainability, developing a global partnership for development.

9. Rights of Migrant Workers

Millions of people who are earning their living, or are looking for paid employment, are not nationals of the State where they reside. Migrant workers often have no protection or safety and are vulnerable to discrimination, poverty, and social and cultural handicaps. Disabled migrant workers are doubly disadvantaged. In order to protect migrant workers, the United Nations, the ILO and regional organizations

have given special attention to this issue. This has resulted in the adoption of some important international and regional standards concerning migrant workers.

9.1 United Nations Provisions on the Migrant Worker

The [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#), in force since July 2003, contains a comprehensive set of rules with regard to the particular situation of migrant workers. The main thrust of this Convention is that persons who qualify as migrant workers under its provisions are entitled to enjoy rights regardless of their legal status. The Convention does not directly refer to the disabled people, but some articles are worth mentioning.

Article 1 (1) states that "...the present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or *other status*..." (emphasis added).

Article 7 provides: "States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or *other status*." (emphasis added).

Article 28 provides that "...migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the state concerned. Such emergency medical care shall not be refused by reason of any irregularity with regard to stay or employment."

Some recent UN World Conferences have dealt with the rights of migrant workers:

The World Conference on Human Rights invited States to ratify the [International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#) as soon as possible. In the [Vienna Declaration and Programme of Action](#) (part II, paragraphs 33-35), the Conference urged all States to guarantee the protection of the human rights of all migrant workers and their families.

In chapter X of the Programme of Action, adopted at the **International Conference on Population and Development**, the Conference called for a comprehensive international approach to dealing with international migration.

At the **World Summit for Social Development** States committed themselves, at the international level, to ensure that migrant workers benefit from the protection provided by relevant national and international instruments, to take concrete and effective measures against the exploitation of migrant workers and to encourage all States to consider ratifying and fully implementing international instruments relating to migrant workers.

In the **Beijing Platform for Action**, adopted at the **Fourth World Conference on Women** (Chapter IV. D), the Conference called on States to recognise the vulnerability to violence and other forms of abuse of women migrants, including women migrant workers, whose legal status in the host State depends on employers who may exploit their situation.

9.2 Regional Instruments Pertaining to the Rights of the Migrant Worker

The [European Social Charter](#) protects migrant workers. Article 19 establishes the right of migrant workers and their families and of self-employed migrants to protection and assistance. In order to implement these guarantees, States Parties undertake to provide a number of services. Some of which include:

1. States undertake to assist migrant workers against misleading propaganda relating to immigration and emigration;
2. States undertake to adopt appropriate measures to facilitate the departure, journey and reception of such workers and their families and to provide appropriate services for health, medical attention and good hygienic conditions during the journey;

3. States undertake to secure for migrant workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters: remuneration, working conditions, membership of trade unions, enjoyment of the benefits of collective bargaining and accommodation;
4. States undertake to secure for such workers lawfully within their territory treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable of employed' persons;
5. States undertake to facilitate the reunion of a family of a foreign worker lawfully within their territory;
6. States undertake to secure that workers lawfully residing within their territories receive treatment not less favourable than that of their own nationals in respect of legal proceedings;
7. States undertake to secure that the workers lawfully residing within their territories are not expelled unless they endanger national security or offend the public interest or morality;
8. States undertake to permit the transfer of the earnings and savings of the migrant workers into other countries.