

**KEY ISSUES AT GLOBAL AND REGIONAL LEVELS
IN THE PROCESS TOWARDS THE INTERNATIONAL CONVENTION
ON RIGHTS OF PERSONS WITH DISABILITIES**

Kozue Kay Nagata*

ABSTRACT

This paper is a review of the background and issues related to the decision by the international community to draft a new human rights convention for people with disabilities, at the 2nd session of the Ad Hoc Committee on an international convention to protect and promote the rights and dignity of persons with disabilities, held at New York in June 2003. It also includes a discussion on the recent initiatives taken by United Nations Economic and Social Commission for Asia and Pacific (ESCAP) at the regional level. The paper attempts to provide a link between recommendations and a new regional policy for action by governments and concerned stakeholders entitled 'The Biwako Millennium Framework for Action towards Inclusive, Barrier-free, and Rights-based Society for Persons with Disabilities in the Asia and Pacific Region (BMF)'. It introduces policies and priorities of the Bangkok draft that was adopted by ESCAP regional workshop for 'Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities' (Bangkok, 2003).

INTRODUCTION

A historical momentum is being witnessed this year in the global disability movement because of the following reasons. Firstly, the new Asia and Pacific Decade of Disabled Persons (2003-2013) has been initiated. Secondly, the international community after 15 years of efforts has taken a decision about drafting a 'Convention text' on rights of persons with disabilities and commissioned a 'Working Group'. Lastly, the Arab Region, under the auspices of the League of Arab States, will declare the 'Arab Decade of Disabled Persons' (2003-2012) at the end of this year. It follows the 'Asian and Pacific Decade' and the 'African Decade of Disabled Persons' (2000-2009).

WORLD PROGRAMME OF ACTION CONCERNING DISABLED PERSONS

The proclamation by United Nations General Assembly of the 'United Nations Decade of Disabled Persons' between 1983-1992 provided a time frame to implement the objectives of

'World Programme of Action' concerning disabled persons. Three main objectives of the Programme of Action were prevention, rehabilitation and equalisation of opportunities. This programme defined 'equality of persons with disabilities' as provision of equal opportunities. Equality is a dynamic concept that often develops in accordance with overall social development. Equalisation of opportunities is the process of promoting accessibility for people with disabilities to the systems in the society. The most fundamental element of accessibility is to promote full participation of persons with disabilities in decision-making. This that can be achieved by promoting self-help groups of persons with disabilities who can then lobby and influence governmental policies that affect their life.

DISABILITY PERSPECTIVE ON DEVELOPMENT AND HUMAN RIGHTS

The World Programme of Action provides the basis for a disability perspective to be integrated into development, in contrast with the earlier charitable approach towards persons with disabilities and the medical model with an emphasis on medical treatment and rehabilitation. The World Programme of Action represents a movement towards a human rights and development perspective. Equality is the fundamental concern of the Programme of Action and is strongly reflected in its objective of equalisation of opportunities. The Programme of Action does not see persons with disabilities as vulnerable, but as development agents for positive change. It directs special attention to social and environmental factors, that hamper progress in equalisation of opportunities including accessibility. When the World Programme of Action was formulated, protection of rights of persons with disabilities included relevant sections from 'Universal Declaration of Human Rights' and 'International Covenant on Human Rights', namely the 'International Covenant on Economic, Social and Cultural Rights' and the 'International Covenant on Civil and Political Rights'.

Parallel to this development, in June 1983, the ILO General Conference passed a sectoral convention on employment promotion (Convention No. 159 of the Vocational Rehabilitation and Employment of Disabled Persons) that came into force on 20 June 1985. It has been ratified by 68 ILO member states. This sectoral convention aims to ensure that vocational rehabilitation measures are made available to all categories of disabled persons and employment opportunities are promoted for disabled persons in the labour market. Based on the work of United Nations Educational, Scientific and Cultural Organisation (UNESCO), the Salamanca Statement and Framework for Action on Special Needs Education, was adopted by the World Conference on Special Needs Education: Access and Quality. This statement urges that governments adopt inclusive education as a policy or a law. Its framework for action defines special education needs as needs arising from disabilities or learning

difficulties and recommends that schools accommodate all children with child-centred and individual pedagogical methods.

HISTORY OF EVENTS LEADING TO THE NEW INTERNATIONAL CONVENTION

The first recommendation to elaborate on the rights of persons with disabilities was submitted at an international expert group meeting, held at Stockholm in August 1987. The meeting reviewed and evaluated the progress, achievements and barriers in implementing the World Programme of Action at the mid-point of the United Nations Decade of Disabled Persons (1983-2002). It then recommended that the General Assembly convene a special meeting on rights of persons with disabilities with the mandate to draft an international convention on elimination of all forms of discrimination against disabled persons and to protect their human rights. It was later ratified by its member states by the end of the Decade.

Both the 42nd session in 1987 and the 44th session in 1989 of the General Assembly had a draft text of convention of human rights of persons with disabilities that were submitted for consideration. But a majority of member states suggested that further studies and information gathering were needed before they were considered. However, in the light of the expert group's recommendations and the views expressed by non-governmental organisations and governments, the General Assembly decided that the 2nd half of the Decade should emphasise equalisation of opportunity as a major concern.

Simultaneously intergovernmental action on promoting equalisation of opportunities was considered in the 1990 session of Economic and Social Council of the United Nations. Thus, in May 1990, United Nations Commission of Social Development initiated work on standard technical rules on equalisation of opportunities for disabled persons. Effort to elaborate the rules was funded by voluntary contribution and included technical teams from all regions. These efforts resulted in the General Assembly resolution 48/96 on 20th December 1993, titled 'Standard Rules of the Equalisation of Opportunities for Persons with Disabilities (Standard Rules)', a UN document which ensures rights of persons with disabilities. While not legally binding, the Standard Rules incorporate human rights and reflect strong moral commitment of member states to achieve equalisation of opportunities for persons with disabilities. The 22 rules provide normative guidelines for policy-making and formulating a national policy. The Standard Rules have 4 chapters that include preconditions for equal participation, target areas for equal participation, implementing measures and monitoring mechanisms.

The monitoring mechanism is among the most radical aspects of the Standard Rules. Monitoring aims to ensure effective implementation of the rules. Monitoring also identifies

barriers and obstacles against successful implementation of Rules. Mr. Bengt Lindqvist (the special rapporteur appointed by the Secretary General of UN in March 1994) in his monitoring reports marked the need for a more focussed human rights perspective in the context of the Standard Rules, and directed greater attention to issues related to children with disabilities, gender and housing. He presented his views on options to complement the Standard Rules further with attention on human rights of persons with disabilities. A major development during his mandate was the decision of General Assembly in the resolution, 56/168 of 19 December 2001, to establish an Ad Hoc Committee to consider a comprehensive international convention to promote and protect rights and dignity of persons with disabilities. The report of the special rapporteur also noted that the process towards a convention might take several years and hence it was important to develop the disability dimension with regard to human rights of disabled persons within the existing United Nations human rights monitoring systems.

During the 56th session of the General Assembly in 2001, Vicente Fox Quesada, President of Mexico, presented a proposal to initiate a comprehensive and integral convention on the rights of persons with disabilities. The Mexico draft called for the international community to combat poverty and social exclusion of people with disabilities. He reaffirmed the interest of Mexico to lead the process and as a result the government of Mexico hosted an international expert group meeting at Mexico City in 2002. The Mexico Draft containing elements of the convention was then submitted at the first session of Ad Hoc Committee on 'Comprehensive and Integral Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities' in New York in July - August 2002. The first session of Ad Hoc Committee considered the Mexico draft and position papers for the convention submitted by China and the European Union. The outcome of the first session of the Committee was another General Assembly resolution 57/229 adopted by the 57th session of the General Assembly in 2002. The General Assembly resolution 57/229 provided guidance for further elaboration of a comprehensive convention at all levels. It invited all regional commissions of United Nations, such as ESCAP and ESCWA, and intergovernmental organisations such as Organisation of African Unity, or the League of Arab States, as well as non-governmental organisations and other stakeholders, to present suggestions and papers to the Ad Hoc Committee to be considered during the convention.

At the regional level, governments, ESCAP and non-governmental organisations worked together to implement the 'Agenda for Action' for the 'Asian and Pacific Decade of Disabled Persons' from 1993 to 2002. Through its resolution 58/4 of 22 May 2002, entitled 'Promoting an Inclusive, Barrier-free and Rights-based Society for People with Disabilities in the Asian and Pacific Region in the Twenty-first Century' the Commission extended the 'Asian and Pacific Decade' to 2003-2012. The Decade's action-oriented guidelines for ESCAP Member States, 'The Biwako Millennium Framework for Action towards Inclusive, Barrier-free and

Rights-based Society for Persons with Disabilities in Asia and the Pacific (BMF) urged governments in the ESCAP region to support and contribute to the work of the Ad Hoc Committee. In pursuance of the United Nations General Assembly resolutions and the regional mandate, ESCAP organised an expert group meeting in June 2003 to discuss the 'International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities'. The meeting's outcome was the 'Bangkok Recommendations', a comprehensive set of recommendations on the proposed convention. The 'Bangkok Recommendations' were presented at the second session of the Ad Hoc Committee, which was held at New York in June 2003.

During the 2nd session, the Ad Hoc Committee agreed to elaborate on the convention on disability and to establish a working group composed of 27 selected governments, 12 non-governmental organisations and 1 national human rights commission. This working group would prepare a draft for the convention to be the basis of negotiations at the next session of Ad Hoc Committee in 2004. Seven governmental positions were allocated to the Asian block excluding Australia and New Zealand that were included in other blocks. To date, 7 governments (China, India, Japan, Lebanon, Republic of Korea, Philippines and Thailand) had self-nominated for membership of the working group and were approved. From the Asian Block, two women representatives were nominated and approved for membership of the working group (Ms. Anuradha Mohit, Human Rights Commission, India and Ms. Venus Ilagan, President, Disabled Peoples International). Both attended the ESCAP regional workshop on 'Women and disability: Promoting full participation of women with disabilities in the process of elaboration on an international convention to promote and protect the rights and dignity of persons with disabilities', at Bangkok in August 2003. As gender was among the key issues in the Bangkok Recommendations, a group of women experts, most of whom were disabled, critically evaluated the recommendations from a gender perspective and developed a 'Statement of Recommendations'. This 'Statement of Recommendation' was used as a background paper along with the 'Bangkok Recommendations' during the regional expert group workshop in October 2003.

The regional expert group was held in order to formulate a full text version of the convention for people with disabilities, based on the Bangkok Recommendations. The draft text will be submitted to the working group to be held early next year, with copies forwarded to the United Nations Department of Economic and Social Affairs (UNDESA) and the Special Rapporteur on Disability. The draft of the convention is a well-formulated complete text, ready to be used by any government in the Asian and Pacific region with their own revisions if necessary. It is one of the few complete text versions of the draft convention like the Mexico draft. Already the Government of the Philippines has fully endorsed both the Bangkok Recommendations and the Bangkok Draft, instead of elaborating its own national version. The Bangkok draft was formulated by a group of regional experts on disability issues and

international human right lawyers. Representatives from all 7 countries of the working group participated in the process, as well as representatives of most of the region's major non-governmental organisations. A set of general recommendations about the principles of the Bangkok Draft will be submitted together with the Draft to the Working Group commissioned by the Ad Hoc Committee for their consideration. A full text of this Draft is available at <http://www.worldenable.net/bangkok2003/>

Furthermore the Bangkok Draft was critically evaluated and commented upon, by the forum of governmental delegates in Beijing in November 2003. This regional seminar on 'International Convention on Disability' was co-organised by ESCAP and the China Disabled People's Federation (CDPF) with financial support by the Chinese Government. This seminar invited governmental opinions on disability from the Asian and Pacific region, increased public awareness on the process towards the Convention, evaluated, commented on and supported the draft Convention text prepared by the October 2003 expert group from Bangkok. Over a dozen of governmental participants from the Asian and Pacific region attended it and developed a joint political statement entitled the 'Beijing Declaration' for expressing a collective determination and willingness to support the process towards the Convention. Non-governmental organisations and other civil society members also participated in the Seminar as observers.

About 50 participants from 22 countries and territories of the Asian and Pacific region attended it and adopted a joint Policy-oriented statement entitled "Beijing Declaration on the Elaboration of and iNternational Convention to Promote and protect the Rights and Dignity of Persons with Disabilities" for expressing a collective determination and willingness to support the process towards the Convention. NGOs and other civil society members also participated in the Seminar as observes. The Beijing Declaration will be submitted together with the Bangkok Draft to the Ad Hoc Committee and the Working Group

ELEMENTS OF THE BANGKOK DRAFT

The elements of draft convention include a preamble, basis of the convention and special articles. It highlights issues and priorities to be included in the Convention. Unlike existing human rights instruments, such as 'Convention on the Elimination of All Forms of Discrimination against Women' and 'Convention on the Rights of the Child', the proposed Convention involves populations defined based on disability. Unlike gender and age, disability has to be defined to identify who is disabled and who are to be covered under the convention. The Bangkok Draft adopted the conceptual framework of WHO's International Classification of Functioning, Disability and Health, that was endorsed by World Health Assembly in March 2002. In the International Classification of Functioning, Disability and Health, 'disability' is an umbrella term for an impairment of body's structure or function, limitation of activities or

restriction in participation. Disability is conceived as a dynamic interaction between health conditions and environmental and personal factors. The Bangkok Draft adopted more or less this concept.

The structure of the Bangkok Draft is very holistic covering all kinds of rights that are to be enjoyed by persons with disabilities, including civil and political rights, and socio-economic and cultural rights, as well as the principle of non-discrimination and equality. The structure of the draft is composed of a preamble, statement of objectives and general principles, scope/definitions, general obligations of the state, such as guarantee for equality and non-discrimination, guarantee of specific rights, other state obligations, monitoring mechanisms and miscellaneous provisions.

The main principles of Bangkok Draft are:

- the Convention should build on human rights laid down in the existing UN human rights treaties;
- Human Rights are universal, inter-related and inter-dependent and fully apply to people with disabilities;
- Pro-active state obligations to take legislative and administrative measures to ensure equality;
- The role of international cooperation in implementation of the Convention;
- Independent community living the inclusive services (e.g. inclusive education, etc)

The Bangkok Draft defines discrimination in all forms including direct, intended and unintended, hidden and systemic discrimination. Equality of opportunities was defined as freedom from any relevant restrictions or any limitations caused directly and indirectly by a disability, and include appropriate modifications, adjustments, or assistance, including affirmative actions, reasonable accommodations or special measures to provide barrier free access. The Draft also includes provision for full participation of people with disabilities in monitoring mechanisms, at international and national level.

LINK BETWEEN THE CONVENTION AND BIWAKO MILLENNIUM FRAMEWORK

As mentioned before, the 'Biwako Millennium Framework' was adopted as a set of policy guidelines for implementation of the new Asian and Pacific Decade of Disable Persons (2003-2012). It is a rights-based approach to disability issues in this region. In paragraph 53, it mentions that civil, cultural, economic, political and social rights of persons with disabilities

should be addressed and protected. In the same paragraph, it recommends that governments should support and contribute to the work of Ad Hoc Committee and they should include persons with disabilities and their organisations at the national, regional and international levels, for drafting and adopting the Convention. It is hoped that passing the Convention will ensure a strong consumer-influenced monitoring mechanism on the rights and responsibilities of persons with disabilities. By ratifying the Convention, governments are to adopt national laws and policies and review existing laws to protect the rights of person with disabilities, to ensure non-discrimination. Persons with disabilities will have equal access to their rights under such national laws or under the International Convention itself. Currently, more than 40 countries globally have adopted non-discrimination laws on disability, but only 9 countries in Asia and Pacific region have done so.

AFRICAN DECADE OF DISABLED PERSONS (2000-2009) AND ARAB DECADE OF DISABLED PERSONS (2003-2012): SOUTH-SOUTH DIALOGUE

The African Decade of Disabled People was an initiative of non-governmental organisations of Africa, in co-operation with governments and 'Organisation of African Unity'(OAU), now the 'African Union'. In a way, it replicates the practice of the first Asian and Pacific Decade of Disabled Persons, with the purpose of furthering the equalisation of opportunities of persons with disabilities. The period 2000-2009 was formally proclaimed the African Decade of Disabled Persons at the 72nd session of the OAU 'Council of Ministers' and at the 36th session of 'Assembly of the Heads of States' respectively, held in Lome, in June 2002. The goal of the decade is promoting awareness and commitment to full participation, equality and empowerment of persons with disabilities in Africa. Following the proclamation of the Decade, responsibility for organising the Decade was handed to the African Rehabilitation Institute (ARI) in Harare, in collaboration with the non-governmental Pan African Federation of Disabled Persons, the African Union of the Blind, and other regional entities of persons with disabilities.

The question of proclaiming the period 2003-2012 as the Arab Decade of Disabled Persons was first seriously considered at a meeting hosted by ESCWA in Beirut in October 2002, though the history of this Decade dates back to almost 10 years like the International Convention. A conference on 'Towards an Arab Decade of Disabled People' was co-organised by ESCWA and the League of Arab States, in collaboration with the government of Lebanon, Arab Organisation of Disabled People and other non-governmental organisations concerned with disability. More than 200 people attended the conference, including officials from 18 Arab countries. Plenary and workshop sessions identified recommendations that were unanimously adopted later at the closing session. They will be presented to the League of Arab States and

the Arab Ministers of Social Affairs for adoption and proclamation at the Arab Summit. It is envisaged that the Decade will be launched from the end of 2003 or early 2004.

As these parallel events indicate, a historical momentum is now evident in developing countries. It is also reflected in the fact that there was unanimous support to the Convention during this year. For the first time it also included a lot of support from many member states from less developed regions. As the process towards the Convention requires a consensus at global level, this kind of 'South-South' dialogue and collaboration will become more important for generating a unified stance. At the UN level, ESCAP and ESCWA are working together closely. Just prior to the ESCAP expert group meeting on the Convention in June 2003, a similar meeting was organised by ESCWA in May 2003 at Beirut and views from different regions were exchanged.

This review suggests that elaboration of an international convention on rights and dignity of persons can facilitate development of policy for people with disabilities in the context of national policies and existing laws and regulations. The process towards the Convention itself will contribute to boosting public awareness in line with proclamation of regional Decades, empower people with disabilities and enhance South-South dialogue among stakeholders. One is entering the new decade at regional and global level with a historical momentum. It is imperative for all to use this occasion to promote further advancement of persons with disabilities and create a truly barrier-free and rights based society for all people with and without disabilities at regional and global levels.

*UN ESCAP
6th Floor, UN Building, Rajadamnern Nok Avenue
Bangkok 10200, Thailand
nagata@un.org

From 1987 to 2002 the author served United Nations Economic and Social Commission for Western Asia as a social affairs officer in charge of the disability programme. In April 2003, she took up the position as a disability focal point of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). In the past she has served ILO as an expert on vocational rehabilitation and contributed to establishing a disability unit under the Department of Labour and Solidarity in Timor, Leste, under the United Nations Transitional Authority in East Timor.