

PROMOTING THE RIGHTS OF PERSONS WITH  
DISABILITIES: TOWARDS A NEW UN CONVENTION

NATIONAL HUMAN RIGHTS INSTITUTIONS  
INTERNATIONAL WORKSHOP

SESSION 4

EXISTING (SOFT) UN INSTRUMENTS RELEVANT TO  
DISABILITY

THE UN STANDARD RULES  
FOR THE EQUALIZATION OF OPPORTUNITIES  
FOR PERSONS WITH DISABILITIES

GENERAL ASSEMBLY RESOLUTION 48/96 OF 20 DECEMBER 1993

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The UN Standard Rules  
For the Equalization of Opportunities  
For Persons with Disabilities  
General Assembly resolution 48/96 of 20 December 1993

**I. INTRODUCTION**

The UN Standard Rules of 1993 are undoubtedly the main soft UN instrument on the rights of Disabled persons. It is a 'soft' UN instrument because it has no binding force. See Appendix I to situate the UN resolution in its historical context.

The first noteworthy point is that the instrument is about the Equalization of Opportunities not about equality per se. All human beings are born equal in dignity, but not all human beings are born with the same mental or physical faculties. In spite of these differences, opportunities, the right to a decent standard of living, the chances of progress and advancement in life should be the same for one and all. It is generally acknowledged that the fate of persons with disabilities must be treated as a rights issue, not as a welfare issue.

Secondly the instrument is mainly concerned with economic, social and cultural rights. Human rights are universal, indivisible and there is no order of precedence. Any UN Convention on the Rights of persons with Disabilities will have to englobe all rights, civil and political rights, as well as economic, social, cultural rights. The two sets of rights co exist and cannot be separated. A now often debated issue is why there should be two UN Covenants on such rights supervised by two treaty bodies, making it all the more complicated and time consuming for member countries to satisfy the reporting requirements under the two UN instruments. A merging of the two Covenants with a single committee examining the reports of signatory countries may be something earnestly wished for. Thus a new UN Convention on the rights of persons with disabilities which encompasses all human rights may create a precedent.

It must be conceded that compliance with a new UN Convention will depend largely upon the financial resources available to a country. Generally speaking it may cost less to abide by civil and political rights (although one cannot contest the fact that the maintenance of democracy, the holding of regular free and fair elections can cost a lot of money – See *The Cost of Rights – Why liberty depends on Taxes* by Stephen Holmes and Cass R. Sunstein (1999) W.W. Norton & Company, New York.

## II ANALYSIS OF THE KEY ELEMENTS OF THE UN STANDARD RULES

The Standard Rules are a carefully elaborated instrument which can serve as a useful foundation on which to build a new Convention. As it has no binding force, it only purports to request Member States to apply the Rules on developing national disability programmes and to urge Member States to support, financially and otherwise, the implementation of the Rules.

The first twelve Rules deal with the following -

### Preconditions for Equal Participation

Rule 1	Awareness-raising
Rule 2	Medical care
Rule 3	Rehabilitation
Rule 4	Support services

### Target Areas for Equal Participation

Rule 5	Accessibility
Rule 6	Education
Rules 7	Employment
Rule 8	Income maintenance and social security
Rule 9	Family life and personal integrity
Rule 10	Culture
Rule 11	Recreation
Rule 12	Religion

## PRECONDITIONS

### Rule 1 Awareness-Raising

For too long there has been little awareness of the rights and needs of persons with disabilities. Their fate has been left in the hands of private charitable organisations and NGOs while generally the State has catered for able bodied persons. The rules require that the State should make persons with disabilities aware of their rights while at the same time other persons should be made to realize that persons with disabilities are citizens with the same rights and obligations. The mass media should be involved in the exercise. Public education programmes should be promoted.

### Rule 2 Medical care

Both preventive and curative medicine should be used. The key words are early detection, assessment and treatment of impairment. Adequate training of medical and paramedical personnel are of utmost importance.

**Rule 3            Rehabilitation**

Basic skills training, counselling, developing self reliance will help persons with disabilities to improve or compensate for an affected function.

**Rule 4            Support Services**

Paragraph 2 of Rule 4 is explicit –

*States should support the development, production, distribution and servicing of assistive devices and equipment and the dissemination of knowledge about them. As far as possible they should be provided free of charge or at a low price.*

**TARGET AREAS**

**Rule 5            Accessibility**

- (a) Access to the physical environment for persons with disabilities means accessibility to houses, buildings, public transport services and other means of transportation, streets and other outdoor environments.
- (b) Access to information and communication includes availability of Braille, tape services, large prints and appropriate technologies to access spoken information for persons with auditory impairments or comprehension difficulties, including computerized information. Deaf persons should be able to benefit from sign language interpretation services.

**Rule 6            Education**

The education of persons with disabilities should be an integral part of the educational system. In some areas special education may be necessary, while community-based programmes may also be developed.

**Rule 7            Employment**

The fundamental rule is that persons with disabilities must have equal opportunities for productive and gainful employment in the labour market. The possibility of earning their own living will help them to enjoy other rights. A number of measures in States' action programmes may be used to achieve this end, e.g. vocational training, incentive oriented quota schemes, reserved or designated employment, loans or grants for small

business, exclusive contracts or priority production rights, tax concessions, contract compliance, financial assistance etc.

The work environment must also be improved where it is not possible to integrate persons with disabilities into the work force, small units of sheltered and supported employment may be set up.

**Rule 8            Income maintenance and social security**

It should be the responsibility of the State to ensure adequate income support to persons with disabilities whether on a temporary or a permanent basis. Temporary measures should include incentives to restore the income earning capacity of persons with disabilities.

**Rule 9            Family life and personal integrity**

Opportunity must be given to persons with disabilities to experience their sexuality, have sexual relationships and bear children. They should be made aware of the possibility of sexual or other abuse, of the precautions they may take and of the need to report such cases to put a stop to the abuse.

**Rule 10           Culture**

Participation in cultural activities will enable persons with disabilities to develop their creative, artistic and intellectual potential. Stress is laid upon the accessibility and availability of places for cultural performances and services.

**Rule 11           Recreation and Sports**

States should ensure accessibility to the same, including the organization of special activities or games with the provision of adequate training.

**Rule 12           Religion**

Equal participation in the religious life of the community is a must.

## **IMPLEMENTATION MEASURES**

**Rules 13 to 22** describe the Implementation Measures to ensure equal participation in the target areas mentioned above. Such measures comprise

(13) information and research on living conditions of persons with disabilities (gathering statistics, constituting a data bank, conducting national surveys);

(14) policy making and general development planning,

(15) legislation to enforce rights of persons with disabilities,

(16) economic policies whereby States should include disability matters in the regular budgets of all national, regional and local government bodies;

(17) coordination of work involving the establishment and strengthening of national coordinating committees,

(18) Organisations of persons with disabilities should be recognized, encouraged, supported economically, given both an advisory role and a participatory role;

(19) Training of personnel involved in the planning and provision of programmes;

(20) National Monitoring and evaluation of disability programmes in the implementation of the Rules;

(21) Technical and economic cooperation between industrialized and developing countries with special attention to persons with disabilities; and

(22) International Cooperation within the UN, special agencies and other intergovernmental organizations.

An overview of these Rules shows that disability issues have been dealt with in great detail. The central message remains the equalization of opportunities and how states should exercise the balancing act in catering for the whole population.

## **III CASE STUDY**

Mauritius is a small island of 720 square miles with a population of 1.2 m. including 41,000 people with disabilities. Its economy, based on the textile industry, sugar, tourism, financial services, has been doing fairly well. Because of its small size, its stable government and its productive labour, the problems have not been as enormous as those of other developing economies. It has a Constitution based on the European Convention of Human Rights, which it has preserved since 1968. The relative economic prosperity has allowed Mauritius to implement measures found in the Standard Rules, depending on what are the attendant strains on its resources. Above all, Mauritius is proud of having set up a welfare state based on the English Fabian Model, with free education from pre primary to tertiary level, free health services, some form of subsidised housing and

welfare measures like Old Age pensions and social benefits for handicapped persons.

Over the years the rights of persons with disabilities have been afforded better protection. In 1995 the Government enacted a Training and Employment of Disabled Persons Act, requiring employers of more than 35 persons to have at least 3 per cent of the workforce reserved for persons with disabilities **Appendix II**. A new Mental Health Care Act was passed in 1999 to protect the rights of mental patients and to ensure better care. The Income Tax Act is reviewed regularly to grant allowances to disabled persons and to parents with disabled children. Free medical care, hearing aids, walking sticks are given to persons with disabilities where needed. Government subsidies are granted to NGOs which cater for persons with disabilities. A National Council for the Rehabilitation of Disabled Persons set up by Act of Parliament coordinates the activities of NGOs.

As far as possible new buildings are equipped with facilities (entrance, lifts, toilets, parking etc.) for persons with disabilities.

Sports facilities have started to evolve, enabling persons with disabilities to participate in games specially organised for them. A campaign has been launched to enable persons with disabilities, who are victims of sexual abuse to report such cases. Persons with disabilities are given extra facilities to vote at general and local elections. The need to make special provision to enable persons with disabilities to participate in religious activities has not been felt since such persons tend to be religious minded. In some cases religious sects may find in them a captive audience.

In Africa the Ugandan National Human Rights Commission has been quite active in promoting the rights of persons with disabilities. It actually held a public inquiry on the rights of persons with disabilities with the following terms of reference –

1. *The impacts of discrimination based on disability.*
2. *The social and cultural attitudes and practices that affect persons with disability and other barriers which have prevented effective protective action for persons with disabilities.*
3. *The shortcomings in existing laws, policies and practices affecting persons with disabilities.*
4. *Best practice models of laws, policies and programmes in Uganda and other nations.*
5. *The extent to which Uganda meets international minimum standards for persons with disabilities.*
6. *The experiences of persons with disability.*
7. *Evidence of disability discrimination in education, training, employment, transport, health etc.*

All over the world, more specially in the developing world, we are a long way from promoting satisfactorily the rights of persons with disabilities.

#### **IV The relevance of the Standard Rules - Relationship with the new Convention**

The Standard Rules are too verbose and are not drafted in the style of a proper legal instrument. Although the target areas mentioned therein have to be preserved in a new Convention, civil and political rights should be included. For example not only should persons with disabilities be able to vote at elections, but they should be afforded representation in Parliament either by way of reserved seats or political parties should be encouraged to have persons with disabilities among the candidates they field. A degree of positive discrimination would be welcome – especially if the legislature has a second chamber, the system of reserved seats should meet with no objection.

In our changing world could the Convention not include a clause about monitoring sale of weapons to developing countries where wars are now largely responsible for the increase in the number of persons with disabilities?

Regarding medical facilities, would the big drugs firms in developed countries allowed the cheap production and marketing of drugs for disabled persons? Could such a clause be incorporated in the Convention in the face of strong commercial vested interests?

The Special Rapporteur appointed under the Rules is of the view that the Rules do not deal adequately with the following areas -

*Gender, children (violence and abuse)*

*Certain groups, mainly persons with developmental and psychiatric disabilities (self-determination i.r.o. medical care, rehabilitation and support services, informed consent, right to refuse treatment and medication and involuntary confinement)*

*Strategies for improving living conditions in regions with extreme poverty.*

*Housing (self-determination, privacy and personal integrity)*

*Disabled persons in refugee or emergency situations.*

It has been suggested that the new Convention could distinguish between developed and developing countries. The application of different norms to dissimilar situations may constitute a dangerous precedent.

The Monitoring Mechanism that the new Convention could provide should not be as ineffectual as the Committees of the Treaty Bodies which receive Country Reports with undue delay and whose comments are thereafter shelved, to be next attended to only for the preparation of the NHRIs next Report. The Standard Rules provide for the appointment of the Special

Rapporteur. To protect the rights of persons with disabilities a closer monitoring mechanism with Country Rapporteurs may be set up without the need for periodic Country Reports and a Committee. Instead the Panel of Experts proposed in the Standard Rules could be more effective to ensure rapid implementation of the new Convention. Country Rapporteurs could be the members of national human rights institutions which are the body best placed to monitor the situation. Until now, the role of NHRIs at this level has been rather minimal.

## **V. CONCLUSION**

The key words used in the Standard Rules such as Elementary Care, Education, Rehabilitation, Integration, Normalization (of persons with disabilities) can only become a reality when there is Participation. But Participation is only possible when there is an Equalization of opportunities for persons with disabilities which would raise their awareness of both of their rights and obligations in society. The autonomy they would achieve will place them at the centre of decisions affecting them.

Persons with disabilities are at a double disadvantage since they tend to be among the poorer sections of the population. But whether a country is rich or poor, its degree of civilisation is measured by the way it treats its vulnerable groups.

## APPENDIX 1

1948	Universal Declaration of Human Rights
1969	Declaration of Social Progress and Development (Article 19)
1971	Declaration on Rights of Mentally Retarded Persons
1975	Declaration on the Rights of Disabled Persons
1981	International Year for Disabled Persons
1982	World Programme of Action concerning Disabled Persons (Resolution 37/52)
1983	UN Decade of Disabled Persons
1983	International Labour Organisation Convention No. 159 on Vocational Rehabilitation and Employment of Disabled Persons
1990	World Conference on Education for All
1990	World Summit for Children
1993	Standard Rules on the Equalisation of Opportunities for persons with Disabilities (Resolution 48/96)
1993	World Conference on Human Rights
1994	Salamanca Statement and Framework for Action on Education
1994	International Conference on Population and Development
1995	World Summit for Social Development
1995	World Conference on Women
1995	Appointment of a UN Special Rapporteur on Disability
1999/2000	African Decade of Persons with Disabilities
2000	Economic and Social Council resolution 2000/10 on further promotion of equalization of opportunities by, and for persons with disabilities
2001	Proposed Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities (Resolution 56/168) Ad Hoc Committee
2002	Human Rights of Persons with Disabilities (UN Commission on Human Rights. Resolution 2002/61)