Making complaints to the United Nations Disability Committee: A Guide for New Zealanders

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## Introduction

Making complaints to the United Nations Disability Committee: A Guide for New Zealanders provides information to disabled people and public sector organisations in New Zealand on the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (CRPD-OP).

The CRPD-OP is part of an international human rights treaty (or agreement). It offers disabled people a way to make a complaint to the United Nations Committee on the Rights of Persons with Disabilities (UN Disability Committee). To do so, they must first have exhausted all ways to resolve a problem domestically, that is, here in New Zealand.

International human rights agreements are intended to ensure governments protect and promote human rights. Disabled people in New Zealand continue to face discrimination preventing many from being able to live a full and good life. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) explains how to make human rights a reality for disabled people.

In September 2008, the New Zealand Government ratified the CRPD. This means the Government has a duty to protect and promote the human rights of all disabled people.

On 4 November 2016, the Government ratified the CRPD-OP. The CRPD-OP gives disabled people who think their rights have been denied or abused, a way to make a complaint to the UN Disability Committee – the Committee responsible for the CRPD.

This guide sets out information and steps you need to take before you can make your complaint to the United Nations Disability Committee.

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## What is the United Nations Convention on the Rights of Persons with Disabilities?

The CRPD is an international agreement. Its purpose is to make sure disabled people are treated with dignity and respect and have the same rights as everybody else. It does not give disabled people new rights. Instead, the CRPD confirms and sets out what countries need to do to make rights real for a particular group, in this case, disabled people. Governments that have ratified the CRPD have a duty to work towards a more inclusive society by making their policies and laws align with what the CRPD says.

### The United Nations Committee on the Rights of Persons with Disabilities

The United Nations Committee on the Rights of Persons with Disabilities (UN Disability Committee) is made up of 18 people who are experts in the area of disability from around the world. The UN Disability Committee monitors the way governments that have ratified the CRPD follow what the CRPD requires. Those living in countries that have acceded to the CRPD-OP can make a complaint to the UN Disability Committee if they think that their rights have been abused or denied.

In New Zealand, the Independent Monitoring Mechanism (IMM) monitors the Government to make sure it is putting the CRPD into action. The IMM is made up of the Human Rights Commission (HRC), the Ombudsman and the Disabled People’s Organisations’ Coalition (DPO Coalition), a body that represents the voice of disabled people in the monitoring process. The IMM also writes reports to the UN Disability Committee to tell it how it thinks the Government is doing on making rights real for disabled people. It also suggests ways the Government can improve on the work it is doing in this area.

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## What is an optional protocol?

An optional protocol is a treaty in its own right, linked to a parent or main human rights treaty. It can either add to or improve its parent treaty. Only countries that have agreed to a parent treaty can choose to agree to its optional protocol.

There are only two kinds of optional protocols in the United Nations Human Rights Treaty System. Those that cover:

* matters that have not been included or covered in the original parent treaty; and
* rules that may affect the way a parent treaty works or is carried out. For example, how you make a complaint to the United Nations Committee looking after the parent treaty.

The CRPD-OP offers a way for disabled people to make complaints to the UN Disability Committee and sets out the way they examine complaints. Most optional protocols offer ways individuals and groups of people may make a complaint to the correct United Nations Committee. Such protocols set out the steps to take to make a formal complaint. A complaint can also be made when a country is thought to have abused the human rights set out in a treaty it has agreed to.

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## Under which human rights treaty should you make a complaint?

If you reach a point when you believe there are no other ways left to resolve your complaint in New Zealand, you may be able to take it to one of the United Nations Committees. It is important that you approach the right Committee, because once you have submitted your complaint to a United Nations Committee you cannot send it to another one as well. The Human Rights Commission will be able to offer you advice on which Committee to send your complaint to.

For example, if you are a disabled prisoner who is unable to access information because of a hearing impairment and other prisoners can access this information, you may be being discriminated against because of your disability. If you have tried all ways possible to sort out your complaint in New Zealand including: going through the Department of Corrections’ complaints processes and complaining to the Office of the Ombudsman or Human Rights Commission; you can make a complaint to one of two United Nations Committees. You could make your complaint to the Subcommittee on Prevention of Torture using the Optional Protocol to the Convention against Torture (OPCAT) because you are complaining about a place of detention. Or you can send your complaint to the UN Disability Committee because it is a complaint about discrimination because of your disability. You should get advice before deciding which committee to send your complaint to.

There are 10 human rights treaty bodies monitoring the key international human rights treaties. These are listed in the following table along with the treaty they monitor. Most have an optional protocol, and some have more than one – these are noted in the third column. New Zealand has not ratified all the treaties and optional protocols listed and where this is the case, it is noted in the third column.

Table 1: Human Rights treaty bodies[[1]](#endnote-2)

|  |  |  |
| --- | --- | --- |
| Treaty body | Treaty | Optional Protocol |
| [Committee on the Elimination of Racial Discrimination (CERD)](http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIntro.aspx) | [Convention on the Elimination of All Forms of Racial Discrimination](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx) (UNCERD) | No optional protocol but has an Individual complaints procedure under the International CERD |
| [Human Rights Committee (CCPR)](http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx) | [International Covenant on Civil and Political Rights](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx) (UNCCPR) | 1. [Optional Protocol to the UNCCPR](http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx)
2. [Second Optional Protocol to the UNCCPR](https://en.wikipedia.org/wiki/Second_Optional_Protocol_to_the_International_Covenant_on_Civil_and_Political_Rights)
 |
| [Committee on Economic, Social and Cultural Rights (CESCR)](http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx) | [International Covenant on Economic, Social and Cultural Rights](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx) (UNCESCR) | Optional Protocol to UNCESCR – New Zealand has not ratified |
| [Committee on the Elimination of Discrimination Against Women (CEDAW)](http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx) | [Convention on the Elimination of All Forms of Discrimination against Women](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx) | [Optional Protocol to CEDAW](http://www.un.org/womenwatch/daw/cedaw/protocol/) |
| [Committee Against Torture (CAT)](http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIntro.aspx) and [Subcommittee on Prevention of Torture (SPT)](http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx) | [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx) (UNCAT) | [Optional Protocol to UNCAT](http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx)  |
| [Committee on the Rights of the Child (CRC)](http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx) | [Convention on the Rights of the Child (UNCRC)](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx) | 1. [Optional Protocol to the UNCRC on the involvement of children in armed conflict](https://childrenandarmedconflict.un.org/mandate/opac/)
2. [Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography](http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx)
3. Optional Protocol to UNCRC on a communications procedure – New Zealand has not ratified
 |
| [Committee on Migrant Workers (CMW)](http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIntro.aspx) | [International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx) (UNCMW) | No optional protocol – New Zealand has not ratified this Convention |
| [Committee on Enforced Disappearances (CED)](http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIntro.aspx) | [International Convention for the Protection of all Persons from Enforced Disappearance](http://www.ohchr.org/Documents/HRBodies/CED/OHCHR_Map_CPED.pdf) (UNCED) | No optional protocol – New Zealand has not ratified this Convention |
| Committee on the Rights of Persons with Disabilities (UN Disability Committee) | [Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html#Fulltext) (UNCRPD) | [Optional Protocol to the UNCRPD](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx) |

Decide which treaty you want to make your complaint under. You can only make a complaint under the treaties and optional protocols New Zealand has ratified. Once you have decided, then you need to approach that UN Committee. The steps you need to follow to make a complaint are on each Committee’s website.

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## What is the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities?

The CRPD is the parent treaty of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (CRPD-OP).

The CRPD-OP is an extra agreement to the CRPD. It gives disabled people a way to make complaints when they believe their rights under the CRPD have been abused or denied. A complaint can only be examined by the UN Disability Committee if all domestic remedies have been exhausted. This means that the individual or group has followed all the correct complaints processes in their own country, and still feel that their complaint has not been resolved.

The CRPD-OP lets individuals or groups who say they have had their rights under the CRPD breached make a complaint to the UN Disability Committee. The CRPD-OP also allows the Committee to examine complaints alleging very serious and continued abuse (grave and systematic violations) of the CRPD by countries that have ratified both the CRPD and CRPD-OP.

Article 2 of the CRPD-OP sets out the rules for a complaint to be examined by the UN Disability Committee. It says:

* you must give your name or the name of your group to the UN Disability Committee
* there must be a violation (abuse) of your rights under the CRPD – for example, this means you have not been treated the same as others because of your disability or have been discriminated against because of your disability
* the same situation has not already been examined or is not being examined by the UN Disability Committee or another international body which looks into complaints when human rights have been abused
* you must first try to resolve your complaint using your national law. For example, this could mean taking your case to the highest court or bringing the complaint to the Office of the Ombudsman or the Human Rights Review Tribunal. However, if you think this would take too long or not give you the right solution to your complaint you will need to give your reasons for this to the UN Disability Committee
* your complaint of an abuse of your rights must be based on facts and be genuine
* the complaint is about something that happened after a country has ratified the CRPD-OP or something that happened before a country ratified the CRPD-OP and is still happening.

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## Who can make a complaint?

Anyone can make a complaint to the UN Disability Committee. You can make a complaint if you have:

* been treated unfairly because of your disability; and
* tried all the ways to sort out the issue in New Zealand but still cannot get a solution to your problem.

Complaints can be submitted by or on behalf of individuals or groups of individuals (as long as the person/people have given their permission in writing).

A lawyer does not need to prepare your complaint to the UN Disability Committee. Please note that in New Zealand you cannot get legal aid for preparing and sending complaints using the CRPD-OP complaints process. However, Community Law Centres may be able to provide free legal information and support either through their own staff or through arrangements for referring clients to law firms which will not charge for their work.

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## When can a complaint be taken to the UN Disability Committee?

There is no time limit for sending a complaint to the UN Disability Committee. However, it is best that you send your complaint to them as soon as possible. Remember, you can only do this after you have tried to deal with your complaint using all the complaints processes available to you in New Zealand.

The UN Disability Committee will only accept a complaint if it is about an abuse of human rights that has happened in a country after the date it acceded to the CRPD-OP. If the abuse of rights started before the date the country agreed to the CRPD-OP and is still happening, the UN Disability Committee can still look into it. For example, if you are making a complaint about New Zealand, the issue you are complaining about must have occurred after the 4 November 2016, when the CRPD-OP came into force in New Zealand. However, if the issue you are complaining about started before this date and it is still happening, you can make a complaint to the UN Disability Committee.

### **Exhausting domestic remedies**

Before you make a complaint to the UN Disability Committee or any other UN Committee, you must have **exhausted all domestic remedies**. This means that you have tried to resolve your complaint with all the right agencies in New Zealand and, if allowable, have taken your complaint to a court or tribunal.

For example, if your complaint is about a government agency then you need to follow the complaints process of that particular agency. If you cannot sort out your problem by doing this, then you can ask that an Ombudsman or another suitable independent complaints-handling body look into your complaint. If your issue is still not resolved, then your next step might be to make a complaint using the CRPD-OP.

Another example is where you believe your human rights have been abused or denied because of your disability. If you think this has happened, you can make a complaint to the Human Rights Commission. You may then be invited to take part in a mediation process with the agency or organisation involved to try and resolve your complaint. If you and the organisation or agency are not able to resolve the complaint through mediation then you can take your complaint to the Human Rights Review Tribunal. If your issue is still not resolved, you then have the opportunity to make a complaint to the UN Disability Committee.

The UN Disability Committee will not normally examine complaints if all domestic remedies **have not** been exhausted. However, if you think this would take too long or not give you the right solution to your complaint you will need to give your reasons for this to the UN Disability Committee.

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Complaint Line

[Complaint Line](http://www.complaintline.org.nz/) is a useful online tool that can be used to find the correct agency to complain to or find an agency’s contact information. You can select the agency or category box (each of these boxes has a drop-down menu), or if you are unsure who you should contact, a third search box allows you to add a key search term.

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## How do I make a complaint to the UN Disability Committee?

The CRPD-OP tells you how to make a complaint to the UN Disability Committee. It also explains how an inquiry will be carried out into a complaint.

Your complaint must be sent in writing in one of the official languages of the United Nations – Arabic, English, French, Mandarin, Russian or Spanish.

It would help the Committee if you tell them which rights in the CRPD you believe have been violated or denied. There is a model complaint form online which you should use. A link to this form can be found at: [www.ohchr.org/EN/HRBodies/CRPD](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx) .

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## What does the UN Disability Committee do with a complaint?

When the UN Disability Committee receives your complaint, it will decide if a human rights abuse has or has not happened. This will take place in a private meeting of the UN Disability Committee. The UN Disability Committee usually meets twice a year.

If the UN Disability Committee decides an abuse of the CRPD has occurred it will examine the complaint. Once it has finished, it will decide what actions it believes the Government should take to correct the problem.

If the complaint is about an abuse that has happened in New Zealand, the UN Disability Committee will send its recommendations to the New Zealand Government and also to the person or group who has made the complaint. The Government will then have six months to send written explanations or statements to the UN Disability Committee about the complaint. It will also tell the UN Disability Committee about what it is doing to correct the problem (Article 3).

When the UN Disability Committee gets a complaint it can ask the country to take action right away if there is a risk that the victim(s) can be hurt permanently. Just because the UN Disability Committee decides to take action right away, it does not mean:

* it will be able to examine the complaint; or
* that the complaint will be upheld.

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## Grave and systematic violations of the CRPD

Sometimes the UN Disability Committee finds out about grave and systematic violations of the CRPD by a country that has ratified both the CRPD and the CRPD-OP. In other words, it discovers that very serious and continued abuse of human rights set out in the CRPD has happened. The UN Disability Committee can ask the country’s government to co-operate in an investigation on the information it has received and provide its comments on the matter.

Members of the UN Disability Committee may sometimes start an investigation into a serious abuse and can visit the country to find out what may have happened if it thinks this is needed.

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## Comments and recommendations

Once the UN Disability Committee has examined a complaint, it makes comments and recommendations to the country being complained about. Decisions made by the UN Disability Committee about a complaint are final and there is no right of appeal.

[To find out more about what complaints have been made to the UN Disability Committee](http://juris.ohchr.org/), and if they were accepted or rejected by the Committee for examination, visit: <http://juris.ohchr.org>.

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## Are the UN Disability Committee’s decisions binding?

The UN Disability Committee’s decisions are not legally binding. This means that a country does not have to do what the UN Disability Committee has asked them to do. But, if a country has signed a treaty then it should do what the Committee suggests unless it has a very good reason not to.

There are steps in place to check if countries have put the UN Disability Committee’s recommendations into action. These are known as follow-up procedures. The UN Disability Committee assumes that if a country has agreed to the CRPD-OP it will accept its findings and recommendations when an abuse of human rights has happened, and do its best to sort out the problem so that it won’t happen again.

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# Contact information

Human Rights Commission
Tel: 0800 496 877 (free phone)
Email: infoline@hrc.co.nz
Website: [www.hrc.co.nz](http://www.hrc.co.nz)
Fax: 09 377 3593 (attn: InfoLine)
TXT: 0210 236 4253
PO Box 10424, The Terrace, Wellington 6011

Ombudsman
Tel: 0800 802 602 (toll free)
Email: info@ombudsman.parliament.nz
Website: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)
Fax: 04 471 2254
PO Box 10152, Wellington 6143

Disabled People’s Organisations’ Coalition (DPO Coalition)
Email: us-dpo@groups.io

### DPO Coalition member organisations

Association of Blind Citizens of New Zealand Inc (Blind Citizens NZ)
**Tel:** 0800 222 694
**Email:** admin@abcnz.org.nz
**Website:** [www.blindcitizensnz.org.nz](http://www.blindcitizensnz.org.nz)

**Balance Aotearoa**Tel: +64 6 345 4488
Email: info@balance.org.nz
Website: [www.balance.org.nz](http://www.balance.org.nz)

Deaf Aotearoa

**Tel:** 0800 332 322
**Email:** national@deaf.org.nz
**Website:** [www.deaf.org.nz](http://www.deaf.org.nz)

**Disabled Persons Assembly (DPA)**

**Tel:** +64 4 801 9100
**Email:** info@dpa.org.nz
**Website:**  [www.dpa.org.nz](http://www.dpa.org.nz)

**Kāpō Māori Aotearoa**

**Tel:** 0800 770 990
**Email:** info@kapomaori.com
**Website:** [www.kapomaori.com](http://www.kapomaori.com)

**Muscular Dystrophy Association of New Zealand**

**Tel:** 0800 800 337
**Email:** info@mda.org.nz
**Website:** [www.mda.org.nz](http://www.mda.org.nz)

**People First New Zealand Inc**

**Tel:** 0800 206 070
**Email:** ask@peoplefirst.org.nz
**Website:** [www.peoplefirst.org.nz](http://www.peoplefirst.org.nz)

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# Appendices

# Resources and links

## IMM guides and information

### Making disability rights real leaflet

<https://www.hrc.co.nz/your-rights/people-disabilities/our-work/making-disability-rights-real/>

This short, plain language leaflet explains how New Zealand’s Independent Monitoring Mechanism (IMM) is made up and what it does.

### Reasonable accommodation of people with disabilities in New Zealand guide

<http://www.ombudsman.parliament.nz/resources-and-publications/guides/disability-rights-guides>

This guide assists disabled people to understand their rights to ask for reasonable accommodation. It also informs employers, state sector agencies, and other persons providing services to the public, of their obligation to provide reasonable accommodation to persons with disabilities where necessary.

## New Zealand

### Auckland Disability Law

<http://aucklanddisabilitylaw.org.nz>

Based in Auckland, Disability Law works to support disabled people living in the region to access legal services and information.

Complaint Line
<http://www.complaintline.org.nz/>

Complaint Line is an easy to use online tool to find out contact information about key disputes resolution and investigation agencies in New Zealand. It offers three ways to search for this information.

### Community Law Centres

<http://communitylaw.org.nz/our-law-centres/>

Community Law Centres offer free legal information throughout New Zealand.

The following links to information on Community Law website about the UNCRPD:

<http://communitylaw.org.nz/community-law-manual/chapter-15-disability-rights/rights-that-are-recognised-internationally-the-un-disability-convention/enforcing-your-rights-under-the-disability-convention/>

### Office for Disability Issues

<http://www.odi.govt.nz/>

The Office for Disability Issues is a strategic and whole-of-government focused policy group, located within the Ministry of Social Development. It provides dedicated policy support to the Minister for Disability Issues. This Office is also a focal point in government on disability issues.

## International

### IMM for Northern Ireland

[www.equality.ni.org](http://www.equality.ni.org)

The IMM for Northern Ireland have produced two helpful resources about the CRPD-OP. These are available in PDF format:

* Guide to making a complaint under the Convention
* A plain language version of the UN Convention on the Rights of Persons with Disabilities and Optional Protocol.

### International Disability Alliance (IDA) – Factsheet on the Optional Protocol to the CRPD

<https://www.internationaldisabilityalliance.org/resources/ida-factsheet-optional-protocol-crpd>

IDA have produced an in-depth factsheet on the process to making a complaint to the UN Disability Committee.

### United Nations Human Rights – Office of the High Commissioner

<http://www.ohchr.org/EN/>

Details international human rights bodies and treaties. It also offers a country’s overview under the tab ‘Human Rights by Country’.

* [UN Convention on the Rights of Persons with Disabilities (CRPD)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx) - https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx
* [Optional Protocol to the Convention on the Rights of Persons with Disabilities](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#4) (CRPD-OP) - <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#4>
* Ratification Status for New Zealand: <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=124&Lang=EN>

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# Glossary

Acceded Agreed to.

Binding That you have a duty to follow something you have agreed to.

Breached To have broken a law or promise.

Convention See **UN Convention.**

CRPD United Nations Convention on the Rights of Persons with Disabilities.

CRPD-OP Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities.

Mechanism A way or a tool to make a complaint.

Monitoring Check that the Government follows what the CRPD requires.

No right of appeal The decision made is a final one.

Optional Protocol An optional protocol is a treaty in its own right and is linked to a parent or main human rights treaty. It can either add to or complement its parent treaty.

Parent treaty A parent treaty is one of the 10 main human rights treaties. For example, the CRPD is the parent treaty to the CRPD-OP.

Ratify To formally approve.

Treaty A treaty is a written agreement or promise between two or more parties who agree to follow what the treaty sets out once it has been formally approved by them.

UN Convention In this Guide it means a human rights treaty.

Upheld To support the complaint because it is seen to be true.

Violation An abuse or breaking of something. In this document it means abusing human rights by not following or ignoring what has been set out in the CRPD. If a country ratifies a human rights convention it is making a promise to follow what is set out in the convention.

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[Document ends.]

1. Accessed 20/03/2018 United Nations Human Rights Office of the High Commissioner. View the ratification status by country or by treaty <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=124&Lang=EN> [↑](#endnote-ref-2)