

**UN Convention on the Rights of Persons with Disabilities:
Making Domestic Implementation Real and Meaningful
CCD – CACL Working Paper
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Introduction

On March 11, 2010 Canada ratified the UN Convention on the Rights of Persons with Disabilities (CRPD). As we approach the first Anniversary of Canada's ratification, it is important that we take appropriate steps to ensure that we live up to our commitments as a country and develop a plan for meaningful implementation, monitoring and reporting.

The CRPD is a tool that helps communities and governments understand why and how the rights of people with disabilities haven't been realized and it provides a framework that articulates the conditions needed to make rights a reality. There is significant work to do in Canada to make the CRPD real and meaningful in the lives of Canadians with disabilities. While substantive reform cannot be ignored, it also cannot be achieved in isolation. Focused efforts are required to address the substantive issues in the CRPD but efforts must be incorporated as part of an overarching implementation plan that includes a robust and comprehensive monitoring and reporting mechanism.

An implementation plan would provide coherence in addressing the substantive issues as well as provide a framework for monitoring and reporting. It would act as the road map for success and provide the necessary benchmarks to monitor Canada's progress on making the CRPD real.

The following working paper has been developed by the Council of Canadians with Disabilities (CCD) and the Canadian Association for Community Living (CACL). It is intended to spark dialogue on implementation of the CRPD and propose concrete actions for consideration. This paper provides:

- A brief background on the CRPD and the role the Government of Canada and the Canadian disability community played in elaborating the CRPD.

The paper identifies the need for:

- National mechanisms for implementation, monitoring and reporting.
- A robust participation strategy.
- A national framework for implementation.
- A public and transparent review process.

The paper concludes with suggested next steps – including a specific call to action for the Government of Canada and Parliamentarians.

Background

On December 13, 2006, the United Nations General Assembly formally adopted the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD is unique for a number of reasons. It is: the first human rights treaty of the 21st Century; the fastest negotiated human rights Convention in UN history and the first time in history civil society actively participated in the development and negotiation of the text; the first human rights Convention with an explicit social development dimension; and, with 82 signatories on March 30, 2007, it has the highest number of signatories in history to a UN Convention. Domestically, it is also the first time Canada has signed a UN Convention on its opening day. Canada ratified the CRPD on March 11, 2010. **To-date, 147 countries have signed and 97 countries have ratified the CRPD.**

The elaboration of the CRPD represents a unique collective effort, bringing together governments and persons with disabilities. Over the course of six years and eight Ad Hoc Committee working sessions, the international community came together to identify barriers experienced by persons with disabilities and agreed on specific measures to be implemented, progressively (Art. 4), to eliminate these barriers and give effect to widely accepted human rights. In this process, the participation of persons with disabilities (immortalized in the motto: "nothing about us without us")

proved essential. Many government representatives often testify to the invaluable learning experience for them as a result of the participation of persons with disabilities.

In 50 articles, the CRPD clearly articulates what existing human rights mean within a disability context and establishes reporting and monitoring procedures for States Parties. The Convention on the Rights of Persons with Disabilities (CRPD) reaffirms that persons with disabilities throughout the world enjoy all human rights. In particular, the CRPD's purpose is:

"to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".

The CRPD contains articles setting out guiding principles (Art. 3) state party obligations (Art. 4), and specific measures intended to give effect to its principles, for example, living independently and being included in the community (Art. 19), work and employment (Art. 27), adequate standard of living and social protection (Art. 28).

The CRPD marks a paradigm shift by addressing the human rights of persons with disabilities from a progressive social model approach to disability. In many instances, this new approach requires a new way of understanding the exercise of key human rights.

The CRPD also has an Optional Protocol. The Optional Protocol on Communications (OP) provides for a complaints mechanism whereby groups and individuals, after having exhausted all national resources, can have the Committee on the Rights of Persons with Disabilities consider a claim that a State Party has violated the provisions in the CRPD. To-date 90 countries have signed and 60 countries have ratified the OP. Canada has not signed or ratified the OP.

Canada and the CRPD

Both during the elaboration and ratification stages, the government of Canada worked closely with provinces and territories and with the disability community. This approach enabled Canada to make a strong contribution, relying on Canadian values as enshrined in Canadian constitutional and human rights law. As a result, the CRPD has a uniquely Canadian feel. For example: Article 5 (equality and non-discrimination) is very consistent with S. 15 of the Canadian Charter of Rights and Freedoms; Article 12 (equal recognition before the law) was facilitated by the Canadian delegation and secures a progressive approach to legal capacity and, for the first time in international law, recognizes a right to use support to exercise one's legal capacity – a made-in-Canada solution; Article 24 (education) secures a right to inclusive education – a concept that Canada, in particular, New Brunswick, is seen as an international leader on.

Canada was one of the most progressive and engaged delegations involved in developing and negotiating the CRPD. In many regards, the world is looking to Canada to continue to lead the way through progressive – and meaningful – efforts on implementation, monitoring and reporting.

Moving the CRPD Forward

CCD and CACL believe concerted effort is required to ensure effective and coherent implementation of the CRPD at all levels of Government. To this end, we recommend the following:

A. NATIONAL MECHANISMS FOR IMPLEMENTATION, MONITORING AND REPORTING

- 1. Establish a High-level Federal Focal Point and Coordination Mechanism** – A high-level federal coordination mechanism, consisting of assistant deputy ministers or higher, is a first step in ensuring cross-departmental collaboration and input on CRPD implementation. This group should be mandated to develop a CRPD implementation plan at the Federal level and ensure close collaboration with representative organizations of persons with disabilities in the development and delivery of its plan.

Rationale:

This recommendation is critical if Canada is to make further progress toward improving the living conditions, in general, for persons with disabilities. It is also required in order to comply with articles 33(1) and 4(3) of the CRPD. Experience shows that for such a mechanism to be effective, it has to function at least at the assistant deputy minister level and avoid the practice of downward delegation to working-level officials who do not have the authority to advance the policy leadership required for full implementation of the CRPD.

- 2. Federal Leadership** – the Government of Canada can demonstrate its leadership and commitment to meaningful implementation of the CRPD by establishing a Minister Responsible for the Status of Persons with Disabilities with key responsibility in Cabinet to promote the status of persons with disabilities and advance the CRPD. The Government of Canada can also demonstrate leadership through the creation of an appropriate FPT mechanism, that includes a mandate for consultation with the disability community, for ongoing collaboration with Provincial/Territorial governments and the development of a shared implementation strategy.

Rationale:

Canadian experience shows that progress in disability-related policy and programming requires inter-jurisdictional cooperation. The First Ministers have affirmed this in “In Unison”. The provisions of the CRPD extend to “all parts of federal states” (Art. 4.5).

- 3. Parliamentary Committee** – CCD and CACL recommend that a standing parliamentary committee mandated to advance disability-related issues be established. One of the tasks of such a committee must be the implementation of the CRPD, including seeking audits by the Auditor-General of Government of Canada relevant policies and programmes. The Committee must also examine the advisability of creating a disability commission.

Rationale:

Based on recent experience, it is CCD and CACL’s view that more effective ways of advancing disability issues at the federal level are imperative. A standing committee focused on disability-related issues, including the implementation, of the CRPD can contribute significantly to improving effectiveness at the federal level. The potential benefits of the Auditor-General, a disability commission and similar arrangements can be examined more thoroughly in the context of a standing committee.

- 4. Independent Monitoring Mechanism** – Article 33 of the CRPD requires Canada to designate an independent monitoring mechanism to “promote, protect and monitor” implementation of the CRPD. The Canadian Human Rights Commission, with the appropriate mandate and resources, should be designated as the monitoring mechanism.

Rationale:

To-date, the UK, Germany, France, New Zealand and Australia have designated their National Human Rights Institute as their country’s independent monitoring body. The Canadian Human Rights Commission (CHRC) has the legislative basis to promote, protect and monitor human rights. However, the Commission cannot fulfill effectively this function within existing resources or a narrowly focused federal mandate. To be effective in this role, the CHRC needs:

- A clear mandate to monitor nationally – not just federally – on articles in the CRPD.
 - National monitoring will require a collaborative effort with provincial/territorial HRCs and other relevant bodies.
- New resources to undertake this task effectively.
 - The Commission may meet the requirements of Article 33 but unless additional resources are allocated it is poorly resourced to take on this new and important function.

- 5. Canadian Comprehensive Report** – In accordance with Article 35, Canada is required to submit its first report on the CRPD in April 2012. The disability community should be engaged early in the process of preparing this comprehensive report.

Rationale:

Canada must submit to the Committee on the Rights of Persons with Disabilities a comprehensive report on the measures taken toward implementing the CRPD. The CRPD calls on states parties to prepare their reports in an open and transparent manner, including the involvement of representative disability organizations.

Summary of Possible Mechanisms to advance Implementation, Monitoring and Reporting

A variety of mechanisms could be useful starting points for advancing implementation of the CRPD. Based on learnings from domestic experiences on other human rights conventions and international experiences, we suggest the following mechanisms for consideration:

1. Establish an all party parliamentary or legislative committee with a mandate to address the status of persons with disabilities and tasked with the development of the implementation action plan.
2. Establish a Minister Responsible for the Status of Persons with Disabilities with key responsibility in Cabinet to promote the status of persons with disabilities.
3. Establish a Disability Commissioner within all levels of government to monitor government policy and procedures as they relate to persons with disabilities.
4. Establish a senior level inter-departmental implementation committee within all levels of government.
5. Establish a senior level inter-governmental committee to coordinate implementation, monitoring and reporting activities related to CRPD.
6. Engage disability community in dialogue with First Ministers and the Council of the Federation on issues of inter-governmental coordination, monitoring and reporting.

B. PARTICIPATION OF PEOPLE WITH DISABILITIES AND THEIR REPRESENTATIVE ORGANIZATIONS

- 1. A robust participation strategy** – Article 4.3 of the CRPD obligates State Parties to “consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations” in all aspects of implementing the Convention, including policy development processes and independent mechanisms. It is essential to design the processes and structures to enable compliance with this Article.

Rationale:

Different mechanisms for participation will be required including: 1) membership on independent monitoring and implementation mechanisms; 2) advisory panels to policy development processes; and 3) issue-specific consultation processes. A participation strategy should include:

- Negotiated representation and modes of participation with the national representative, membership disability organizations.
- Assurance that under-represented groups (visible minorities, people in institutions, etc.) are adequately represented.
- Adequate resources for full and effective participation.
- Investment in capacity development of disability organizations so they can participate effectively in policy development processes and independent (and other mechanisms) established for CRPD implementation.
- Investment in capacity development of disability organizations to participate effectively in the development of parallel reports.
- Full accessibility through multiple formats, and other forms of accommodation.
- Access to needed information and transparency in implementation processes to enable effective participation.

C. NATIONAL FRAMEWORK FOR IMPLEMENTATION (IMPLEMENTATION ACTION PLAN)

Article 33.2 obliges States Parties to establish a framework to “promote, protect and monitor implementation” of the CRPD. A National framework for implementation, or simply, an implementation action plan – developed in

collaboration with the disability community – would provide the vision and overarching framework for successful implementation of the CRPD; it would identify the necessary mechanisms for collaboration (in particular, mechanisms for Federal-Provincial-Territorial and Aboriginal Government collaboration), and benchmarks for monitoring and reporting.

An implementation action plan would include a focus on substantive issues and relevant articles as well as a monitoring and reporting strategy. It should include a strategic evaluation of existing policies, programmes and services to identify gaps and the necessary measures to address them. An implementation action plan should build on the ongoing efforts to build an inclusive and accessible Canada and the four core areas identified in the National Action Plan on Disability.

CCD and CACL have identified the following priorities and actions for consideration:

1. *Disability Related Supports (multiple articles)*

Disability supports has been a long standing priority of the disability community. While the provision of disability supports is typically a Provincial/Territorial responsibility, their foundational impact on the lives of people with disabilities make them an issue of basic citizenship. Disability supports are woven into the fabric of the CRPD and each article. The CRPD recognizes supports and services as integral to the realization of rights. An Implementation Action Plan should:

- Explore federally regulated areas related to, or reliant on, the provision of disability supports (i.e. housing, employment, participation in political and public life etc).
- Engage in an FPT dialogue on shared responsibility for implementation of the CRPD for disability related supports that fall solely under PT jurisdiction.

2. *Poverty Alleviation (Article 28)*

Canadians with disabilities face shameful rates of poverty. An implementation action plan must provide a framework for tackling poverty and the conditions that have created poverty as the likely outcome of life with a disability. An Implementation Action Plan should:

- Explore Federal income support measures (i.e. tax credits, benefits, direct payments etc) that could be enhanced to be more flexible and responsive to the real income needs of Canadians with disabilities and their families (i.e. a refundable Disability Tax Credit for low income Canadians; non-taxable CPP-D benefits, shared eligibility criteria between CPP-D and DTC, provide 52 weeks EI sick benefits)
- Explore an expanded Federal income support role for Canadians with significant disabilities.
- Engage with Provincial-Territorial governments to develop a disability supports re-investment strategy of PT social assistance monies saved as a result of an expanded Federal income support role.

3. *Increased Labour Market Participation (Article 27)*

Canadians with disabilities are underrepresented in the labour market. Where people with disabilities are employed their attachment to the labour market is tenuous and often reliant on the provision of adequate disability-related supports. An Implementation Action Plan should:

- Review existing employment programs and services for compliance with Article 27 and explore possible enhancements.
- Identify specific targets for Canadians with disabilities to be included in Labour Market Development Agreements (LMDAs) negotiated with the provinces.
- Engage with the disability community and PT governments to identify shared solutions to increase labour market participation.

4. *Access and Inclusion (Article 9 and 21)*

For Canadians with disabilities and their families, progress in any of the above mentioned areas relies on accessibility in its broadest sense – physical and infrastructure-related access, information and communication access and participation access. An Implementation Action Plan should provide an

accessibility lens on relevant federal areas (i.e. housing, transportation, elections). In particular an Implementation Action Plan should:

- Commit to developing accessibility regulations for all federally regulated modes of transportation.
- Promote a procurement policy that would ensure only accessible technologies are purchased.
- Provide a framework for necessary reforms to the electoral process to ensure people with disabilities can participate in all aspects of election campaigns and vote in an independent and secret manner.

5. *Canada's International Disability Leadership (Article 32 and 34)*

Canada is seen as an international leader on disability and was an active leader during negotiations of the CRPD. To continue this role, an Implementation Action Plan should:

- Engage with CIDA to explore policy and programs for compliance with Article 32.
- Promote Canada's engagement internationally through participation in Conference of States Parties meetings and the Committee on the Rights of Persons with Disabilities.

D. ARTICLE 12 RESERVATION AND OPTIONAL PROTOCOL

1. A public and transparent review process – Canada included a substantive reservation on Article 12 (equal recognition before the law) in its ratification. Additionally, Canada has not yet signed or ratified the Optional Protocol. The Government of Canada should publicly establish a clear timeframe to review its reservation and its position on the Optional Protocol.

Rationale:

The disability community believes the reservation does not affirm the spirit of the Convention, and could be interpreted to signal less than full commitment to advancing legal capacity and supported decision making, and to reforming current substitute decision making provisions. Additionally, the disability community remains united in its position that a complaints mechanism is integral to ensuring accountability and meaningful implementation. A clear review process, including a dialogue with the disability community, would provide an opportunity to better understand the concerns that have shaped these realities and to develop a shared solution for moving forward.

Next Steps

As a State Party to the CRPD, Canada is obliged to take active measures for implementing the CRPD – including monitoring and reporting on those measures. CCD and CACL believe the measures outlined in this paper are feasible, have practical value and are consistent with the provisions of the CRPD. They provide a starting point for establishing the fundamentals of an implementation plan and monitoring process.

Moving the CRPD forward requires political will and a public service mandated and resourced to drive implementation. **CCD and CACL are calling for immediate action by the Government of Canada and Parliamentarians.**

1. The Government of Canada should
 - i. Create an advisory panel, with representation from national disability organizations, to explore how to move forward the actions identified in this paper. The creation of such a panel would be a first step in meeting Canada's obligations to the CRPD.
2. Parliamentarians should:
 - i. Endorse and support the convening of Parliamentary hearings on the CRPD. The hearings should be convened as soon as possible and should include representatives from disability organizations as key witnesses.

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