

## LESSON 2

### FRAMEWORKS OF DISABILITIES

In this lesson, we learn about legal frameworks as well as a practical guideline.

#### **The Content of Lesson 2**

- 2.1. UN Convention on the Rights of Persons with Disabilities
- 2.2. Disabilities and Laws in Kyrgyzstan
- 2.3. Terminologies
- 2.4. Practical Guideline When Meeting Persons with Disabilities

## **2.1. UN Convention on the Rights of Persons with Disabilities**

The Convention and a Human Rights-Based Approach

At the time of writing this module, Kyrgyzstan was about to ratify the [UN Convention on the Rights of Persons with Disabilities](#).

The Convention was adopted on 3<sup>rd</sup> of December 2006 and entered into force on 3<sup>rd</sup> May 2008 after 20 ratification of the Convention and 10 ratification of the Optional Protocol. Organizations of persons with disabilities from all over the world actively participated in the making of the Convention, which was a significant achievement of materializing the slogan, “Nothing about us, without us.”

The Convention aims 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 Convention advances a human rights-based approach to disabilities and the participation of persons with disabilities in all spheres of life. That is/ in other words, the Convention has officially shifted the paradigm from a

conventional medical approach to a human rights-based approach. Duty-bearers are obliged to respect, protect and fulfil human rights<sup>1</sup>:

### **Respecting, Protecting and Fulfilling Human Rights**

**Respect:** The obligation to “respect” human rights means that States must not interfere with the exercise and enjoyment of the rights of people with disabilities. They must refrain from any action that violates human rights. They must also eliminate laws, policies, and practices that are contrary to human rights.

**Protect:** The obligation to “protect” human rights means that the State is required to protect everyone, including people with disabilities, against abuses by non-State actors, such as individuals, businesses, institutions, or other private organizations.

**Fulfill:** The obligation to “fulfill” human rights means that States must take positive action to ensure that everyone, including people with disabilities, can exercise their human rights. They must adopt laws and policies that promote human rights. They must develop programs and take other measures to implement these rights. They must allocate the necessary resources to enforce laws and fund programmatic efforts.

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards, such as the Convention, and operationally directed towards promoting and protecting human rights.

The objectives of a human rights-based approach are two-fold:

- to empower people (rights-holders) to claim and exercise their rights and
- to strengthen the capacity of the actors (duty-bearers) who have a particular obligation or responsibility to respect, protect and fulfil the rights of the poorest, weakest, most marginalized and vulnerable, and to comply with these obligations and duties.<sup>2</sup>

A human rights-based approach is theoretically an opposite approach to a charity-based approach, as in the following table.

---

<sup>1</sup> ODIHR. (undated) Understanding the Human Rights of Persons with Disabilities. Available at [http://tandis.odihr.pl/documents/hre-compendium/rus/CD%20SEC%203/III\\_53\\_2\\_ENG.pdf](http://tandis.odihr.pl/documents/hre-compendium/rus/CD%20SEC%203/III_53_2_ENG.pdf) Accessed on 27.11.2017.

<sup>2</sup> UNICEF Finland. (2015) Introduction to the Human Rights-Based Approach: A Guide for Finnish NGOs and Their Partners. UNICEF Finland. Helsinki.

**Table 2. Charity-Based Approach and Human Rights-Based Approach<sup>3</sup>**

	<b>Goal</b>	<b>Individuals</b>	<b>Responsibilities Based on</b>
<b>Charity-Based Approach</b>	Filling the gaps of (often material) needs	Objects of charity, “Beneficiaries”	Discretion, no obligations
<b>Human Rights-Based Approach</b>	Fulfilling aimed human rights in a human rights-sensitive manner	Subjects as rights-holders, as well as duty-bearers in different contexts	international law-oriented obligations and accountability for fulfilling the rights of individuals

As is clear from the above table, **the right to self-determination** of persons with disabilities is central to a human rights-based approach, as persons with disabilities are subjects and not merely objects as in a charity-based approach.

#### Implications of the Convention

**Ratification** is an act through which a State expresses its consent to be bound by the Convention. When ratified, a State is obliged to implement the binding legal instrument.

The OHCHR<sup>4</sup> (2017) enlists the following activities that should take place after the ratification of the Convention:

<sup>3</sup> Katsui, H. (2012) Disabilities, Human Rights and International Cooperation: Human Rights-Based Approach and Lived Experiences of Ugandan Women with Disabilities. VIKE. Helsinki.P.25.

<sup>4</sup> OHCHR. (2017) OHCHR Training Package on the Convention on the Rights of Persons with Disabilities. Available at [http://www.ohchr.org/EN/Issues/Disability/Pages/TrainingmaterialCRPDConvention\\_OptionalProtocol.aspx](http://www.ohchr.org/EN/Issues/Disability/Pages/TrainingmaterialCRPDConvention_OptionalProtocol.aspx) Accessed on 22..11.2017.

- Change laws and policies
- Provide funding
- Make goods and services accessible
- Raise awareness on rights
- Train professionals and others
- Undertake research
- Collect data
- Monitor
- Strengthen ministries, courts, national human rights institutions (creating them if needed)
- Build State capacity to implement
- Build the capacity of persons with disabilities to claim their rights

**Implementation** of the Convention involves the following major steps:

1. Law and policy making to comply with the Convention
2. Allocation of necessary budgets
3. Building institutional mechanisms (governmental focal point and coordination mechanism; independent monitoring and implementation frameworks; Courts and Parliament)
4. Making mainstreaming services inclusive and establishing disability specific services
5. Awareness raising and training of both duty-bearers and rights-holders
6. Research on disabilities
7. Monitoring and reporting (after which go back to the first law and policy making)

**Civil Society, including organizations of persons with disabilities, the media and academics**, also closely monitor the implementation of the Convention and advocate for necessary changes.

After the ratification, each State Party shall submit to the Committee, through the Secretary-General of the United Nations, **a comprehensive state report** on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard within two years after the entry into force of the present Convention for the State Party concerned. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests (Article 35). The Committee provides recommendations to a State which will be discussed nationally to establish a time-bound implementation plan. The reporting, therefore, is an important process for national implementation and for international experience and information sharing.

Those states that have ratified the Convention become state parties to the Convention. The Annual Conference of State Parties is held at the United Nations' Headquarters in New York where the Committee members are elected by the state parties. There are 18 Committee members who are elected every two years for a four-year-term at a time. Every other year, nine members are elected. The next election will be on 12<sup>th</sup> June 2018.

Civil society and the national independent human rights institute can also submit their **“alternative” or “shadow” reports** to the Committee, in addition to the state report. The Committee formulates a list of issues for the government to answer. The list of issues is essentially a list of questions the Committee members seek to get more information on, or issues omitted in the periodic country report. The answers provided by the government contribute to the concluding observation and recommendations made by the Committee following the country's review.

When **Optional Protocol** is also ratified, individuals have the possibility to make complaints to the Committee about a violation of human rights when national remedies are exhausted. When a personal complaint is made to the Committee, and the Committee publishes its views, the State has to report its development to the Committee after six months and in the next periodic report. Optional Protocol can validate national laws and policies, contribute to strengthen national protection mechanisms (ex. courts), and provide protection to individuals.

#### Principles of Human Rights in the Convention

The principles of human rights in the Convention include participation, accountability, non-discrimination, equality, and rule of law. These principles guide both duty-bearers and rights-holders so that there is an enabling environment for persons with disabilities to make their own decisions without discrimination on the basis of a disability and others. The society needs to secure accessibility, both physical and attitudinal accessibility, and to accept diversity. Persons with disabilities have equal opportunities with reasonable accommodation beyond equal treatment for all.

Duty-bearers are obliged to account for their responsibilities based on rules of laws and operationalize the stipulated human rights-based approach to disability in practice. Rights-holders, particularly persons with disabilities and their representative DPOs, need to first of all be aware of their rights and then have a central role in the decision making, implementation, monitoring and evaluation on issues related to persons with disabilities. That is, both disability specific interventions to empower persons with disabilities and their DPOs as well mainstreaming disability into society are indispensable. This is widely known as the twin-track approach. For that, continuous dialogue has to take place among different stakeholders from decision makers at the top to people at the grassroots. This is the triple-track approach.

#### Structure of CRPD

The Convention includes 50 independent articles. The structure of the Convention is summarized in the table below.

**Table 3. Structure of the Convention<sup>5</sup>**

Articles	Themes	Short Descriptions
Preamble	Background	Sets the general context and identifies important background issues, such as the relation between disability and development.
Article 1	Purpose	Sets out the goal of the Convention, which 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. It also explains who is included in the term “persons with disabilities”.
Article 2	Definitions	Defines the Convention’s key terms, namely communication, language, discrimination on the basis of disability, reasonable accommodation and universal design. Disability is not defined as a fixed term, but as an evolving concept.
Article 3	General principles	Principles are very important for interpreting and implementing the rights stipulated in the Convention.
Article 4	General obligations	In addition to the recognition of the rights of persons with disabilities, the Convention also identifies who is responsible for realizing these rights and what they have to do and when, for instance, immediately or progressively. There is also an obligation to consult persons with disabilities and actively involve them in the development and implementation of legislation and policies to implement the Convention.
Article 5-30	Cross-cutting issues and specific rights	<p>The Convention presents non-discrimination and equality to apply across all rights in Article 5. Other cross-cutting issues include women with disabilities (Article 6) and children with disabilities (Article 7).</p> <p>Specific rights include:</p> <ul style="list-style-type: none"> <li>- Right to life (10)</li> <li>- Equal recognition before the law (12)</li> <li>- Liberty and security of the person (14)</li> <li>- Freedom from torture or cruel, inhuman or degrading treatment or punishment (15)</li> </ul>

<sup>5</sup> OHCHR. (2014) The Convention on the Rights of Persons with Disabilities: Training Guide. Available at [http://www.globaldisabilityrightsnow.org/sites/default/files/related-files/351/CRPD\\_TrainingGuide\\_PTS19\\_EN\\_Accessible.pdf](http://www.globaldisabilityrightsnow.org/sites/default/files/related-files/351/CRPD_TrainingGuide_PTS19_EN_Accessible.pdf), p.27-28. Accessed on 22.11.2017. Some modifications are made by the authors.

		<ul style="list-style-type: none"> <li>- Freedom from exploitation, violence and abuse (16)</li> <li>- Integrity of the person (17)</li> <li>- Liberty of movement and nationality (18)</li> <li>- To live independently and be included in the community (19)</li> <li>- Freedom of expression and opinion, and access to information (21)</li> <li>- Respect for privacy (22)</li> <li>- Home and family (23)</li> <li>- Education (24)</li> <li>- Health (25)</li> <li>- Work and employment (27)</li> <li>- Adequate standard of living and social protection (28)</li> <li>- Participation in political and public life (29)</li> <li>- Participation in cultural life, recreation, leisure and sport (30)</li> </ul>
Article 32	International cooperation	Unlike other conventions, CRPD has a stand-alone article on international cooperation including development cooperation. The detailed actions presented include cooperation in research and inclusive and accessible development cooperation.
Article 31 and 33	Implementing and monitoring measures	Article 31 requires state parties to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention. Article 33 sets forth the various measures that state parties have to adopt to establish national implementation and monitoring frameworks.
Article 34-39	Committee	These articles detail its institutional structure of the Committee on the Rights of Persons with Disabilities that receive and review periodic reports from state parties.
Article 40	Conference of state parties	The article establishes a Conference of State Parties to meet regularly to consider any matter with regard to the Convention's implementation.
Article 41-50	Final clauses	These articles set out the procedures for signature, ratification, entry into force and other relevant requirements.

Links between CRPD and SDGs

In 2015, UN member states adopted the 2030 Agenda for Sustainable Development, [Sustainable Development Goals](#) (SDGs). SDGs have 17 goals and 169 targets:

- Goal 1. End poverty in all its forms everywhere

- Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
- Goal 3. Ensure healthy lives and promote well-being for all at all ages
- Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- Goal 5. Achieve gender equality and empower all women and girls
- Goal 6. Ensure the availability and sustainable management of water and sanitation for all
- Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all
- Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
- Goal 9. Build a resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
- Goal 10. Reduce inequality within and among countries
- Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable
- Goal 12. Ensure sustainable consumption and production patterns
- Goal 13. Take urgent action to combat climate change and its impacts\*
- Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
- Goal 15. Protect, restore and promote the sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
- Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
- Goal 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development

Unlike the previous Millennium Development Goals that did not pay attention to persons with disabilities, the SDGs have clear references to persons with disabilities. SDGs are highly relevant to persons with disabilities that have the slogan of “**Leaving No One Behind**”. Leaving no one behind will not be possible to achieve by 2030 if 15% of the global population, persons with disabilities, are excluded. As 20% of the world’s poorest people have disabilities, development and human rights discourses and practices finally need to include persons with disabilities.

## 2.2. Disabilities and Laws in Kyrgyzstan

In Kyrgyzstan, disability is defined in the Law on the Rights and Guarantees of Persons with Disabilities as follows:

*Disability is a limitation of health condition due to persistent malfunctions of organs, which leads to a complete or substantial disability or to substantial limitations of life. Depending on the degree of disorder of body functions and multiple difficulties of life I, II and III categories are provided. Children under the age of 18 years are included in the category of disabled children.*

This definition, that has been taken over from the Soviet Union, is quite medically-oriented, as is clear. I, II and III categories of disabilities are allocated depending on the severity of disabilities, which determine the amount of social protection allowances and other social protection measures.

In Kyrgyzstan, there is a combination of general and special legislations regarding the rights of persons with disabilities. This part presents both general legislations and disability-specific legislations.

- The teacher can ask the trainees if they know any laws and articles that are relevant to persons with disabilities.

Kyrgyzstan has vast legal frameworks that ensure the rights of persons with disabilities. In fact, there are more than 108 legal frameworks on persons with disabilities. However, many implementation mechanisms are missing. Some of the rooms for further development include laws for ensuring accessibility (such as physical and information), inclusive education, employment, specialized services and the right to political participation, to name a few.

Due to the **history of the Soviet Union** where persons with disabilities were hidden in institutions and in special workshops and where persons with disabilities were understood much through a medical approach to disabilities, negative consequences continue to reinforce the difficult realities of persons with disabilities in Kyrgyzstan still today. The realities of persons with disabilities are presented in more detail in Lesson 3.

**General legal provision** is also made for persons with disabilities in the following Kyrgyz laws:

- Constitution (Articles 9, 16, 47-48, and 53)
- Civil Code (Articles 1013-1016, 1018, and 1133)
- Civil Procedural Code (Article 74)
- Land Code (Article 52)
- Family Code (Articles 2, and 94-95)
- Child Code (Articles 28 and 38)
- Tax Code (Articles 163, 167, 212, 242, 257, 330, and 343- 344)
- Labor Code (Articles 75, 91, 93, 95, 97, 100,114, 118,133, 134, 232, 235, 237, 244, 247, 249, 266, 304, 310 - 311, 313- 314, and 316- 320)
- Criminal Code (Articles 43, 46-2, and 234)

In the Constitution of the Kyrgyz Republic, for instance, social support and protection to all its citizens are guaranteed, including thus also persons with disabilities. Article 16 of the Constitution states the principle that no one shall be subject to discrimination by gender, disability, age, education and other circumstances.

Another example is the Labour Law. The state promotes the employment of persons with disabilities with a 5% quota system that applies to any company of more than 20 employees. With this legal provision, around 700 jobs should be available to persons with disabilities, which however is not fulfilled in reality.

As for the **disability-specific laws**, the law on rights and entitlements of people with disabilities, as well as the new law on social protection, are particularly relevant ones, including many articles specifically on disabilities.

Similarly, the Resolution of the Government of the Kyrgyz Republic of September 16 2011 № 422 approved the UN Convention on the Rights of Persons with Disabilities to be signed on September 21 2011.

## 2.3. Terminologies

Terminologies reflect on the cultural and social ways of thinking that can be very negative and should be avoided. Social workers should not reinforce such a negative attitude and discrimination against persons with disabilities. Therefore, both appropriate and inappropriate terminologies are presented in the following. Using language where the person comes first before the disability is an important gesture to enhance the dignity of persons with disabilities and eventually to promote disability rights.

However, we have to bear in mind a few points. First, politically correct terminologies evolve all the time. Therefore, there is no universally fixed list of correct terminologies. Second, an actual change of behaviour is equally or even more important than terminologies. When one is not sure about some terminologies, s/he should not be afraid of asking what persons with disabilities think about them. Open dialogue on disabilities is a way to break existing barriers and is highly encouraged rather than being afraid of making mistakes and remaining silent.

**Table 3. Terminologies to Use and to Avoid**

To Avoid	To Use
the disabled, the handicapped, invalid, cripple	people with disabilities (disabled people)
victim of, suffer from	has [name of condition or impairment]
impaired, impairment	disabled, has a disability
idiot, imbecile	person with a learning disability/disabilities
normal person, healthy person	persons without a disability/disabilities
confined to a wheelchair, wheelchair-bound	wheelchair user
spastic, CP victim	person with cerebral palsy
mental patient, insane, mad, mentally ill, mentally handicapped, mentally retarded, mentally defective, subnormal	person with a psychosocial disability
deaf and dumb, deaf mute, the deaf	Deaf (with a capital D), person with a hearing impairment, sign language user
the blind, visually impaired,	blind persons, partially sighted people
epileptic	person with epilepsy
diabetic	person with diabetes
stutterer, tongue-tied	person with a speech or communication disability
fit, attack	seizure
Dwarf, midget	person of short stature, person of small stature, person with restricted growth
Down's person, mongoloid	person with Down syndrome
Birth defect	person with a congenital disability, disabled from birth

## 2.4 Practical Guidelines When Meeting Persons with Disabilities

In this part, we learn practical tips when meeting persons with different disabilities. When terminologies are internalized, similar ideology that persons with disabilities are part and parcel of the society and us becomes a taken-for-granted way of thinking. However, if not practiced so far, conscious attention has to be continuously paid not to patronize persons with disabilities when meeting them. The following is a general guideline. However, persons with disabilities are not a homogenous group but quite diverse, even when some have similar or the same impairments. Each individual with a disability is different from each other. Therefore, individual needs and expectations have to be clarified by listening directly to them. When their needs and expectations are different from the general guideline as below, their personal preferences should be prioritized.

Another important point is an invisible disability. There are many people with invisible disabilities. Make a way for these people to express their needs for your meeting, for instance by asking them in advance if there is any accommodation needed for the meeting.

#### Ask before You Help

Persons with disabilities do not necessarily need your help. You cannot assume that they need your help. Before acting, you need to ask from the persons with a disability whether s/he needs your help. It would be more accurate, when the person explains what kind of help is needed. In Kyrgyzstan, where people tend to spontaneously help persons with disabilities with good intention, this is an important practical tip to respect the independence of the person with a disability.

#### Ask before You Decide Based on Your Assumption

Persons with disabilities make their own decisions. You need to avoid making decisions on their behalf based on your assumption. Instead, you should ask them their own opinions and decisions. When they need more information for making their decisions, information has to be provided and available to them as much as possible.

#### Speak Directly to the Persons with Disabilities

Persons with disabilities might be accompanied by their assistants or sign language interpreters. You should directly speak to persons with disabilities rather than to their assistants or sign language interpreters. The voice tone should remain the same as when you talk to anybody else without a disability.

#### Physical Contact

Persons with disabilities should be treated with dignity as any peers without a disability. Patting on the head and shoulders might be considered inappropriate and patronizing. When meeting persons with physical disabilities, you should be careful not to lose the balance of the person with a disability with your physical contact. They will offer you the suitable hand (or foot in some cases) to shake with, if shaking hands is culturally appropriate. If not, a smiling greeting is a good way of first contact.

When approaching persons with visual disabilities, you can talk to them first that you have approached them before shaking their hands or touching them. When necessary, ask the person with a visual disability if s/he needs to hold your arm for moving.

When approaching persons with hearing disabilities, physical contact out of their sight is inappropriate and unnecessarily frightens them. You should go in front so that they can see you first before touching them.

Touching assistive devices and guide dogs is not allowed unless you get the permission from the persons with disabilities.

## Accessibility

If you know that you are meeting persons with disabilities, particularly with those with physical disabilities, you should check the accessibility of the meeting premises. You can check the physical accessibility to get into and get out of the premises. Do not forget to check the accessibility of toilet facilities. If not available at the site of the meeting, you should check the nearest possible accessible facilities.

When meeting a person with a hearing disability, a meeting room with limited noise and a well-lit place is conducive. When the person lip-reads, speak clearly and sit/stand in front of the person so that s/he can see you well. You should not cover your face when talking with the person with a hearing disability. Very often speaking clearly is more important than speaking loudly which can very well be disturbing for many. If there is a sign language interpreter, speak directly to the person with a hearing disability rather than to the interpreter(s). Booking sign language interpreters might take time. Therefore, any meeting should be informed to the person with a hearing disability well in time. In a discussion situation, there should be one speaker at a time.

When meeting a person with a visual disability, the names of presenters always have to be mentioned in the beginning. In the discussion situation, even when one makes many interventions, names are better to be presented every time. Written materials can be delivered beforehand to the person with a visual disability, if s/he has a screen reader programme in her/his computer. If written materials are provided on the spot, you can read them through or provide them in a large print, if needed. Any visual materials should be described well enough so that the persons with a visual disability have the access to available information.

When meeting a person with an intellectual disability, a meeting should be organized in a place comfortable for her/him. Try to keep communication simple and spare enough time and space for her/him to respond. When her/his assistant accompanies her/him, speak directly to her/him rather than to the assistant. Easy-to-read materials are good to be prepared.

When meeting a person with a speech disability, do not interrupt her/his sentences, if not finished. If you are not sure, you can repeat the sentence for verification. Asking her/him to write down is another possible way of communication.

When meeting a person with a psychosocial disability, it could be hard for you to identify it as it is not usually a visible disability. Try to keep stress at a minimum level in the meeting. Individuals with psychosocial disabilities are very different from each other. Ask her/him what makes her/him most comfortable to respect the needs.

There are persons with many more different types of disabilities. That means, individual attention has to be paid to each person by asking directly from her/him. Disability is only one part of persons with disabilities, which alone does not define them.