Linking Disability Rights and Democracy: Insights From Brazil

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Abstract
This article explores the purport and portent of the 2006 United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) for disabled Brazilians. The analysis proceeds in three stages. First, it traces the evolution of the Convention as the culmination of a 30-year dialogue between the UN, governments and civil society organizations worldwide. As a legally binding instrument, the UNCRPD enables disabled citizens and interested civil society organizations to hold signatory states accountable for the protection and furtherance of disability rights. Second, the article examines how the Brazilian government came to adopt the Convention and how it has implemented its provisions to date. Finally, I investigate the possible long-term consequences for Brazil’s young democracy of the strategic choices revealed by the nation’s human rights policy implementation emphasis.

Overall, this analysis argues the formal creation of institutions is just the first step toward realization of human rights for disabled Brazilians and thereby a more robust democracy. Changing cultural values and social relations institutionalized in informal patterns of everyday life cannot be achieved by statutory mandates alone, but will be critical to full realization of the Convention’s aspirations in Brazil.

Keywords
Persons with disabilities; Disabled rights; United Nations; Brazil

Until recently, disabled individuals were not explicitly recognized in binding instruments of human rights international law. There were several international and regional human rights norms and instruments specifically concerned with disabled population, but these were generally insufficient to guarantee their rights. In fact, even today, fewer than 50 states around the world have anti-discrimination laws in place to protect disabled people, and those nations are located mostly in the developed world (Mercer and Macdonald 2007:548). The acknowledgment of disability as a fundamental human rights
issue has developed slowly around the globe during the past three decades. Despite the efforts of civil society organizations internationally to press for a specific convention on disability rights and several disability-related declarations and treaties initiated by the United Nations, disabled individuals, 80 percent of whom live in developing countries and account for a significant share of the poor in those nations, were not included in the UN’s Millennium Development Goals in 2001.² These facts speak to the degree of invisibility and oppression that millions of disabled people worldwide have long experienced.³ Passage of the 2006 UN Convention on the Rights of Persons with Disabilities (UNCRPD) in Brazil was the culmination of the long-term efforts of nongovernmental organizations (NGOs) internationally to secure a specific agreement on disability rights to begin addressing this situation.

This article explores the aims and significance of the UNCRPD for Brazil’s disabled citizens. The Brazilian government, under pressure from disability rights groups, has undertaken several steps to devise policies to implement the Convention since the nation adopted it in 2008. This analysis argues the formal creation of institutions is just the first step in the realization of human rights for disabled population and in enhancing Brazilian democracy. My analysis has three components. First, I argue that initiatives such as the UNCRPD represent an important step in placing disability rights on national agendas. Second, signing and ratifying the Convention will not alone advance justice for disabled citizens. Instead, nations must undertake substantive actions to ensure its implementation, including creation of appropriate policies and accountability mechanisms. Third, I contend that while effective implementation of the Convention’s provisions is key, the agreement cannot mandate changes in social attitudes, which will shift only over time. The UNCRPD can help in that process, if appropriate implementation choices are made and vigorously pressed by the Brazilian government and civil society over time. The paper concludes with a discussion of the long-term consequences that the nation’s Convention-related implementation choices to date imply for Brazil’s disabled as well as for its continued democratic development.
METHODOLOGICAL NOTE

This article presents a case analysis with empirical, historical, and policy evidence regarding disability rights in Brazil. For purposes of this analysis, I critically examined available governmental and non-governmental organization reports and websites to understand better the development of disability rights in Brazil in recent years. In addition, I drew on ethnographic fieldwork conducted in the summer of 2011 to explore the significance and implementation challenges of the UNCRPD since its ratification in Brazil. I conducted individual semi-structured interviews with seven Brazilian leaders of disability rights organizations to explore the justice-related claims their respective organizations are advancing to promote the rights of disabled individuals in their nation.

I here clarify the use of terminology that follows to describe experiences of impairment and disability, which are not uniform. I acknowledge and respect the choices that disabled people and their advocates employ to describe their identity and experiences. A clear majority of those I interviewed preferred ‘persons with disability,’ or ‘pessoas com deficiência’ in Portuguese, as this formulation places people first, before disability, and focuses more on their potential, rather than limitations. However, this formulation can also be seen as problematic as an effort to reduce “the difference-of-disability in favor of the sameness-of-personhood” (Michalko 2002:148). I also avoid using ‘person(s),’ since the liberal conception of persons assumes their powers of reason and free will and is therefore problematic when we aspire to secure effective inclusion of intellectually impaired citizens (Reinders 2000:16). I have adopted ‘disabled people/citizens’ throughout this article to describe those with various impairments who are oppressed and discriminated against, or ‘disabled’ by society’s values and attitudes, and ‘people with impairments’ to describe individuals with physical or intellectual impairments in general.

How one thinks about impairment and disability is of central importance to how one conceives of rights and justice for disabled people. The definition of impairment adopted by the Brazilian government is based on the biological features of a person that deviate from established normality—physical, intellectual and emotional attributes. Brazil’s 2010 Census relied on the biological characteristics of the population including those with visual, hearing,
motor, or mental incapacities of varied degrees to catalogue those with impairments. However, Shakespeare has argued that impairments should be viewed not in terms intrinsic to a particular individual, such as the character and severity of a specific condition, but in social terms, “related to values and attitudes of a wider society” (2006:35). Furthermore, as Omote has explained, no biological feature or attribute is deviant simply because it differs from the norm; in fact, any quality can be interpreted and treated as a deviant case, depending on who possesses the particular feature and the context in which the judgment occurs (2004:292). The notion of impairment remains controversial and has broad implications for allied definitions of disability, but as Shakespeare has noted, there is “no impairment without society, nor disability without impairment” (2006:34). Those who ascribe to the social model of disability view the attitudinal and environmental factors in a society as ‘disabling,’ or oppressive for people with impairments, preventing them from living a full life. This perspective implies there is a population with impairments that is not oppressed and is not the subject of discrimination, and thus there would be no immediate need to include them in disability rights policies and actions. Reflecting the social model and its accompanying conceptualization, the text of the UNCRPD focused only on the rights of persons with impairments currently experiencing oppression, ‘persons with disabilities,’ and not on all people with impairments who may be at risk of repression and discrimination (Kayess and French 2008:21).

I am not trying here to sustain the impairment/disability distinction defended by advocates of the social model. Rather, I believe that for analytical purposes it is important to point to several different sources of disability to illustrate the complexity of the issues and the similar intricacy of the solutions that must be developed to address them.

THEORETICAL RATIONALE: DEMOCRACY AND HUMAN RIGHTS

Human rights agencies and activists and many Western governments (in their foreign policies) have increasingly linked democracy and human rights (Beetham 1999:89). As Beetham has rightly pointed out, an adequate understanding of the relationship of
human rights and democracy depends very much on the ways we define both ideas (Ibid). Considered in a somewhat simplified way, the debates around democracy and human rights can be grouped as symbiotic and non-symbiotic accounts. The first listed unites claims that promoting democracy also enhances human rights, or that promoting human rights also fosters democracy. The latter account suggests that democracy does not necessarily promote human rights protection.

Many scholars assume human rights and democracy are indeed symbiotic. Goodhart, for example, has developed an account of democracy as human rights (DHR), in which he outlined the normative and institutional requirements of freedom and equality as promoting “universal emancipation through securing human rights for all” (2000:135). Goodhart bundled fundamental human rights into four groups: those linked to liberty and security, fairness, ensuring an adequate standard of living, and civil and political rights. Goodhart pushed beyond negative rights in his framework, but not so far as to offer a substantive vision of the good life. Goodhart maintains that DHR does not pretend to “exhaust popular politics,” but instead “specifies the democratic core of politics,” by providing a framework to address political problems (2000:162-163). Goodhart views democracy in process terms by focusing on the mechanisms by which rights are guaranteed.

Like Goodhart, Gould (2004) has placed human rights at the core of democracy, but she goes further and offers a substantive account of the governance approach. Gould views democracy as based “on reciprocal and empathetic personal relations” (2004:2) arguing, “individuals bear these rights only in relation to other individuals and to social institutions” (2004:37). She contends the relationship between democracy and human rights is dialectical: While democratic participation provides an avenue for ensuring human rights, the protection of such rights in itself represents a condition necessary to secure extensive democratic participation (2004:4). Distinguishing between formal (or procedural) and substantive democracy, she argues for a vigorous conception of democracy that “is itself one of the human rights” (Gould 2004:196), in which human rights pose a legitimate constraint to democratic decision-making (2004:4). Her conception of substantive democracy is based on self-
development of participants, in which they “reciprocally recognize each other’s freedom and equality in the process of making collective decisions” (2004:39).

Similar to Gould, Beetham (1997) has argued human rights constitute an intrinsic component of democracy. Moreover, Beetham has outlined three classes of rights—civil and political, economic and social, and cultural—that each relate to democracy in different ways (1999:114). In his view, while civil and political rights comprise an “integral part of democracy,” economic and social rights also stand in “mutual dependency” with democracy (Ibid). For Beetham, democracy requires economic and social rights as much as it does civil and political rights, but in a less direct way, “economic and social rights have an importance not only for equal citizenship, but also for securing democracy as a whole” (1997:356). Finally, cultural rights require the analyst to re-conceptualize democracy and its processes, if equal citizenship is to be realized in the context of multicultural societies (Beetham 1999:114).

Similarly, Zucker has offered a substantive vision of democracy, which entails economic and political rights, cautioning that otherwise “the standard list of democratic rights is incomplete” (2001:277). Examining young democracies, Arat has observed civil and political rights cannot be guaranteed when socioeconomic rights are undermined (1991:4). To buttress her claim she argues, “The stability of political democracy (liberal democracy) depends on the extent of balance between the two groups of human rights” (Ibid). When this balance is violated and socioeconomic rights are ignored, young democracies risk sliding into authoritarianism (Arat 1991:9).

Several authors have observed that establishing goals to promote human rights also furthers democracy and development (see Donnelly 1999; Evans 2001; and Freeman 2000). Donnelly, for example, has suggested that analysts should focus on ensuring the creation of rights-protective regimes, which will promote both democracy and prosperity (1999:631).

In contrast, a number of scholars have cautioned that democracy does not necessarily entail human rights protection (Donnelly 1999; Freeman 2000; Evans 2001; Mesquita, Downs, Smith and Cherif 2005). Mesquita et al. have analyzed the aspects of
democracy that are most important in addressing and mitigating human rights violations and found that “increases in a state’s level of democratization do not lead to commensurate reductions of human rights violations” (2005:456). They have argued that a “structural change is necessary for behavior to change, but behavior does not change until enough structures are in place to make it compelling for political leaders to restrain themselves and to respect the rights of their subjects” (2005:455). They framed this imperative as a critical threshold on specific dimensions of democracy that ensure accountability and translate institutional changes into behavior (2005:443). These scholars concluded that aspects such as competitive political participation, high levels of democratic development and accountability mechanisms have the most impact on a state’s human rights record. It appears reasonable to conclude with Mesquita and colleagues that passage of a few laws will not by itself generate behavior change and result in all adopting a stance of respect for human rights in general, and disability rights in particular, following decades of society-wide discrimination and inequality. Indeed, changes in the larger society’s values and attitudes, active political participation and accountability mechanisms are each necessary for change and each represent challenges to which I shall point when discussing UNCRPD implementation in Brazil.

The authors treated here have raised many complex and critical arguments regarding human rights and democracy, and this brief review of their arguments helps to frame discussion of the development and implementation of disability rights at the national level in Brazil.

In Brazilian politics, human rights in general (and disability rights in particular) represent relatively new values and strategies (Oliveira 2001:57). One of the main goals of Brazil’s recent human rights policy, enacted in 2009, has been to strengthen participatory democracy. This aspiration assumes a positive relationship between promoting democracy and human rights. However, it does not clarify the role of human rights in enhancing democracy in Brazil. Should oppressive structures and public attitudes and norms persist, implementing human rights formally will have limited impact on realizing a more vigorous Brazilian democracy in practice. As Montero (2011:116-117) has noted, Brazil’s clientelist practices and political
institutions maintain the status of ruling oligarchic elites and these individuals are able to curtail participatory democracy. This outcome is exemplified by the continued under-representation of women and minorities in politics and policy-making. Nonetheless, these issues are not reflected and prioritized in the nation’s revised and updated human rights policies.

THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: ITS SIGNIFICANCE, OPPORTUNITIES AND CHALLENGES IN BRAZIL

The UN Convention on the Rights of Persons with Disabilities was the first binding instrument in the long struggle of individuals with impairments worldwide to secure protection and promotion of their human rights. Previous UN disability-related regimes were not compulsory and failed to recognize impairment as a part of human diversity (Kayess and French 2008:16). Several attempts undertaken by The UN and civil society institutions occurred in the 1980s to garner international community acceptance of a human rights convention specifically aimed at this population.

States negotiated the UNCRPD, the first UN human rights treaty adopted in the 21st century, from 2002 to 2006, with the participation of NGOs, national human rights institutions and intergovernmental organizations. The General Assembly adopted it on December 13, 2006, during its 61st session and subsequently opened the effort for signature by all states and by regional integration organizations at UN Headquarters in New York on March 30, 2007. Eighty-one states and the European Union became treaty signatories at the opening ceremony. That total was and remains the highest number of initial acceptances of a UN Convention of any sort on its opening day in history. Since its entry into force in May 2008 for signatory states, UNCRPD has become a universal standard for human rights for disabled citizens. The Convention replaced previous instruments for the 153 signatory states and 113 state parties that have ratified it. The UNCRPD identified the rights of disabled individuals as well as the obligations of state parties to promote, protect and ensure those entitlements. Through its Optional Protocol, it also allowed for inquiry by the Committee on the Rights
of Persons with Disabilities into grave or systematic violations of the UNCRPD's provisions in specific states (UN 2006).

The Convention reaffirmed rights previously scattered in other human rights treaties with the primary aim of ensuring that disabled individuals would thereafter enjoy the “right to have rights” (Mégret 2008:500). Among those human rights are the right to life (Art.10), equal recognition before the law (Art.12), liberty and security of one’s person (Art. 14), physical and mental integrity (Art.17), respect for home and the family (Art.23), education (Art.24), health (Art.25), work and employment (Art.27), adequate standard of living and social protection (Art.28) and cultural life, recreation, leisure and sport (Art.30) (Mégret 2008:499). Some of these rights must be formulated in ways to consider the needs and experiences of disabled people, such as reproductive rights on an equal basis with others (to eliminate any threat of repetition of past practices of forced sterilization) (Art. 23), respect for privacy of personal, health and rehabilitation information (Art. 22) and a number of others. In many instances, as Mégret has summarized, the detailed specification of rights by the UNCRPD “fundamentally renew[ed] our understanding of what these rights mean and imply” (2008:507).

In March of 2007 Brazil signed the UNCRPD and its Protocol, thereby affirming its intention to ratify both. Formal adoption occurred in July 2008 when the nation accorded the Convention the status of a Constitutional norm. Legislative support for ratification was unanimous. This was so for many reasons, among them active advocacy among civil society organizations aimed at raising legislators’ awareness of the issue and its importance. For the disability rights NGOs, ratification of the Convention and its Optional Protocol meant a national commitment to the UN and other states, which spurred a nation-wide mobilization to begin implementing the rights written in the Convention, as one young disability rights activist commented to me. Two long-time disability rights movement activist interviewees saw the UNCRPD as a “victory of the movement” and as the “hallmark of a long process of discussions, agreements, advances and intense reflections that happened during four years … [that] was possible thanks to the experience accumulated in 23 years (1979-2002) by the national movement of struggle of people with disability.” In a similar vein, another disability rights
organization leader commented in an interview that the Convention represented “a new form of observing the issue of social inclusion of people with disability, since historically there was an assistencialist approach to this population … [which] strengthened the disability movement, equipping it with legal arguments in demanding rights and participation.”

The assistencialist perspective entailed tutelage of disabled and poor citizens, depriving them of developing their freedom to make decisions and assuming personal responsibility for those choices. It created strong resistance among disabled and non-disabled activists engaged in the disability rights movement. UNCRPD also encouraged dialogue between public sector representatives and militant groups in assessing and replacing assistencialist assumptions and searching for new possibilities for inclusion. Overall, the Convention called for a more comprehensive framing of disability rights as part of a push to define national human rights policies in Brazil.

Brazil’s recent human rights policies have acknowledged population diversity in an effort to promote equality. The third version of the country’s Human Rights National Plan, adopted in 2008, contains guidelines that address multiple dimensions of diversity in Brazilian society (age, race, gender, impairment, sexual orientation, ethnicity, etc.), urging their recognition in constructing a more egalitarian society. Recognizing the diversity within the nation by promoting and protecting universal human rights constituted a significant first step. However, without changes to public institutions necessary to represent women, poor, and minorities more effectively, their political roles have remained limited. These shifts lie outside the scope of specific human rights policies, but they need to be addressed for successful implementation of such initiatives. It is worth recalling, when establishing appropriate expectations, that the human rights agenda “… is not a comprehensive political program. It does not supply answers to many important political questions; rather, it leaves them to the democratic political process” (Goodhart 2005:165).

Despite constituting a historical milestone for disabled individuals around the world and in Brazil particularly, the UNCRPD has occasioned scholarly criticism. I discuss these contentions next. First, critics have argued the Convention suffers from several weaknesses endemic to many human rights treaties, including
insufficiency and ineffectiveness of monitoring provisions, and conflicting meanings and priorities, in the face of limited state resources (Stein 2007:94). Some scholars have criticized the UNCRPD’s organization and the various definitions it includes. They point out the Convention blends civil, political, economic, social and cultural rights, both within its overall structure, and within its individual articles. That orientation seems to conflict with a principal UNCRPD aim (in Article 4) to distinguish between those rights subject to near-term realization (civil and political) and those possible to attain only over time (economic, social and cultural) (Kayess and French 2008:33). In practice, critics have suggested, this apparent disjunction may complicate implementation as well as reporting of progress in attaining the Convention’s aims.

Another major criticism scholars have offered concerning the UNCRPD is that it conflates disability and impairment (Kayess and French 2008:21). While the link between impairment and disability seems clear in the definition of ‘persons with disabilities’ in Article 1 of the Convention, Kayess and French have observed that in the remainder of the agreement’s text, the Convention’s protection seems to be, “post-facto – only available to those persons with impairments who are already subject to discrimination and oppression, rather than those persons who may be at risk of it” (Ibid).13 Disability rights activist Marta Russell has similarly observed that “impairments are viewed as abnormalities and people who have them become devalued objects of the medical and social services establishment […] , not […] subjects considered fully human with comprehensive rights of citizenship” (Russell 2003:para.5). Her comment illustrates the point that until recently, people with impairments were not even included in society; they were institutionalized and often not educated. While all the individuals I interviewed recognized that progress toward a more inclusive society is occurring in Brazil, impairment is still markedly stigmatized and marginalized. Thus, people with impairments are consistently at risk of oppression and discrimination. Indeed, substituting the phrase ‘persons with impairments’ for ‘persons with disabilities’ creates the distortion to which critical scholars point. This may partially be an issue of prioritization, as Stein has suggested, but there is a deeper epistemological question at play as well. The UNCRPD incorporated the social model of disability as its
foundation, in which disability is conceived as a kind of oppression from an inaccessible environment and discriminatory society. Thus, if the aim is to change oppressive social structures and attitudes, it indeed would make sense to protect all people with impairments, rather than only those already oppressed. One of the main criticisms of the social model is the dualism it establishes between impairment and disability, a situation that has spurred some scholars to call for linking ‘social’ (disability) and ‘non-social’ (impaired bodies), instead of posing them against each other. Since the social model of disability significantly influenced the UNCRPD’s development (Kayess and French 2008:7), both the advantages and limitations of the approach seem to have been carried over into its provisions.

Scholars have also directed attention to several major challenges to UNCRPD implementation. The lack of meaningful enforcement mechanisms in the pact leaves implementation up to each country and therefore realization of its aims are subject to the vagaries of each participating nation’s politics (Mercer and MacDonald 2007:548). Beyond issues of political commitment, governments require appropriate and sufficient internal capacity to devise and implement suitable human rights policies and nations need a strong disability rights movement to continue to prod political leaders to action. Stein (2007:97) has added that effective monitoring of human rights treaties depends on a series of factors, such as moral persuasion, political pressure as well as NGOs’ ability to increase the general public’s awareness of the issue. One long-time disability activist acknowledged the need for organized and well-articulated political pressure in an interview with me: “I think we are starting to form ourselves as a pressure group. We are not yet able to put sufficient pressure to attain public policy change.”

Lang, Kett, Groce, and Trani (2011) have identified another challenge confronting Convention implementation efforts: There is no set of indicators to assess human rights attainment on which there is universal agreement. This is true for both human rights policies in general and UNCRPD-related policies, in particular. As if acknowledging the urgent need to develop disability policy indicators, the Brazilian government decided to postpone the development of such measures and reported its choice formally in a progress report.
prepared for the UN. The Report listed the identification of indicators and development of related information systems to measure the effects of enacted policies, as long-term goals (Art.4c). This decision implies that the effects of short- and medium-term (Art.4a; Art. 4b) Convention-related policy actions in Brazil will not likely be measured, tracked and reported.

As Lang (2009) has also observed, many developing countries (including Brazil) lack reliable and robust statistics on their disabled populations. That fact shapes the governments’ ability to plan and implement relevant services effectively (Lang 2009:276). In the long-term, this situation could potentially result in “an inherent democratic deficit in upholding disability rights,” since accessing basic services is indispensable for exercising other rights (Ibid), and reliable data and indicators to measure progress are lacking. The complexities of social policies suggest the need for policy-makers to create effective inter-sectoral networks, which include policy-makers and civil society organizations, to work together on policy formulation and implementation, recognizing that the public sector alone cannot tackle such challenges successfully (Lang 2009:272). This argument underscores the fact that no single sector acting alone can redress the inequality long experienced by disabled people, and their involvement in politics to secure change in their status is critical.

PATTERNS OF IMPLEMENTATION OF THE UNCRPD IN BRAZIL AND THEIR LONG-TERM IMPLICATIONS

In August 2008, Brazil deposited its UNCRPD ratification instrument with the UN, becoming, respectively, the 34th (for UNCRPD) and the 20th (for Optional Protocol) State to do so. The Convention was the first human rights treaty adopted with the standing of a Constitutional amendment in Brazil (Brazil 2009).

Brazil’s activists appear to view political participation as a crucial element in a struggle to guarantee the rights of disabled citizens. In their view, government policy aimed at UNCRPD implementation must also reflect this priority. The Brazilian government’s policy priorities were presented in its National progress report on UNCRPD in April of 2011 and these in fact were different from those offered by advocates of disabled people, as discussed below.
The report consisted of General and Specific parts. The General report reviewed social justice issues, policies and the agencies / bodies responsible for them. The Specific report was organized in accordance with the articles of the UNCRPD, specifying laws and policies enacted and programmatic actions implemented for each. Mégret (2008:506) has compiled a series of measures that states should adopt to implement the rights articulated in the UNCRPD effectively, ranging from repealing or adopting certain laws and mainstreaming concern for disability rights to training specialized personnel, providing certain services and assistance and periodically consulting with organizations representing the interests of disabled population. The National report argued in its different sections that the government had adopted all of these measures, but it provided little information about their specific outcomes.

In general, the National report did not analyze preliminary results of adopted policy actions, including increased access of disabled people to education, healthcare, social security, employment, etc. Measuring gaps in political participation, access to technology, healthcare, transportation, education, earning capacity, etc., among disabled and non-disabled population, among women and men, white and non-white, urban and rural, would yield many useful insights that could help to gauge the emergent effects of adopted public policies across the nation (for details about the National Survey on the Inclusion Gap in the US, see Stroman 2003:112-113). For truly inclusive policies, these disparities would need to be identified, measured and monitored as indicators of broader social and disability rights policies. For example, Article 6 of the UNCRPD is specifically focused on disabled women and Brazil’s progress report provided no specific indicators regarding their education or earning capacity, which could have been obtained from the Annual Survey of Social Information (RAIS) gathered and published by the government.

The authors of the Specific report analyzed implementation of Article 4 by distinguishing among short, medium and long-term strategies devised to address it, instead of immediate and progressive implementation of the rights as proclaimed in the text of the UNCRPD. This subtle distinction may generate some confusion when tracking the Convention’s implementation in Brazil, as I suggest below.
Brazil’s short-term strategy for ensuring attainment of Convention aims focuses on three main goals: first, developing policies to ensure access to basic healthcare for disabled individuals; second, effective implementation of norms aimed at increasing access by disabled adults to the job market and public services; and third, adopting measures to ensure disabled individuals’ access to media and means of communication. While the authors of the UNCRPD assumed these economic, social and cultural rights were likely to be attained progressively over time, the Brazilian government has nonetheless sought urgently to set a goal to secure them in the short-term, which carries a potential to generate some policy inconsistencies. For example, to boost the employability of disabled youth and adults, the government chose to focus on providing vocational training. However, vocation-specific training cannot replace a solid educational foundation, on which the government decided to focus only as an aim for its medium-term strategy. It appears it would make more sense to combine both adult educational and vocational training aims under the nation’s progressive implementation strategy.

Another short-term strategy of Brazilian government concerned disabled individuals’ access to the job market. Twenty-four percent of Brazil’s 190 million residents are impaired, and less than one percent are formally employed. Brazil’s laws, policies and social norms do not yet support entrepreneurship by disabled adults. Since unemployment among this population is traditionally high, encouraging entrepreneurship seems to be one viable option to help lower it. While the Specific report offered great detail concerning the various agencies and programs in place to promote the employability of disabled youth and adults, it said nothing about specific legislation, policies and actions to promote entrepreneurship among members of this public. A law to promote entrepreneurship and establish specific financing opportunities for disabled adults has been under consideration in Brazil’s legislature since 2008. It was recently approved by the Senate (Upper House of the national legislature), and has been awaiting analysis and approval by the Lower House since the end of 2011.

The nation’s medium-term policy implementation strategy first entailed the consolidation of inclusive education policies for disabled citizens, and second, development of programs that seek to
address the removal of barriers that deter such citizens from fully participating in daily life. The Convention’s text considers enhancing the participation of disabled citizens as an urgent matter in guaranteeing their rights, especially the right to political participation. Disability rights NGOs consider political participation as the foundation on which to build other rights. Therefore, they claim that delaying removal of barriers that hinder such engagement may postpone the acquisition of full citizenship rights for disabled Brazilians. Furthermore, postponing efforts to ensure the right to education for disabled people is likely to perpetuate the social injustice these citizens are already experiencing. Two consequences of this situation are poor employment opportunities and self-employment prospects for disabled people due to a continuing lack of education, which the government contends will be addressed in the longer run.

This government choice also hinders the development of disability studies scholarship in Brazil and the participation of disabled people in such research. Development of disability scholarship may also inform the debates concerning UNCRPD implementation, offering critical insights and reflection on the public choices taken. This is not to say, as Shakespeare has pointed out, that just because someone has a disability they can offer insights into the lives and experiences of other disabled people, since impairments and experiences are so diverse (2006:195). However, some scholars, including Linton (1998), have questioned the benefit and validity of generated research if not informed by disabled people’s perspectives. Indeed, if the research is focused on the needs and costs of service provision for disabled individuals, and not on their political and social rights, their inclusion into the wider citizenry is unlikely to be sustained.

The Specific report defined the conception of information systems and identification of indicators that would measure the effects of enacted policies, as long-term goals (Art.4c), which implies, as noted above, that the effects of short- and medium-term (Art.4a and 4b) policy actions will not likely be evaluated and reported. The text of the UNCRPD’s Article 31 focuses on Statistics and Data Collection regarding disabled population, but it does not specifically indicate that the provision should be immediately implemented, thus leaving signatory parties with discretion to interpret its relative priority.
Nonetheless, the Article does suggest that research information should be used to report on implementation progress. This stance implies that attention to this obligation would be short-term rather than long-term, but the lack of clarity in the text allows one to rank actions in a different order. Carrying out and disseminating research on the aspects and extent of disability injustice would likely make national policies more substantiated, as well as empower people with impairments in their struggle for justice.

Furthermore, it will help put disability rights and justice on the nation’s scholarly agenda, which has not yet occurred to any significant extent (Lanna Jr. 2010:12). Although there has been some research in Brazil concerning people with impairments and their experiences and rights, disability studies scholarship has not yet been consolidated in the nation’s colleges and universities. By highlighting and sponsoring research on disability and justice, the state could not only promote disability rights and potentially develop more effective policies, but also eventually prompt a broader change in attitudes toward disabled people in the culture. Changing cultural values and social relations institutionalized in informal patterns of everyday life is beyond the capacity of statutory mandates (Scotch 2009:180) while partnering with many stakeholders in this process to realize the findings of research may help to quicken the pace of change. As one disability movement activist commented in an interview with me,

> There will be need for more time for action by social movement militancy [groups] to put this issue [disability rights] on the agenda of the state and society in general. There is a saying, “without action there is no right.” We have a long way to walk in the defense of rights, of struggle, of denouncing, of militancy, to attain those changes, so that people with disabilities can live their lives with dignity.  

In sum, Brazil’s implementation of the Convention’s provisions will be a challenging and long-term effort involving many actors in society (civil society groups, private sector, state, etc.) whose collaboration is critical to achieving sustained social change. Brazil’s
national government has incorporated disability rights into its larger human rights plans and policies, an important inclusive step. However, the effectiveness of these actions will depend largely on the accountability and evaluative systems built into their implementation and the evidence thus far is not hope-inspiring. Moreover, Brazil’s democracy may not benefit from the nation’s relatively new human rights policies if they do not address the deeper injustices that disabled people confront on a daily basis that inhere in prevailing social and cultural attitudes.

CONCLUSIONS

The Convention represents a historic landmark in the long struggle for disability rights internationally. As a first legally binding international instrument, the UNCRPD potentially could serve as a vital force for change in the lives of disabled people worldwide as it put disability rights and justice on many national agendas for the first time.

The Convention as well as already enacted human rights policies would probably benefit Brazil’s democracy-building efforts if fully implemented. However, structural constraints, in the guise of widely accepted public attitudes, hinder such outcomes even if the policies are successfully implemented. Brazil’s policies indeed now formally seek to create and sustain a culture respectful of human rights. However, the UNCRPD’s scope and potential in securing the human rights of disabled people in the future should not be overestimated. As a negotiated international instrument, the Convention blended a variety of values and perspectives, which resulted, in some scholars’ views, in an inconsistency in adopted terminology and overall structure. In practice, this internal contradiction may complicate implementing the accord as well as make reporting concerning progress in attaining its aims more difficult, as the brief review of the Brazilian situation above underscored. The Brazilian government has taken an important inclusive step by incorporating disability rights into its larger national human rights plans and policies, but the effectiveness of these actions will depend largely on the accountability and evaluative mechanisms built into their implementation. Moreover, as suggested above, the nation’s relatively new human rights policies will be of limited benefit
to the development of its democracy if they do not address the deeper injustices confronting disabled people that inhere in prevailing social and cultural attitudes. No single sector can solve the inequality and injustice experienced daily by Brazil’s disabled people. That fact will hopefully encourage new forms of collaboration among civil society groups and the state to improve the social standing and welfare of this population in the nation.

References


Endnotes

1. Several UN-initiated disability-related declarations and treaties, as well as international and regional efforts to protect the rights of disabled individuals preceded the Convention’s adoption: the 1975 UN Declaration on the Rights of Disabled Persons; the 1991 UN Declaration of Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care; the 1993 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities; the 1994 Declaration of Salamanca concerning education; the 1999 Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; and many others.


3. According to the World Health Organization’s (WHO) World Report on Disability released at the end of 2011, the number of people with impairments worldwide has grown to 15 percent of the globe’s population, or one billion individuals. The reasons are diverse, but the WHO has suggested the growth is due to an aging population and, trends in health and environmental conditions, among other factors. Retrieved May 31, 2012 (http://www.who.int/disabilities/world_report/2011/factsheet.pdf).

5. An example of this situation is a legal definition of a person with hearing impairment for the purposes of employment quotas in Brazil, applied to companies of 100 employees and more. These firms need to hire a certain percentage of employees with impairments based on the legal definition. To qualify for being legally hearing-impaired, he or she would need to have partial or total hearing loss in both ears of 41 decibels or more, measured on various frequencies. If it is unilateral, it does not comply with the legal definition and is not covered by the policies.


8. Personal interview with a disability rights NGO leader, conducted on July 12, 2011.

9. Personal interview with a disability rights NGO leader, conducted on July 12, 2011.

10. Personal interview with a disability rights NGO leader, conducted on August 17, 2011.

11. Personal interview with a disability rights NGO leader, conducted on July 12, 2011.

12. Personal interview with a disability rights NGO leader, conducted on July 12, 2011.
13. The Convention defined “Persons with disabilities” in Article 1 as follows: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” (UN 2006), retrieved December 29, 2011. (www.un.org/disabilities/default.asp?id=151).


15. The most recent National Census in Brazil was conducted in 2010, and the responsible governmental organ, the National Institute of Geography and Statistics or IBGE, collected data on the population with impairments in its sampled households. Although some activists filed complaints against this practice before the Census began, demanding an actual headcount instead of sampling, agency preparations were already at an advanced stage and could not be altered.

16. Two years after ratification, the Convention obliged the Brazilian government to present a progress report to the UN detailing the implementation actions it had taken as part of a periodic monitoring provision. A draft report for 2008-2010 concerning progress in realizing UNCRPD aims was released in April 2011, inviting civil society organization representatives and disabled citizens to contribute documented evidence and suggestions to be analyzed and possibly incorporated into the final national report for the UN. Brazil submitted its consolidated final document to the UN in May 2012, but it was made public only weeks later. For that reason, the analysis here draws on the draft National report presented in April 2011.

17. Personal interviews with disability rights NGO leaders, conducted on July 14 and July 26, 2011.

18. Personal interview with a disability rights NGO leader, conducted on August 17, 2011.
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