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Prevailing Perceptions vs. Possible Realities:
Assessing the Potential Impacts of UN
Conventions at the Country-Level

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1. Introduction

In recognition of the needs and rights of disabled people, a convention on the rights of persons with disabilities (the convention) has been established by the United Nations (UN). The convention has yet to be ratified. The decision to ratify a convention is important, as ratification places obligations on the signatory states. Therefore, it is necessary to determine, prior to ratification, the potential impacts of the convention post-ratification.

The purpose of this paper is threefold. Firstly, it determines the potential impacts of the convention in three countries: Canada, India and Haiti. This sample represents countries from across the development continuum ranging from highly developed to least developed. Based on the analysis, the paper provides policy recommendations for ratification. Secondly, this paper critiques the pre-existing literature and exposes the gaps and limitations of studies conducted to date. Finally, this paper addresses the identified gaps through the development and use of two unique concepts: the overall process of human rights attainment and layering. Both of these concepts are described in the argument section of the paper. No study can accurately determine the impacts of a convention at the country-level without taking into account layering and the overall process of human rights attainment.

I assert that the prevailing perceptions provided by the literature about the impact of conventions are overly pessimistic and based on incomplete analysis, and the possible realities offered by the disability convention counter this pessimism. The majority of existing studies overlook the impact of conventions on internal micro-level human rights practices. My analysis identifies and focuses on pre-existing micro-level human rights practices. Moreover, I discuss the relationship between these human rights practices and the convention, with respect to layering, the full realization and institutionalization of human rights and the overall process of human rights attainment. I argue that the convention could positively impact individual human rights practices, facilitate layering, which is necessary for the full realization and institutionalization of human rights and assist with overall human rights attainment.

This paper begins by providing a brief overview of the convention. Then the methodology used to assess the potential impacts of the convention is described. This is followed by my major arguments. The next section presents the major theories and studies found in the literature. The potential impacts of the convention and specifically articles 24, 25 and 28 are analyzed for each of the three case studies. This is followed by an assessment of the combined impact of the convention in each country. Based on the combined impact, policy recommendations regarding ratification are presented. Finally, next steps are outlined and overall conclusions are provided.

2. Overview

In the summer of 2006, negotiations among UN member states, for the Convention on the Rights of Persons with Disabilities concluded. The next phase is ratification. Prior to assessing the potential impacts of the convention at the country-level, and providing policy recommendations for ratification, the convention and its purpose must be understood.

This section provides a brief overview of the convention. It begins by discussing why such a convention is needed. This is followed by an examination of what the convention actually aims to do at the country-level. And finally, descriptions of the articles assessed by this paper are provided.

2.2 Why a Convention?

Disabled people in countries across the development continuum experience marginalization. Marginalization leads to social and economic barriers, which result in a diminished quality of life. Marginalization is an affront to human rights. Therefore, a universal and legally binding standard is needed to ensure that the rights of disabled persons are guaranteed everywhere.

UN conventions provide a universal standard, which promote and protect human rights. Existing conventions target specific groups and or rights; however, the scope and application of these conventions are limited. For example, CEDAW focuses on the rights of women, yet it fails to address the many explicit needs of disabled women. Hence, the disability convention was established to better elaborate the rights of disabled persons by focusing on of their explicit needs.

2.3 What Will the Convention Do?

The convention does not create any new rights. Rather, it provides a lens for viewing existing rights, as embodied by other conventions, from a disabled perspective. This perspective takes into account the specific needs of disabled people. It also highlights the potential barriers that prevent the full realization and institutionalization of their rights.

At a more substantial level, the convention places legally binding obligations on state parties to improve current practices to ensure that the rights and needs of disabled citizens are met. The improvements could eventually result in tangible benefits for disabled people. And these benefits could address the marginalization experienced by disabled people. Perhaps most importantly, the convention could have far-reaching implications for the full realization and institutionalization of human rights in each country and for overall human rights attainment (to be discussed later).

2.4 Assessing the Convention

The entire convention cannot be examined within the confines of this paper. This paper focuses on three broad social policy areas: education, health and welfare. Every government should attempt to meet the educational, health and welfare needs of its citizens. Furthermore, articles 24(education), 25(health) and 28(welfare) could specifically address the marginalization currently experienced by disabled populations.

To conclude, the convention provides a universal and legally binding standard to ensure that the rights of disabled people are met. At a more tangible level, the convention could reduce marginalization among disabled people. And perhaps most importantly, the convention could assist with the full realization and institutionalization of human rights and with overall human rights attainment.

The methods used to assess the individual (potential) impact of each article are described in the next section.

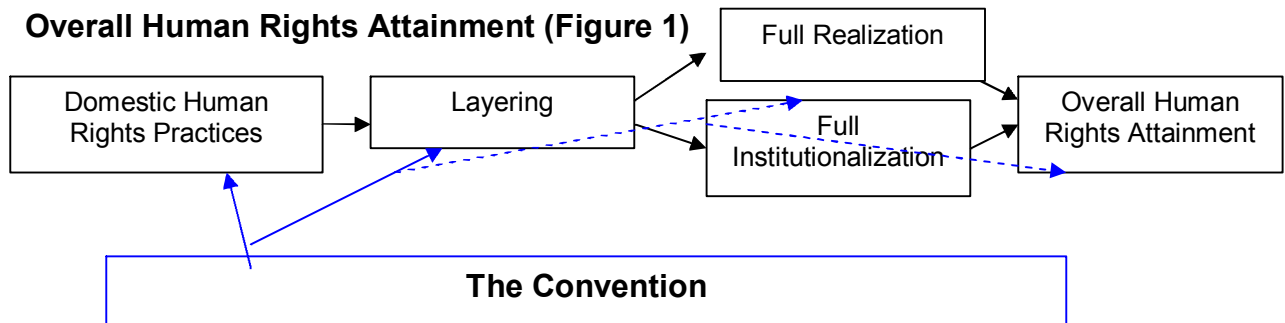
3. Methodology

Overall human rights attainment is partially achieved when a human right is recognized and provided to citizens by a domestic government. Attainment is fully achieved when the citizens are empowered to and use the right. The process leading to overall human rights attainment is fairly complex. Domestically, the process begins at the following four levels: constitutions, legislation, policies/programs and NGO involvement and participation (hereafter referred to as units of analysis or levels). Individual human rights practices at each of these levels assist with realization and institutionalization of human rights. Realization is essentially raising awareness. Institutionalization translates the right into a tangible benefit, which citizens can use. There are two types of realization and two types of institutionalization, which are needed for the full realization and institutionalization of human rights and for overall human rights attainment. Each type is described in the next section

When practices at all four levels effectively combine, a process I describe as layering occurs (to be discussed in more detail in the next section). Layering fosters full realization and institutionalization, which in turn contributes to overall human rights attainment.

The convention plays an important role in the process. By positively impacting human rights practices at each of the levels, the convention facilitates layering. This facilitation allows for full realization and institutionalization and by extension overall human rights attainment. Therefore, the purpose of the methodology is to assess the strength of pre-existing practices relative to the provisions of each

article. Doing so, determines the potential impact of each article on the entire process of human rights attainment, in each of the three policy areas. Please refer to diagram below.



3.2 The Four Units/Levels of Analysis and Related Practices

Constitutions enshrine human rights. By enshrining human rights, constitutions raise awareness among the different levels of government about human rights, and thereby assist with realization. Central and subordinate governments must ensure that the rights enshrined at the constitutional level are included in legislation, policies and programs.

The second unit of analysis is legislation. Legislation is essentially the law that governs government practices at the policy and programming levels. At a basic level, legislation can provide a human rights lens with which to formulate policies and programs. Legislation assists with realization of human rights by raising awareness among governments about human rights. Legislation also assists with institutionalization by influencing the development of policies and programs. Along with the constitution, legislation is needed for full realization at the government level.

Policies and programs result in tangible benefits for the population (e.g. services). Policies/programs assist with the realization and institutionalization of human rights, by raising awareness, among the population about their rights, and by providing rights in the form of services. When proper layering occurs, the policies/programs reflect the human rights, enshrined and legalized at the constitutional and legislative levels.

The final unit of analysis is NGO involvement and participation. According to the literature, domestic NGOs serve as catalysts for change (Heyns and Viljoen, 2001). NGOs provide services to populations. Perhaps more importantly, NGOs exert pressure on governments to improve current practices and adhere to international norms and standards, leading to real change. NGOs assist with realization by raising awareness at the government and population levels. As agents of change, NGOs also assist with the institutionalization of human rights,

through the provision of services and by improving pre-existing institutionalization.

3.3. Measuring the Impacts of the Convention

3.3a Constitution

Where a constitution is the supreme law of the land (Canada), an external convention would not directly impact the constitution. Therefore, measuring the impacts of the convention on a constitution is fairly limited. If the convention is already consistent with the constitution, then the convention would have no impact. Similarly, if the convention is inconsistent, the convention would have no impact as the constitution would prevail. However, the inconsistency may compel the government to use the convention as an external guide or point of reference. It may also use the convention as an external guide or reference if the constitution is silent on the issue. Such a role would not infringe upon the supremacy on the constitution and it would ensure that the government is aware of the potential constitutional gaps. If used as an external guide or point of reference, the convention would have a less than moderate impact. If its use as an external guide led to changes at the policy and programming levels, such changes would be characterized as a significant impact.

Where the constitutions are not the supreme law of the land (India, Haiti), the convention could directly impact these institutions. As a result, the potential level of impact would be different. If the convention is already consistent with the provisions of the constitution, then the convention would have no impact. If the constitutions are inconsistent, then the convention could lead to a constitutional amendment or even an overhaul. Since an amendment would only impact one part of the constitution, this is defined as a moderate impact. However, if the convention led to a constitutional overhaul (i.e. updated and changed the entire document); this would be characterized as a significant impact.

3.3b Legislation

If pre-existing legislation is already consistent with the convention, then the convention would have no impact. However, if legislative gaps are identified, then the convention could moderately impact the legislation through internalization. Internalization is the incorporation of the convention into existing legislation. Internalization can take two forms, the first is joint interpretation. Joint interpretation would result, if the legislation and convention were interpreted in conjunction with one another. Doing so, would bridge any legislative gaps. The second and stronger form of internalization would be a new article or amendment. Both forms of internalization work within the confines of existing legislation.

In the absence of pre-existing legislation, the convention could lead to the creation of new legislation. And the creation of new legislation is a significant impact. It is a significant impact because it creates a new institution, rather than improving the pre-existing one. Furthermore, the role of the convention in creating and developing the new legislation would be significant. The convention could provide the incentive for the creation of the new legislation. And given the convention's legally binding nature, it could also provide the impetus for the new legislation. And finally, the convention could provide the framework for the new legislation.

3.3c Policies/Programs

The convention would have no impact on policies and programs that are already consistent with its provisions. However, if policies and programs were inconsistent, then the convention could provide a new incentive for additional policy analysis and program evaluation. Both of these impacts are moderate because the purpose of analysis or evaluation is to identify and address existing flaws.

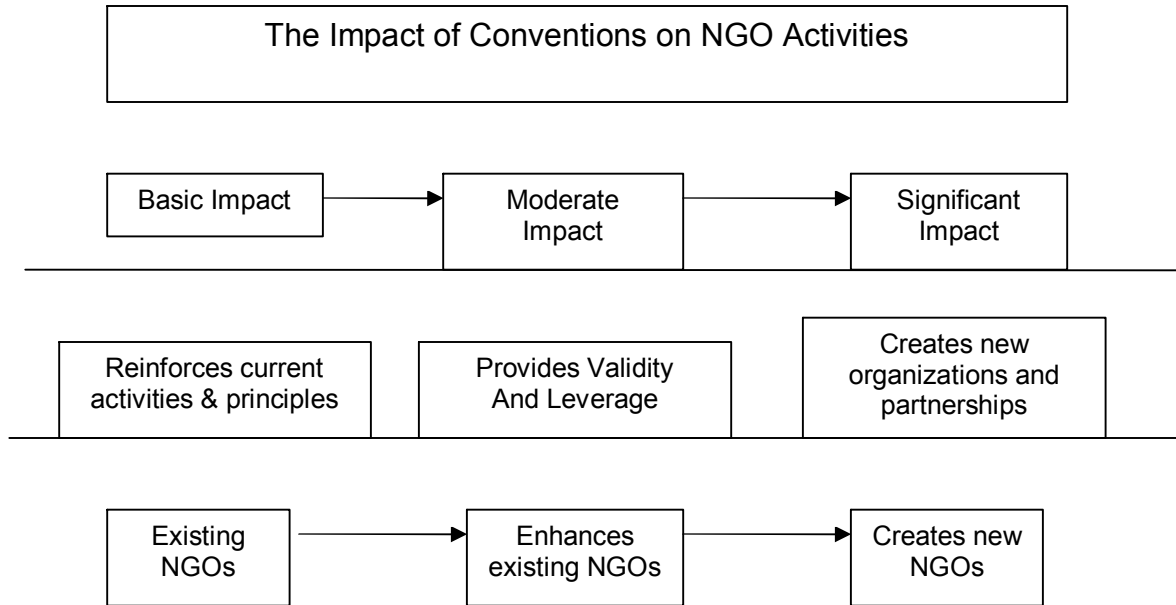
In the absence of policies and programs, the convention could provide the incentive, impetus and framework for the creation and development of policies and programs and such an impact would be significant. The convention could also have a similar impact if existing policies and programs were extremely weak. In either case, new policies and programs could result in tangible changes for the targeted population.

3.3d NGO Involvement and Participation

The literature emphasizes the role of NGOs in promoting human rights and improving current government practices (Heyns and Viljoen, 2001). Even if a NGO's activities and principles are already consistent with the convention, the convention could reinforce these activities and principles by adding credibility to the NGO. This is characterized as a basic impact. The convention could also moderately impact NGO activities by granting validity to those activities or by causing a shift in activities. The validity could empower the NGOs to seek financial support from the government. The convention could also provide NGOs with additional leverage, to exert pressure on the government to improve current practices. With this leverage, NGOs become agents of change.

At the most significant level, the convention could lead to the creation of new NGOs. The convention could provide the incentive and impetus for the creation of new NGOs. It could also provide the framework and guiding principles for the new NGOs. The convention could also lead to the creation of new partnerships between existing NGOs. For example, a gender NGO could collaborate with a disability NGO to ensure that the rights of disabled women are realized. And finally, the convention could lead to the creation of new partnerships between

domestic and international NGOs. It could also compel international NGOs and governments to become more involved and provide additional support to least developed countries. The figure below outlines the convention's level of impact on NGO activities, ranging from basic to significant.



Assessing the Impact of the Convention on the Overall Attainment of Human Rights

The assessment of the potential impacts of each article on individual practices at the four levels provides insights into the broader impacts of the convention. Since, these impacts have positive implications for layering and for the full realization and institutionalization of human rights and for overall human rights attainment. In other words, the individual impacts have a relative or stronger indirect effect on the overall process of human rights attainment. See figure 1 above.

The following section presents the argument, which I have formed on the basis of this methodology.

4. Argument

My argument is premised on the following: Firstly, the convention could play an important role in the process of overall human rights attainment. Secondly, layering is necessary for overall human rights attainment, and the convention could have a direct impact on layering. And finally, the pessimistic perceptions within the literature regarding the impacts of conventions are incorrect or exaggerated at best. So, essentially I offer a critique of the literature. My analysis provides a micro-level assessment of the potential impacts of the convention, not found in any other studies. Therefore, my analysis provides new insights and contradictory conclusions to the pre-existing literature.

4.2 Country-Level Human Rights Practices, Layering and Overall Human Rights Attainment

As described in the preceding section, the process of overall human rights attainment begins with human rights practices at the following four levels: constitutions, legislation, policies/programs and NGO involvement and participation. These practices are interconnected. Therefore, an improvement in one can positively influence other practices. Constitutions influence legislation, policies and programs. Legislation influences policies and programs. Policies and programs address gaps in constitutions and legislation. And NGOs impact all practices through service provision and advocacy activities. See equation below.

$$\text{NGO (C + L + P/P)} = \text{Domestic Human rights practices}$$

The convention identifies and addresses gaps in human rights practices at each of the four levels described above. By addressing the gaps, the convention helps to foster partial realization and or partial institutionalization. For example, a program assists with realization by raising awareness at the population level

through the provision of services. However, if the program is weak and fails to provide services to the targeted population, then population realization does not occur. The convention provides the incentive for program evaluation as well as the framework for the establishment of an improved or new program. By doing so, the convention ensures that realization at the population level occurs.

When practices at each of these levels effectively combine, a process I describe as layering occurs. Layering assists with full realization and full institutionalization and in doing so allows for overall human rights attainment. There are two types of realization. The first is government realization. The second is population realization. The former is fostered by practices at the constitutional and legislative levels, while the latter is fostered by practices at the policy/programming and NGO levels. Partial layering occurs when realization at these two levels combine. Please refer to equation below.

$$G(C+L) + P(P/P + NGO) = \text{Full realization}$$

Partial Layering

Institutionalization takes two forms: Theoretical institutionalization and practical institutionalization. Theoretical institutionalization occurs at the constitutional and legislative levels. At these levels, the concept of human rights is enshrined or a human rights lens is formed, which influences policies and programs. Practical institutionalization refers to the tangible benefits derived from human rights, and the ability of citizens to make use of those benefits. Such benefits take the form of services. When theoretical and practical institutionalization combines the result is full institutionalization and partial layering. Refer to the equation below:

$$T(C+L) + P(P/P + NGO) = \text{Full Institutionalization}$$

Partial Layering

Realization and institutionalization are interlinked. Realization is needed to inform institutionalization and ensure that people are aware of their rights. And institutionalization is needed empower citizens to use their rights. So, layering occurs at three levels: in combining the different types realization to lead to full realization, in combing the different types of institutionalization to lead to full institutionalization and in combining the full realization and institutionalization to allow for overall human rights attainment. Ultimately, full realization and full institutionalization and by extension human rights attainment cannot occur without layering. See figures below.

$$L\{G(C+L) + P(P/P +NGO)\} + L\{T(C+L) + P(P/P +NGO)\} = \text{Full Realization} + \text{Full Institutionalization} = \text{Full Layering}$$

Layering	$\frac{G(C+L) + P(P/P +NGO) + T(C+L) + P(P/P +NGO)}{=}$
	Human Rights Attainment Or



4.3 Exposing and Addressing Gaps: A Critique of Pre-Existing Literature

Much of the literature provides pessimistic perceptions about the impacts of UN conventions. One such perception is that UN conventions cannot improve human rights practices in developed/democratic countries, especially compared to its impacts in highly developing countries. Another is that UN conventions actually worsen human rights practices in least developed countries. However, I argue that these perceptions are incorrect or at least exaggerated since they are derived from flawed and limited studies. A majority of existing studies use macro-level human rights practices at the country-level and other broad concepts (e.g. democracy) as the basis of their analysis. These studies overlook micro-level human rights practices and the impact of conventions on those practices (e.g. policies and programs). By doing so, they exclude an important area of analysis. Furthermore, these studies overly emphasize the external relationships of states in relation to the human rights regime. In other words, the studies use an institutionalist approach. The importance of external relationships cannot be denied, however, in order to effectively gauge the impact of conventions at the country-level it is necessary to fully examine micro-level internal human rights practices.

My analysis not only critiques the existing studies, by contradicting the prevailing perceptions, it also bridges the identified gaps. My analysis identifies and examines micro-level internal human rights practices at the country-level. My units of analysis are supported by Heyns and Vijolen's study of internal human rights practices. They focus on constitutions, legislation, policies and domestic NGOs. I expand on Heyns and Vijolen's study by identifying and describing the interrelationships between micro-level internal human rights practices. Beyond that, I develop and use two unique concepts, the first is the process of overall human rights attainment at the country-level and the second is the concept of layering, which describes how internal micro-level human rights practices effectively combine to lead to full realization and institutionalization, which allows for overall human rights attainment. Neither of these concepts have been identified, described or examined within the existing literature. I argue that the

potential impacts of any UN convention, at the country-level, cannot be examined without these two concepts.

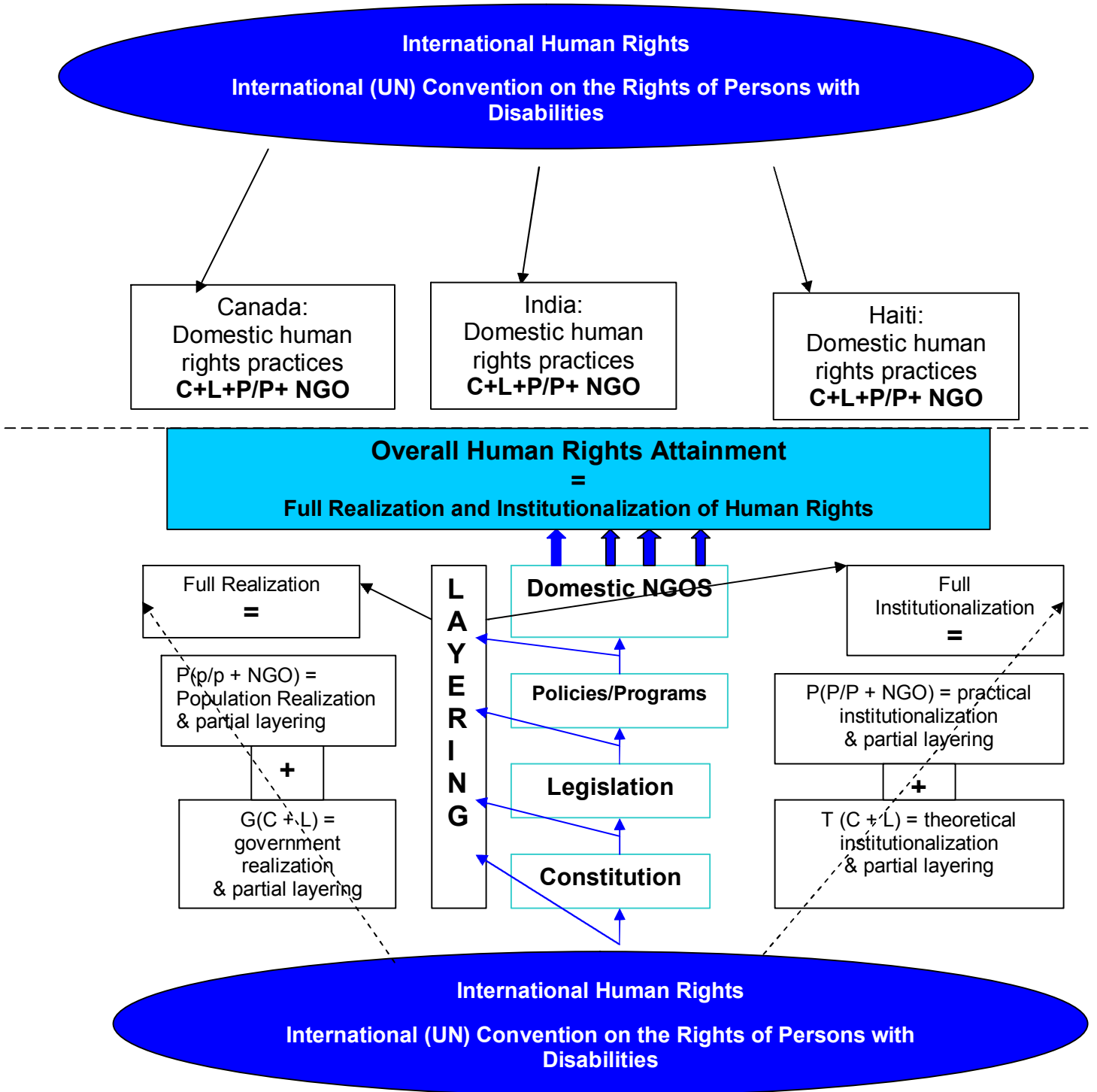
Contrary to the existing literature, I employ a neo-realist viewpoint rather than an institutionalist viewpoint. I do not agree with the pessimistic conclusions, which the neo-realist theory provides about the potential impact of conventions at the country-level (to be described in the next section). However, I do use the unitary tendencies embodied by the theory with respect to states.

My analysis has broader implications for the study of international human rights treaties (UN Conventions). Firstly, international human rights treaties have the potential to positively impact domestic human rights practices. And this provides an additional internal incentive for treaty ratification. Another implication is that the potential impact of treaties is at least partially contingent upon effective implementation mechanisms and monitoring. Therefore, it is necessary to examine and improve implementation and monitoring practices. Implementation and monitoring are not widely analyzed in the literature.

To conclude, my analysis reveals that the convention could play an important role in the overall process of human rights attainment. And this role is particularly significant with respect to layering. Layering occurs at three levels: in combining the different types realization to lead to full realization, in combining the different types of institutionalization to lead to full institutionalization and in combining full realization and institutionalization to allow for overall human rights attainment. Without layering, overall human rights attainment could not occur. And the concepts of overall human rights attainment and layering expose and address the weaknesses of the current literature and empirical studies contained therein.

Conceptual Framework: The Convention, Human Rights Practices, Layering and Overall Human Rights Attainment

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The following section describes the prevailing perceptions provided by the pre-existing literature as well as the empirical findings, which support those perceptions.

5. Literature Review

In theory, the role of international human rights treaties is straightforward. International human rights treaties are developed at a supranational level to improve and enhance domestic human rights practices. In order to analyze the potential impacts of the convention on human rights practices in Canada, India and Haiti, it is necessary to understand the nature and impact of international human rights treaties at the country-level. The purpose of this literature review is to assess the major theoretical assumptions and empirical evidence compiled in this area of study. The assessment also includes my own evaluations of the theories and empirical findings.

5.2 The Impact of Theories: Theoretical Assumptions

The impact of international human rights treaties at the country-level is contingent upon conscious decision-making by states. The decision to ratify a treaty places obligations upon state parties to examine internal human rights practices. Compliance involves the decision to actively internalize the norms of the treaties and improve or change domestic human rights practices accordingly.

The factors impeding or enabling ratification and compliance (or non-compliance) are closely examined in the literature. Different theories provide optimistic or pessimistic conclusions about the potential impacts of human rights treaties. A review of the literature reveals that the theories can be placed on a continuum ranging from an unitary self interested perspective to a collectivist world perspective (see figure 2 below). The purpose of this section is to provide an overview of those theories.

At the unitary end of the continuum, a neo-realist perspective views states as unitary and self-interested actors. According to this perspective, states have given preferences for maximizing their own utility with little regard for the welfare of other actors (Neumayer, 2001). However, opponents of neo-realism, such as Krasner believe that powerful states have the ability to improve the effectiveness of the international human rights regime by compelling other states to improve their practices. Krasner's position is further supported by the relative weakness of international human rights regimes. This weakness results from the lack of market forces driving compliance coupled with ineffective monitoring and enforcement mechanisms (Krasner, 1993).

In reality, powerful states rarely give importance to external human rights practices, and rarely employ any kind of sanctions to coerce other states to improve domestic human rights practices (Neumayer, 2001). The only time that

powerful states become interested in the human rights practices of other states is when one of their own citizens is affected. As a consequence, there is little cost for states with poor human rights records to ratify treaties as a symbolic gesture of good will (Goldsmith & Posner, 2005). To conclude, the neo-realist perspective is pessimistic about the potential impacts of international human rights treaties.

Compared to neo-realism, an institutionalist perspective emphasizes the more beneficial effects of international human rights treaties, helping states to reap the mutual, often long terms benefits of cooperation. Institutionalism is less unitary and more binary in nature. However, this perspective does not lead to a much more optimistic conclusion about international human rights treaties, because it is questionable whether there are substantial mutual benefits from the greater respect for human rights across states. Furthermore, there is little evidence suggesting that such cooperation between states can be achieved (Neumayer, 2001).

Regime theory expands upon institutionalism by emphasizing the sense of collectivism among state parties, wherein compliance is the normal organizational presumption for ratifying states (Chayes & Chayes, 1993). From this perspective, international treaties create binding obligations, which states aspire to honour. However, treaty norms are often perceived to represent long-term desirable goals, and are set above a level that many participating states can or want to comply with immediately or in the future.

As Chayes and Chayes point out, full compliance is not necessary. Instead, what matters is that overall compliance is at an acceptable level (Chayes & Chayes, 1993). The high level norms often function as targets, which states are supposed to move towards over time, and compliance problems are not so much a consequence of conscious non-compliance but are due to a lack of compliance capacity. Therefore, non-compliance is not a problem of enforcement but of management. And as Chayes and Chayes assert, international human rights treaties are “an extreme case of time lag between undertaking and performance (Chayes and Chayes, 1993).” Furthermore, treaties do not offer much in terms of assistance for tackling insufficient compliance capacity. So, regime theory provides a somewhat less pessimistic conclusion about the impact of international human rights treaties.

The following two models describe how external collectivism (as described by regime theory), is fostered and internalized by states. Both of these models provide optimistic conclusions about international human rights treaties and their impact. The transnational legal process model, (TLPM) views internalization as the final phase of a three step process of interaction, interpretation and internalization. Some transnational actors such as NGOs form a kind of “epistemic human rights community” that initiates a series of interactions, which lead to the negotiation of international human rights treaties (Koh, 1996). And this process creates the norms of the regime. It should be noted that the broader the

group of actors involved at the various stages of interactions, the more likely the internalization will follow. And even though this process may fail in some states, norm violation by a few does not prevent norm obedience by many more states.

The theory of transnational human rights advocacy networks (TTHRAN) predicts that international human rights regimes can improve actual performance, where such networks are strong. These networks consist of international human rights NGOs (e.g. Amnesty International), domestic NGOs, civil society groups and media committed to human rights. I would argue that these networks are comprised of internal-external partnerships.

The network precipitates change in human rights practices, by placing pressure on the offending state by disseminating information, shaming the government, and mobilizing international public opinion against it, as well as persuading powerful states to target the government with open criticism and sanctions. These tactics are usually met with extreme denial by the offending states. If the pressure (particularly by powerful states) remains sufficiently strong, then human rights improvements start becoming institutionalized in the form of constitutional amendments or Supreme Court decisions.

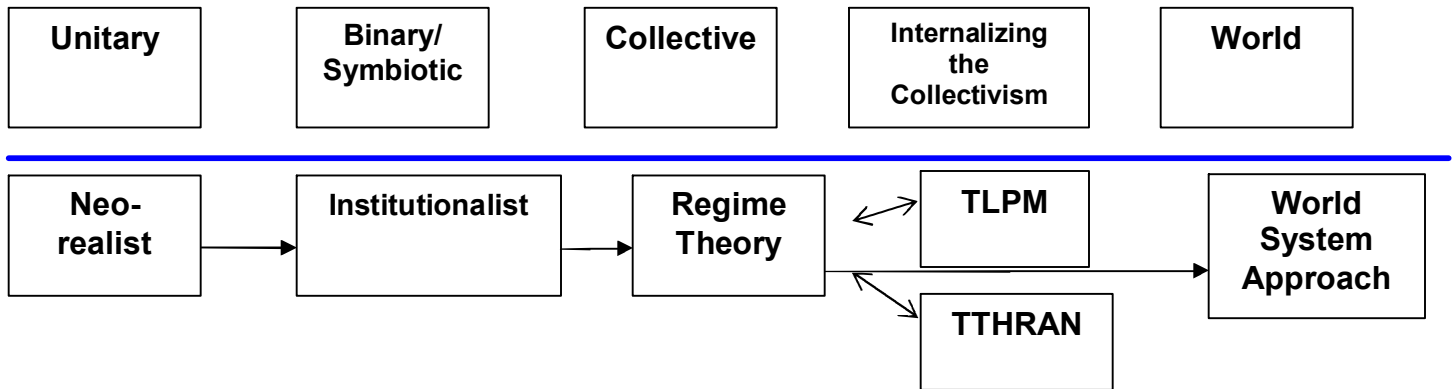
At this stage, human rights acquire a prescriptive status, and the state stops dismissing human rights complaints as interference with domestic affairs. Furthermore, the government's behaviour is reformed to be consistent with the norms of the treaty. It should be noted that human rights violations can still happen, but they are no longer officially sanctioned by state officials (Koh, 1996). According to this model, there is a positive association between ratification and human rights improvements (Koh, 1996).

The world system approach is the most global of all of the perspectives/models. The basic argument is that the norms that are institutionalized at the world level, acquire assumed status over the time and influence policy makers at the national level. In terms of international treaties, this approach predicts that the policy decision to ratify is often a symbolic gesture, to gain legitimacy in the international community (Hafner-Burton & Tsutui, 2005). For example, a country with a poor human rights record may choose to ratify a treaty to deflect external pressure or scrutiny. And when the legitimacy of a treaty or norms grows to the extent that nonratifying states become deviants, states are more likely to ratify without the willingness and or capacity to comply with the provisions of the treaty (Hafner-Burton & Tsutui, 2005). This approach provides a very pessimistic conclusion.

To conclude, the unitary, binary and global perspectives provide the most pessimistic conclusions about the impact of the international human rights treaties. The pessimistic conclusions are premised on the inability to address barriers that prevent compliance. The more collectivist perspectives/models highlight the pre-requisites (e.g. domestic NGOs) for compelling compliance and

strengthening capacity. As a result, these perspectives provide more optimistic conclusions about the overall impacts of treaties.

The Theoretical Continuum (Figure 2)



The pessimistic conclusions highlighted above are supported by the findings of the major studies conducted to date. The studies are discussed below.

5.3 The Impact of Treaties: Empirical Evidence

Measuring the impact of human rights treaties is a difficult task. The difficulty arises from the nature of the rights and their individual manifestations in different contexts. Furthermore, there are no tried and tested methods for quantitatively measuring the impacts. Therefore, only a limited number of studies have been conducted, which attempt to measure the impacts. In most cases, the empirical findings reinforce the basic tenets of the literature. The purpose of this section is to review the existing findings.

Heyns and Viljoen determined the impacts of all major UN conventions by reviewing the practices of 20 countries post-ratification. Their findings provide some evidence that international human rights treaties can positively impact domestic human rights practices. They have identified six major areas of influence. Firstly, they found that international human rights treaties led to an increased level of awareness about human rights issues among the general populations of the ratifying countries. This increased awareness was partly contingent upon the effectiveness of the media. Secondly, in some cases, the treaties were instrumental for drafting constitutions or other domestic human rights documents. In a limited number of cases, the treaties led to legislative reform. In some countries, the treaties were used as an interpretive tool for judicial decisions at the Supreme Court level. And the Convention on the Economic, Social and Cultural Rights was used in the development of policies, such as national action plans (Heyns & Viljoen, 2001). Perhaps most importantly, Heyns and Viljoen have found that international human rights treaties granted leverage and legitimacy to domestic and international NGOs. This leverage comes in the form of pressure, which can be exerted on domestic governments, through lobbying. Furthermore, the demands of NGOs gain legitimacy because they are consistent with and recognized by the treaties.

Heyns and Viljoen's findings are quite positive. However, their analysis is limited by their sample size, which is comprised of 20 countries. Furthermore, the six areas of influence which they have highlighted are case-study specific and not widespread (i.e. found mostly in developed/democratic countries.)

In 1999, Keith conducted the first empirical analysis to determine the impacts of international human rights at the country-level. She focused on the International Convention on Civil and Political Rights. Her findings yielded no statistically significant relationship between ratification and change in domestic human rights practices. However, her study laid the ground work for three future studies. Neumayar examined the impact of all the major international treaties in over 100 states. Hafner-Burton and Tsutsui analyzed the impact of all major treaties in 153 states. And perhaps the most influential study was conducted by Hathaway.

Neumayar found that the beneficial effects of ratification in any given state are contingent upon the extent of democracy, the strength of civil society groups and linkages to nongovernmental organizations (NGOs). In the absence of these factors, ratification has no impact. Furthermore, ratification in pure autocracies is associated with a worsening of human rights practices.

His study also indicated that in order for ratification to work, certain pre-requisite conditions must be satisfied. These conditions are the instruments used by groups, parties, individuals and NGOs to persuade, convince, and even pressure governments to improve human rights practices, post-ratification (Neumayar, 2001).

Hafner-Burton and Tsutsui's findings were not very encouraging. Firstly, they found that ratification did not automatically translate into government/state respect for human rights. Secondly, there was no evidence found, to suggest a systematically positive correlation between ratification and improvement in domestic human rights practices. However, they found evidence that ratification led to worse human rights practices.

They also found that state ratification of all major treaties had a negative affect on the state's behaviour. According to Hafner-Burton and Tsutsui, treaty members are more likely to repress their citizens than nonratifiers (Hafner-Burton & Tsutui, 2005). They attribute this disturbing finding to the fact that international human rights treaties do little to encourage better practices. Furthermore, treaty norms cannot prevent many states from spiraling into increasingly repressive behaviour, and may even exacerbate poor practices. The act of ratification provides legitimacy to the ratifying state but it also provides immunity from criticism and real scrutiny. Therefore, states may become worse abusers of human rights, post ratification (Hafner-Burton & Tsutui, 2005).

Like Neumayar, Hafner-Burton and Tsutsui found that state linkages to NGOs provided a counter force to the radical decoupling described above (Hafner-Burton & Tsutui, 2005). And the norms codified in the treaties also provided leverage to NGOs to exert pressure on the state to improve practices. So, ultimately, the role of international NGOs and domestic civil society cannot be disregarded.

5.4 The Impact of Treaties: Hathaway's Findings

Arguably, Hathaway's study is the most well conceived empirical study of its kind and could serve as a research catalyst. Hathaway's findings are not very encouraging; however, they do provide good insights into the weaknesses of the international human rights regime.

According to Hathaway, treaties operate on more than one level simultaneously. Treaties create binding law that is intended to have particular effects, and they also express the position of the states that ratify them. This expressive role demonstrates to the international community the commitment of the ratifying state to human rights (Hathaway, 2002a). And because of the legal nature of treaties, ratification is virtually costless and does not require any actual changes in human rights practices (Hathaway, 2002b).

The costless nature of ratification is beneficial. The benefit is derived from the fact that ratification provides a shield to deflect from poor human rights practices. And this shield may even encourage worse human rights practices. Perhaps it is not surprising then, that Hathaway found that states with worse human rights records tended to ratify treaties at a higher rate than those with better records (Hathaway, 2002a). Her findings also support the assertion that treaty ratification is associated with worse human rights practices.

Her most disturbing finding is that ratification compelled international actors, such as NGOs to reward ratifying states by reducing political pressure to promote human rights standards, thereby actually increasing human rights violations. This finding is contrary to the findings of Neymayar and Hafner-Burton and Tsutsui. And it is particularly disturbing because these other studies emphasized the extremely important role that NGOs play in fostering the impact of treaties.

In terms of positive findings, Hathaway found that enforcement procedures reduced non-compliance. This means that a strengthening of monitoring and enforcement procedures will enhance the impact of treaties and will further reduce human rights violations. She also found that ratification was associated with better practices in full democracies (this finding is supported by my analysis). Opponents of Hathaway argue that her findings are counter-intuitive, since she claims that treaties can positively impact human rights practices in some countries but negatively impact practices in other countries.

For the most part, Hathaway's findings are consistent with the prevailing studies. Hathaway's finding deviate with respect to the role of NGOs. The other researchers found that NGOs can significantly enhance the impact of treaties. However, according to Hathaway, NGOs worsen human rights practices through complacency post-ratification. Hathaway also emphasizes the role of improved enforcement and monitoring mechanisms in the improvement of human rights practices. This is an important point that has been overlooked in the rest of the literature.

5.5 Conclusions: Prevailing Perceptions

The theoretical assumptions highlighted in the literature are mostly pessimistic. The major exceptions are the transnational legal process model and the theory of transnational human rights advocacy networks. These perspectives are more

optimistic. However, their optimism is somewhat limited, as they only emphasize the need for NGO involvement to ensure a positive correlation between ratification and improvement in human rights practices.

The empirical evidence supports much of the pessimism found in the literature. However, there is evidence to suggest that the impact of treaties can be enhanced. Both Neumayar and Hafner-Burton and Tsutsui found that NGOs play an instrumental role in fostering the impacts of treaties. Their findings, lend credence to the two perspectives mentioned in the preceding paragraph. And Hathaway provides some new insights into the weaknesses of the international human rights regime and methods for addressing those weaknesses.

The following section presents my analysis, which contradicts most of the findings discussed in this section, because my analysis provides more optimistic conclusions about the potential impacts of the convention.

6. The Analysis

This section examines human rights practices at the following four levels: constitutions, legislation, policies/programs and NGOs, in relation to article 24, article 25 and article 28 of convention. In order to gauge the overall impact of each article at the country-level, it is necessary to discuss the impact of each article on each unit/level of analysis as well as the broader implications for full realization and institutionalization of human rights and for overall human rights attainment. The level of impact on human rights practices can be classified as less than moderate, moderate or significant. A less than moderate impact does not change current practices or existing institutions. A moderate impact improves existing practices and or institutions. A significant impact creates new institutions or partnerships, where none existed previously.

6.1 Article 24

The right to education is objectified as a UN millennium goal. It has also been enshrined by other conventions. However, other conventions have not fully focused on the needs and rights of disabled people. Therefore, article 24 is devoted to ensuring that the educational rights of disabled people are recognized and met by state parties.

This subsection examines parts 2A and 2B of article 24 (hereafter referred to as article 24) to determine their implications for the advancement of the educational rights of disabled children. Article 24 is analyzed in relation to pre-existing constitutions, legislation, policies/programs and NGO involvement and participation in Canada, India and Haiti. This subsection concludes by discussing whether or not the analysis supports prevailing perceptions or creates new (possible) realities.

6.1a Article of Analysis

At a basic level, article 24 is about non-discrimination, access, inclusion and equal opportunity. Each of these elements is interlinked. The non-discrimination refers to the admission practices of educational facilities. State parties must ensure that educational facilities, particularly at the primary level, do not discriminate against children seeking education. The practice of non-discrimination facilitates access to education. And this access fosters the inclusion of disabled children into the mainstream education system and by extension into the broader community. This access also provides equality of opportunity for all children.

Non-discrimination is typically enshrined at the constitutional level. The concept of access is commonly embedded at the legislative level. Inclusion is fostered through policies and programs. Equal opportunity can also be derived from policies and programs. The driving force for the manifestation of these concepts at all levels is domestic and international NGOs.

6.1b Constitution

Canada

Section 15 of the Canadian Charter of Rights and Freedoms (the Charter) is the equality clause. According to section 15, equality rights refer to equality before the law and equal benefit of the law without discrimination. This non-discrimination refers to all individuals, and specifically to mentally and physically disabled individuals. This section is the only constitutional clause that explicitly enshrines the rights of disabled persons.

At a broad level, section 15, institutionalizes the concept of non-discrimination. This institutionalization raises awareness about discriminatory practices. And in doing so, it provides a non-discrimination lens. This lens ensures that discriminatory practices are not used in the development of legislation, policies and programs. It also encourages a review of existing practices to identify and eliminate discrimination.

Section 15 specifically recognizes the right of disabled persons to non-discrimination. This recognition encourages an acknowledgement of the rights of disabled individuals when formulating legislation, policies and programs. In this way, equality before the law can be interpreted to encompass all laws and the laws governing the formulation of legislation, policies and programs.

Article 24 is consistent with section 15 of the Charter. Article 24 emphasizes the rights of persons with disabilities to non-discrimination; therefore, it reinforces the right to non-discrimination as embodied by section 15. However, section 15 does

not explicitly refer to non-discrimination in relation to education. As a result, article 24 could serve as an external guide for governments.

Conclusion: Article 24 could have a less than moderate impact in the Canadian context.

India

Section 15 of the Indian Constitution is the non-discrimination clause. It prohibits discrimination on the grounds of religion, race, caste, sex and place of birth. Disability is not listed among the prohibited areas of discrimination. However, subsection 3 of section 15 could be interpreted for the benefit of disabled citizens. This subsection stipulates that the government may make special provisions for socially disadvantaged groups. Socially disadvantaged groups include mentally or physically disabled individuals. For the most part, the Indian Constitution does not enshrine the non-discrimination rights of disabled citizens.

In terms of education, the 83rd Amendment to the constitution has made education a fundamental human right for all children up to the age of 14. Therefore, it is necessary that all children have access to primary level education. And this includes all disabled children.

Article 24 is therefore consistent with the 83rd amendment to the constitution. The 83rd amendment reinforces the concepts of accessibility, inclusion and equal opportunity. And even though the official non-discrimination clause of the constitution (section 15) does not enshrine the right of disabled people to non-discrimination, the 83rd amendment does enshrine that right in relation to education.

Conclusion: Article 24 would likely have no impact in the Indian context.

Haiti

In May of 2006, the Haitian Constitution regained its functional status, after nearly 18 years of dormancy (Haiti Fact Sheet, 2007). Unlike the constitutions of Canada and India, this constitution does not have a non-discrimination clause. Therefore, the right of disabled people to non-discrimination is not enshrined at the constitutional level.

The Haitian Constitution does include some provisions relating to education. Article 32 of the constitution guarantees the universal right to education. And this universality extends to disabled children. Article 32 also makes primary schooling compulsory under the law and provides for free and accessible primary level education. Finally, article 32 stipulates that disabled children should have the means to ensure their autonomy, education and independence. The last part of

the article is open to interpretation but the reference to disabled children provides undeniable recognition of their right to education.

Article 24 of the convention is therefore consistent Article 32 of the constitution. However, article 32 does not specifically refer to inclusion or to integration. Both accessibility and equal opportunity are implied. Therefore, article 24 could add to the existing provisions of article 32, through joint interpretation. Doing so would provide a more comprehensive interpretation of the educational rights of disabled children. Furthermore, since the Haitian constitution is outdated, the convention could provide input into the human rights framework for the development of an updated constitution.

Conclusion: Article 24 could have a moderate impact on the Haitian constitution (joint interpretation). It could also have a more significant impact (constitutional overhaul).

6.1C Legislation

Canada

Canada is a federal state in which powers are shared by the federal and provincial levels of government. Education is a provincial responsibility. Therefore, access to education is embedded in provincial legislation. The nature and impact of the legislation varies from province to province. For the purposes of article 24, British Columbia and Ontario serve as examples.

BC does not have a disability act. However it does have a Human Rights Code (the code). According to section 8 (1) of the code, all citizens must be granted access to all public services, accommodations and facilities. Special reference is made to disabled people under this section. And since education is a public service and schools are public facilities, this section could be interpreted to include primary level public education. Article 24 could provide added support to this interpretation through joint interpretation.

By contrast, the province of Ontario does have a disability act. *The Ontarions with Disabilities Act* institutionalizes the rights of disabled people. Section 15 of this act specifically refers to educational institutions. It stipulates that educational institutions must prepare annual accessibility plans in consultation with disabled individuals. The purpose of these plans is to report on measures taken by the institutions to remove, identify and prevent barriers to accessibility. The plans must also outline any future measures to increase accessibility. Since this act explicitly addresses the issue of accessibility and educational facilities, article 24 would likely have no impact on this legislation.

Conclusion: Article 24 could have moderate impact on BC's legislation (joint interpretation). Given the comprehensiveness of Ontario's legislation, the article would likely have no impact in that case.

India

Unlike Canada, India has a national disability act. The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, came into force on February 7, 1996. This law is an important landmark and serves as a significant step for ensuring equal opportunity and accessibility for disabled citizens. The act specifically focuses on education, employment, vocational training, and job reservation, as well as the creation of a barrier-free environment, rehabilitation, and housing.

Chapter 5 of the act is devoted to education. It is comprised of subsections 26 to 31. Subsection 26 provides accessibility to free primary level education. This subsection also promotes the integration of disabled students into mainstream educational facilities. According to subsection 27, all disabled children are entitled to receive free books and assistive equipment. Subsection 28 builds upon 27, by encouraging research into new assistive devices and equipment. Teacher training is referred to in subsection 29. And finally, subsections 30 and 31 stipulate, the removal of all barriers to education, ranging from transportation to finances.

Chapter 5 institutionalizes the concept of accessibility by ensuring that education for disabled children is financially and physically accessible. It also enshrines the concept of inclusion by emphasizing the need for integration into schools. And by providing accessibility and fostering inclusion it allows for equal opportunity. Therefore, article 24 would likely have no impact.

Conclusion: The article would likely have no impact on the pre-existing legislation in India.

Haiti

Legislation

Unlike the other two countries, Haiti does not have legislation relating to the educational rights of disabled children. Currently, there are no government devised and administrated policies and programs that allow for the inclusion and integration of disabled children into the mainstream school system. So article 32 is a theoretical clause, with little practical basis. As a result, article 24 could provide the framework for the establishment of legislation, policies and programs, which meet the needs of the disabled population.

Conclusion: Article 24 could have significant impact on the establishment of legislation, policies and programs in Haiti.

6.1d Policies and Programs

Canada

Policies and programs foster inclusion. With education, inclusion equals the integration of disabled students into the mainstream school system and into the broader community. Since policies and programs vary by province, BC serves as the case study. The assessment determines whether or not BC's policies and programs foster inclusion and thereby integration of disabled students into the school system. The extent of the integration is also analyzed. The analysis also determines what impact if any, article 24 could have on pre-existing policies and programming.

As a matter of policy, BC schools support the principles of inclusion, equal access and equal opportunity for all students in pursuing their educational goals (BC Ministry of Education, 2000). And within this context, inclusion for disabled students transcends physical location and encompasses participation, friendship and integration (BC Ministry of Education, 2000). This means that disabled students are fully integrated into classrooms with their age and grade peers, and provided with the necessary supports within the classroom to ensure their academic success.

The BC Ministry of Education is responsible for elementary education. And it has developed the following policies for all of BC's elementary schools. Firstly, any disabled student must be provided with an education program in the classroom in which he or she is fully integrated. To ensure the proper development and success of each education program, the student must have an individual education plan (IEP) (BC Ministry of Education, 2000). This plan may contain the additional services that enable the student to take part in the prescribed curriculum. The plan may also include individual outcomes for the student. And finally, the IEPs are written collaboratively by the parents, professionals (e.g. speech therapist) and by the classroom teacher.

In terms of programming, school districts receive supplementary special education funding from the Ministry of Education to support programs for disabled students. It should be noted that the services provided by each school and each district may vary based on the needs of the students and local priorities. However, most schools have some school-based programming and specialist teaching assistant staff to accommodate disabled students (BC Ministry of Education, 2000).

BC also has provincial outreach programs that provide support and consultation to schools about specific student needs. The focus of these programs is

providing information and research, which assists in the improvement and development of education programs for children with specific disability or special needs (BC Ministry of Education, 2000). Some of these programs include:

- Provincial Outreach Program for Students with Deafblindness (PRP)
- Gateway Program for Autism and Related Disorders
- Special Education Technology (SET-BC)
- Provincial Integration Support Program (support for schools with students who have severe/profound multiple physical and cognitive disabilities)

The policies and programs provided by the BC government for students with special needs are quite comprehensive. Furthermore, they reinforce the principle of inclusion by emphasizing the integration of disabled students into the classrooms and the broader school community. Therefore, article 24 would likely add no value to these programs and policies. However, policies and programs do vary from province to province. So it is possible that the article may have a different impact in a different province.

Conclusion: The article would likely have no impact on existing policies and programs in BC.

India

In India there are two major national policies that provide the framework for the majority of programs relating to the education of disabled children. Both of these policies have been devised by central government. However, they are administered at the state level, in an individualistic fashion. The first policy is the National Policy on Education (NEP). Section 4.9 of the policy focuses on the educational needs of children with disabilities. The section stipulates, that children with disabilities need to be integrated into the mainstream education system. It also provides training programs for classroom teachers, to facilitate the educational success of disabled students.

The second policy is the National Action Plan (1992 and 2005). This plan reaffirms the need to integrate disabled children into the mainstream educational system. The goals of this plan include: the enrolment and retention of disabled children in public schools and facilitating access to free and quality primary school education; Providing needs-based educational and other supports to disabled students, to promote their learning through adapted curricula and organizational and community strategies (Ministry of Human Resource Development, 2007). And identifying and reducing physical barriers preventing access to education. At a broader, level the plan aims to raise awareness about the educational rights of disabled children. And finally, it also calls for a review of existing programs in an effort to identify and address current weaknesses.

The National Action Plan also presents a series of strategic interventions for development or incorporation into existing programs. Some of these strategies include:

- Developing national norms for the implementation, training, monitoring and evaluation of inclusive education programs
- Providing adequate resources and support services to allow schools to better integrate disabled students (e.g. special education teachers)
- Establishing an effective communication and delivery system for teaching and using learning aids (e.g. computer hardware and software)

The NEP and the NAC provide the framework for the development of programs. Currently, there are several programs operating to advance the integration of disabled students into the mainstream educational system. The two most significant programs are the *Integrated Education of Disabled Children Program (IEDC) and the SSA*. Both programs have converged their activities to attain the common goal of universal access to primary level education.

The goals of IEDC program are multi-faceted. This program aims to increase access to enrolment and foster the retention of disabled children in mainstream schools. The enrolment and retention of disabled girls is a special focus of this program. The program also provides assistance to schools by helping to reduce physical barriers to accessibility and adapting curricula to meet the needs of individual learners. And finally, at a broader level, this program aims to create an environment that respects and values diversity. To do this, the program raises awareness about the needs and rights of disabled children and the concept of inclusive education.

The IEDC also provides educational opportunities for disabled children through financial assistance (Ministry of Human Resource Development, 2007). The forms of financial assistance include:

- Cost of books and stationery;
- Cost of uniforms;
- Transport allowance;
- Monthly Reader allowance in case of blind children up to grade 5;
- Escort allowance for severely disabled children;
- Actual cost of equipment

Presently this program is being implemented in 27 States and in 41,875 schools, benefiting more than 1.34 million children with disabilities (Ministry of Human Resource Development, 2007).

SSA Program

The key objective of the SSA program is the universalization of primary level education. And this objective cannot be achieved without the full integration of disabled children into the mainstream education system. Therefore, the SSA has adopted a zero-rejection policy. This means that every child with special needs, irrespective of the kind or degree of disability, is provided with quality education. To achieve this, SSA provides a 1200 rupee allowance to schools for each disabled child that is integrated (Ministry of Human Resource Development, 2007). The interventions under SSA for inclusive education are: identification of the educational deficit, functional and formal assessment, appropriate educational placement, preparation of Individualized Educational Plan (IPE), the provision of aids and appliances, teacher training, resource support, removal of architectural barriers, research, monitoring and evaluation, and girls with special needs.

This program provides a flexible framework that enables states to administer universally inclusive education in different ways. For example, states like Haryana have developed open-model inclusive schools and provided them with various support services, (e.g. transport, equipment for physio-therapy, occupational therapy, resource teachers etc.) to promote the integration of disabled learners. NGOs are also playing a key role in the implementation of this program at the state level. Currently, 530 NGOs are working in 26 States (Ministry of Human Resource Development, 2007). An important facet of this involvement is the range of activities that the NGOs have undertaken in different states. These activities vary from planning to implementation and monitoring.

The SSA program is having a steady impact. In 2003-2004, 1.2 million children with disabilities were enrolled in mainstream schools (Ministry of Human Resource Development, 2007). In 2005-2006, this number increased to 1.6 million children (Ministry of Human Resource Development, 2007). And in the 2006/2007 the number again increased to almost 2 million children (Ministry of Human Resource Development, 2007). Despite these increases, the SSA has fallen short of its 06/07 target of integrating 3 million children. This deficit could be the result of several different factors (e.g. implementation challenges at the state level).

India has strong national policies that promote the accessibility and integration of disabled children into the mainstream educational system. These policies have provided the framework for the development of comprehensive programs that are administered differently in each state. The SSA has not succeeded in meeting its target for 2006/2007. Article 24 would not address the failings of the program.

Conclusion: Article 24 would likely have no impact on existing policies and programs in India.

Haiti

As discussed in the legislation section, Haiti does not have any officially administered educational policies/programs for disabled children.

Conclusion: Article 24 could have a significant impact in Haiti through the creation of new policies and programs.

6.1e NGO Involvement and Participation

Canada

In Canada, there are dozens of national and provincial NGOs dedicated to the rights of disabled people. Cross disability NGOs focus on the rights of all disabled individuals rather than any particular sub-group. The BC Coalition of Persons with Disabilities is one such NGO.

The BC Coalition of Persons with Disabilities has many responsibilities. It promotes awareness about the needs and rights of disabled peoples through the media and special conferences. It also provides information to disability groups and disabled individuals about assistive services and self-help skills. The coalition has three advocacy functions. It provides advocacy services for individuals and groups. Coalition members also represent the disabled community on government panels and committees. And perhaps most importantly, the coalition advocates with all levels of government on policies and attitudes that affect disabled people, including access to education and employment. It should be noted that there are no domestic NGOs, which focus exclusively on the educational rights of disabled children.

Article 24 could provide additional leverage to the coalition in its advocacy activities, particularly in relation to education. More significantly, article 24 could provide the incentive and framework for the establishment of new NGOs, which focus exclusively on the educational rights of disabled children.

Conclusion: The article could have a moderate impact on NGO involvement and participation in Canada. Article 24 could also have significant impact (creation of new NGOs).

India

Presently, there is no national cross-disability NGOs operating in India. And there are no NGOs specifically devoted to the educational rights of disabled children. However, there are several disability focused national NGOs (e.g. National Federation for the Blind). There are also NGOs functioning at the state level. And a majority of these state level NGOs perform advocacy activities to promote awareness about the rights of disabled individuals and to exert pressures on

state governments. Examples of these organizations include: Delhi Coalition for the Rights of Disabled Peoples, Delhi Association of the Deaf, and the Gujarat Disability Network.

Indian NGOs also have ties with international disability NGOs. Each international NGO partner acts as central point of reference for a particular sub-group within the disabled community (e.g. children). These international partners also facilitate networking, build capacity and administer grants. As mentioned in the preceding section several NGOs also assist with the administration of different programs (e.g. SSA program).

Article 24 could provide additional leverage to domestic NGOs and to international NGO partners. It may even strengthen the links of technical cooperation. And by doing so, the article could provide more validity to these organizations and to their interrelationships. The article could also provide the framework for the establishment of an NGO working specifically for the educational rights of disabled children.

Conclusion: Article 24 could have a moderate impact on NGO involvement and participation in India. It could also have a more significant impact (creation of new NGOs).

Haiti

Despite article 32 of the constitution, disabled children have regularly been denied access to education in Haiti. Recognizing this discrimination, an NGO, Healing Hands for Haiti (HHH), established a school integration program in 2001. This NGO has limited funds and cannot meet the needs of every disabled child. However, the program has taken some incremental steps towards continued integration. During its first year, the program integrated 11 students (HHH, 2006). In 2003-2004, 37 children were integrated into mainstream schools (HHH, 2006). The following year that number doubled to 75 students (HHH, 2006). And in 2006, 116 children were successfully integrated (HHH, 2006).

In addition to integrating students into mainstream schools, HHH also provides other supports for continuing integration. HHH raises awareness about the need to integrate disabled children into the school system. At the beginning of each academic year, HHH runs an awareness program at several schools. This program serves to reduce discrimination against disabled learners and encourages understanding and sensitivity towards individual learning styles. HHH also provides school supplies to disabled students as well as a daily hot lunch. HHH is also involved in some basic teacher training. Finally, HHH oversees the monitoring and evaluation of the program.

Currently, HHH is having a very limited impact. Furthermore, the services provided are very rudimentary and need to be expanded to better meet the

needs of disabled children. Funding remains a central impairment to increasing impact and expanding services. Currently, the government of Haiti does not provide any support to NGOs like HHH. If ratified, article 24 could provide an incentive to the government to support HHH. And as with Canada and India, the article could give more validity and leverage to domestic NGOs. And with this new leverage, HHH could lobby the government to change practices (e.g. enforcing article 32 of the constitution) and provide financial support.

Conclusion: Article 24 could have a moderate impact on NGO involvement and participation in Haiti.

6.1f Conclusions: Prevailing Perceptions versus Possible Realities

The analysis defies, or at least questions the validity of prevailing perceptions by demonstrating that article 24 could have the same level of impact in both Canada and India. Despite the fact that Canada is more developed than India, both countries have equally strong pre-existing institutions and mechanisms in place to ensure the educational rights of disabled children. Therefore, article 24 would likely have no impact at the legislative, policy and programming levels in each of these case studies. At the NGO level, article 24 could have a moderate to significant impact in Canada and India. The analysis of Haiti indicates that contrary to the prevailing perception, article 24 could improve human rights practices in this case, not worsen them.

6.2 Article 25 - Health

Access to health services is essential for the well-being of all individuals. Disabled people in particular need consistent access to health services, regardless of where they reside within a country or community. Therefore, article 25C of the convention dictates that health services must be equally accessible to all communities (i.e. urban and rural).

This section begins by providing an examination of 25C. It then analyzes the potential impacts of 25C on the four units of analysis in Canada, India and Haiti. Finally, the analysis is interpreted in relation to prevailing perceptions and possible realities.

6.2a Article of Analysis

Section 25 of the convention describes the health rights of persons with disabilities. Part C of section 25, stipulates that, health services must be provided in close proximity to urban and rural communities. Part C is essentially about accessibility and equalization. Within this context, accessibility encompasses both physical and geographic accessibility. Physical accessibility ensures health services are visible and readily accessible to persons with disabilities (e.g. community health centers). Geographic accessibility ensures that health

services are available within a reasonable geographic distance that can be traveled to without undue hardship.

Equalization implies regional and population equalization. Regional equalization is about ensuring that all regions within a country are able to provide equally accessible and quality health services to residents. Population equalization ensures that all populations (i.e. disabled and non-disabled) within community have equal access to the same level of health services. It also refers to equalization between urban and rural populations.

6.2b Constitution

Canada

Part III of the Constitution Act, 1982 includes the regional disparities section. According to this section, the federal and provincial governments are committed to promoting equal opportunities for the well-being of Canadians. The governments are also committed to providing essential public services of reasonable quality to all Canadians.

This section could be interpreted to include health services. The well-being of Canadians is at least partially contingent upon health. And good health is correlated with access to quality healthcare. The interpretation of equal opportunity is twofold: First, the funding, which the federal government provides to ensure that all provinces provide equally accessible and consistent quality health services. And second, the equality of opportunity, which communities provide to all residents by ensuring that health services are equally accessible.

The second part of the section refers to the provision of essential public services. Health services are essential public services. Providing services to all Canadians implies universal access, regardless of geographic region or community type (e.g. urban or rural). And full universality can only be achieved if persons with disabilities have complete access to health services.

25C is partially consistent with the Canadian Constitution. 25C reinforces the provisions found in part III of the constitution. However, part III does not specifically refer to urban and rural communities or to the health rights of disabled people. In order to bridge the constitutional gaps, 25C could serve as an external guide. The government could use the external guide as point of reference to ensure that the rights of disabled people are sufficiently satisfied.

Conclusion: 25C could have a less than moderate impact. Since the Canadian constitution is the supreme law of the land, 25C could serve as external guide for governments.

India

The Indian constitution does not include any reference to health services, or to equalization. However, article 47 of the constitution stipulates that states are responsible for public health. This responsibility specifically pertains to nutrition and to standard of living.

A definition of the standard of living is not provided. Therefore, standard of living could be interpreted to include access to health services. In this case, the level of interpretation will determine the relationship between the constitution and 25C. A liberal interpretation of the standard of living would mean that 25C is consistent with the constitution. However, such an interpretation is extremely subjective. And to date, this article has not been interpreted to include access to health services.

Literally interpreting article 47 would lead to the conclusion that 25C provides additional information not found in the constitution. Since the constitution is silent in this regard, the convention could complement the constitution. In that, 25C could provide the impetus for an amendment to the constitution. An amendment to the constitution is feasible as earlier conventions have led to constitutional amendments.

Conclusion: 25C could have a moderate impact (constitutional amendment) in the Indian case.

Haiti

There are two articles in the Haitian constitution, which refer explicitly to health: Article 23 and article 19. Article 19 guarantees each citizen's right to life and health. The government is obligated under article 23 of the Haitian constitution to provide the means for the establishment of hospitals, health centers and dispensaries in each territory of the country. The purpose of doing so is to ensure that all Haitian citizens are able to protect, maintain and restore their health. Article 23 also allows for geographical and population equalization.

25C is consistent with the provisions of this article. However, disabled individuals are not referred to in article 23. Therefore, 2B could provide the incentive to amend article 23. Or it could provide the impetus for the creation of a separate article, which would enshrine the health rights of disabled people.

Conclusion: 25C could have a moderate impact (constitutional amendment) in the Haitian context.

6.2c Legislation

Canada

The Canada Health Act is the governing legislation for health care policy and health care insurance in Canada. According to the act, the primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of all Canadians. Another major objective is to facilitate reasonable access to health services without barriers.

The purpose of the act is to ensure health policy is formulated in such a way as to facilitate reasonable access to health services by addressing geographic and physical barriers. Therefore, this act reinforces physical and geographic accessibility implied by 25C. However, equalization is not explicitly addressed by the act. No reference is made to urban and rural communities or to the rights of disabled individuals. Therefore, there are gaps in the legislation.

25C could add interpretive value to this act. The Canada Health Act could be interpreted in conjunction with this 25C. Such an interpretation would bridge the legislative gaps, especially with respect to equalization.

Conclusion: 25C could have a moderate impact on existing Canadian legislation through joint interpretation.

India

Currently, there is no overarching legislation governing healthcare/health services in India. The Persons with Disabilities Act (1995) does not include any provisions relating to health. Therefore, accessibility and equalization are not embedded at the legislative level in India.

Given the lack of pre-existing legislation, 25C could play two roles. Firstly, it could provide the incentive for the establishment of healthcare legislation. It could also provide the framework for the establishment of healthcare legislation. Secondly, it could provide the incentive and framework for an amendment to the existing disability act.

Conclusion: 25C could have a moderate (amendment) to significant (creation of healthcare legislation) impact at the legislative level in India.

Haiti

Like India, Haiti does not have health care legislation that governs the provision of healthcare services in the country. Therefore, 25C could play an important role in the development of legislation. The convention and particularly 25C could

serve as de-facto legislation and simultaneously provide the incentive and framework for the establishment of healthcare legislation.

Conclusion: 25C could play a dual role in Haiti. And the overall impact would be significant (creation of new legislation).

6.2d Policies and Programs

Canada

Healthcare is a provincial responsibility. Therefore, health policies and programs vary from province to province. BC provides an interesting case study for assessing the potential impact of 25C.

The size and geography of BC create unique challenges for providing residents with equal access to health services. This is particularly true of access to specialty care. Especially, for residents of remote and northern communities, where there are generally fewer local specialists and the greatest distance to travel (PHSA, 2007). Disabled individuals are particularly affected by this situation, since they use specialty health services more than the rest of the population.

To address some of these challenges, the provincial government established six regional health authorities in 2001. Five of the health authorities are responsible for providing health services to a specific region (e.g. Northern Health Authority.) The Ministry of Health works together with BC's health authorities to provide quality, appropriate and timely health services to British Columbians. The ministry sets province-wide goals, standards and performance agreements for health service delivery in each health authority. The Provincial Health Services Authority (PHSA) oversees the five health authorities.

PHSA's primary role is to ensure that B.C. residents have access to a coordinated network of high-quality specialized health care services; the PHSA focuses on the health needs of marginalized groups (including disabled individuals). PHSA operates provincial agencies including BC Children's Hospital, the BC Transplant Society, and Riverview Hospital (PHSA, 2007). It also has responsibility for specialized provincial health services like chest surgery, which are delivered in a number of locations in the regional health authorities as well specialized programs that operate across several PHSA agencies (PHSA, 2007). In addition to overseeing the operations of specialized health care facilities, the PHSA is responsible for selected provincial programs and services. Many of these services are provided in facilities funded by other Health Authorities.

PHSA is working to expand its number of programs and services. Examples of provincial programs (adult and pediatric) currently under consideration for PHSA coordination and/or performance agreements include:

- BC Autism Assessment Network
- Provincial Surgical Services Program
- Provincial Emergency Services Program Services
- Trauma
- Specialized diagnostics
- Specialized cancer surgery

It should be noted that the establishment of the health authorities and their current operations have not fully addressed the challenges to accessibility, especially for disabled individuals. However, regionalized and joint program/service delivery mechanisms, offered by the health authority system have improved physical and geographic accessibility as well as equalization in BC. Furthermore, PHSA recognizes that improvements are continuously needed and is therefore continuing to expand its programs and services.

25C reinforces the basic principles and practices of BC's health authority system. The design of the health authority system addresses the provisions of 25C. At best, 25C could provide the incentive for a review of existing programs to ensure that they meet the needs of disabled individuals in province.

Conclusion: At best, 25C could have a moderate impact (program evaluation) in the Canadian (BC) context.

India

India is a vast country that is comprised of urban and rural populations and a diverse range of socio-economic classes. And all of these groups have different healthcare needs. For the healthcare system to be effective and truly universal, the challenges that arise from this diversity must be addressed. To that end, the government devised a National Health Policy in 2002 (NHP). The aim of this policy is to identify and address the current challenges to the Indian healthcare system. One of its major goals is to increase access to health services by 55 percent (NHP, 2002). It also provides the framework for the establishment of programs to achieve this goal.

To effectively address the challenges of accessibility and equalization, the NHP has identified three areas: expansion of public health services, equity and urban health in which program development and cooperation is required. Given, India's population needs, there is a general shortage of medical personnel in the country. And this deficit disproportionately impacts the less-developed and rural areas of the country. Previous attempts to entice more doctors to practice in these areas have failed. One possible solution offered by the NHP is the development of a program, which trains nurses, paramedics and other personnel to allow them to provide some limited health services in these areas. Another possibility is having homeopathic practitioners implement state/central government public health programs in these deprived areas. A program could

also be established to provide supplementary training to these practitioners to allow them to provide additional medical services.

The NHP has also identified the need for states to simplify the recruitment procedures and rules for contract employment in order to employ trained medical professionals in deprived areas (NHP, 2002). State Governments could also rigorously enforce a mandatory two-year rural posting before the awarding of the medical degree (NHP, 2002). This would increase the percentage of trained medical professionals in underserved areas.

In order to promote equity, equalization, and increased accessibility, the NHP stipulates an increase in the outlay of the primary health sector. Such outlets would afford access to many individuals, and also facilitate prevention and early detection practices, which would lead to cost-effectiveness. To achieve this, the NHP provides an increased financial allocation of 55 percent for the primary health sector (NHP, 2002). This increased allocation could also be used to strengthen and expand existing facilities.

Currently, India's urban population accounts for 30 percent of the total population (NHP, 2002). This population is projected to increase further. In most urban areas, public health services are inadequate and not easily accessible. The NHP provides a two-tiered approach to address this problem. The first tier is the establishment of a primary centre and dispensary, which will increase access to national health programs. The second tier is increased funding and development of government general hospitals.

The NHP is a comprehensive policy, which provides feasible options for addressing challenges relating to equalization and accessibility. The only major shortcoming of the NHP and its related programs is that it does not explicitly address the health needs of disabled individuals. Therefore, 25C could provide the impetus for a review of this policy and related programs to ensure that they include the needs of the disabled population. Such a review could lead to improvements and even to the development of new policies and programs.

Conclusion: 25C could have moderate (program evaluation) to significant impact (creation of new policies/programs) in India.

Haiti

Currently, Haiti does not have any official policies or programs that aim to address the challenges of accessibility or equalization. The challenges posed by the lack of accessibility and poor equalization are particularly acute, especially given rapid population growth, the AIDS/HIV epidemic and a high proportion of disabled people (Health Commission Partnership, 2007).

25C could have a profound impact in Haiti. 25C could provide the framework for the establishment of policies and programs. The framework would need to encompass a general human rights lens, a specific focus on the rights of persons with disabilities and the need to address issues of accessibility and equalization relating to health services. Additionally, 25C could provide the incentive for the annual review of policies and programs to identify and address gaps.

Conclusion: 25C could have a very significant impact (creation of policies and programs) in Haiti.

6.2e NGO Involvement and Participation

Canada

In Canada there are no national or provincial NGOs, which exclusively focus on the health rights of disabled individuals. However, several disability NGOs engage in activities to enhance access to health services. For example, the Canadian National Institute for Blind promotes access to sight-enhancing health services. At the provincial level, NGOs such as the BC Coalition of Persons with Disabilities advocate with all levels of government on policies and attitudes that affect disabled people, which includes access to health services.

25C could provide validity to the activities of these NGOs. Perhaps most importantly, 25C could provide the incentive for the establishment of domestic NGOs, which specifically focus on the health rights of disabled individuals. The ratification of other conventions has led to the creation of cause-specific NGOs and a similar outcome would be probable with respect to this convention.

Conclusion: 25C could have moderate (provide validity to current activities) to significant impact (creation of new NGOs) in the Canadian context.

India

India's population is vast. As a result, public health needs are wide-ranging and existing public health services inadequate. Therefore, many domestic NGOs focus on public health issues such as reproductive health, prevention and nutrition. By comparison, a smaller proportion of NGOs focus on the health needs of specific sub-populations, such as disabled people. One of the most successful NGOs of this type is the Aurobindo Chaudhuri Memorial Great Indian Dream Foundation (GIDF).

The GIDF is a development organization. It was established in 2002 (GIDF, 2007). The aim of this organization is to empower vulnerable groups within society (including disabled people) through education, health and skills-based development. To achieve this empowerment, GIDF has developed and operates health programs in urban and rural communities all over the country.

The basic principles, which guide GIDF's health programming, are access, equity and equalization. One of GIDF's most successful health programs is the Mobile Outreach Program. The purpose of this program is to facilitate access to health services by providing mobile healthcare in the more remote and inaccessible parts of the country. The program specifically targets marginalized groups (e.g. disabled peoples) within these populations.

Each mobile van carries a team of doctors, public health nurses and paramedical staff as well as medical supplies (GIDF, 2007). These vans travel to villages across the country and dispense health services to underserved populations. By providing these services, the vans are not only facilitating increased access to health services they are also fostering community and population equalization.

25C could provide additional validity to GIDF's activities. It also could provide justification for GIDF's programming. And since the implicit principles, which govern GIDF's programming are consistent with the provisions of the article, 25C could reinforce those principles. Finally, 25C could provide additional leverage to GIDF to lobby the government and obtain support.

Conclusion: 25C could have a moderate impact (add validity to current activities) in India.

Haiti

Working in partnership with a network of local NGOs (that serve a third of the population); the Ministry of Health has worked to considerably improve the health of Haitian families. Despite these efforts, two thirds of the population still does not have access to health services (HS, 2004). From 1995 to 2004, the Ministry led the implementation of the Haiti Health Systems 2004 Project operating to improve the population's access to high-quality health services, while building a sustainable healthcare system. At the end of 2004, the NGO's had achieved some limited success. A successor project was established at the beginning of 2007.

The 2007 project specifically targets the expansion of health services into underserved areas with the help of the public sector and local NGOs and faith based organizations (Management for Health Sciences, 2007). This project provides reproductive and child health services, along with expanding the treatment of TB and HIV/AIDS. Building on what was accomplished by 2004, the new project is helping Haiti develop and expand health service capacity (HS, 2007).

25C could provide an incentive to the Ministry of Health to continue to develop this project and provide more support to its NGO partners. 25C could also provide justification for the activities of the NGOs and promote the expansion of

such activities as well as provide NGOs with additional leverage to lobby the government for support. Additionally, 25C could lead to the establishment of domestic NGOs, which focus specifically on the health rights of the disabled population in Haiti. And finally, if the convention is ratified by Haiti, it may be able to enter into technical cooperation with a developed country such as Canada. This relationship could result in Haiti receiving support and assistance from Canada to establish a sustainable healthcare system and increase access to health care services.

Conclusion: 25C could have a significant impact through the creation of new domestic NGOs and the increased involvement of international NGOs and developed countries in Haiti.

6.2f Conclusions: Prevailing Perceptions versus Possible Realities

The perception is that since Canada is a democracy and Canada's healthcare system is fully universal, 25C would have little to no impact on current practices. However, as the above analysis reveals, current practices are inadequate and could be improved through the application of 25C. Another prevailing perception is that the impact on Canadian practices would be proportionately less than the impact on Indian practices. In reality, 25C could have similar impacts with respect to policies, programming and NGO involvement in both countries. Prevailing perception and possible reality are inconsistent with respect to Haiti. The perception is that the convention would worsen human rights practices in Haiti. However, the analysis indicates that the opposite is possible.

6.3 Article 28- Welfare and Poverty Reduction

Disabled populations in countries across the development continuum face economic difficulties and experience poverty at higher rates than the rest of the population. These difficulties must be offset by access to welfare assistance. Article 28 (2B) of the convention stipulates that all disabled people must have access to social protection and poverty-reduction programs. Social protection and poverty reduction programming take different forms in different countries. The common underlying principle of these programs is income assistance.

This section begins by examining 2B and its application. This is followed by an analysis of its potential impacts in relation to pre-existing constitutions, legislation, policies/programs and NGO involvement in Canada, India and Haiti. Finally, the analysis is interpreted in terms of prevailing perceptions and possible realities.

6.3a Article of Analysis

Section 28 (2B) of the convention promotes access to welfare services. According to 2B, persons with disabilities and especially women, girls and seniors must have access to social protection and poverty reduction programs. At a superficial level, 2B is about access to welfare. However, a more in-depth analysis of this sub-section reveals that it extends beyond welfare to encompass the maintenance of an adequate standard of living and the promotion of equality.

Welfare is dependent upon financial well-being, which is linked to an adequate standard of living. An adequate standard of living is contingent upon consistent, not intermittent access to the basic necessities of life. Social protection and poverty reduction programs typically provide some form of financial assistance to recipients. Therefore, 2B helps to maintain an adequate standard of living.

2B also promotes equality. Women experience poverty at higher rates than men and this gap becomes more acute among marginalized groups such as disabled people. Seniors also experience poverty at higher rates than the rest of the population. By referring specifically to these groups, 2B is promoting awareness about these existing inequalities. 2B also provides the impetus for the elimination (or reduction) of these inequalities, by promoting targeted access to programming.

6.3b Constitution

Canada

The Canadian Constitution does not enshrine the right to social protection or poverty reduction programs. Since the constitution is the supreme law of the land in Canada, 2B would have no direct impact on the constitution. So unlike other countries such as India, conventions do not provide the incentive or impetus for a constitutional amendment.

2B could serve as an external guide for the government. The federal and provincial governments could refer to it to ensure that the rights of disabled individuals with respect to an adequate standard of living are realized. Such a role would not infringe upon the supremacy of the constitution; rather it would bridge the identified constitutional gaps.

The actual impact of the external guide would depend on whether the guide was simply used a point of reference or if it was used to foster change. Changes could be made at the legislative, policy or programming levels. The level of change would be contingent upon the effectiveness of the pre-existing institutions. It should be noted that there is no way to track or measure such changes. In Canada, earlier conventions have served only as external guides. Therefore, such an outcome would be probable in this case also.

Conclusion: 2B could have a less than moderate impact in Canada.

India

As with the Canadian Constitution, the Indian Constitution does not enshrine the right to social protection and poverty reduction programs. However, a constitutional amendment is far more feasible in the Indian context than in the Canadian. Therefore, 2B could provide the incentive for an amendment to the Indian Constitution.

In India, earlier conventions have led to constitutional amendments. For example, the driving force behind the 83rd amendment (universal right to primary school education) was the Convention of the Rights of the Child (UN Committee on Child Rights, 2000). Therefore, a similar outcome with respect to 2B is probable. However, such an amendment would also be contingent upon pre-existing political will. In the absence of such will the potential impact of 2B would diminish.

Conclusion: 2B could have a moderate impact (constitutional amendment) in the Indian case.

Haiti

The Haitian constitution does not include the right to social protection or poverty reduction programming. In Haiti's case a constitutional amendment is feasible and easily attainable. Unlike Canada or even India, a constitutional amendment in Haiti does not require provincial/state consent or consensus. A majority vote is required in both houses of parliament and such majorities are achievable.

In this case, 2B could have a more profound impact, which could extend beyond a constitutional amendment. The Haitian constitution has been dormant for nearly 18 years. Therefore, 2B and the broader convention, could provide the incentive for the constitution to be reviewed and updated using a human rights lens. So ultimately, 2B could serve as a catalyst for constitutional change.

Conclusion: 2B could have a moderate (constitutional amendment) to significant impact (constitutional overhaul) in the Haitian context.

6.3c Legislation

Canada

Social protection programs typically provide some form of employment or income assistance. In Canada, income assistance is governed by provincial legislation. In BC there are two pieces of legislation overseeing the provision of income assistance and related benefits. The first is the *Employment and Assistance Act*. The second, established in 2002, is the *Employment and Assistance Act for*

Persons with Disabilities (the act). The focus of this section is the latter piece of legislation.

The act provides various forms of assistance to eligible individuals. Eligibility is decided on a case by case basis. Individuals can receive disability assistance to supplement their current income, or as a primary source of income for housing and other basic necessities. By enabling access to basic necessities, this assistance facilitates the maintenance of an adequate standard of living. Those individuals and families who are not eligible for disability assistance may receive hardship assistance. Hardship assistance is similar to disability assistance however, it is provided on an emergency basis. The act also stipulates that individuals must have access to any programs established or funded by the act.

As discussed above, 2B is about access to welfare and the promotion of equality. The act reinforces the former but not the latter. By providing various forms of financial assistance and access to programming, the act helps to maintain an adequate standard of living. And even though, the act does not explicitly refer to or include poverty-reduction programming, both disability assistance and hardship assistance help to reduce poverty. Therefore, it is not necessary to include specific poverty-reduction programming in the legislation. The act fails to highlight or address existing inequalities within the disabled population. The act does not specifically refer to the rights of women, girls and seniors. 2B could provide the impetus for a legislative review, which could lead to an amendment. In this way, 2B could be internalized into the existing legislation.

Conclusion: Given the internalization, 2B could have a moderate impact in the Canadian context.

India

Chapter 13 of the Disability Act includes the right to social security. According to section 67(2) of this chapter, governments must provide some form of income assistance to disabled employees. The category of assistance (e.g. disability or hardship) is not specified nor is the amount of assistance. Each government has the discretion to determine the type and rate of assistance provided, as well as the circumstances under which the assistance is granted.

67(2) is a flexible provision. The discretionary power allows governments to develop financially and administratively feasible income assistance programs. And this feasibility ensures consistent access to assistance. By ensuring consistent access to assistance, 67(2) promotes access to welfare and well-being, as well as an adequate standard of living. Poverty-reduction programs are not mentioned. Therefore, 2B could provide the incentive to review this legislation and either amend it to include poverty-reduction programs or add a new provision.

67(2) fails to promote the reduction of existing inequalities. It does not mention women, girls or seniors. Therefore, 2b could provide the incentive for a legislative amendment to the disability act. This act was passed in 1995; 2B could also provide the impetus for a full legislative review to update the provisions of the act.

Conclusion: The potential impact of 2B in India is twofold. Firstly, 2B could be incorporated into the Disability act (moderate impact). Secondly, 2B could provide the incentive to review and update the legislation in its entirety (significant impact).

Haiti

Currently, Haiti does not have any legislation, which promotes access to welfare and to an adequate standard of living. 2B could provide both the incentive and impetus for the development of new legislation. 2B could also provide the framework for the establishment of legislation. This framework would include recognizing the needs and rights of disabled people, facilitating access to welfare programming, identifying existing inequalities within the disabled population, and addressing those inequalities.

Conclusion: Since there is no pre-existing legislation in Haiti, 2B could provide the incentive and impetus for the establishment of new legislation. It could also provide the framework for the new legislation. This would be a significant impact.

6.3d Policies/Programs

Canada

In BC, the disability assistance program is specifically aimed at providing financial assistance to disabled people. Recipients of this program are eligible to receive benefits from other programs. The other programs include: hardship assistance and the supplements. Each of these programs also serves as de-facto poverty reduction programs, since they lead to a reduction in poverty.

Under the disability assistance program, individuals receive a monthly allowance. This allowance can serve as the sole income for that individual and his/her family. This allowance can also serve as a supplementary income. The assistance rate provided by this program is the third highest rate in the country, among comparable programs (Ministry of Employment and Income Assistance, 2007).

Hardship assistance provides immediate financial assistance to individuals and families in need. Unlike, disability assistance, hardship assistance does not take the form of a monthly allowance. Rather this type of assistance is provided in a lump sum (Ministry of Employment and Income Assistance, 2007). All recipients of disability assistance are automatically eligible to receive benefits from the

supplement programs. Examples of services provided by the supplement programs include: transportation supplements and health supplements (Ministry of Employment and Income Assistance, 2007).

These programs provide consistent access to welfare and to an adequate standard of living. As a result, the programs are at least partially consistent with 2B. However, these programs do not aim to reduce existing inequalities within the disabled population. Therefore, 2B could provide the impetus for conducting an evaluation of these programs to better meet the needs of marginalized groups (e.g. disabled women). 2B could also provide the incentive for the development of programs, which specifically reduce existing inequalities and promote increased access to welfare programming.

Conclusion: Reviewing and improving current programming is a moderate impact. However, 2B could lead to the creation of new programming in BC and this would be a significant impact.

India

In India, income assistance and poverty reduction programs are administered by the state level governments. The Disability Act provides each state with the flexibility to develop and implement such programs. Different states have developed unique income assistance and or poverty reduction programs over the last decade. For the purpose of this section, the state of Uttar Pradesh (UP) serves as an example.

The state of UP has an income assistance program. However, this program is quite limited in scope as it only offers benefits to employees and retired seniors (Shrivastava, 2007). In other words, there are no programs in place to assist those individuals who cannot work (e.g. due to disability). And among the existing programming, the only programs, which specifically target disabled people, are worker's compensation programs. This means that disabled individuals outside of the workforce do not have access to income assistance.

2B could provide the incentive for the establishment of programs that provide income assistance to all disabled people, and not just those who become disabled as a result of work place injury. 2B could provide the framework for the development of such programs. The framework would include an acknowledgement of the right of disabled people to welfare and to an adequate standard of living even if they are not employed nor employable.

The State of UP has established several different poverty reduction programs. An evaluation of these programs indicates that these programs do not target disabled individuals. And there is no evidence that any disabled individuals have benefited from these programs (Shrivastava, 2007).

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2B could provide the impetus for a review of existing programs. Such a review would expose flaws and gaps in the programming. The principles of 2B could be used to address the identified flaws. For example, existing programs could be modified to include provisions for disabled people. Or a new program could be established in effort to reduce existing inequalities within the disabled community.

Conclusion: 2B could have a moderate (program evaluation) to significant impact (creation of new programs) in the state of UP.

Haiti

Since the early 2000s the Haitian government has failed to implement any income assistance or poverty reduction programs. The government attributes this failure to a lack of finances. The Haitian government has appealed to the international community and to international organizations for financial assistance to implement of such programming.

2B coupled with article 32 (international cooperation) of the convention may provide the incentive to developed countries to provide increased aid to Haiti. In this case, the aid could be used for the establishment and implementation of income assistance and poverty reduction programs. So if Haiti ratifies the convention, it increases the possibility receiving financial assistance and cooperation from developed countries.

Conclusion: 2B could have a potentially significant impact in Haiti through the creation of new programs and increased international aid.

6.3e NGO Involvement and Participation

Canada

The Poverty and Human Rights Centre and Povnet are two NGOs involved in poverty-reduction and income assistance activities in BC. The former, is committed to eradicating poverty and promoting equality through human rights. It advocates for the welfare rights of many marginalized groups, including disabled people. The latter, Povnet, advocates for the rights of people on welfare and for community groups and individuals who need increased access to welfare services. Povnet also works in partnership with anti-poverty groups.

Neither of these NGOs focuses exclusively on rights of disabled people. The advocacy activities of these NGOs, do not extend to the reduction of inequalities within the disabled population (e.g. gender equality), or to the eradication of such inequalities. Similarly, there are no NGOs in the province, which focus exclusively on the welfare rights of disabled people.

2B's potential impact is twofold. Firstly, 2B could compel provincial disability NGOs to work in partnership with anti-poverty or welfare oriented NGOs. A similar partnership could be formed between women's rights NGOs and disability NGOs. This would be particularly beneficial, as the existing inequalities within the disabled population are often overlooked. Furthermore, such partnerships could lead to more targeted advocacy activities for the rights of disabled people. Secondly, 2B could provide the incentive and framework for the establishment of disability NGOs, which exclusively focus on the welfare rights of disabled people. Such an outcome is probable because other conventions (CEDAW) have led to creation of new NGOs.

Conclusion: 2B could have a potentially significant impact since it could lead to creation of new partnerships and new NGOs in BC.

India

In India there are many NGOs dedicated to reducing poverty and providing income assistance. None of these NGOs focus on the explicit needs and rights of disabled people. And no disability NGO focuses exclusively on the welfare rights of disabled people. However, there are some NGOs, which include access to income assistance and poverty-reduction programming as part of their wider services. One such example is the BMVSS.

The primary objective of the BMVSS is to physically, socially and economically empower disabled individuals. The organization focuses on providing free assistive devices to disabled people. In addition to this service, BMVSS also provides income assistance and economic training programs. Through such programs, BMVSS aims to reduce poverty levels among disabled people and foster labour market participation.

The guiding principles of BMVSS's programming are accessibility and equality. In terms of accessibility, BMVSS aims to make programming and services accessible to all disabled individuals and especially to those living below the poverty line. BMVSS is also committed to ensuring that all disabled individuals and particularly marginalized individuals (religious minorities) receive services.

BMVSS's programming and guiding principles are consistent with the provisions of 2B. If ratified, 2B could lead to a slight shift in BMVSS's operations wherein the income assistance/economic programming would be given equal status to the assistive devices programming. Currently, the income assistance programming is of secondary importance. At a broader level, 2B could provide the incentive for the establishment of NGOs, which focus exclusively on the welfare rights of disabled people.

Conclusion: 2B could have a potentially significant impact in terms of the creation of new NGOs and partnerships in India. It could also have a moderate impact on BMVSS' current activities in India.

Haiti

Currently, there are no domestic NGOs (disability or other) working for the welfare rights of disabled individuals in Haiti. 2B could have an extremely profound impact in this case. 2B could provide the incentive for the establishment of domestic NGOs. It could also provide the guiding principles for these NGOs. The guiding principles derived from 2B would include: access to welfare, maintenance of an adequate standard of living and the recognition and reduction of existing economic inequalities within the disabled population. 2B could also compel international NGOs to provide welfare services in Haiti. These international NGOs could even assist with the establishment of domestic NGOs and their initial activities. Such a role would be consistent with the findings in the literature. Once established, domestic NGOs could exert pressure on the government to establish or improve policies and practices in this area.

Conclusion: 2B could have a potentially significant impact through the creation of new NGOs and new international partnerships. It could also have a moderate impact on the activities of newly established NGOs in Haiti.

6.3f Conclusions: Prevailing Perceptions versus Possible Realities

Since Canada is a welfare state, the perception is that 2B would not improve current practices. However, the analysis reveals, that welfare practices could be improved. 2B could lead to moderate and significant improvements at the legislative, policy and programming levels. Another perception is that the convention would have more of an impact in India than in Canada. However, the analysis indicates that 2B could have similar impacts in India and Canada in relation to legislation, policies and programs. Haiti is the least developed of the country case studies. And rather than worsen human rights practices, it is possible that 2B could lead to significant changes and improvements in current human rights practices.

The above analysis provides the basis for assessing the combined impact of the convention at the country-level. Please refer to chart in Appendix A.

7. The Combined Impact of the Convention at the Country-Level

Assessing the combined effect of the convention is comprised of two components. The first is the level of impact on individual human rights practices. The second is the extent to which, layering pre-exists in each country and the impact of the convention on layering. Facilitating layering has broader

implications for the full realization and institutionalization of human rights and for overall human rights attainment.

7.1 Canada

Article 24

In Canada, primary school level education is a provincial responsibility. Provincial governments have taken steps to ensure that public education is accessible to all learners, including disabled children. As a result, article 24 could have a moderate impact on gaps identified in two of the four units of analysis.

In BC, the concept on non-discrimination as it relates to education is found in the BC Human Rights Code. However, this code does not specifically mention disabled children. Therefore, article 24 could be interpreted in conjunction with this code. This form of internalization is a moderate impact. Article 24 could moderately to significantly impact the activities of domestic NGOs in the area of education.

The joint interpretation could assist with realization by promoting awareness about the educational rights of disabled children. In theory, it could also assist with institutionalization by influencing the formulation of policies and programs. In reality, policies and programs in BC are fully consistent with article 24. Therefore, the joint interpretation would not effect the institutionalization of human rights. NGOs could use the validity and leverage derived from article 24 to lobby the government to improve current practices. However, current practices are sufficient. Therefore, the NGOs would not significantly impact current practices.

Article 24 would likely have little impact on current educational practices in Canada. In terms of the right to education, sufficient layering has occurred. Therefore, the convention would not assist with overall human rights attainment in this area.

Article 25C

An underlying principle of the Canadian healthcare system is universal access. However, the analysis reveals that the system needs to be improved for the disabled population. Gaps were identified in the three of the four units of analysis. 25C could have a moderate to potentially significant impact on all of the gaps.

The Canada Health Act does not institutionalize the health rights of disabled citizens. Nor does it refer explicitly to equalization at the community level (urban and rural). 25C could bridge the identified gaps through joint interpretation. This is a moderate impact as it occurs within the confines of existing legislation and does not create new legislation. The provision of services by BC's health

authority system is fairly consistent with 25C. Therefore, 25C could only provide the incentive for a review and evaluation of BC's health programming. This would be a moderate impact. The most significant impact 25C could have in Canada, is the creation of new NGOs that focus exclusively on the health rights of disabled people.

Joint interpretation of the legislation could assist with realization and institutionalization. It could raise awareness among governments about the health rights of disabled individuals. In terms of institutionalization, joint interpretation could help to institutionalize the concept of universal access to healthcare for disabled people at the policy and programming levels. The creation new NGOs could raise awareness at the government and population levels, which could lead to full realization. The NGOs could also use additional leverage to lobby the government to improve practices. And any resulting improvements could assist with institutionalization.

25C could moderately to significantly improve current practices. Sufficient layering has not occurred with respect to health rights. 25C could assist with layering by addressing the identified gaps.

Article 28-2B

Canada is a welfare state, and as such welfare rights are institutionalized. Therefore, the perception is that 2B would have little impact on the current practices. However, the analysis reveals that current practices are not sufficient to meet the needs of the disabled population. As a result, 2B could have a moderate to significant impact on gaps identified in three of the four units of analysis.

As discussed earlier, the BC government has developed legislation, which exclusively focuses on the welfare rights of disabled people. However, the legislation fails to address the pre-existing inequalities within the disabled population. Therefore, 2B could provide both the incentive and framework for an amendment to this legislation. This is a moderate impact as it improves pre-existing legislation. At the programming level, 2B could lead to program evaluation and eventually to the creation of new programming, since current programming does not reduce persisting inequalities within the disabled population. Program evaluation is a moderate impact as it improves current programming. By comparison, the creation of new programming is a significant impact. Finally, given that there are no domestic NGOs, which exclusively focus on the welfare needs and rights of disabled people, 2B could provide the incentive for new partnerships (between disability and welfare NGOs) or for the creation of new NGOs. These are significant impacts.

The moderate impact at the legislative level could assist with the full institutionalization of human rights. Enhanced legislation could more sufficiently

govern the needs of disabled people and influence policies and programs. It could also assist with the realization of human rights by raising awareness among marginalized groups within the disabled population. Enhanced or new programming could assist with realization of human rights by extending services to a broader group of people. The provision of services could also assist with institutionalization. NGOs could increase awareness about the human rights of disabled people and this would lead to enhanced realization.

2B could moderately to significantly impact current welfare practices in Canada. The inadequacy of current practices demonstrates that sufficient layering has not and could not occur without assistance from the convention. In addressing the gaps the convention could foster layering and thereby assist with the full realization and institutionalization of human rights and overall human rights attainment.

To conclude, the convention (specifically articles 25C and 28-2B) could positively impact current human rights practices in Canada. Furthermore, the convention could assist with the full realization and institutionalization of human rights and with overall human rights attainment. This is contrary to the perception that conventions cannot enhance human rights in developed countries.

7.2 India

Article 24

As with Canada, article 24 would likely have little to no impact on current educational practices in India. The lack of impact could be attributed to the potency of current practices at the constitutional, legislative policy and programming levels. The only level at which article 24 could have an impact is NGO involvement and participation.

Article 24 could provide additional validity and leverage to domestic NGOs. This is a moderate impact as it improves pre-existing institutions. The validity and leverage derived from article 24 could enhance the ability of NGOs to raise awareness about the rights of disabled children. And this could assist with overall realization. Increased or enhanced lobbying could compel the government to improve current practices and this could assist with institutionalization. However, the analysis reveals that current practices are sufficient to meet the needs of the disabled population. Therefore, the lobbying tactics would likely not lead to an improvement in the institutionalization of human rights. And even if new NGOs were created this would not necessarily result in an improvement of practices or in enhanced institutionalization of human rights.

Since sufficient layering has occurred, the convention would likely not assist with overall human rights attainment in this area.

Article 25C

The population of India is vast and their health needs are diverse. The government has attempted to meet these diverse needs. However, efforts have fallen short, particularly with respect to disabled people. The analysis indicates that 25C could have a moderate to significant impact on gaps identified in all four units of analysis. And these impacts could also assist with the full realization and institutionalization of human rights and by extension overall human rights attainment.

At the constitutional level, 25C could have moderate impact in the form of an amendment. At the legislative level, 25C could have a significant impact through the creation of healthcare legislation. 25C could also provide the incentive for an amendment to the disability act. India's National Health Policy and related programming are fairly comprehensive. However, they do not refer explicitly to the health rights of disabled individuals. Therefore, 25C could provide the incentive for a review and evaluation of current policies and programming. This would be a moderate impact. More significantly, 25C could lead to the creation of new programming. 25C could provide more validity to the current activities of domestic NGOs. It could also provide these NGOs with increased leverage to lobby the government.

A constitutional amendment could assist with realization by raising awareness about human rights among the governments and the population. It could also assist with institutionalization through incorporation at the policy and programming levels. The creation of new legislation could assist with realization by raising awareness at the government level. The legislation could also assist with institutionalization through internalization into existing policies and programs. Improvements to the disability act could have a similar impact.

New policies/programs could increase access and thereby awareness of rights. The new policies and programs could also institutionalize human rights at the practical level through the provision of services. By granting validity and leverage to NGOs, 25C could assist with realization, because the NGOs could use the validity and leverage to raise awareness about rights at the grass roots and government levels. The additional leverage could be used to compel governments to improve current practices. And these improvements could assist with institutionalization of human rights.

25C could have a moderate to significant impact on current health practices. Layering has not occurred with respect to health rights. Improving current practices could facilitate layering. Therefore, the convention could have a significant impact on the full realization and institutionalization of human rights and on overall human rights attainment in the area of health.

Article 28-2B

The analysis indicates that 2B could have a moderate to significant impact on all the gaps identified among the four units of analysis.

The Indian constitution does not enshrine the right to welfare. 2B could provide the incentive and impetus for a constitutional amendment. Such an outcome is both feasible and likely since earlier conventions have had a similar impact. This is a moderate impact. India does have a national disability act. However, this act does not sufficiently institutionalize the right to welfare. Therefore, 2B could moderately impact this legislation through an amendment. Since the act was established in 1995, 2B could also provide the incentive for a full review and update of this act. This would be characterized as a significant impact.

Current state level programming does not adhere to the provisions of 2B. As a result, 2B could provide the incentive for program evaluation and more significantly for the creation of new programming. Finally, NGO activities with respect to the welfare rights of disabled people are fairly limited. 2B could address this by providing the incentive for the creation of NGOs and by enhancing the activities of current NGOs. The former would be a significant impact and the latter a moderate impact.

An amendment at the constitutional level could impact the institutionalization of human rights, through the incorporation of a human rights lens at the policy and programming levels. An update of the disability act could ensure that the human rights of disabled people are identified and sufficiently institutionalized. This enhanced institutionalization could assist state governments in meeting the rights and needs of disabled populations. The creation of new programming could assist with the realization of human rights through awareness promotion. The NGOs could also provide increased access to the services, which would help institutionalize rights.

Finally, the creation of new NGOs could have a significant impact on the overall realization and institutionalization of human rights. New NGOS could raise awareness about the human rights of disabled people at two levels. Firstly, they could make disabled people more aware of their rights. Secondly, they could raise awareness at the government level. The new NGOs could also exert added pressure on governments to improve practices. And this pressure could result in the improved institutionalization of human rights.

Overall, 2B could have a moderate to significant impact on current practices. As with 25C, layering is hindered by the weakness of current practices. Therefore, the convention could assist with human rights attainment by addressing the weaknesses and fostering layering.

7.3 Haiti

Article 24

Haiti represents the least developed country case study. And as such article 24 could have a more profound impact on educational practices, particularly in comparison to the two more developed country case studies. The analysis indicates that article 24 could address gaps identified in all four units of analysis. And the level of impact could range from moderate to significant.

The Haitian constitution does include an education article. However, its application for the rights of disabled children is ambiguous. To address this ambiguity, the article could be interpreted in conjunction with article 24 of the convention. This form of internalization is a moderate impact. Currently, there is no official legislation, policies or programs in place to meet the educational needs of disabled children. Therefore, article 24 could provide the incentive, impetus and framework for the establishment of new legislation, policies and programs. These would be significant impacts.

There are domestic NGOs working to integrate disabled children into the mainstream education system. These NGOs could derive increased validity and leverage from article 24. This would be a moderate impact.

Joint interpretation could assist with realization at the governmental level by raising awareness about the educational rights of disabled children. And with increased validity and leverage, domestic NGOs could more effectively pressure the government to improve current human rights practices. The creation of new legislation, policies and programming could have a significant impact on the full realization and institutionalization of human rights. By virtue of being new, they could raise awareness about the rights and needs of disabled people. New legislation, policies and programming could also institutionalize human rights through service delivery.

Article 24 could significantly improve current practices. And by doing so, it could facilitate layering, which could result in overall human rights attainment.

Article 25C

In Haiti, the impact of 25C could be significant. 25C could provide the incentive for a constitutional amendment. This is the only moderate impact it could have. More significantly, 25C could lead to the creation of new legislation, policies and programs. At the NGO level, 25C could lead to the creation of new domestic NGOs and compel international NGOs and developed countries to provide more assistance to Haiti.

A constitutional amendment could raise awareness at the government level. This could result in partial realization. It could also assist with institutionalization as state governments would have to incorporate it into their current practices. The creation of new legislation could result in full realization by raising awareness among governments and the population. It could also assist with institutionalization by influencing policies and programs. New policies and programs could increase access to services, which could raise awareness about rights among the population. And through the provision of services, the programs/policies would institutionalize the right to those services.

The creation of new NGOs could have a profound impact on full realization and institutionalization of human rights. The NGOs could raise awareness about human rights at all levels, leading to full realization. The NGOs could also use the validity and leverage derived from 25C and international NGOs to successfully pressure the government to improve current practices. Any improvement in practices could assist with the institutionalization of human rights. The international linkages could foster the full realization and institutionalization of human rights at all levels in the country.

25C could strengthen current practices and foster layering, where none existed previously. The impacts could result in overall human rights attainment.

Article 28-2B

Given, the weakness of pre-existing institutions, 2B could have significant impact on all four units of analysis and identified gaps. Haiti's constitution has been dormant for nearly 18 years. 2B could be used to fully review and update the constitution. This would be significant impact. As there is no pre-existing legislation, 2B could lead to the creation of new legislation. And the same is true for the non-existent policies and programming. 2B could also lead to the creation of new NGOs and to the increased participation of international NGOs in Haiti. These would be particularly significant impacts.

A constitutional overhaul could institutionalize human rights and also assist with realization by raising awareness about human rights among governments and the masses. It could also compel governments to improve current human rights practices. Similarly, new legislation could enhance the realization and institutionalization of human rights. New programming could raise awareness about the rights of disabled people through the provision of services and thereby increase realization. New NGOs and especially international NGO involvement could raise awareness about the rights of disabled people and compel the government to institutionalize those rights at every level. The strength of the NGOs could also lead to real change.

As with the other articles, 2B could positively impact current human rights practices. And the impact could foster layering, which could have positive

implications for full realization and institutionalization of human rights and overall human rights attainment.

7.4 Conclusions

The combined impact of the convention in all three countries could be described as either moderate or significant. The only exception is article 24 in the Canadian and Indian contexts. In each case, the convention could also have far reaching positive implications for the full realization and institutionalization, as well as for overall human rights attainment.

Whether or not the combined impact provides sufficient justification to proceed with ratification is discussed in the next session.

8. Policy Recommendations for Ratification

There are several internal (e.g. political will) and external (e.g. pressure from international NGOs) reasons that compel a country to ratify a convention. Within the confines of this analysis, I have developed four interrelated criteria to determine whether the three countries should proceed with ratification or not. The focus of the criteria is the relationship between the convention, the units of the analysis, the implications for layering and by extension human rights attainment, and the broader benefits for disabled people. This section describes the four criteria and applies the criteria to the three case studies. Based on the analysis, policy recommendations about ratification are provided.

8.1 Criteria: The Units of Analysis and the Articles

The convention was established to help ensure that the rights and needs of disabled people are fully met. The effectiveness of the convention is contingent upon the level of impact each article could have on each unit of analysis and related practices. Given, the interconnected nature of the units, where, three or more gaps are identified, an article must positively impact all of the gaps. If an article only impacts one or two of the gaps, the benefits for disabled people and the effect on layering would be insufficient. Furthermore, the level of impact must be moderate to significant because a less than moderate impact would not address the gap or assist with the realization or institutionalization of human rights.

This paper examined the potential impacts of articles 24, 25 and 28. The decision to ratify should not be based on the impacts of only one of these articles. Using one article as a basis for ratification would not be justifiable. Therefore, it is necessary that two or more of the articles have moderate to significant impacts on all identified gaps.

8.2 Criteria: *Tangible Benefits*

At a practical level, justification for ratification is derived from the tangible benefits a convention will confer upon the targeted population. Therefore, it is necessary that the articles lead to tangible benefits for the disabled population in the country. For example, 25C may lead to the creation of new health programming in India (this is a significant impact) and this new programming could lead to increased access to health programs. Since this is not a longitudinal study, there is no way to accurately measure the tangible benefits derived from the articles. However, based on the level of impact, potential benefits can be ascertained. And finally, the convention must facilitate layering and thereby assist with full realization and institutionalization of human rights and with overall human rights attainment in each of the three policy areas. This means that the convention (the specific articles) must sufficiently (moderately or significantly) improve pre-existing human practices to ensure that layering occurs.

8.3 *Canada*

Even though Canada is a developed country, the analysis reveals that the convention could moderately to significantly improve current practices. Articles 25C and 28 (2B) could have a moderate to significant impact on all identified gaps. 25C could positively impact legislation, policies, programming and NGO involvement and participation. Similarly, 2B could lead to improvements at the legislative, policy, programming and NGO levels. These improvements could also result in tangible benefits for the disabled population. For example, 2B could help increase access to welfare related programming through the creation of new programs, which specifically aim to reduce pre-existing inequalities within the disabled population. Perhaps most importantly, the impacts of both of these articles could foster layering, which in turn could allow for the full realization and institutionalization of human rights and overall human rights attainment.

So ultimately, the convention satisfies the criteria in the Canadian context.

Policy Recommendation: Canada should ratify the convention.

8.4 *India*

Articles 25C and 28(2B) could have a moderate to significant impact on all identified gaps. This means that the articles could improve current practices at the constitutional, legislative, policy/programming and NGO levels. And these improvements could result in tangible benefits for the disabled population. For example, 25C could lead to the creation of new programming, which would specifically target the health needs of disabled people. New programming could increase accessibility. At a broader level, new programming could assist with the realization and institutionalization of human rights. Increased accessibility could

raise awareness about the rights of disabled people. And the actual programming could help to institutionalize human rights through the provision of services.

By improving health and welfare practices, the convention could foster layering. This layering could lead to the full realization and institutionalization of human rights. And this could lead to overall human rights attainment in the areas of health and welfare.

To conclude, the convention meets all of the criteria for ratification.

Policy Recommendation: India should ratify the convention.

8.5 Haiti

Haiti is the only case study in which gaps have been identified at all four levels in relation to each article. These gaps are most likely a reflection of Haiti's level of development. Therefore, the implications for the disabled population and for full realization and institutionalization of human rights and overall human rights attainment are significant.

Article 24 could provide the incentive and framework for the creation of legislation, policies and programming relating to the education of disabled children. The tangible benefits derived from these new institutions could be increased access to education and the integration of disabled children into the mainstream educational system. The new legislation, policies and programming could also raise awareness among governments and the population about the rights of disabled people. In this way, they could assist with the full realization of human rights. The new policies and programming could also institutionalize the right to education. Similarly, articles 25C and 28(2B) could lead to the creation of new legislation, policies and programming with the same implications for disabled people, and for the full realization and institutionalization and for overall human rights attainment.

Perhaps most importantly, ratification could foster cooperation between Haiti and international NGOs and developed countries. This cooperation could have a profound impact on the quality of life of disabled Haitians and on the full realization and institutionalization of human rights and by extension overall human rights attainment. International NGOs functioning in Haiti could effectively identify and meet the needs of the disabled population. These NGOs would also have the means to raise awareness at all levels, which could result in full realization of human rights. And finally, these NGOs could more effectively pressure the Haitian government to improve current human rights practices. And these improvements could assist with institutionalization of human rights.

International NGOs could also help create domestic NGOs, which could have similar impacts on services and on the full realization and institutionalization of

human rights. Domestic NGOs could also have a more longer term impact than the international NGOs. Cooperation in the form of financial assistance, from developed countries, could assist the Haitian government in meeting needs and rights of the disabled population. At a broader level, it could entrench the commitment of the Haitian government to human rights. And this commitment could have longer term implications for human rights practices in Haiti.

No layering has occurred in the Haitian case. The weaknesses of the current practices have prevented layering. By addressing these weaknesses, the convention could foster layering. And this layering could allow for full realization and institutionalization of human rights, which in turn could allow for overall human rights attainment.

The convention not only meets the criteria for ratification, it exceeds it.

Policy Recommendation: Haiti should ratify the convention.

8.6 Conclusion

The analysis demonstrates that countries from across the development continuum could benefit from ratifying the convention. The benefits in developed countries (Canada) and highly developing countries (India) are comparable. This means that that even in democracies, human rights practices could be improved. The findings are contrary to prevailing perceptions in the literature, which indicate that the impact on international conventions is fairly minimal in more developed and democratic countries and detrimental in least developed countries.

The benefits for Haiti are contrary to the findings in the literature, which indicate that conventions lead to worse human rights practices in least developed countries. Since Haiti is the least developed case study with the weakest institutions, it stands to benefit the most from ratifying the convention. The level of impact in Haiti is more pronounced than in the other case studies.

The analysis critiques and contradicts pre-existing studies. It also provides the basis for future studies, which could further address the gaps in existing studies and in this study.

9. Next Steps

The paper provides new insights into the study of international human rights treaties. It should be noted that this paper is limited by external constraints, such as the fact that the convention has not yet been ratified. However, the analysis is replicable and could provide the impetus for future studies. I have identified five future steps, which could strengthen and expand upon the current analysis and address gaps. The first step is to expand the analysis and apply it to the remaining articles of the convention and to other countries across the

development continuum. At a broader level, the analysis could be applied to other conventions to determine the extent to, which they have assisted with overall human rights attainment.

Even though this paper has provided policy recommendations regarding ratification, the likelihood of each country ratifying the convention has not been determined. One way to gauge the likelihood of ratification would be to conduct a rational agent model or stakeholder analysis. Such an analysis would offer important insights into the role of stakeholders and the internal pressures, which compel or dissuade a government from conforming to the norms of the international human rights regime.

Building upon the stakeholder analysis, an assessment of the ratification process and compliance mechanisms could be conducted. The assessment would discuss the feasibility of ratification, as well as the likelihood of treaty compliance. Treaty compliance would be contingent upon the pre-existing capacity within each country. Any convention, could theoretically impact overall human rights attainment, however, whether or not it will actually make a difference is dependent upon whether or not a country has the capacity to institute the improvements offered by the convention. For example, the convention may provide the incentive and impetus of the creation of new programs; however, a country may not have the administrative pre-requisites, capacity or funding to establish new programs. Therefore, lack of capacity or insufficient capacity also hinders layering.

Based on ratification and compliance capacity, a sensitivity analysis would provide predictions about the actual impact of the convention at the country-level. The current analysis provides predictions about potential impacts of the convention but cannot accurately provide predictions about its actual impacts. The sensitivity analysis could be used for each of the four levels identified in this paper. It could also be applied to other levels not analyzed by this paper (e.g. civil society or media).

Finally, the validity and accuracy of the predictions offered by the sensitivity analysis could be gauged through a longitudinal study. The rights embodied by the convention are subject incremental realization therefore, instant improvements are not likely. So, after sufficient time has elapsed, the actual impact of the convention on the four levels could be measured.

10. Final Conclusions

Overall human rights attainment at the country-level is dependent upon the quality and effectiveness of micro-level human rights practices. Inferior human rights practices prevent layering, which hinder full realization and institutionalization. The convention is essential for ensuring that individual human rights practices are of sufficient quality for layering to occur. By facilitating

layering, the convention allows for full realization, institutionalization of human rights and overall human rights attainment.

The analysis reveals, contrary to prevailing perceptions found in the literature, that the convention could positively impact human rights practices in all countries, regardless of their individual levels of development. In the Canadian context, human rights practices in the areas of health and welfare are not sufficient to ensure layering and by extension overall human rights attainment. If ratified, the convention could improve the quality of the practices and facilitate layering. Similarly, in the Indian case, the convention, if ratified, could improve micro-level human rights practices in the areas of health and welfare. And in the Haitian case, human rights practices relating to education, health and welfare could be improved by ratifying the convention. Ratification could also ensure that individual human rights practices are sufficient to meet the needs of the disabled population in each country. Ultimately, all three countries could benefit from ratifying the convention.

This paper also has broader implications for the study of international human rights treaties (UN conventions). Firstly, the analysis and methodology employed by this study are replicable and could provide the basis for future studies as discussed in the next steps section. Secondly, it is necessary to examine micro-level human rights practices at the country-level. Thirdly, the concepts of layering and overall human rights attainment must be included in any examination of the impacts of conventions. Therefore, pre-existing studies are incomplete and should be re-visited. Finally, the decision to ratify a convention is an important one; therefore, it is necessary that sound analysis is employed to determine the potential impacts of a convention. This study provides the necessary elements for that sound analysis.

Appendix B. Bibliography

- Chayes, Abram and Antonia Handler Chayes. 1993. On Compliance. *International Organization* 47:175-205.
- Goldsmith, Jack L., and Eric Posner. 2005. *The Limits of International Law*. New York: Oxford University Press.
- Goodman, Ryan, and Derek Jinks. 2003. Measuring the Effects of Human Rights Treaties. *European Journal of International Law*. 14:171-183.
- Hafner-Burton, Emilie M., and Kiyoteru Tsutsui. 2005. Human Rights in a Globalizing World: The Paradox of Empty Promises. *American Journal of Sociology*. 111: 1373-1411.
- Hathaway, Oona. 2002a. Do Human Rights Treaties Make a Difference? *Yale Law Journal*. 111:1935-2042.
- Hathaway, Oona. 2002b. The Cost of Commitment. *Stanford Law Review*. 55:1821-1862.
- Heyns, Christof, and Frans Viljoen. 2001. The Impact of United Nations Human Rights Treaties on the Domestic Level. *Human Rights Quarterly*. 23:483-535.
- Keith, Linda Camp. 1999. The United Nations International Covenant on Civil and Political Rights. Does it May a Difference in Human Rights Behaviour? *Journal of Peace Research*. 36:95-118.
- Koh, Harold Hongju. 1996. Why Do Nations Obey International Law? Review Essay. *Yale Law Journal*. 106:2599-2659.
- Krasner, Stephen D. 1993. Sovereignty, Regimes and Human Rights. In *Regime Theory and International Relations*, edited by Volker Rittberger, 139-167. Oxford, UK: Clarendon.
- Neumayar, Keith. 2005. Do International Human Rights Treaties Improve Respect for Human Rights? *Journal of Conflict Resolution*. 49(6):925-953.
- Risse, Thomas, Steven C. Ropp, and Kathryn Sikkink. 1999. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge UK: Cambridge University Press.

Appendix C. Work Cited Page

United Nations Convention on the Rights of Persons with Disabilities. 2006.
<http://www.un.org/disabilities/convention/conventionfull.shtml>

Canada

BC Human Rights Code. http://www.qp.gov.bc.ca/statreg/stat/H/96210_01.htm

BC Ministry of Education. 2000. *The Primary Program: A Framework for Teaching*. http://www.bced.gov.bc.ca/primary_program/primary_prog.pdf

BC Ministry of Employment and Income Assistance. 2007. *Information for Persons with Disabilities*. <http://www.mhr.gov.bc.ca/pwd.htm>

BC Ministry of Income and Employment Assistance. 2007. *Legislation*.
<http://www.eia.gov.bc.ca/ministry/leg.htm>

Canadian Charter of Rights and Freedoms.
<http://laws.justice.gc.ca/en/Charter/index.html#egalite>

Canada Health Act. http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/2002/2002_care-soinsbk4_e.html

Canadian Social Research Network.
<http://www.canadiansocialresearch.net/bcbkmrk2.htm>

Ontarions with Disabilities Act. http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/01o32_e.htm#BK17

PHSA. 2007. *Provincial Health Services Authority*.
<http://www.phsa.ca/default.htm>

India

BMVSS. 2007. *For the Rehabilitation of the Physically Challenged*.
<http://www.jaipurfoot.org/>

India Disability Act. <http://socialjustice.nic.in/disabled/act.htm>

GIDF. 2007. *Great India Dream Foundation*. <http://www.gidf.org/about.html>

Indian Constitution. <http://www.constitution.org/cons/india/const.html>

By Saima Akbar
June, 2007

Ministry of Human Resource Development. 2007. *Comprehensive Action Plan for Inclusive Education*. <http://ncpedp.org/eductn/ed-isu2.htm>

Ministry of Human Resource Development. 2007. *Education Schemes*. <http://www.ncpedp.org/eductn/ed-scheme02.htm>

Ministry of Human Resource Development. 2007. *SSA Program*. <http://ssa.nic.in/ssasplneeds.asp>

NHP. 2002. *National Health Policy 2002*. <http://mohfw.nic.in/np2002.htm>

NCERT. 2007. *Education of the Disabled Children* <http://www.education.nic.in/cd50years/f/93/HP/93HP0901.htm>

Shrivastava, Ravi S. 2007. *Anti-Poverty Program in Uttar Pradesh: An Evaluation*. <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN015022.pdf>

UN Committee on Child Rights. 2000. *Concluding Observations*. <http://wcd.nic.in/crcpdf/ACTION.PDF>

Haiti

Haiti Constitution. <http://www.haiti.org/constitu/constabl.htm>

Haiti Fact Sheet. 2007. *The Constitution*. http://www.haiti_factsheet_Constitution.htm (this link no longer works.) Retrieved on November 22, 2006.

Health Communication Partnership. 2007. *Health Communication Partnership: Latin America – Haiti*. http://www.hcpartnership.org/Programs/Latin_America/hcp_haiti.php

HHH. 2006. *Healing Hands for Haiti: A Rehabilitation Project*. <http://www.healinghandsforhaiti.org/school.html>

Management Sciences for Health. 2007. *Haiti Health Systems 2004 and 2007 Project*. http://www.msh.org/programs/haiti_hs2007.html

The Potential Impacts of Articles 24, 25 and 28 at the Country-Level (Comparison Chart)

Appendix A

By Saima Akbar

	Article 24				Article 25				Article 28			
	Constitution	Legislation	Policies/Programs	NGO	Constitution	Legislation	Policies/Programs	NGO	Constitution	Legislation	Policies/Programs	NGO
<u>Canada</u>	LM	M/N	N	M/S	LM	M	M	M/S	LM	M	M	S
<u>India</u>	N	N	N	M/S	M	M/S	M/S	M	M	M/S	M/S	M/S
<u>Haiti</u>	M/S	S	S	M	M	S	S	S	S	S	S	M/S

Legend	
N=	No Impact
LM=	Less Than Moderate Impact
M=	Moderate Impact
S=	Significant Impact