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The United Nations Convention on the right and dignities for persons with disability: A panacea for ending disability discrimination?

La Convention des Nations Unies sur les droits des personnes handicapées : une solution pour mettre fin à la discrimination contre le handicap ?

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Abstract

This article seeks to chronicle the political history and intellectual antecedence of disability policy and practice in the past 30 years, which culminated in the successful negotiation of the United Nations (UN) Convention on the rights of persons with disabilities, that came into force in May 2008. It therefore analyses the *raison d'être* that underpins the UN Convention, as well as providing a brief description of the substantive issues that the Convention addresses. The article also analyses some of the perceived challenges with regard to the implementation of the UN Convention, by drawing upon the substantive findings of two Disability Scoping Studies in Zimbabwe and Nigeria, funded by the UK's Department for International Development. Reference is also made to contemporary debates within mainstream development studies discourse, particularly the efficacy of "rights-based approaches" to development, which have a direct bearing on the extent to which the UN Convention will be successfully implemented. The article concludes by arguing that the UN Convention is a necessary but not sufficient instrument for the enforcement of disability rights and should not be perceived as a panacea that will end disability discrimination. Such legislation can and should make such discrimination illegal. However, it is very difficult indeed to implement, for it is extremely difficult to enforce. Notwithstanding the UN Convention's acknowledged seminal importance, other deep-seated, endemic policy-orientated challenges will need to be addressed in order for this ideal to become an objective reality. © 2009 Association ALTER. Published by Elsevier Masson SAS. All rights reserved.

Keywords: UN Convention; Public policy; Implementation; Disability rights; Civil society

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Résumé

Cet article explore l'histoire politique et intellectuelle de la politique du handicap au cours des 30 dernières années, dont le point culminant a été la négociation réussie de la Convention des Nations Unies sur les droits des personnes handicapées, entrée en vigueur en mai 2008. L'auteur analyse la raison d'être de cette Convention et décrit les questions qu'elle aborde. En s'appuyant sur les résultats de deux études menées au Zimbabwe et au Nigeria, financées par le Département britannique pour le développement international (DFID), l'auteur s'intéresse également aux défis liés à la mise en œuvre de la Convention. Cet article fait également référence aux débats actuels au sein du courant de pensée dominant des études sur le développement, en particulier à celui relatif à l'efficacité des approches fondées sur les droits humains, déterminante pour une mise en œuvre réussie de la Convention. L'auteur conclut que la Convention est un outil nécessaire mais non suffisant pour le respect des droits des personnes handicapées et ne doit pas être considérée comme la panacée pour mettre un terme à leur discrimination. Cette Convention peut et devrait rendre illégale une telle discrimination. Cependant, la mettre en œuvre et la faire respecter présentent des difficultés considérables. Malgré son exemplarité reconnue, des problèmes endémiques de fond, liés aux politiques publiques, devront être traités pour que l'idéal qu'elle promeut devienne une réalité objective.

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Mots clés : Convention des Nations Unies ; Politique publique ; Mise en œuvre ; Droits des personnes handicapées ; Société civile

Introduction

The United Nations (UN) Convention on the rights and dignities for persons with disabilities, (hereinafter referred to as the UN Convention), which came into force in May 2008, has the potential to be a catalyst for a “paradigm shift” (as developed by Thomas Kuhn), in the manner in which disability policy and practice is framed and implemented. This UN Convention, which is a first human rights treaty to be enacted in the 21st century, is of historic importance, in as much that it is the first legally-binding international instrument by which disabled people and other stakeholders working within the disability sector, are able to hold their respective governments to account for the promotion and enforcement of disability rights. This article will chronicle the political history and intellectual antecedence of the UN Convention, by examining the historical context in which it was negotiated, and analyse the trajectory of engagement between the UN and civil society institutions with respect to disability issues. However, it will be argued that the UN Convention should not be seen as a panacea that will end discriminatory policies and practices, but rather will result in the emergence of a new set of challenges, some of which have not yet been foreseen. This article further argues that the effective implementation of the UN Convention is contingent upon a number of factors, which include national governments passing robust anti-discrimination disability legislation and the development of an appropriate administrative implementation infrastructure for service delivery, particularly at regional and local levels. This is by no means a foregone conclusion. Drawing on original research undertaken in Zimbabwe and Nigeria (Lang & Chadowa, 2007; Lang & Upah, 2008), this paper will illustrate some of the systemic challenges that need to be surmounted in order to ensure that the principles of disability rights, as enshrined in the UN Convention become a reality. It will also draw on contemporary debates within the mainstream development studies discourse, which critically evaluates the efficacy of implementing a rights-based agenda to development, upon which the UN

Convention is fundamentally premised. This article concludes by arguing that the UN Convention is a necessary but not sufficient means by which to enforce disability rights, for it is virtually impossible to enforce individuals not to hold negative social attitudes about disability. Rather it should be seen as a foundation for promoting the social inclusion of disabled people in every aspect of contemporary society.

The historical context of the UN Convention: linking disability with mainstream international development

The passage and subsequently enactment of the UN Convention can be perceived as a culmination of a 30 year evolving relationship between the UN, on one hand, and civil society institutions, particularly disabled people's organizations, on the other. During the late 1970s and early 1980s, spearheaded by disabled activists and academics predominantly based in the United Kingdom and the United States, disability began to be conceptualised in political and sociological terms (UPIAS, 1976; Albrecht, 1976; Barnes, 1991). It can be argued that the social model of disability arose as a backlash and as an ideological juxtaposition to the medical model of disability. The latter purported that the main issue that disability policy should address was to "cure", or at least ameliorate physical and/or intellectual impairments, in the belief that disabled people wished to become as "normal" as possible. In order to counteract this negative and pejorative view, the social model of disability maintained that disabled people were systemically discriminated against and excluded from participating in contemporary society, this being the result of systemic negative attitudinal, physical and institutional barriers that preclude disabled people's active and effective participation and inclusion in society.

Furthermore, power relations between medical model and social model paradigms were juxtaposed, with medical and paramedical professionals maintaining the dominant position in the former and disabled people being predominant in the latter. In commenting upon the power relations that underpin the medical model of disability, Imrie states that "[T]he role of the doctor is paramount in seeking to repair the disabled or dysfunctioning body, or a corporeality that is seen as a deviation from normality" (Imrie, 2004:289).

The 1980s also witnessed the emergence of the international disability movement, with Disabled Peoples' International being established in 1981 (Driedger, 1989). Consequently, this period witnessed disabled people organisations (DPOs) being established across the world. Typically, DPOs are run and managed by disabled people, whose principal mandate is to advocate and promote disability rights. As the disability movement has matured, some DPOs have begun to provide services, such as income generation programmes (Coleridge, 2007). Moreover, the social model became the intellectual and ideological foundation of the disability movement and initially provided the gravitas upon which DPOs began to negotiate with their respective governments for a rights-based agenda to disability.

The 1980s also witnessed the genesis of an ongoing relationship between the UN and civil society institutions in the field of disability. Consequently, 1981 was designated the International Year of the Disabled, which was closely followed by the first UN Decade of Disabled Persons (1983–1992), whose theme was "full participation and equality". Subsequent, regional Decades for Disability have ensued; for example, the Asian and Pacific Decade of Disabled Persons (1993–2003), and the African Decade of Persons with Disabilities (1999–2009). A second Asian and Pacific regional decade has been formally declared (2003–2012) and the Windhoek Declaration of Social Development, adopted by the Council of Ministers in Change and Social Development on the 31st October 2008 formally extended the work of the African Decade until

2019. The mandate of these initiatives has been to raise the political profile of disability issues at regional level, by encouraging governments to enact and implement anti-disability discrimination legislation. However, to what extent these initiatives have been effective is indeed a matter of conjecture¹.

In December 1982, the UN General Assembly adopted the World Programme of Action with respect to disability, which was an attempt to develop a global strategy for the prevention of disabilities, the provision of rehabilitation services and the equalisation of opportunities. It is therefore interesting to note, that even at this very early stage, the UN were indeed taking the lead in promoting a rights-based agenda to disability.

This decade also witnessed the genesis of Community-Based Rehabilitation (CBR), being promoted as the most viable and cost-effective strategy before the provision of rehabilitation services to disabled people in developing countries. The original impetus for the emergence of CBR derived from the recognition that, given the social and economic profiles and the demographic projections found in many countries throughout Asia, Africa and Latin America, traditional patterns of disability service provision were deficient and inadequate in meeting the needs of disabled people. Furthermore, it was recognised that if the traditional system of disability and rehabilitation services continued to be replicated without a substantial overhaul, then the vast majority of disabled people would never benefit from any provision of services whatsoever. It was calculated that even by 1985 (Helander, 1993: 51), when CBR had been in existence for six years, only 3% of disabled people living throughout the developing world who could potentially benefit from rehabilitation were in fact receiving any services at all.

The efficacy of adopting rights-based approaches to policy and practice was not the sole preserve of the disability sector, but was also being propagated by mainstream development policy-makers and practitioners, as well as academics. Increasingly, during the 1980s, the deficiencies of structural adjustment programmes and the failure of so-called “modernisation theory”, (whereby developing countries were encouraged to adopt social and economic policies being implemented in Western countries), came to the fore. Consequently, it was increasingly recognized that development programmes would become more sustainable and have greater impact if target beneficiaries were involved at all stages of the “project cycle”, including the planning, monitoring and evaluation of such programmes. Early protagonists of participatory approaches to development included Robert Chambers at the Institute of Development Studies, at the University of Sussex, who pioneered Participatory Rural Appraisal and Participatory Learning and Action (Chambers, 1983; Chambers, 1997). Chambers himself was strongly influenced by the pedagogical techniques promoted by Paulo Freire and Antonio Gramsci, who privileged local knowledge, and the reversal of power relationships in the process of learning (Freire, 1970).

Furthermore, UNICEF in 1987 published its seminal report, *Adjustment with a Human Face* (Jolly, 1987), which categorically demonstrated that the implementation of “top-down” modalities, such as structural adjustment programmes, as were being propagated by the World Bank and the International Monetary Fund, resulted in unsustainable and indeed harmful results. Thus, it can be argued that the disability movement was pushing an open door for the adoption of a rights-based, genuinely inclusive approach to disability by bilateral and multilateral donor agencies, not least by the UN itself. In commenting upon the negative impact of structural adjustment programmes, Caroline Robb catalogues the increasing criticism of structural adjustment programmes, particu-

¹ Further more detailed information regarding the UN activities in the field of disability, including the UN Convention can be found at <http://www.un.org/disabilities/index.asp>.

larly the apparent inability to engage with participatory approaches to development and engage in a meaningful dialogue with project beneficiaries in a culturally appropriate manner (Robb, 2004: 28–29). Such critiques provided the basis for the Robert Chambers' highly influential theories of participatory development, which fundamentally challenged existing power relations between donor agencies and beneficiaries, in the belief that “bottom-up” driven approaches ultimately led to more sustainable outcomes (Chambers, 1983; Chambers, 1997). It also led to poverty being defined in a more holistic, multidimensional manner, culminating in the publication of the 1990 UNDP (UN Development Program) *Human Development Report* and the production of the Human Development Index (UNDP, 1990).

It is also interesting to note that, at the same time, a bipolar juxtaposition was being drawn between the medical and social models of disability, (which contrasted with the focus of attention between the individual and the political in determining the priorities for disability policy and practice), a parallel juxtaposition between a “needs-based” and “rights-based” approach to development was being drawn within mainstream development studies. Thus, a needs-based approach is premised upon the notion of securing additional resources for service provision to and socially excluded groups. In contrast, a rights-based approach to development maintains that existing resources should be distributed equitably, thereby ensuring that the most vulnerable and marginalised groups are in a position to exercise their inherent rights. These underlying and distinctive motivations underpinning both the needs-based and rights-based approaches to development are comprehensively analyzed by Nyamu-Musembi and Cornwall (2004).

Thus, from the foregoing discussion, it can be seen that the antecedents of the principles of the UN Convention were already being sown as early as the mid-1980s. There was therefore an increasing groundswell of opinion, galvanized by both the disability movement, bolstered by mainstream debates in development studies discourse, towards ensuring that a rights-based framework was the basis for the future development of disability policy and practice. These trends were further advanced by analogous debates regarding the multidimensional characteristics of poverty, and the emerging correlations that existed between poverty, social exclusion and marginalization (Sen, 1999).

Notwithstanding that the negotiation process of the UN Convention did not really commence until 2000, it can nevertheless be appreciated that the intellectual architecture and framework were being built over almost two decades before its inception. Commenting upon the impact of the movement from medical to sociopolitical constructions upon the policy-making, Lang and Officer are of the opinion that only then a rights-based approach to disability becomes the *modus operandi* for disability policy and practice “. . . will significant, sustained progress be made in advancing the human rights and social inclusion of disabled people throughout the developing world” (Lang & Officer, 2009: 384).

The rationale for the UN Convention

Throughout the 1990s, there was continued engagement and collaboration between the UN and civil society institutions working in the disability sector, again with DPOs taking a leading role (particularly Disabled Peoples' International). In 1993, The UN General Assembly adopted what turned out to be a very seminal document, the *UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities* (United Nations, 1993). The 22 Standard Rules built upon the foundational work of the World Programme of Action. By this time, it was increasingly recognized that the principles of the social model of disability should become the basis and constitute the ideological hegemony for any future development of disability policy and that

there was a necessity to codify these sentiments within an internationally recognized document, under the auspices of the UN. As a result, the Standard Rules delineated specific areas where the advancement of the equalisation of opportunities was particularly necessary. These included provision for access to affordable services including education, employment, medical care, and support services. The Standard Rules also dealt with how the processes by which equalisation of opportunities for disabled people would be attained, including the support of DPOs, the need to include disabled people in the planning, management and evaluation of disability programmes, as well as the need for international cooperation. Provision will also made for the appointment of a Special Rapporteur, charged with the responsibility for ensuring their effective implementation, with appropriate monitoring system being established. Once again, it can be seen that a human rights perspective underpinned the *raison d'être* for the Standard Rules. Signatory States were therefore morally obliged to implement a strong rights-based approach to disability policy and practice and consult with national DPOs with regard to policy-making (United Nations, 1993).

Notwithstanding the progressive nature of the Standard Rules, they nevertheless had only a discretionary status, by which signatory States were only morally obliged to ensure that they were implemented. Hence, from the very outset, the legal status of the Standard Rules was compromised, for signatory States were subjected to no sanction whatsoever if they did not implement the principles of the rules within their respective domestic legislation. As will be further analysed later in this article, particularly within the context of the vast majority of developing countries, there are many understandable, and in some ways legitimate reasons, why it was not possible to implement the Standard Rules.

Therefore, at the end of the 1990s, there was a growing impetus to draft a legally-binding international treaty, whereby signatory States will be publicly held to account for the promotion and enforcement of disability rights. This became the main driving force and *raison d'être* for the UN Convention. It is important to recognize that the UN Convention does not establish new rights for disabled people *per se*, but nevertheless delineates more clearly and coherently the existing legal obligations that States have in upholding and enforcing disability rights. Therefore, the UN Convention codifies existing rights that apply to disabled people in previous human rights treaties, as well as explaining these in greater detail.

At the turn of the Millennium, there was a groundswell of opinion among civil society institutions, once again spearheaded by the international disability movement, for the necessity for a convention on disability rights.

The negotiation process

The UN Convention was negotiated over a seven year period – December 2001 to May 2008. In December 2001, spearheaded by interventions of the Government of Mexico, the General Assembly of the UN passed resolution 56/168 to establish an Ad Hoc Committee, which would investigate the need for a convention, taking into account existing human rights instruments. These included, for example:

- the 1948 *Universal Declaration of Human Rights*;
- the 1959 *Declaration of the Rights of the Child*;
- the 1966 *International Covenant on Civil and Political Rights*.

The first Ad Hoc Committee Meeting was held in August 2001, which discussed the broad parameters and remit of the Convention, in addition to the involvement of civil society institutions, particularly DPOs, within the negotiation process.

What is particularly interesting to note, is that right from its very inception, it was widely acknowledged and agreed that civil society institutions would be closely involved in the negotiation of the Convention. This is in stark contrast to previously human rights treaties and conventions, whereby only government representatives of members of the UN participated in their negotiation process. Furthermore, the level of involvement and impact of civil society institutions increased throughout the negotiation process, with many representatives of DPOs being included within the respective State delegations, formerly mandated to negotiate the text of the Convention. As time progressed, it became increasingly apparent that such inputs to State delegations needed the personal expertise and experience of disabled people, as the vast majority of the civil servants within these delegation had no previous experience of working in the disability sector. Notwithstanding the commitment of including DPOs in the negotiations, a challenge was to ensure adequate representation from developing countries. By means of addressing this challenge, *Leonard Cheshire Disability*, under the auspices of its Young Voices programme, sponsored young people from Kenya, the Philippines and India to attend the sixth Ad Hoc Committee meeting. In addition, *Handicap International* in collaboration with the *Inter-American Institute on Disability* spear-headed Project South to again finance the leaders of the disability movement from developing countries to attend the Ad Hoc Committee meetings.

In addition, with a view to maximising their impact, DPOs and international NGOs working in the disability sector, (including *Leonard Cheshire Disability*, the *World Network of Users and Survivors of Psychiatry*, *Handicap International*, *Rehabilitation International*, and *Disabled Peoples' International*), established the International Disability Caucus (IDC). This comprised of approximately 50 organisations in total. The objective of the IDC was to speak with a “united voice” at Ad Hoc Committee Meetings, in addition to providing detailed comments on the draft text of the Convention, as it was being negotiated.

This principle of engaging civil society institutions as a key partner in the development, implementation and evaluation of public policy has been gaining increasing credence and influence in recent years, in the belief that the complexities of social and economic policies necessitates the establishing of policy networks and an emphasis upon “participatory democracy”. Consequently, the interrelated concepts of policy networks, partnership working, “third party government”, effective user involvement and the democratisation of service delivery in the formulation and implementation of public policy, occupy a central place within contemporary public management theory and practice (Goldsmith & Eggers, 2004). The multifaceted nature of policy-making has driven policy-makers and service providers to develop a new architecture for policy formulation and implementation, recognising that the public sector cannot implement such policies alone. Advocates of these approaches have highlighted the advantages of the democratisation of policy formulation, an increased emphasis upon joined-up government, and the extension of public participation in decision-making (Bognador, 2005). These have been bolstered by the ideological foundations of the New Public Management movement, influential during the 1990s, which advocated a minimalist role for the state, increased competition in service delivery, and the adoption of private sector management techniques by government bureaucracies (Lynn, 2006). Consequently, governments should “steer, not row” and be mission driven (Osborne & Gaebler, 1992). Thus, it can be argued that the *modus operandi* for negotiating the UN Convention, though novel within the parameters of the UN, were nevertheless building upon established trends that were gaining currency within mainstream political science.

Between August 2002 and August 2006 a total of seven Ad Hoc Committee meetings were convened at the UN headquarters in New York, charged with the mandate of negotiating the text of the Convention. At the second Ad Hoc Committee meeting, held in August 2003, a Working Group was convened to produce a first working draft of the Convention's text. The Working Group comprised of 27 governmental representatives, 12 representatives from civil society institutions and a representative from a National Human Rights institution.

The third to the eighth Ad Hoc Committees were primarily concerned with negotiating and finalising the text of the Convention, this being concluded in December 2006. The final draft of the UN Convention was adopted by the UN General Assembly on the 13th December that year and was ratified on 3rd April 2008. Finally, the UN Convention came into force on the 3rd May 2008 when 20 signatory States ratified it.

The content of the UN Convention

Space precludes a detailed discussion of the specific Articles of the Convention, which can be found on the UN's disability website². A comprehensive discussion of the substance can also be found in Hendriks (2007). However, at this juncture it is instructive to provide some elaboration of the fundamental principles which underpin the Convention, which to some extent makes it somewhat distinctive from previous international human rights instruments. The following eight principles constituted the fundamental axioms upon which the negotiation process and the substantive content of the UN Convention were premised.

Firstly, the "respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons". Therefore, the UN Convention explicitly recognises the fact that disabled people are endowed with the capacity to make informed choices for themselves. Secondly, it is founded upon the principle of "non-discrimination". This is somewhat self-explanatory, yet nevertheless is essential, because historically disabled people have been subjected to systemic discrimination and social exclusion. Thirdly, "full and effective participation and inclusion in society", thereby ensuring and guaranteeing their participation in the multifaceted political, economic, social and cultural life of contemporary life. Fourthly, "respect for difference and acceptance of persons with disabilities as part of human diversity and humanity". This fourth characteristic is of particular importance on two counts, as it highlights the inherent value of the creation of a diversified humanity, (irrespective of nationality, creed, gender, ethnicity, etc), as well as the recognition that disabled people themselves constitute a heterogeneous group, who differ with respect to their own preferences in terms of the lifestyle they choose to lead. Fifthly, the principle of "equality of opportunity" is fundamental to the tenets of the UN Convention, because historically disabled people have, for example, been statistically less likely to complete full-time primary and secondary education, have less formal qualification and be in full-time employment than their non-disabled counterparts. This is particularly the case for those living in developing countries, as demonstrated, for example, by the Disabled Living Conditions Surveys in Zimbabwe and Namibia by Stiftelsen for industriell og teknisk forskning (SINTEF) (Eide, Nhiwathiwa, Muderedzi, & Loeb, 2003a; Eide, van Rooy, & Loeb, 2003b) and the 2005 National Disability Survey in Afghanistan (Trani & Bakhshi, 2006).

Sixthly, the principle of "accessibility" is also highlighted as key, which refers not solely to physical accessibility, but also ensuring that, for example, information is provided in genuinely

² <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

Box 1

Structure of the UN Convention:

- *preamble*: setting the context of the convention;
- *purpose*: sets the goal of the convention (promote, protect and ensure disability rights);
- *definitions*: (communication, language, discrimination)
- *general principles*: (see above);
- *obligations*: delineation of actions that states are legally required to take to enforce the tenets of the convention;
- *specific rights*: (civil, cultural, economic, political and social rights);
- *enabling measures*: measures that states must take to ensure an enabling environment so as to ensure disabled people can enjoy the full benefit of their inherent rights, irrespective of social, economic and political specificities;
- *international cooperation*: (disability and impact on international development);
- *implementation and monitoring*: establishment of an administrative infrastructure to ensure the effective implementation of the convention;
- *final clauses*: delineating procedures for signature, ratification, etc.

accessible formats, thereby ensuring that disabled people are able to fully participate in across the political and economic spectrum. Accessibility is a means to an end, rather than an end in itself. The seventh principle is “equality of men and women”. Although this may be self-evident, a social anthropological study of disability undertaken in three rural areas in Tamil Nadu, India (with 250–300 households and 1400 individuals) showed that there were significant gender disparities. This study found that disabled men were more likely to receive education and have more spent on rehabilitation services than disabled women. Furthermore, the severity of impairment had to be significantly greater for women than for men before it was deemed socially acceptable to be relieved from undertaking general household tasks (Harriss-White & Erb, 2002). The final principle that underpins the UN Convention is “respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities”.

The Convention has been structured in the following manner, which is delineated in **Box 1**.

In addition to the main Articles of the UN Convention, signatory States have the ability to sign the Optional Protocol, which provides a mechanism by which individual disabled people are able to appeal to the UN Committee on the Rights of People with Disabilities, (charged with the mandate to oversee the implementation of the Convention), if they consider that their rights are being infringed by their own governments. In addition, where there is a prima facie case that an individual’s rights have indeed been violated, this Committee has the authority to undertake a full investigation. It should be emphasised that signatory States of the UN Convention are under no obligation to sign the Optional Protocol, although many DPOs and other civil society institutions working in the disability sector are strongly encouraging their respective governments to sign. At the time of writing, of the 41 States that have ratified the UN Convention, only 25 have ratified the Optional Protocol.

Problems of implementing the UN Convention

While acknowledging that the UN Convention is of historic landmark importance, it is nevertheless argued that, in and of itself, the UN Convention will not end disability discrimination *per se*. The key test will be how it is implemented. This section of the article describes the monitoring and implementation architecture that has been developed. This is followed by an analysis of some of the foreseen challenges that exist and possibly impede successful implementation. In so doing, reference is made to issues that are of particular importance and pertinence within the disability sector. This is then supplemented by a cursory discussion of some of the more contemporary debates in international development discourse, particularly the questioning of the efficacy of “rights-based approaches” as a foundational fulcrum for development policy and practice and a critical evaluation of participation. The latter is an attempt to begin an ongoing dialogue between disability studies and development studies, which with few notable exceptions (Coleridge, 1994; Stone, 1999; Albert, 2006; Barron & Amerena, 2007), has hitherto largely been ignored.

Articles 33, 34 and 35 of the UN Convention delineate the mechanisms and infrastructure for implementation. Hence, the Conference of State Parties, which comprises of signatories of the Convention, will meet no later than six months after it has come into force to elect the Committee on the Rights of Persons with Disabilities. This Committee will comprise of 18 “experts”. Initially, only 12 will be elected. The election of the first Committee members were held in November 2008, with representatives from Bangladesh, Qatar, Hungary, Spain, Slovenia, China, Jordan, Australia, Chile, Ecuador, Tunisia and Kenya being elected. All committee members will act in their own personal capacity, rather than the organisations they represent, and serve for a period of four years. Under Article 35, signatory States are required to submit reports to the UN Secretary General regarding what measures they have undertaken to implement the Convention. In the first instance, signatory States are mandated to submit their first report within two years of ratification. Thereafter, they are required to submit reports to the Secretary General at least every four years.

Despite the fact that these monitoring and evaluation mechanisms have been established, it is nevertheless argued within this article that there will be many difficulties in implementing the UN Convention at country level. What follows are some of the problematic issues that the author foresees in terms of effective implementation. Drawing upon original research undertaken by the author, in concert with current discourses within mainstream development studies literature, it will be shown that there are some systemic, fundamental issues that need to be addressed if the UN Convention stands to any possibility of being implemented in an effective manner.

Challenges to implementation: evidence from disability policy and practice

Within Western countries, the norms and aspirations that underpin the assertion that disability is inherently a human rights issue is well-grounded, providing the intellectual and ideological hegemony upon which disability policy and practice is premised. However, this is not the case in many developing countries. For example, the Disability Scoping Study in Nigeria, funded by the UK’s Department for International Development (Lang & Upah, 2008), found that the provision of all social and economic policies were premised upon the notion of charity rather than human rights. Furthermore, this prevailing culture of charity was endemic within civil society institutions, not least among DPOs. Consequently, even when in the disability sector, there is little understanding of the principles of the social model of disability. This constitutes a major barrier for the enforcement of the UN Convention.

A further difficult issue is that in many developing countries, such as Nigeria and Zimbabwe, there is a real paucity of reliable and robust disability statistics. Article 31 of the UN Convention explicitly requires State Parties to “undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention”. However, in reality and especially in developing countries, there are no disability statistics whatsoever.

However, the collation and utility of disability statistics is a highly emotive and controversial issue, and it has to be acknowledged that some individuals within the international disability movement (Oliver, 1992; Hurst, 2000) maintain that any form of classification and the collation of statistical data on disability is not necessary. This is because disability statistics and any other forms of “classification” by themselves per se cannot capture the level of discrimination and oppression that disabled people encounter on a daily basis, which is perceived by those who subscribe to this view to be the primary causal factor that perpetuates the social exclusion and violation of human rights against disabled people.

However, it is argued here that such a position is ill-conceived. In the absence of reliable and robust statistical data with regard to disability, it is difficult to foresee how governments can effectively plan and implement disability services. Furthermore, it is asserted here that, in many instances, the provision of appropriate user-directed services is a precursor for exercising rights. In the absence of rigorous statistical data collection, it will be impossible for DPOs and other civil society institutions working within the disability sector, to hold their respective signatory governments to account for the actions and obligations for which they are legally bound under the terms of the UN Convention. Therefore, the absence of disability statistics, in the long-term, will result in an inherent democratic deficit in upholding disability rights, as there will be no benchmarks from which informed judgements can be made with the respect to how far any particular country has progressed in implementing the tenets of the UN Convention.

The foregoing raises a more fundamental problem with regard to implementation. In a plethora of developing countries, particularly in Asia and Africa, public sector reform is high on the political agenda of national governments, as well as bilateral and multilateral donor agencies. Within many countries, the public sector can be accurately characterized by a lack of accountability and transparency in the provision of services, as well as a lack of appreciation and adherence of the doctrine of the rule of law. This was highlighted in the 2005 Commission for Africa report, *Our Common Interest*, chaired by the UK’s former Prime Minister, Tony Blair (Commission for Africa, 2005). This very influential report, (whose broad mandate was to make recommendations with regard to the future political, social and economic development of the continent of Africa), identified the lack of robust governance structures, the lack of capacity to deliver services, in concert with the inability of ordinary citizens to hold their respective governments to account for the action and decisions taken on their behalf, as two of the principal factors that militate against sustainable development. Moreover, notwithstanding the fact that many African governments have signed and ratified other human rights treaties, (for example, the Convention on the Elimination of All Forms of Discrimination against Women), there is little evidence to suggest that national legislation has been enacted in order to ensure its effective implementation. Commenting on the inadequate governance architecture typically found in many African countries, the Commission for Africa report states:

“As the [Africans Governance Report] also highlights, weaknesses remain in most countries in the efficiency of government services, the control of corruption, the transparency and accountability of the civil service, and the effective decentralisation of government

structures. Further improvements are also needed in management of budgets and public resources and strengthening the rule of law” (Commission for Africa, 2005: 133).

Despite the ostensibly sophisticated and elaborated monitoring and evaluation mechanisms that have been described above, it is advisable to be cautious in one’s level of expectation with regard to the extent to which signatory States will be diligent and committed to promoting and enforcing the tenets of the UN Convention. It is possible to foresee a situation whereby governments, who value the necessity and perceive the importance of accountable and transparent governance structures and the rule of law, will make significantly more progress in implementing the UN Convention, than in countries where these constitutional principles have a scant historical heritage. A further crucial factor will be the level of human and financial resources that are allocated to promoting disability rights in specific countries. Despite the fact that the moral case for the inclusion of disabled people in every aspect of contemporary life has been made, it still remains the case that many governments, even in some cases where they have signed and ratified the UN Convention, have yet to be convinced of the necessity of purposefully enacting genuinely inclusive public policy and practice. Such governments invariably maintain that they do not have sufficient financial resources to implement such policies, when compared against other competing developmental challenges. Yet such arguments are spurious, for the design and implementation of genuinely inclusive policies benefit the entire population and not solely disabled people.

A further endemic obstacle that has to be addressed if the UN Convention is to move beyond becoming a rhetorical instrument is to address the capacity of civil society institutions. DPOs often lack the capacity to engage with policy-makers and hold their respective governments to account with regard to disability rights. It has already been noted that in the Nigerian context, DPOs have a scant comprehension of disability issues as a human rights issue, and themselves operate on the basis of charity (Lang & Upah, 2008), but this is not the only example. Research undertaken by Philippa Thomas under the auspices of the UK’s Department for International Development Knowledge and Research programme on Disability³, has conclusively shown that the disability movement in India is fragmented, is populated by “disability elites”, whereby the national DPOs are by and large representing single impairment groups (Thomas, 2005). Furthermore, this research concluded that within the Indian context, among national DPOs, there was little motivation for creating a multi-impairment DPO. Thomas candidly states that:

“Divided by impairment-based interests and personal rivalries, and tending to be urban dominated, India’s disability movement has not matured. There is tension between organisations of people with physical impairments and those with sensory impairments, with the latter in particular feeling that they are neglected. Networks and coalitions tend to develop from the top-down rather than the bottom-up, and this raises questions about how relevant and representative they actually are. . . The Indian disability movement is not achieving all that it might. There is a need for unity and much greater cooperation. A national cross-disability DPO may not be feasible, or even desirable. India’s federal structure means that responsibility for areas that most directly affect individuals’ lives, health, education, transport and housing are devolved to states and local government; state-level umbrella DPOs may be more appropriate” (Thomas, 2005: 39–40)

Such an analysis seriously questions some of the foundations of the social model of disability, as originally conceived by the founding fathers of the disability movement (for example, Barnes,

³ Further information on this programme can be found at <http://www.disabilitykar.net/>.

1991; Oliver, 1990). The social model of disability, as originally conceived by Barnes and Oliver, maintain that all disabled people, irrespective of their particular impairments, are united in the fact they all encounter exclusion, discrimination and oppression. Therefore, they maintain that all disabled people should be united in eradicating such exclusionary and discriminatory practices. However, such a position does not recognize that different impairment groups and their respective DPOs may not share the same political agenda, nor be subjected to exclusion, discrimination and oppression in the same manner. Consequently, “second generation” disability theorists are now beginning to question the universal and homogeneous experience of discrimination and oppression and to assert that there is a “social hierarchy of impairment”, whereby some impairment groups are deemed to have more political credibility than others. If it is acknowledged that a social hierarchy does indeed exist and operate within contemporary disability politics, then this seriously challenges the position held by scholars such as Barnes and Oliver, who maintain that all disabled people are united in the manner in which they encounter oppression. It further challenges the capacity of national umbrella DPOs in representing heterogeneous needs and views of all impairment groups.

A classic example of this phenomenon is the deaf community, which certain members will argue that they are not disabled people, but rather constitute a somewhat distinct cultural identity, characterised by the development of their own language (Corker, 1998). Similarly, some disability scholars, (for example, Watson, 2002; Deal, 2003; Shakespeare, 2006), while acknowledging that disabled people encounter “oppression”, are questioning whether this is sufficiently common and cohesive factor that unites all disabled people. Research undertaken by Watson by conducting in-depth qualitative interviews, has shown that for a significant number of disabled people, their impairment is not their own primary defining characteristic of “self”. Furthermore, Deal’s 2003 study, by deploying research methods from mainstream social psychology, (particularly stereotyping and ingroup/out-group categorisation), has shown that different impairment groups actually discriminate against each other. He also argues that within a political environment in which there are inevitable finite financial resources for disability issues, different impairment groups may indeed compete with each other, in the belief that different impairment groups hold divergent political agendas and consequently this policy environment may result in “goal displacement” (Deal, 2003: 903–904).

Some sociologists would maintain that the emergence of “elites” who dominate leadership positions in social movements, (be they in the disability movement or otherwise), is inevitable, in the belief that, irrespective of espoused democratic ideas, effective organisation necessitates the creation of bureaucracy, combined with the centralization of knowledge and power. This theory was first developed by the German sociologist, Robert Michels, in his conception of the “iron law of oligarchy” (Michels, 1915).

Thus, it can be seen that if the existence of a social hierarchy of impairment does indeed exist, then this seriously challenges the traditional political strategies that have hitherto been deployed by the disability movement in securing disability rights and promoting a rights-based approach to disability within the context of international development. The challenges raised by acknowledging the existence of such a hierarchy of impairment by the disability movement is cogently analysed by the disability activist, Tom Shakespeare, in his recent book, *Disability Rights and Wrongs* (Shakespeare, 2006). Shakespeare (2006) maintains that this acknowledgement poses a serious challenge to both disability studies and the disability movement. Traditional disability studies fail to take into account the impact of pain, that different impairment groups encounter “oppression and discrimination” in differing ways and at varying levels of intensity. Once again, this is further testimony to the fact that disabled people constitute

a heterogeneous entity, with different and in some instances divergent aspirations and political goals.

From the foregoing analysis, the political imperative of recognizing that, within the vast majority of countries, throughout the developed and developing world, a social hierarchy of impairment exists, even from within the disability movement, has profound and far-reaching implications for the effective implementation of the UN Convention. It raises serious questions about the representation and genuine inclusion of a broad spectrum of impairment groups within national umbrella DPOs. If the UN Convention is genuinely going to be effective in promoting disability rights, irrespective of the nature and severity of different impairments, then it is imperative that national bodies mandated with monitoring the UN Convention make a concerted effort to consult with a broadest range of impairments as possible. While acknowledging the importance of the principles and axioms of self-advocacy, and that disabled people must be in leading positions in the development, implementation and evaluation in disability policy and practice, it is argued here that one should not be naïve to the challenges that effective self-advocacy presents. These include, as already mentioned, democratic credentials and capacity of DPOs to engage in the policy-making process, that in many countries DPOs and policy-makers do not understand each other's "world-view", and the ethical conundrum of parents advocating on behalf of their children, where the agenda and views of the former may be at variance with the latter (Lang & Officer, 2009).

An analogous yet broader issue is that bilateral and multilateral donor agencies are increasingly recognizing that poverty and disability are inexorably linked, with each being a cause and consequence of each other. The nexus that exists between poverty and disability is complex, ill-defined and under-researched. Consequently, anecdotal evidence would suggest that if one is poor, there is a greater likelihood of being disabled, due to the fact that those who are poor often live in physical and environmental conditions, (such as inadequate sanitary conditions and lack of access to health care provision), that will increase the risk of becoming disabled. Once a person becomes disabled, there is a greater probability of being poor than their non-disabled counterparts, because of lack of access to education and employment opportunities. This mutually self-reinforcing negative cycle is fuelled by underlining structural factors, the most prominent of which are social exclusion, negative social attitudes and human rights violations. To date, research has shown that disabled people encounter discrimination accessing mainstream micro-finance schemes (Marsland et al., 2008), and that are few social protection programmes available to disabled people in developing countries (Mitra, 2008). However, in the light of completing developmental challenges and priorities that exist within many developing countries, donor agencies need to be provided with robust economic data that provides a comprehensive analysis of these complex relationships. If poverty is indeed the primary root cause in the systematic social exclusion and marginalisation of disabled people, then it is imperative that a more nuanced, in-depth analysis of this poverty/disability nexus is developed. Unless this is achieved, in many developing countries, principles and tenets of the UN Convention, for all intents and purposes, stand little chance of being implemented.

Challenges to implementation: evidence from development studies

The previous section has analysed some of the potential challenges to effectively implementing the UN Convention on a disability perspective. This penultimate section analyses further challenges to implementation: by drawing on contemporary debates in mainstream development studies discourse. It is not possible to do justice to this section, for the issues discussed here are complex and of a controversial nature that warrant a separate article in its own right. Since the turn of the millennium, the efficacy of "rights-based approaches" to development as well as the

analogous concept of “participation” have been subjected to major critique. This is despite the fact that the vast majority of bilateral and multilateral agencies have subscribed to this approach as the *raison d’être* for international cooperation⁴.

Protagonists on each side of the debate make strident claims, (positively and negatively), regarding what the adoption of a rights-based agenda to development can and cannot achieve. It is fair to say that within the literature, there is indeed a large degree of ambiguity regarding the definition and ultimate objectives of this approach. Those in its support maintaining that the adoption of rights-based approaches has challenged and reorientated international development by reconfiguring the power relations between “donors” and “beneficiaries”, so that beneficiaries become the final arbiters with the regard to the development, implementation and monitoring of development initiatives. Conversely, critics of this approach maintain that, for all intents and purposes, nothing has really changed in terms of power relations, with donor agencies domesticating and de-politicising aid modalities (Cooke & Kothari, 2001). Furthermore, notwithstanding the relative merits and demerits of this approach, Peter Ulvin has helpfully highlighted two interrelated goals that underpin rights-based approaches: one with regard to processes and the other with regard to means. Ulvin has therefore argued that this ascendancy has fundamentally redefined the parameters of development discourse and practice, by shifting the *raison d’être* for development cooperation from addressing needs through charitable interventions. Rather a rights-based approach seeks to “promote respect and adjudicate the violation of rights”. Furthermore, in agreement with a plethora of other development practitioners, Ulvin argues that right-based approaches have resulted in a fundamental shift in the *process* of development, privileging notions of accountability and participation, that are articulated in a non-tokenistic manner (Ulvin, 2007).

At this juncture, it is worth noting and briefly commenting some of the criticisms that have been made of the “participation” project in recent years, albeit these being highly contested. If these criticisms can indeed be sustained, then they have profound implications for the effective implementation of the UN Convention and more broadly for the future architectural framework for disability policy-making.

Hickey and Mohan, in reviewing the literature on participatory development, list three principal criticisms that have been levelled against participatory development. First, it has been claimed that there had been an over emphasis on privileging “local knowledge” that ignores broader structural oppression that exists in many local communities. Secondly, there is an inadequate conceptualisation of structure and agency with respect to social change. Thirdly, development practitioners and donor agencies have domesticated “participation”, by transforming it into a methodological tool rather than an agent of empowerment (Hickey & Mohan, 2004: 11). Some of these criticisms have some resonance with some of the challenges to implementing the UN Convention that have been delineated above. Historically, there are many examples in the disability sector where “participation” has indeed been used as a mechanism to enable NGOs to secure funding for discreet projects. A good example is in Zimbabwe, where partners within the first phase of Department for international development (DFID)-funded Protracted Relief Programme highlighted disabled people as one of their “targeted vulnerable populations”, although subsequent evaluations have shown that disabled people have scarcely benefited from these activities (Lang & Chadowa, 2007: 8).

⁴ An indication of the impact of the rights-based approach of UNDP’s 2000 Human Development Report entitled *Human Rights and Human Development* (UNDP, 2000).

The privileging of local knowledge resonates with and parallels many of the strategies deployed by international disability movement, particularly the clarion call of “nothing about us without us” and that the role of non-disabled professionals working in the disability sector is to be “on tap – not on top”. Yet, an unquestioning over-reliance on local knowledge has the potential but may not necessarily reinforce existing exclusionary practices. An example where this was indeed the case was chronicled in the social-anthropological study of disability conducted by [Harriss-White and Erb \(2002\)](#), which showed that disabled women, on balance, encountered higher levels of discrimination than did men.

Conclusion

The purpose of this article has been to chronicle the historical development of the intellectual and political history of disability in the past 30 years, which culminated in the enactment of the UN Convention on the Rights of Persons with Disabilities in May 2008. Particular emphasis has been given to examining the relationship between the UN, on the one hand, and civil society institutions, (especially DPOs), on the other, in relation to the development of disability policy and practice. This article has also attempted to provide, notwithstanding the fact that the UN Convention has just come into force, a critical analysis of some of the perceived future challenges regarding the implementation of the UN Convention, by drawing upon the findings of original research in the disability and international development sector, complemented by a cursory analysis of contemporary debates within mainstream development studies.

It is too early to determine, with any degree of certainty, whether the UN Convention will indeed result in a seismic paradigm shift in the parameters of disability policy and practice. This will be contingent upon a multiplicity of complex and interrelated factors, some of which have been identified within this article, but others that have yet to be foreseen. However, it can be acknowledged that the UN Convention is indeed of seminal importance, in the sense that for the first time in history of disabled people, their representative organisations and other civil society institutions have a legal redress to hold their governments to account for the promotion and enforcement of disability rights. Indeed, some scholars have also argued that the UN Convention is of seminal historical importance, in that it will change the political architecture and lexicon in which human rights is framed. For example, Frederic Megret has argued that the UN Convention has fundamentally challenged what is essentially to be “human”. Moreover, by emphasising the fact that human rights are “indivisible, interdependent and interrelated”, the UN Convention questions some of the binary polarised distinctions that are made within mainstream human rights discourse namely:

- positive versus native rights;
- civil, political and economic rights versus social and cultural rights;
- public versus private rights ([Megret, 2008](#)).

What is clear, even at this early stage, is that the UN Convention will not, in and of itself, be the panacea that will end the discrimination and social exclusion of disabled people within contemporary society. While it is possible for sovereign states to sign and ratify the UN Convention, thereby outlawing systemic discriminatory policy and practice, it is virtually impossible for governments to enforce individuals, and to some extent organisations, not to maintain and to some extent perpetuate discriminatory practices. Furthermore, as this article has demonstrated, there are several challenges that will need to be surmounted, at country level, for the UN Convention to be

effectively implemented. The Disability Scoping Studies in Zimbabwe and Nigeria, undertaken by the author, has identified a series of key challenges with regard to implementation. These include the fact that policy-makers, on the one hand, and civil society institutions, (especially DPOs), on the other, do not understand each other's "worldview". Although in some countries there has been significant progress in this area (notably in South Africa), it nevertheless remains the case that there is a great deal of progress still to be made in this area. The generic problem of policy-makers and civil servants not engaging with civil society is not unique to the disability sector. There are numerous examples of a non-understanding of the agendas and miscommunication between single issue interest groups and policy-makers, particularly concerned with environmental issues, (Sabatier, 2006; Kingdom, 2003).

At country level, the extent to which the UN Convention will be effectively implemented is contingent upon some crucial factors. These are namely:

- political will of elected politicians and senior civil servants in promoting a rights-based agenda on disability issues;
- a vibrant civil society, that can hold signatory States to account;
- governance systems that respect and uphold the principles of the rule of law, transparency, accountability and due process;
- the collection and analysis of disability statistics, (particularly at local government level);
- the development of efficient and effective implementation modalities that ensure that disabilities services are widely accessible in such a manner that they meet the expressed needs of disabled people.

Historically, it is fair to say that, in some countries previous human rights treaties and conventions, (for example, the 1976 International Covenant on Civil and Political Rights and the 1986 UN Declaration on the Right to Development), were honored in the breach. Some countries, particularly those with high levels of poverty, can justifiably argue that they do not have the financial resources to implement the tenets of such international instruments. Therefore, in such countries, the signing and ratification of such human rights instruments can be perceived as being aspirational and declaratory in nature. The evidence from the Disability Scoping Studies in Nigeria and Zimbabwe would suggest that this is particularly the case, with many politicians and senior civil servants not understanding that "disability" is fundamentally at root based on human rights principles. Furthermore, within many developing countries, scant credence is given to the advancement of democratic governance systems, in which social and economic policies are founded upon human rights. Bilateral and multilateral donor agencies, who are beginning to provide direct budget support to recipient governments, are increasingly focusing on public sector reform that attempts to inculcate the notion of the rule of law, transparency and accountability within the structure of public administration in such countries. This democratic deficit is particularly acute at the local government level, in which public appointments and service provision are made on the basis of nepotism. Therefore, in such countries, it is hard to foresee, at least in the short-term, how the UN Convention will be implemented. It will be very interesting to read these first progress reports on the implementation of the UN Convention from such countries, that are due to be published two years from now.

Within this article, it has been strongly argued that disabled people and their representative organisations should and must play a pivotal role in the development and execution of disability policy and practice. However, notwithstanding this laudable ideal, such an initiative is fraught with difficulties and conundrums. In many developing countries, DPOs are populated by middle-class

“disability elites”, and often dominated by a very small proportion of impairments. Moreover, in countries such as India, the vast majority of DPOs represent the needs of single impairments, which unfortunately results in infighting within the disability movement for finite financial resources. A further problem is that, with a few notable exceptions such as in South Africa, DPOs have not been particularly effective in lobbying their respective governments in terms of promoting rights-based agenda to disability issues. If the UN Convention is to be more than just tokenistic, then it is imperative that the capacity of DPOs to lobby governments is increased. Bilateral and multilateral donor agencies are now beginning to see this being key. For example, the Department for International Development in Nigeria is giving serious consideration to how they can increase the organisational capacity of DPOs, this being achieved through their mainstream initiatives in strengthening civil society institutions and revitalising the public sector (Lang & Upah, 2008).

A further crucial factor will be the collation and analysis of disability statistics, which are crucial for monitoring the impact and effectiveness of the UN Convention. In the absence of such statistics, there will be a fundamental democratic deficit, in as much that disabled people and their representative organisations will not have any benchmarks by which to assess what progress has been made in terms of implementation. The generation of robust disability statistics will also be advantageous in enabling governments to develop strategies to mainstream disability within generic social and economic policies, (for example, enabling disabled children to attend mainstream primary and secondary schools), as well as implementing specifically targeted programmes.

Finally, it is imperative that signatory States develop robust administrative infrastructures so that disability services can be provided in such a manner that meets the explicit needs of disabled people. Once again, drawing upon the findings and inferences of the Disability Scoping Studies in Nigeria and Zimbabwe, it is abundantly clear, that at local government level, there are no such structures that have been established. In the absence of these structures, it is likely that disabled people will encounter continued and sustained social exclusion from the contemporary society in which they live, with for example, disabled children not completing their basic primary education, and the majority of disabled people living in a state of abject poverty, resulting from their inability to secure long-term, sustainable employment.

The UN Convention on the Rights of Persons with Disabilities has the potential to create a seismic “paradigm shift”, (as understood by Thomas Kuhn), in the manner in which disability policy and practice is formulated. However, it is far too premature to determine, with any degree of certainty, whether this will indeed be the case. One thing is for sure – that the UN Convention has played a catalytic role in raising the political profile of disability, which is fundamentally linked to human rights, to such an extent that has not been achieved before.

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