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978-1-107-01171-7 - From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities

Eilíonóir Flynn

Excerpt

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## Introduction and Methodology

### INTRODUCTION

As the first human rights treaty of the twenty-first century, the Convention on the Rights of Persons with Disabilities (CRPD) was drafted in the midst of a broader debate about the role of the UN and, in particular, the role of existing mechanisms in monitoring human rights violations.<sup>1</sup> Given this context, the drafters of the CRPD sought to push the boundaries of what an international human rights instrument could achieve, and the resulting Convention creates unique links between national implementation and monitoring and international oversight of the monitoring process. In response to the CRPD (and in some cases, prior to its adoption), many countries have developed national disability strategies that set out how people with disabilities are to be included in domestic society as fully participating citizens through measures to improve access to education, employment, transport, housing, income, personal support, etc. The CRPD encouraged the development of these strategies and set itself as a blueprint for domestic action plans designed to promote and protect the rights of people with disabilities.

<sup>1</sup> See, for example, Stein, M. A. and Lord, J. E., "Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential" (2010) 32(3) *Human Rights Quarterly* 689.

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As a result, this book undertakes a global study of such national disability strategies (including the perspectives of developing and developed countries) in order to identify success factors in bringing the Convention to bear at the grassroots level. This introduction will first set out the scope and purpose of the book and its contribution to existing knowledge on the CRPD and the development of national disability strategies. Second, it will give an overview of the content of the book and sketch its main arguments. Finally, it will describe the methodological approach taken in conducting this research in order to set the boundaries of the arguments that are made throughout the text.

### A. SCOPE AND PURPOSE OF THE BOOK

The purpose of this book is twofold. First, it aims to establish that national disability strategies are key ingredients in embedding the dynamic of change envisaged by the Convention at the domestic level. Second, and related to the first point, it argues that national disability strategies can only achieve this goal if they are constructed and implemented in accordance with certain critical success factors, identified through a comprehensive global analysis. Each of these arguments will be addressed in turn here before highlighting how they are developed throughout the following chapters.

There are many potential reasons for selecting a national disability strategy as the primary implementation tool for the Convention. First, the Convention itself recognises that legal measures alone will not be sufficient to ensure the protection and promotion of the fundamental rights of people with disabilities. There are constant reminders of this fact throughout the text of the Convention, including Article 8, which places a strong obligation on states to raise awareness of the nature of disability in the public sphere, particularly for those who work with people with disabilities, emphasising

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the importance of valuing people with disabilities as full active citizens. In addition, the general obligations on states outlined in Article 4 include a requirement “to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention.”<sup>2</sup> This, particularly when combined with the requirement in Article 33 to establish focal points within the government and independent monitoring mechanisms to evaluate compliance with the CRPD at the domestic level, gives rise to an implied obligation on states to develop comprehensive national disability strategies to ensure effective implementation of the CRPD.

It should also be noted that during the drafting process of the Convention, a number of submissions argued for a more explicit obligation to adopt national action plans in the Convention text.<sup>3</sup> Although this approach was not ultimately adopted in the text, it is arguable that the requirements of Article 33 relating to domestic implementation and monitoring can best be achieved through the framework of adopting a national disability strategy. It has also been suggested that the Committee on the Rights of Persons with Disabilities may provide guidance to states who wish to develop such strategies as part of the broader advice offered throughout the state reporting and international monitoring process. Stein and Lord contend that a much broader role is also given to the Conference of States Parties in Article 40 of the CRPD than in previous international

<sup>2</sup> Article 4(1).

<sup>3</sup> See, for example, Asia Pacific Forum of National Human Rights Institutions, Proposal on Monitoring Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (6th Sess., Ad Hoc Comm., 2005) and available at <[http://www.nhri.net/pdf/Disability\\_Proposal\\_Monitor.pdf](http://www.nhri.net/pdf/Disability_Proposal_Monitor.pdf)>; U.N. GAOR, *Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, Working Paper by Mexico* (1st Sess., Ad Hoc Comm., U.N. Doc. A/AC.265/WP.1, 2002) available at <<http://www.un.org/esa/socdev/enable/rights/adhocmeetaac265w1e.htm>> (last accessed 20 October 2010).

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human rights treaties,<sup>4</sup> and that the Conference has an important part to play in facilitating interstate learning on the development and implementation of national disability strategies to implement the Convention.

At the regional level, instruments such as the Council of Europe Disability Action Plan also require the development of national disability strategies, stating that “member states should set up strategies aimed at bringing their policies progressively in line with the recommendations and underlying basic principles of the Disability Action Plan.”<sup>5</sup> Knowledge concerning the crafting of national disability strategies is quite underdeveloped at present, and this book aims to make a significant contribution to the debate on how national disability strategies should be framed in order to ensure effective implementation. The structures, processes, and indicators developed as part of a national disability strategy will all be carefully considered in deducing the success factors that should guide states to ensure effective implementation.

Ireland has been chosen as the primary case study for this book as it was among the first jurisdictions to develop a national disability strategy that blended legislative, policy, and funding elements,<sup>6</sup> and augmented provisions on non-discrimination with recognition of more complex issues of access, participation, and rights to services for people with disabilities. This book uses Ireland as an example to demonstrate how international best practice and lessons from other comparative jurisdictions can be applied in a

<sup>4</sup> *Supra*, n. 1, pp. 689, 699.

<sup>5</sup> Council of Europe (Committee of Ministers) “Recommendation of the Committee of Ministers to Member States on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: including the quality of life of people with disabilities in Europe 2006–2015” (5 April 2006) Rec (2006)5, section 1.5.

<sup>6</sup> Department of An Taoiseach, *Speech at the Launch of the National Disability Strategy in the Alexander Hotel, Fenian Street* (Dublin: Stationery Office, 2004).

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domestic context. However, this experience has a much broader resonance for all states parties to the CRPD, as will be highlighted in the success factors devised, as these are the product of an international learning experience and can be applied in any domestic context. Finally, the depth of analysis and understanding of the Irish context is important in developing a test case for the application of international success factors, as it would not be feasible to consider the detailed application of each of the factors in every comparative country examined in the book. Rather, the focus on a particular jurisdiction with some unique innovations in its national disability strategy can serve as a useful baseline for other countries interested in implementing the success factors discussed.

## B. CONTENT AND STRUCTURE OF THE BOOK

This book is divided into four main parts. The first part contains a global comparative study of implementation and monitoring mechanisms for national disability strategies in light of the principles and processes envisaged by the CRPD. The comparative study is conducted at international,<sup>7</sup> regional,<sup>8</sup> and comparative country levels,<sup>9</sup> and deduces critical success factors in implementing disability strategies or action plans worldwide.<sup>10</sup> The international study conducted in Chapter 1 focuses primarily on the four key principles of the CRPD – dignity, autonomy, participation, and solidarity – and examines guidelines for developing national disability strategies that are derived from the drafting process of the Convention, as well as those that appear in the final text. This international study also discusses some of the

<sup>7</sup> Chapter 1.

<sup>8</sup> Chapter 2.

<sup>9</sup> Chapter 3.

<sup>10</sup> Chapter 4.

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key elements in literature on new public management and community development that can ensure more effective implementation and monitoring of strategies from both grassroots and government perspectives. It explores emerging synergies between what is required to implement principles of international law contained in the CRPD and what strategic management literature tells us is possible to achieve through national policy and systems development.

The regional study conducted in Chapter 2 assesses the contribution of regional Decades of Persons with Disability (in the Americas, Asia-Pacific, the Arab region, and Africa) as well as regional Disability Action Plans (European Union and Council of Europe). Regional systems are particularly relevant for domestic governments in formulating national disability strategies, especially where regional organisations act as a forum for sharing good practices. Certain countries also emerge as leaders at the regional level and bring innovative implementation and monitoring techniques to the fore. Beyond the specific context of disability, there are a number of regional human rights structures, such as the African Commission on Human and Peoples' Rights, the Asia-Pacific Forum of National Human Rights Institutions, and the European Court of Human Rights, that can give important guidance in the broader application of generic human rights norms to people with disabilities and the scope of state responsibility.

A detailed comparative country study is then undertaken in Chapter 3, which examines the disability strategies and action plans of Australia (focus on Victoria), Bolivia, Canada (focus on British Columbia), England and Wales, New Zealand, Slovenia, South Africa, Sweden, the Philippines, and Portugal.<sup>11</sup> The aim of the comparative study is to highlight countries that are successfully implementing strategies, have the ability to gather information to determine the

<sup>11</sup> The baseline for including jurisdictions in this study was the existence of a comprehensive national disability strategy (or a composite of measures that could be described as such), where possible including legislative, policy, and programmatic elements.

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impact of various aspects of the strategy, and have the capacity to learn from experience and improve future outcomes for people with disabilities. The jurisdictions selected reflect the experiences of both developed and developing countries and encompass a broad range of creative approaches to realising the rights of people with disabilities. Comparative problems in implementation that might be relevant in the Irish context are noted, in addition to the viability of solutions put forward. Also, countries that are in the process of formulating an action plan but are not yet in a position to implement this are examined, especially where the strategy has closely followed the principles of the CRPD and may have innovative features that could be considered in other domestic contexts.

Part 2 of the book, Chapter 4, sets out the critical success factors in implementing national disability strategies, in line with the principles of the Convention. This chapter is the core of the entire book, as it provides examples of best practice which will be of interest to both an international and an Irish audience in further developing national disability strategies. The criteria considered include leadership from government and civil society groups, meaningful and effective consultation with people with disabilities throughout the lifetime of the strategy, joined-up thinking between the strategy and the Convention, data and statistics to measure implementation, independent monitoring and external review, transparency and accountability in reporting processes, legal obligations and funding programmes to underpin policy commitments, and mainstreaming disability across all areas of generic policy development. These criteria are illustrated by examples of best practice, taken from the comparative jurisdictions considered in the previous chapter, along with some relevant contributions from Ireland.

Part 3 of the book explores in detail the development of a national disability strategy in Ireland, examining the particular social, political, and legal factors that shaped the strategy in order to uncover its underlying principles. These principles are strengthened by

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Ireland's commitment to the CRPD and to regional agreements such as the EU Disability Action Plan 2003–2010<sup>12</sup> and the Council of Europe Disability Action Plan 2006–2015.<sup>13</sup> The overall aim of the book is to contribute to the future development and ongoing implementation of Ireland's National Disability Strategy by building on national and international expertise to embed a dynamic of change at the domestic level, in line with the premise of the CRPD. In particular, the successes and challenges of implementation identified in this book will resonate not only within Ireland but with all countries that are in the process of moving beyond prohibitions of discrimination on the basis of disability, towards strategic measures to ensure that disabled citizens can participate effectively in society on an equal basis with others.

Chapter 5 considers the golden threads in the development of Ireland's National Disability Strategy, beginning with the seminal Report of the Commission on the Status of People with Disabilities in 1996, and threading through the recommendations of the Commission into the existing structure of the National Disability Strategy. Chapter 6 assesses these structures and processes in greater detail, in order to provide a deeper understanding of the mechanisms that are used in the implementation and monitoring of the National Disability Strategy. Finally, Chapter 7 highlights the common themes and approaches within Ireland's National Disability Strategy, the CRPD, and the Council of Europe and European Union Disability Action Plans respectively. This exercise is particularly useful for other jurisdictions, as it reflects on the similarities and disparities between international and domestic approaches to promote and protect the rights of persons with disabilities.

The final part of the book makes some concrete suggestions about how the success factors identified in Chapter 4 in particular

<sup>12</sup> Commission (EC), "Equal opportunities for people with disabilities: a European Action Plan" COM(2003) 650 final, 30 October 2003.

<sup>13</sup> *Supra*, n. 5.

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could be furthered at the domestic level by assessing their suitability for adoption in the Irish context. Success factors are divided into two main categories – structural ingredients and measurement processes – which are dealt with in Chapters 8 and 9 respectively. The conclusion and recommendations put forward at the end of the book aim to serve as the starting point for future dialogue and discussion on the important role national disability strategies can play in putting the CRPD into practice at the domestic level and breaking down barriers to participation faced by people with disabilities in the relevant jurisdictions.

## C. RESEARCH METHODOLOGY

A number of interlinked methodological approaches are taken in the research conducted for this book. First, desk-based research was undertaken on the comparative countries and the development of the Irish National Disability Strategy. This involved an in-depth analysis of all available material,<sup>14</sup> including the texts of national disability strategies, reports or reviews conducted (whether by an independent monitor or compiled by government representatives), media reporting on the strategy, shadow reports published by disabled persons' organisations, and submissions on the development or redevelopment of the strategy. Second, a questionnaire was developed for key informants on national disability strategies (primarily researchers in academic institutions, with some involvement from NGOs, individuals, and government representatives) in the final countries selected. This was disseminated to the relevant individuals, with follow-up sessions where necessary to obtain a

<sup>14</sup> It should be noted that a concerted effort was made to obtain balance in the materials obtained, as government reports sometimes gave a more optimistic view of progress made, and reports by disabled persons' organizations (DPOs) often took a very critical approach.

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critical analysis of the strategy's impact on the lives of people with disabilities in that jurisdiction. With regard to the analysis of critical success factors, these were deduced from existing independent evaluations of national disability strategies in the comparator countries, and broader literature on new public management and community development, as well as commentary from key stakeholders in each comparator country as to the factors they felt had been most effective in progressing the relevant national disability strategy. In order to accurately represent the approach taken to national disability strategies in comparative countries, the terminology used regarding people with disabilities is intended to reflect best practice in a given country's policy framework. As a result, the terms "people with disabilities," "persons with disabilities," "people with disability," "disabled people," etc. are used interchangeably throughout this book.

With regard to the Irish section of the study, two rounds of interviews were conducted with the members of the National Disability Strategy Stakeholders Monitoring Group, which consists of representatives from ten government departments, six national disability umbrella organisations, the National Disability Authority, Irish Congress of Trade Unions, and the Irish Business and Employers Consortium. A number of other individuals were also consulted in this process, including previous members of that group and those involved in the initial development of the National Disability Strategy. Two focus group sessions were also held with members of the Centre for Disability Law and Policy's Local Consultation Group in order to assess the impact of the National Disability Strategy on members of the local community.

Finally, an academic steering group was convened to support this research, made up of experts in mental health, equality law, disability statistics, independent living, services and supports for people with disabilities, new public management, and international human rights law. The insights of the members of this group have been