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Proofreading and lecture in English: Danijela Milićević

Proofreading and lecture in Montenegrin: Miodarka Tepavčević

Address: Danila Bojovića bb 81 400 Nikšić, Montenegro;

E-mail: mjss@ucg.ac.me

www.mjss.ac.me

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Lektura i korektura na engleskom: Danijela Milićević

Lektura i korektura na crnogorskom: Miodarka Tepavčević

Adresa: Danila Bojovića bb 81 400 Nikšić, Crna Gora;

E-mail: mjss@ucg.ac.me

www.mjss.ac.me

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Original scientific article**UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES IN TIMES OF CRISIS, WITH SPECIAL FOCUS ON THE SITUATION IN BOSNIA AND HERZEGOVINA**Sabira GADŽO-ŠAŠIĆ¹

University of Sarajevo, Faculty of Political Science, Sarajevo, Bosna i Hercegovina

e-mail: sabira.gadzo.sasic@fpn.unsa.ba**ABSTRACT:**

Through content analysis method, this paper examines the implementation of the UN Convention on the Rights of Persons with Disabilities (Convention, UN CRPD) in Bosnia and Herzegovina (BiH). The analysis involves a desk study of available reports, relevant regulations, laws, and other pertinent documents with the objective to assess the opportunities and limitations for the implementation of the Convention and its underlying social model in BiH. Furthermore, the paper aims to highlight how the crises, that marked the 21st century, had negative impact on the Convention's implementation in the country.

Specifically, the analysis draws attention to a set of rights that persons with disabilities find difficult to exercise in the BiH society. These include: equality and non-discrimination, awareness-raising, accessibility, equality before the law, independent living and inclusion in the community, work and employment, participation in political and public life, as well as participation in cultural activities. Unfortunately, access to these rights is made even more difficult by adverse changes resulting from a series of consecutive crises.

KEY WORDS:

BiH; UN; Persons with disabilities; Crisis; Rights; Disenfranchisement;

¹ Sabira Gadžo-Šašić completed social work studies at the Faculty of Political Sciences in Sarajevo in 2002 and obtained the title of graduate social worker, and the Faculty of Law in Sarajevo in 2007, where she also obtained the title of lawyer. She received her master's degree in 2007 at the postgraduate study "Management in Social Work", realized in cooperation with the University of Sarajevo, the University of Gothenburg and the University of Banja Luka. She defended her doctoral dissertation on "Social work and social inclusion of persons with disabilities" in 2016. In 2016, she was elected to the academic title of assistant professor at the Faculty of Political Sciences in Sarajevo.

SAŽETAK:

U radu se primjenom metode analize sadržaja (analizom dostupnih izvještaja o primjeni UN Konvencije o pravima osoba s invaliditetom u Bosni i Hercegovini (BiH), važećih propisa, zakona i ostalih dokumenata od značaja za temu) ukazalo na mogućnosti i ograničenja primjene odredaba sadržanih u Konvenciji Ujedinjenih naroda o pravima osoba s invaliditetom u BiH, ali i socijalnog modela na kojem se bazira kompletna Konvencija. Cilj je bio ukazati kako su krize koje su obilježile 21. vijek negativno uticale na primjenu odredaba sadržanih u spomenutoj Konvenciji u BiH.

Posebno je ukazano na grupu prava (ravnopravnost i nediskriminacija; podizanje svijesti; pristupačnost; jednakost pred zakonom; neovisno življenje i uključenost u zajednicu; rad i zapošljavanje; sudjelovanje u političkom i javnom životu; sudjelovanje u kulturnom životu) koja osobe s invaliditetom teže ostvaruju u bosanskohercegovačkom društvu, a čija primjena je dodatno usporena negativnim promjenama proisteklim iz kriza.

KLJUČNE RIJEČI:

BiH; UN; Osobe s invaliditetom; Kriza; Prava; Obespravljenost;

Introduction

According to the United Nations Convention on the Rights of Persons with Disabilities (Convention, UN CRPD), persons with disabilities are individuals with long-term physical, mental, intellectual or sensory impairments that may, due to various barriers, hinder their full and effective participation in society on an equal basis with others (Article 1). Throughout human history, persons with disabilities have been faced with discrimination and marginalization and it appeared that even in the third decade of the 21st century their situation has not improved to a significant extent. Even with the adoption of the Convention, that is binding for all signatories and represents an internationally unique document based on the social model of disability as a theoretical basis that demands equality, full social inclusion and participation of persons with disabilities in all aspects of social life (Gadžo-Šašić, 2020:69), it seems that a decade and a half later we can speak of a crisis of implementation of everything that this document guarantees.

The reason for this lie in numerous negative changes that have adversely impacted everyone on a personal level, but for persons with disabilities, already vulnerable to discrimination and marginalization, such circumstances deepened their disenfranchisement or lack of access to the rights set out in the Convention. As noted by some authors (Gadžo-Šašić, 2018), the rights stemming from the social model of disability and the Convention seem to be an empty promise that remains unattainable for many countries around the world, despite their signature on this international treaty. This is particularly notable in countries in transition such as Bosnia and Herzegovina (BiH) and its society riddled with numerous ethnic, religious, political, educational and other divisions (Bašić, 2013). However, its representatives ratified the Convention thirteen years ago, in 2010, and thus committed to create an environment where persons with disabilities would have equal access to these rights. Whether this is the case and what are the main obstacles on this path are the questions that arise and the key research questions this paper will attempt to address and steer towards a correct answer.

The 21st century crises as obstacles to implementation of the United Nations Convention on the Rights of Persons with Disabilities

Social development as a set of qualitative and quantitative changes in people's living, working and social circumstances (Lakićević, Gavrilović, 2009) is one of the main pillars of prosperity for all people living in any particular country, and this includes persons with disabilities. Despite social development efforts and investments, persons with disabilities have historically faced varying degrees of disenfranchisement in societies around the world. In fact, persistent marginalization of this group was the primary driver behind the adoption of the UN Convention on the Rights of Persons with Disabilities, a landmark event of the 21st century that was aimed to foster an environment that will improve the well-being and social status of the persons with disabilities. The Convention was the culmination of many years of

relentless advocacy by the community of persons with disabilities, fuelled by their hope for a better life (Lansdown, 2009).

However, merely a year after the Convention was adopted, the world faced the “first global financial crisis of the 21st century” (Felton; Reinhart, 2008) with effects that rippled across the globe. It started with the real estate market and subprime loans in the United States, but the collapse of the major financial institutions in the United States that caused the economic crisis to spread rapidly throughout the world, resulting with problems in the European banking sector. With the collapse of the financial sector, many stocks and goods lost their value. The crisis led to falling liquidity and leverage in financial institutions in the U.S. and Europe. The world’s political leaders, finance ministers and national bank governors coordinated their efforts to mitigate the effects of the crisis and calm the investors. Although the developed countries saw a relatively swift recovery within the next two years, its devastating effects gradually reached Bosnia and Herzegovina, a country already burdened by other crises. Amidst these challenges, BiH ratified the UN Convention on the Rights of Persons with Disabilities in 2010. However, its capacity to implement the Convention was, and still is, further diminished by the structure of the state itself.

So, as the post-conflict society in BiH struggled with the belated effects of the first economic crisis and tried to develop appropriate mitigation measures while also attempting to harmonize its national legislation with the provisions of the UN Convention on the Rights of Persons with Disabilities, the rest of the world was looking at a new crisis: the global migrant crisis. 1,321,560 migrants have entered Europe in the four years following the economic crisis. Most of them were refugees from war-torn Syria, Afghanistan and Iraq. This crisis intensified after recovery from the “first economic crisis” but its beginnings go back to a much earlier period when economic instability and the technology lag behind EU member states made young people to leave the countries of the east (Bježančević, 2019). The 2015 European Migration Crisis was the final result of an ongoing collapse of relations between the countries of the Middle East. In this period, while the EU countries sought to address the emerging crisis by allocating migrant quotas to member states according to their size and by closing borders, BiH continued to struggle with the multitude of issues that hampered the implementation of the Convention. However, due to Europe’s unwillingness and inability to allow migrants to reach their intended destinations, many illegal migrants found themselves stranded in the transit countries. Bosnia and Herzegovina, a transit country with the longest border with Croatia (an EU member state) thus became an “unwanted waiting room”.

The migrant crisis in BiH was further exacerbated by the COVID-19 pandemic, as the health crisis contributed to its complexity. Coping with these challenges was difficult even for societies and countries incomparably more developed than Bosnia and Herzegovina (Gadžo-Šašić; Repovac, 2022). Many countries sought to overcome these adverse impacts and maintain the quality of life by de-prioritising persons with disabilities and their rights, including universal design from Article 2 of the Convention. It states that products, environments, programmes and services

should, to the maximum possible extent, be designed to be used by everyone without the need for adaptation or special design. It does not preclude the use of assistive devices for certain groups of persons with disabilities, if necessary. Universal design requires active social action to introduce the changes that will allow persons with disabilities to fully participate in all aspects of society and represents the basic starting point in the social model of disability. As some authors point out (Leutar et al., 2015; Gadžo-Šašić, 2021), this includes equal opportunities for all, greater participation of persons with disabilities in social life, identification of social activities that would foster independence and ability to make their own choices, improved living standards and quality of life, awareness-raising and encouraging change in social behaviour.

The COVID-19 pandemic resulted in further disruptions and a wide array of socio-economic impacts, such as various goods shortages, suspension of tourism and airline operations and cancellation of sports and entertainment events. The pandemic created a new crisis which affected all countries around the globe to varying degrees. Its effects became intertwined with those of the migrant crisis.

The world remained in this state of crisis until mid-February 2022, when the war between Ukraine and Russia aggravated the economic crisis to unprecedented levels worldwide. In this context, the social model underpinning the CRPD emphasizes that the responsibility for addressing disability issues rests with the society rather than the individual and that the society should put appropriate measures in place to allow persons with disabilities to actively participate in the social environment by means of universal design (Turčić, 2012) as the fundamental pre-requisite for access to many other rights. But the current situation is abysmal because the risks generated by other crises make it unlikely that universal design will be a top priority for any state, especially those that did not meet the minimum requirements even before these crises occurred. The core idea of the Convention, and thus of the universal design, is to allow every person to fully engage with the society regardless of any disease or physical impairment.

Regardless of the immense benefits that the implementation of the Convention could bring, the current focus of the social decision-makers is directed towards the complex issues arising from the crises. Consequently, implementation of the Convention and the social model of disability may receive even less attention in the future. This shift is particularly likely as many ideas stemming from the social model have been proven to be financially demanding, especially for countries with unfavourable economic development trends. Some authors (Bežovan, 2008; Ostojić Baus, 2016; Gadžo-Šašić, 2021) have pointed out that such countries have an unfavourable welfare mix, i.e. a system composed of multiple stakeholders, including the government, local authorities, civil society organizations, companies (profit sector), families (informal sector) and others acting in place of the state which previously held a monopoly position.

It is evident that many countries, including the most developed ones, have responded to new challenges posed by these crises by implementing various measures. So Krtalić (2004) propose the development of a new entrepreneurial culture and em-

phasize the importance of individuals taking responsibility for their own actions. Such approaches are likely to become increasingly popular worldwide, while full compliance with and access to the rights guaranteed by the UN Convention on the Rights of Persons with Disabilities (2006) may be relegated to some better, “non-crisis” times.

Opportunities and limitations in the implementation of the United Nations Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina Methodology

The analysis of opportunities and limitations relevant to the implementation of the United Nations Convention on the Rights of Persons with Disabilities was conducted using the method of content analysis. It involved a review of available literature, such as reports on the implementation of the UN Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina, relevant regulations, laws and other documents pertaining to this subject.

Please note that after the war (1992-1995) Bosnia and Herzegovina was administratively divided into two entities (Federation of Bosnia and Herzegovina – FBiH and Republika Srpska – RS) and the Brčko District. The Constitution of BiH assigned the competences for social protection to the entities and the Brčko District, but the Federation of Bosnia and Herzegovina further delegated social protection powers to the cantons, meaning that the scope of rights effectively depends on the socio-economic capacity of each canton. It follows that the rights of persons with disabilities in Bosnia and Herzegovina are fragmented across several state, entity and cantonal documents and, unfortunately, members of this population live on the margins of society just as they did before the ratification of the Convention as the overarching act governing the rights of this population. It seems that the representatives of the BiH authorities “rushed ahead of themselves” by ratifying an act that prevails over the national legislation and harmonizes the fundamental rights of persons with disabilities. The Convention guarantees to persons with disabilities, as follows: respect for dignity, non-discrimination, full social inclusion, respect for diversity, equal opportunities, accessibility, equality of men and women, respect for the development of children with disabilities and the right of those children to preserve their own identity. Special focus is placed on awareness-raising on the rights of persons with disabilities across the entire society; accessibility; independent living and inclusion in the community.

Certainly, many questions arise in that context, such as whether the BiH society made any progress towards inclusion of persons with disabilities? Unfortunately, those interested in this topic in BiH will have to wait for beneficial change, because it is obvious that the quality of life and the social inclusion of persons with disabilities are not heading in the direction envisaged by the Convention. Even today, BiH institutions and regulations lack a harmonized terminology for disability-related issues (Somun; Krupalija, 2017). The problem quite obviously arises from the fact that important documents are adopted without even the slightest concern for the

pre-requisites needed to actually implement them in practice. It follows that the ratification of the key document for persons with disabilities and its implementation in Bosnia and Herzegovina remain just an illusion, at least for now, because the rights of persons with disabilities are not a matter of ratification or signature but of creating the conditions in which those rights can be exercised.

The transfer of responsibilities for social protection in BiH to the entities and the District prevented the creation of uniform or harmonized legislation in this area. Furthermore, absence of a unified social policy system represents another significant barrier to effective implementation of the Convention. This approach has led to the emergence of discrimination in disability support, which allows persons with disabilities to exercise their rights differently depending on the origin of their impairment and the territory in which they reside.

Although the initial, formal adoption of international regulations on the rights of persons with disabilities in BiH aimed to create a society tailored to each individual, it still seems that many of the activities undertaken in the previous period resulted in greater polarisation within the population directly affected by disability-related issues. This is especially true because since 2010, when BiH ratified the UN Convention on the Rights of Persons with Disabilities, there have been fraught with difficulties in everyday access to basic human rights, especially in terms of access to health care, social support, care by other people or orthopaedic aids. In particular, adverse developments resulting from the crises that marked the period after the adoption of the Convention have slowed down the implementation of everything contained in this document. Undoubtedly, the global “collapse” awaiting all countries of the world due to current inflation and the potential new economic crisis looming over the US banking sector, as recorded in mid-March 2023, will hinder the improvement of the social model of disability. Progress will be challenging even for the developed countries, while in countries like Bosnia and Herzegovina we can expect the medical model of disability to remain the dominant model for a very long time.

The current inflation environment does not promise any progress in the implementation of guaranteed rights in Bosnia and Herzegovina. These rights, including the rights guaranteed by the Convention, are likely to remain just empty words on paper. This is especially true because, according to the Central Bank of BiH, in the first half of 2022 inflation in BiH reached 11% and is affecting all citizens, meaning that few stakeholders are likely to focus their efforts on the implementation of a convention that safeguards the rights of a single group. We can safely say that this matter has been overshadowed by the 21st century crises, most recently by the war in Ukraine which exacerbated the global energy crisis and made the situation in BiH even more difficult.

<i>Article number</i>	<i>Title and brief explanation of the right in the Convention</i>	<i>Article number</i>	<i>Title and brief explanation of the right in the Convention</i>
Art. 5.	Equality and non-discrimination Persons with disabilities should be treated fairly, which may require protective measures	Art. 19.	Independent living and community involvement The State Party shall ensure that persons with disabilities can choose where they wish to live and provide them with the necessary support to enable them to live in the community.
Art. 8.	Awareness Raising Measures to be taken to highlight the rights of persons with disabilities in the society	Art. 27.	Work and employment Persons with disabilities have equal rights to work and to earn a living. In addition, States Parties must promote opportunities for the exercise of those rights
Art. 9.	Accessibility Ways in which communication and information systems, transport, buildings and other structures can be used, how they can be entered or accessed	Art. 29.	Participation in political and public life Persons with disabilities have the right to be represented or to participate in political and public life
Art. 12.	Equality before the law Persons with disabilities have the right to have their legal capacity recognised everywhere	Art. 30.	Participation in culture, recreation, leisure and sports Persons with disabilities have equal right to enjoy play, rest, entertainment and leisure

Table 1: Overview of the rights from the UN Convention on the Rights of

Persons with Disabilities that are difficult to exercise in BiH

Considering the specific structure of governance in BiH, persons with disabilities find it particularly hard to exercise the rights from Article 5 of the Convention which refers to equality and non-discrimination. These rights are governed by the laws of Entity and Brcko District laws and the discrimination here is territorial, as persons with disabilities from FBiH cannot exercise their rights in the RS or the Brcko District, and vice versa. Discrimination based on the origin of impairment is also evident, as war-related impairments are treated differently from those of different origin. According to available sources, war veterans are eligible for support at 20% impairment, civilian victims of war at 60% impairment, while persons with peacetime (congenital or disease-related) disabilities become eligible for support only if their assessed impairment level reaches 90% (Gadžo-Šašić, 2020: 120-123). A little real progress has been made in raising the awareness of the Bosnian-Herzegovinian society, although the Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina (2012) mentions some awareness-raising activities, especially on the occasion of the International Day of Persons with Disabilities. We can conclude that the implemented activities are insufficient, especially with the crises that have further reduced already inadequate efforts and imposed additional limitations on the rights guaranteed by Article 8 of the UN Convention on the Rights of Persons with Disabilities.

Accessibility required by Article 9 of the UN Convention on the Rights of Persons with Disabilities guarantees “equal access to the built environment, transport, information and communication, including information and communication technologies and systems, as well as other equipment, premises and services intended for the public, in both urban and rural areas”. Accessibility is poor in BiH and it can be said that the creation of a conducive environment for execution of this right was neglected during the crises, as well as the active awareness raising about the capacities and abilities of this population.

The right to independent living and inclusion in the community is an elusive dream, especially for people with intellectual disabilities who are more often deprived of this right because BiH is still dominated by mass institutionalisation of people with disabilities, preceded by deprivation of the legal capacity. Institutional procedures are based on the medical model of disability (Gadžo-Šašić, 2020) and often violate the right set out in Article 12 of the Convention for certain categories of persons with disabilities (persons with intellectual and combined disabilities) and fail to ensure equality before the law, specifically the provision stating that “persons with disabilities have equal legal capacity and capacity to work in all areas of life”.

The right to work, already set out in many other international documents (e.g. European Social Charter – Art. 1; International Covenant on Economic, Social and Cultural Rights – Art. 6), is also guaranteed by Article 27 of the UN CRPD and emphasizes that “States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a

living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities”. However, in the context of BiH this is just one of many guaranteed rights because persons with disabilities often fail to exercise this right as equals, mainly due to the lack of information and other problems arising from the lack of accessibility. According to some available research persons with disabilities often hesitate to try to be included in labour market due to bad experiences they had in the past (Gadžo-Šašić; Čaušević, 2022:168; Gadžo-Šašić; Babić, 2023).

Concerning the right to participate in political and public life, the Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina (2012) states that the right to participate in elections is regulated at the level of BiH- the Election Law of BiH (Official Gazette of BiH, no. 20/02) does not deny the right to vote or be elected to persons with disabilities. The Report also states that the FBiH and RS Strategies for Improvement of the Social Position of Persons with Disabilities have identified the need to foster active participation of the representatives of persons with disabilities in the work of political parties, political life and decision-making processes at all levels. In particular, organisations of persons with disabilities are encouraged to participate in public debates on any documents of importance to citizens. However, the practice and actual implementation of the above is absent and the representatives of certain categories of persons with disabilities are often unevenly or not at all involved in the making of decisions that concern them, which is a violation of the “Nothing About Us Without Us” requirement from the Madrid Declaration (2003).

When observing the right to “participate in cultural life, recreation, leisure and sports”, it is evident that BiH athletes with disabilities achieve excellent results in certain sports, such as sitting volleyball. This is concrete evidence that persons with disabilities contribute to the development of society and affirmation of the country, but we can assume that the results would be even better with appropriate organizational preparations and if the requirements are in place to further develop this area, especially for the youngest members of this population (Gadžo-Šašić, 2020) because if greater efforts were invested this could be one of the paths towards their full social inclusion.

Thus, it can be noted that in practice, despite the fact that BiH has signed several key international documents on the rights of persons with disabilities, their rights are violated on a daily basis. Violations that take place in domains closely related to the right to social security and dignified life are particularly evident. When speaking about the rights that persons with disabilities find particularly difficult to exercise, some authors (Živanović; Madacki, 2006) mention the rights arising from the analysed provisions of the Convention, specifically the rights related to health care, social protection, education, the right to receive and disseminate information, rights related to employment and work-related activities and the domains relevant to the status and financing of organizations of persons with disabilities. All of the above is particularly pronounced in the presence of global crises that have slowed down or prevented the stakeholders to actively work on this population’s well-being. In

the light of all of the above, the position of persons with disabilities in BiH and the status of implementation of the provisions of the UN CRPD can be said to be peripheral, meaning that at this time it is something that is occasionally discussed and thus occasionally actioned in practice, mainly through activities that are inadequate and target specific subsets rather than the overall population of persons with disabilities.

Final considerations

Violation of human rights of persons with disabilities is a constant in BiH and the ratification of the UN Convention on the Rights of Persons with Disabilities did nothing to change that. It is more than obvious that the period from 2010 to the present day was marked by continuous violations of the fundamental rights of this population and not, according to state commitments, with improvements required for their execution. Sporadic attempts to enforce or harmonise individual regulations within the Entities can be seen as pro forma exercises rather than meaningful efforts. All activities concern the creation and signing of documents that are not of an overarching nature and this increases the polarisation of this area. So, it is not surprising that the Committee on the Rights of Persons with Disabilities expressed their “concerns about the lack of transparent procedures and laws to regulate consultations with organizations of persons with disabilities. Another concern relates to the lack of structured financial support and capacity building for these organisations, especially at the local level” (CRPD/C/BIH/CO/1). What was missing before and is still missing now, during these crises, is a growing awareness of the abilities and capacities of persons with disabilities in both the immediate and the wider community, which should foster and promote a change of attitudes and values and lead to changes in the entire system. In fact, citizens and major stakeholders should hold themselves accountable and use their own small contributions as examples to pave the way towards a society where everyone will be equal and where the state would be in the service of citizens and citizens in the service of the state. Such a society, as provided for in international law, could adopt a view that the lack of money does not imply that basic human rights will be violated, but that economic, social and cultural rights cannot be exercised instantly and that their implementation will take time. Many countries have introduced the concept of “progressive implementation of fundamental rights” a long time ago. In order to create the conditions that make this concept feasible, governments of the countries that apply it must, to the maximum possible extent, take full responsibility and eliminate any avenues that would allow them to “slip out” and abandon their commitments. So, instead of hearing important state representatives make excuses all the time, as is highly characteristic for BiH, they should be required to ensure the very basic access to each of the rights set out in the UN CRPD or to at least to demonstrate continuous efforts in developing and implementing measures to facilitate access to the guaranteed rights in the times of crises and non-crisis. Until the major stakeholders accept that the implementation of this concept is an imperative, we can only discuss the shortcom-

ings in the implementation of the Convention in BiH. A particularly evident failure in this respect is the failure to develop potential approaches for harmonization of the national legislation with the Convention. It is also shocking that 13 years after its ratification we still do not have a harmonised terminology for addressing persons with disabilities, harmonized mechanisms for consultations with persons with disabilities or the work of their representative organizations (Lansdown, 2009). It follows that despite the efforts of individuals and organizations, BiH remains a country far away from actual implementation of the provisions of the UN Convention on the Rights of Persons with Disabilities. The reality of persons with disabilities in BiH is such that, for example, most members of this population finish school but are rarely or almost never employed. Most cultural and public institutions still remain inaccessible due to the lack of wheelchair access or elevators. The number of traffic lights with sound indicators is negligible and they exist only in major cities. Day care centres for people with intellectual disabilities are not systematically supported and these institutions operate, almost exclusively, thanks to the enthusiasm of parents associated with non-governmental organizations and without a permanent source of funding. The same can be said for personal assistants, another prerequisite for independent living and inclusion in the community. Finally, it should be noted that persons with disabilities generally have low personal income and often live on the verge of poverty. This often leads to apathy, depression and a sense of futility and as such represents the opposite of the enabling environment envisioned in the UN Convention on the Rights of Persons with Disabilities.

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