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Specific groups and individuals: other vulnerable groups and individuals

Report of the United Nations High Commissioner for Human Rights on progress in the implementation of the recommendations contained in the study on the human rights of persons with disabilities

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In its resolution 2004/52, the Commission on Human Rights requested the Office of the High Commissioner for Human Rights to report to the Commission at its sixty-first session on progress in the implementation of the recommendations contained in the study on human rights and disability and on the achievement of the objectives set forth in the programme of work of the Office in relation to the human rights of persons with disabilities.

The study on “Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability” analyses the provisions of the six core human rights treaties from a disability perspective, and reviews the functioning of the United Nations human rights system in the context of disability. The study addresses a wide range of recommendations designed to enhance the future use of the United Nations human rights system in the context of disability. It is directed at States parties, the treaty-monitoring bodies, the Office of the High Commissioner for Human Rights, the Commission on Human Rights, national human rights institutions and civil society.

Since the publication of the study on disability in November 2002, several developments have contributed to raise the visibility of disability issues in international forums. The present report provides an overview of the progress made by the different stakeholders in implementing the recommendations addressed to them by the study on human rights and disability.

Introduction

1. The present report is submitted in accordance with Commission on Human Rights resolution 2004/52 of 20 April 2004, in which the Commission requested the Office of the High Commissioner for Human Rights (OHCHR) “to report to the Commission at its sixty-first session on progress in the implementation of the recommendations contained in the study on human rights and disability” presented at the fifty-eighth session of the Commission and “on the achievement of the objectives set forth in the programme of work of the Office in relation to the human rights of persons with disabilities” (see also E/CN.4/2003/88 and E/CN.4/2004/74).

2. The study on “Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability” (hereinafter, the study) focuses on the work carried out by the United Nations human rights treaty bodies to advance the equal effective enjoyment of human rights and fundamental freedoms by persons with disabilities. The study concludes that despite their considerable potential, the United Nations human rights treaties have not been fully used so far in the context of disability. In order to enhance the future use of the existing human rights treaties and mechanisms, the study addresses a wide range of recommendations to States parties, treaty bodies, the Office of the High Commissioner for Human Rights, the Commission on Human Rights, national human rights institutions and civil society. i[1] The Study is available on the OHCHR web site (www.ohchr.org/english/issues/disability/study.htm).

3. Since the publication of the study in November 2002, several developments have contributed to raising the visibility of disability issues in international forums. This greater attention to the needs of, and challenges faced by, persons with disabilities is best exemplified by the establishment by the General Assembly in its resolution 56/168 of an Ad Hoc Committee with the mandate of considering proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. ii[2] At its second session, in June 2003, the Ad Hoc Committee decided to start negotiations for the adoption of a new international treaty, and established a working group to prepare a draft text to be used as a basis for negotiations by

Member States and observers in the Ad Hoc Committee. The working group met in New York from 5 to 16 January 2004, and the draft text it prepared was considered by the Ad Hoc Committee at its third and fourth sessions.

G. Quinn and T. Degener, “ Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability”, HR/PUB/02/1, United Nations, New York and Geneva, 2002. For more detailed information on the content of the study, see E/CN.4/2002/18/Add.1.

General Assembly resolution 56/168 of 19 December 2001.

I. Implementation of the recommendations contained in the Study on human rights and disability

A. States

1. References to disability issues in States parties’ periodic report to the United Nations human rights treaties bodies

4. The study on disability acknowledges that States have started to treat disability as a broad human rights issue, and that references to the rights of disabled persons in States parties’ periodic reports have increased in recent years. However, the study also observes that only a few States report regularly on the situation affecting the rights of persons with disabilities, and that the amount and the quality of the information provided in the reports vary greatly from treaty to treaty. In order to improve State practice with regard to periodic reporting on disability issues, the study recommends that States increase their efforts to address thoroughly the question of the human rights of persons with disabilities in their periodic reports. It also suggests that in preparing their reports, States should consult more closely with disability NGOs - especially those established by and for persons with disabilities. Finally, the study encourages States to consider nominating persons with disabilities for election to the treaty-monitoring bodies.iii [3]

5. As of 30 November 2004, the following States provided information on measures adopted to implement these recommendations: Australia, Canada, Chile, Cuba, Japan, Mexico, Morocco, Philippines, Russian Federation and Thailand.

6. From the submissions received, and more generally from an analysis of the periodic reports submitted to treaty bodies after the publication of the study (November 2002), it appears that the study on disability is having an impact on the way in which States parties report on disability issues to treaty bodies. In general, it seems that disability is no longer regarded only as a medical issue, and that disabled persons have started to be viewed as holders of rights. References to the human rights of persons with disabilities in States parties’ reports have increased, and the quality of the information provided has improved. Furthermore, it also appears that States have commenced to collaborate more closely with national institutions and human rights/disability NGOs during their preparation and discussion of their periodic reports.

7. In its reply, the Russian Federation stated that, while it regards the study on disability as a useful source of information and reference aid for government officials, representatives of non-governmental organizations and scientific circles, it considers that the recommendations contained in this study are personal views of the authors of the document and entail no consequences for States parties to international multilateral human rights agreements. It also noted that it considers counterproductive for the work of the Commission for Social Development and that

of the Commission on Human Rights to overlap since that leads to the parallel making ... of enquiries concerning the rights of persons with disabilities.

8. The degree of attention that States devote to disability under the existing human rights instruments still varies from one treaty to another. While States parties tend to include reference to disability issues in their periodic reports to the Committee on the Rights of the Child and - to a lesser extent - to the Committee on Economic, Social and Cultural Rights, it appears from the study on human rights and disability that only a limited number of States refer to disability in their reports to treaty bodies.

(a) Committee on Economic, Social and Cultural Rights

9. Although States parties tend to refer to disability issues in their periodic reports to the Committee on Economic, Social and Cultural Rights (CESCR), the study on disability notes that coverage of disability issues in State party reports tends to be piecemeal. The study also notes that the rights-based language is seldom used in descriptions of measures to meet the needs of persons with disabilities, and that no reference is made in States parties' reports to the Committee's general comment No. 5 on persons with disabilities iv[4] or the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.v [5]

10. The replies received show that States have started to address the issue of disability under the International Covenant on Economic, Social and Cultural Rights in a more systematic way. The analysis of the reports examined by the Committee in the period 2002-2004 seems to confirm this trend. Almost all the reports included references to disability-related issues, and several of them included information on disability under more than one article. Although States seem to have started to apply the letter and the spirit of general comment No. 5 and the Standard Rules in the compilation of their periodic reports, only one report directly refers to these instruments.vi [6]

11. For example, the second periodic report of Trinidad and Tobago provides information on disability in several sections, and refers to the adoption of a National Policy on Persons with Disabilities, which seeks to integrate persons with disabilities into society. [7] The second periodic report submitted by Israel contains a detailed analysis of the 1998 Equal Rights for People with Disabilities Law and considers Israel's legislation and policies with regard to the accessibility of public buildings and means of transport, employment, housing, education and participation in cultural life. vii[8] Denmark's fourth periodic report refers to disability under several headings (i.e., right to social security) and under the general concept of protection to groups vulnerable to discrimination. viii[9] The third periodic report of Chile contains a comprehensive and detailed analysis of the measures adopted by the Government to promote the equal effective enjoyment of economic, social and cultural rights by persons with disabilities.ix [10]

(b) Human Rights Committee

12. The study on disability notes that, notwithstanding its potential in the context of disability, the International Covenant on Civil and Political Rights (ICCPR) remains underused as a human rights instrument for persons with disabilities. Although several States included information on disability in their periodic reports under the Covenant, references to disability were generally marginal, and tended to be made in connection to a limited number of articles. Often, information provided in State party reports refers to social benefits for families with children with disabilities or other welfare issues. Only a few periodic reports contain reference to disability issues in connection with forced institutionalization of persons with mental disabilities, treatment of disabled defendants and prisoners, voting rights, marriage and divorce law, immigration law and medical experimentation. An analysis of the reports examined by the Committee in 2002-2004 seems to confirm that trend.

Twenty-three of the 34 reports contain information regarding disability issues. The majority of these reports contains limited references to disability x[11] or focuses on welfare issues.xi [12]

13. Recent reports also provide examples of more thorough references. The fifth periodic report of Poland contains a detailed analysis of the measures adopted to allow persons with disabilities to exercise their right to vote. The report also provides information regarding the “Charter of Rights of the Disabled” and on other laws and regulations aimed to facilitate equal opportunities for persons with disabilities and their active participation in the community life. xii[13] The third periodic report of Portugal provides information on measures adopted to implement the right of persons with disabilities and their organizations to participate in the determination of policies aimed at promoting equality and eliminating all forms of discrimination against disabled persons. xiii[14] In its second periodic report, Israel included detailed information on measures adopted to provide alternatives to involuntary commitments of disabled persons to psychiatric hospitals, to provide suitable rehabilitative, vocational and educational treatment for disabled children and to ensure effective participation of persons with disabilities in the political, social, economic and social spheres. xiv[15] Thailand and Australia reported that their respective initial and fifth reports under the ICCPR will include information on the rights of persons with disabilities.

(c) Committee on the Elimination of Racial Discrimination

14. The study on disability recognizes that the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is of obvious relevance and use to persons who experience discrimination on account of a combination of their racial status and disability. The study shows that the many State party reports already contain references to disability. However, it also stresses that States usually do not regard disability as a separate ground for reporting (i.e. separate from race), but rather refer to disability as one of several prohibited grounds of distinction. A survey of the reports examined by the Committee on the Elimination of Racial Discrimination in the period 2002-2004 seems to confirm the main findings of the study. The majority of these reports contain references to disability issues, in particular with regard to the right to have access to adequate education, to social assistance, and to equal working opportunities. While in general terms disability continues to be enumerated as one of the possible grounds for discrimination, this analysis also shows that some States have commenced to report on disability as separate prohibited grounds of distinction.

15. Argentina’s eighteenth periodic report is one of the most elaborate reports in dealing with the issue of disability. xv[16] The National Advisory Committee for the Integration of the Disabled has implemented a plan of action to combat discrimination against persons with disabilities, and a working committee to ensure the implementation of the Inter-American Convention on the Elimination of All Forms of Discrimination Against People with Disabilities. Norway’s sixteenth periodic report cites several governmental initiatives in the field of immigration and disability, including the adoption of a Plan of Action for Persons with Disabilities, which highlights the special needs of persons with disabilities who have an immigrant or minority background. xvi[17] Spain’s seventeenth periodic report notes that members of the Roma population generally suffer higher rates of illness and disability than the rest of the population. xvii[18] The Government of Mexico reported that its next periodic report under CERD will contain a chapter concerning actions taken to combat disability-based discrimination.

(d) Committee on the Elimination of All Forms of Discrimination against Women

16. The study on disability observes that coverage of disability issues in reports to the Committee on the Elimination of Discrimination against Women (CEDAW) differs from one report to another.

The study also notes that the quality of information provided in State party reports is still far from reaching the benchmark for reporting on women with disabilities set under general recommendation No. 18 on disabled women, which requires States parties to provide information on the situation of women with disabilities in their reports, and highlights the need to take measures (including temporary special measures) to ensure that women with disabilities have equal access to education, employment, health services and social security. xviii[19] The vast majority of the State party reports examined in the period 2002-2004 contain references to disability. In most cases, these references are fairly brief. Information on women with disabilities is usually provided in the context of welfare, health, and employment legislation. Moreover, the issue of double discrimination on account of both disability and gender is seldom addressed in State party reports.

17. In the fifth periodic report of the Dominican Republic, disabled women are singled out as one of the most vulnerable and poorest strata of society. xix[20] Germany's fifth periodic report recognizes that disabled women are frequently exposed to double discrimination, and cites a number of legislative measures adopted to redress this situation. xx[21] In its fourth and fifth periodic reports, Japan states that the Government has set up a Government Action Plan for Persons with Disabilities, which aims to create a society in which every individual can actively participate. The plan encompasses strategies for public awareness raising as well as very concrete goals in securing the participation of disabled persons in the labour market, enrichment of family care services, the construction of welfare homes for the disabled, and the like. xxi[22] Yemen's fifth periodic report points to the correlation between disability and illiteracy, and informs that 95 per cent of the disabled women are illiterate. xxii[23] Chile reported that its fourth periodic report - not yet examined - contains a specific section on measures adopted to eliminate discrimination against women with disabilities.

(3) Committee against Torture

18. The study on disability notes that the potential of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) still remains underused in the context of disability. In some instances, and in particular in cases where NGOs have been involved in the drafting of State party reports, States include specific information on disability in their reports. In general, however, the issue of disability seems to receive minimal or no attention in the reports submitted to the Committee against Torture, notwithstanding the obvious relevance of this Convention to persons with disabilities, in particular those residing in institutionalized settings. An analysis of the reports submitted to the Committee in the period 2002-2004 seems to confirm that trend. Less than half of the reports examined by CAT during this period include references to persons with disabilities, and references to disability issues are in general quite brief. Disability is mainly discussed in the context of legislation pertaining to the involuntary treatment of mentally ill persons.

19. Some countries highlight their efforts in strengthening the rights of the individuals with mental disorders and in establishing legal safeguards circumscribing the conditions under which persons with mental disabilities may be subjected to physical restraint. For instance, Canada's fourth periodic report - not yet considered by the Committee - holds that the right of patients to refuse involuntary psychiatric treatment has been strengthened. xxiii[24] The third periodic report of Bulgaria includes information on the measures adopted to prevent compulsory institutionalization of persons with mental disabilities, training courses for nurses and prevention of physical ill-treatment, degrading attitudes and mental cruelty of patients held in mental health institutions. xxiv[25] The third periodic report of New Zealand provides information on the amendment of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and on the establishment of an independent monitoring body responsible for ensuring the implementation of the National Mental Health Strategy. xxv[26] The third periodic report of Cyprus includes a detailed analysis of the

Psychiatric Treatment Law 1997. xxvi[27] In its second periodic report, Iceland provides detailed information on constraining measures applied in psychiatric hospitals, as well as an analysis of the Legal Competence Act. [28]

(f) Committee on the Rights of the Child

20. The study on disability notes that, in general terms, States parties tend to report regularly on measures taken to implement the Convention on the Rights of the Child with regard to children with disabilities. In this regard, the study acknowledges the inclusion of a dedicated article on disabled children in the Convention and the request for specific information on children with disabilities in the reporting guidelines of the Committee have undoubtedly contributed to raising attention on disability issues under the Convention. The study also recognizes the important contribution provided by the NGO Rights of Disabled Children (RDC), which routinely provides country-related information to treaty bodies regarding the implementation of the Convention at the national level. Nonetheless, the study observes that not all States parties adhere strictly to the letter and the spirit of the Committee's reporting guidelines, which require them to identify problems and barriers to implementation. The study concludes that States "should report more fully on children with disabilities under the CRC", and "should do so under all the rights protected and not just under article 23".xxvii [29]

21. Recent reports examined by the Committee on the Rights of the Child seem to confirm the analysis made in the study. All the reports contain references to disability issues, but in most of the cases this information is only provided under article 2 (on non-discrimination) and article 23 (on the rights of disabled children). xxviii[30] Only a limited number of reports refer to the rights of disabled children under different articles of the Convention. For example, the second periodic report of Kyrgyzstan refers to children with disabilities in the sections relating to general measures of implementation, non-discrimination, recovery of maintenance for the child, health care and health-care services, social security, education, leisure, recreation and cultural activities and physical and psychological recovery and social reintegration. xxix[31] Japan's second periodic report provides information on the Disabled Persons Fundamental Law, and contains a lengthy and detailed section on children with disabilities, containing detailed statistical data on access to inclusive education, employment and vocational training. [32]

2. Involvement/consultation of disability NGOs and national institutions in the drafting of States parties' periodic reports

22. In order to increase attention to disability issues under the core human rights treaties, the study on human rights and disability suggests that States involve civil society organizations and - where they exist - national human rights institutions (NIs) in the drafting of periodic reports under the human rights treaties to which they are parties. An increasing number of States have started to prepare periodic reports in consultation with civil society organizations and/or NIs.

23. Canada reported that in the preparation of periodic reports the Government routinely invites the views of NGOs, including organizations working with persons with disabilities. Australia and Japan informed that they are currently seeking information and opinions from various sectors of civil society (including disability NGOs) for the preparation of their periodic reports under ICCPR and ICESCR, and under ICCPR and CAT, respectively. Mexico reported that reports to human rights treaty bodies are usually prepared with the collaboration of independent experts or academic institutions, and in consultation with civil society organizations and human rights institutions. The Russian Federation informed that draft periodic reports are discussed at sessions of interdepartmental commissions, whose members include representatives of ministries and departments, and non-governmental organizations.

24. Other States - without referring expressly to the preparation of reports to the treaty bodies - have indicated that they consult with disability organizations in developing policies and strategies in the context of disability. For instance, Morocco reported that persons with disabilities, their families and their organizations actively participate in carrying out at the local level a general programme on community-based rehabilitation launched in Morocco in October 1995 with the support of several United Nations agencies and programmes (UNDP; ILO; WHO). The Philippines reported that persons with disabilities and their organizations are represented in the National Anti-Poverty Commission (NAPC) and the National Council for the Welfare of Disabled Persons (NCWDP). Thailand recalled that the 1991 Rehabilitation of the Disabled Act is the result of “cooperative efforts between Government agencies, NGOs, organizations of/for persons with disabilities and persons with disabilities themselves”.

25. Some of the submissions received also expressed support for an active participation of persons with disabilities, NGOs and national institutions in the work of the Ad Hoc Committee established by the General Assembly to elaborate a new international convention on the rights and dignity of persons with disabilities. xxx[33] Australia expressed its commitment to the development of such a new convention, and reported that it has included representatives of disability NGOs and the Human Rights and Equal Opportunity Commission - Australia’s national human rights institution - in its official delegations to sessions of the Ad Hoc Committee. Japan reported that the Government also consults with representative organizations of persons with disabilities with regard to its position on the proposed new convention, and since the second session of the Ad Hoc Committee its delegation includes a person with a disability.

Australia ; Japan; Mexico; Thailand.

B. Treaty bodies

26. The study on human rights and disability commends the treaty monitoring committees for the work they have carried out so far on the issue of disability, notwithstanding their limited resources and the obvious need to deal with a wide range of issues and groups. In the spirit of assisting treaty bodies to further enhance attention to disability issues in their work, the study recommends that the treaty-monitoring bodies: (a) emulate the Committee on Economic, Social and Cultural Rights (CESCR) and consider adopting general comments and recommendations on the nature of State obligations in the context of disability; (b) organize - as the CRC did in 1997 - a thematic day of discussion on disability; (c) take into account the concerns of persons with disabilities in their lists of issues; (d) refer to disability issues in the dialogue with States parties; and (e) refer systematically to disability in their concluding observations/comments and recommendations.

27. From an analysis of the work carried out by treaty bodies after the publication of the study (November 2002), it appears that, overall, the study on disability has for the time being only determined a moderate improvement on the way in which treaty bodies address the issue of disability in the context of their activities.

28. In the period 2002-2004, treaty bodies have adopted 10 new general comments or recommendations. No general comment or recommendation has been specifically devoted to the human rights of persons with disabilities. However, five of them include references - usually very brief - to persons with disabilities as one of the groups particularly vulnerable to discrimination.

29. For example, CESCR general comment No. 15 on the right to water re-states the obligation of States parties to guarantee the enjoyment of the right to water without discrimination on the ground - inter alia - of physical or mental disability, and the need to give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including

persons with disabilities. xxxi[34] CEDAW general recommendation No. 25 on temporary special measures refers to women with disabilities as one of the groups that may suffer from multiple forms of discrimination. xxxii[35] CRC general comment No. 4 on adolescent health and development in the context of the Convention on the Rights of the Child contains several references to children with disabilities as one of the groups of children particularly vulnerable to discrimination in the access to prevention campaigns, treatment, care and services and to various forms of violence and abuse. xxxiii[36] CRC general comments No. 3 on HIV/AIDS and the rights of the children xxxiv[37] and No. 5 on general measures of implementation for the Convention on the Rights of the Child also contain references to children with disabilities. xxxv[38]

30. Four general discussions have been organized in the period 2002-2004 by CRC and CERD, but none of them focused on disability-related issues. The issue of disability was only raised during the thematic discussion held in 2004 by CERD on “Non-citizens and racial discrimination” by one of the participants, who referred to the simplified naturalization process introduced for certain categories of aliens, including persons with disabilities, by the Government of Estonia. xxxvi [39]

31. The extent to which treaty bodies refer to disability issues during the process of examination of State reports varies from one committee to another. With the exception of the Committee on the Rights of the Child and, to a lesser extent, the Committee on Economic, Social and Cultural Rights, disability issues are seldom included in the list of issues and in the concluding observations or recommendations issued by treaty bodies.

32. CESCR often includes references to disability issues in its list of issues and concluding observations. For example, the major part of the lists of issues prepared by the Committee in 2002-2004 included at least one question relating to persons with disabilities. The Committee asked Greece to provide information about employment of persons with special needs - including persons with disabilities - in the private and public sectors, and about education for children with disabilities. xxxvii[40] With regard to the third periodic report of Chile, the Committee requested information on measures taken to implement the Act on Disability and related regulations. xxxviii[41] With regard to concluding observations, the Committee expressed its concerns on the large number of children placed in institutions in the Republic of Moldova, “especially those with slight mental disabilities”. xxxix[42] With regard to the third periodic report of Luxembourg, the Committee noted with concern that a draft law concerning the integration of persons with disabilities into the labour market had still not been adopted. xl[43] The Committee urged Guatemala to adopt measures to address the needs of persons with disabilities by formulating adequate implementation measures in this area, and recommended that the State party provide in its next periodic report detailed information on measures taken and the results obtained. xli [44]

33. Disability issues do not figure prominently in the list of issues and in the concluding observations adopted by the Human Rights Committee. In the period 2002-2004, the Committee requested further information on disability in its list of issues only on a few occasions, with regard to the periodic reports of Belgium, xlii[45] Latvia , xliii[46] Estonia, xliv[47] Sweden and xlv[48] New Zealand . xlv[49] In all cases, questions posed by the Committee were related to the involuntary placement and treatment of persons with disabilities in psychiatric institutions. Similarly, the Committee refers to disability only with regard to a few reports, including the second periodic report of Estonia, where it recommended that Estonia ensure that the administrative procedure related to the detention of a person for mental health reasons comply with article 9 of the Covenant, xlvii[50] and the fourth periodic report of Belgium, in which the Committee expressed concerns about the practice of keeping mentally-ill people in prisons and psychiatric annexes to prisons, and requested to provide mental patients with care and protection. [51]

34. Only on one occasion has the Committee on the Elimination of Racial Discrimination (CERD) referred to disability in its concluding observations. In its concluding observations on the fifth report of Estonia, the Committee welcomed the fact that naturalization procedures have been facilitated for persons with disabilities.xlviii [52]

35. The Committee on the Elimination of Discrimination against Women does not often include references to women with disabilities in its list of issues. Examples of issues raised by the Committee include requests for information about the inclusion of disabled women in poverty reduction programmes xlix[53] or measures adopted to support women with disabilities who have suffered sexual abuse. l[54] With regard to concluding comments, the Committee has sometimes referred to disability in the comments it has issued during its twenty-sixth to thirty-first sessions. For example, in its concluding comments on the fourth and fifth periodic reports of Ethiopia, the Committee noted with concern the lack of information on the situation of disabled women, and requested the State party to provide in its next report disaggregated data and information on the situation of women with disabilities. li[55] With regard to the fifth periodic report of New Zealand, the Committee recommended the adoption of appropriate measures to combat discrimination against disabled women, and recommended in particular that the State party pay attention to the situation of disabled married women with a view to ensuring their economic independence. [56]

36. In its analysis of the work carried out by the Committee against Torture (CAT) in the context of disability, the study notes that “the problems of disabled inmates of institutions (including prisons) have seldom been referred to in the Committee’s conclusions and recommendations”. lii[57] This conclusion is confirmed by the concluding observations adopted by CAT in the last biennium. A notable exception are the Committee’s concluding observations on Bulgaria’s third periodic report, in which the Committee voices concerns regarding the poor conditions in homes for persons with mental disabilities and criticizes the failure of the authorities in addressing this situation.liii [58]

37. Disability-related issues were systematically addressed in the list of issues and included in almost all the concluding observations adopted by the Committee on the Rights of the Child (CRC) during its twenty-ninth to thirty-seventh sessions. In all cases, the Committee included references to disabled children in its lists of issues, either in the form of requests for additional data on total and disaggregated numbers of disabled children in the country under scrutiny or on programmes and services for children with disabilities (i.e. health-care services, educational facilities, etc.). Examples of issues raised by the Committee in its concluding observations include the concerns the Committee expressed about the very poor conditions of children with disabilities in Brazil, their lack of integration in schools and society and the existence of societal discriminatory attitudes towards them. [59] The concluding observations adopted on the second periodic report of Myanmar raised concerns about the lack of statistical data and of a comprehensive policy for disabled children, and recommended several actions to be taken to ensure equal opportunities for disabled children.liv [60]

38. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention). It is the newest treaty body, and it held its first session in March 2004. The provisional reporting guidelines for initial reports adopted by CMW in October 2004 do not request any disability-related information. CMW has not yet reviewed any State party report. The Convention does not include any explicit reference to persons with disabilities, but it clearly provides protection to those disabled persons that may be subject to discrimination on account of both their physical or mental status and their condition as migrant workers.

C. Commission on Human Rights

39. The disability study acknowledges that the Commission on Human Rights has begun to devote a growing attention to the issue of the human rights of persons with disabilities, and recommends that it enhances the process of mainstreaming disability as a human rights issue by (a) setting aside a thematic day of discussion on disability and human rights, and (b) appointing a special rapporteur on the human rights of persons with disabilities. Since the publication of the study, the Commission on Human Rights has adopted annually a resolution on the human rights of persons with disabilities, which had previously been adopted every two years. The publication of the study may be among a series of factors - which include, in particular, the establishment of an Ad Hoc Committee to negotiate a new convention on the rights and dignity of persons with disabilities - that have contributed to raise the visibility of disability in the human rights agenda.

D. National human rights institutions

40. The study on disability acknowledges the active involvement of national human rights institutions (NIs) in the issue of human rights and disability, and encourages them to strengthen their work on this issue by raising awareness on the rights of disabled persons at the national level and by monitoring compliance by their Government with the human rights treaties it has ratified. In particular, the study on disability recommends that NIs form a working group on disability and human rights, which would enable them to deepen their understanding of disability as a human rights issue and to engage in useful exchanges of experience. Information for the preparation of this report was received from the following NIs: the Danish Institute for Human Rights; the Hong Kong Equal Opportunities Commission; the National Human Rights Commission of Mexico; the Human Rights Commission of New Zealand; the Norwegian Centre for Human Rights; and the Swedish Disability Ombudsman.

41. Some NIs already participate in the preparation of periodic reports to the human rights monitoring committees by providing comments and input to their Governments. The Hong Kong Equal Opportunities Commission (HKEOC), for example, reported that it provides inputs for the preparation of its Government's periodic reports to United Nations treaty bodies, including HKEOC's figures on disability discrimination complaints handled, information on promotional and educational activities and an assessment of the Government's compliance with its obligations under the relevant human rights instrument. The Swedish Disability Ombudsman expressed his willingness to participate in the preparation of Sweden's reports under the human rights treaties it has ratified, but reported that so far he has never been invited to take part in such a process.

42. Some NIs expressed their intention to participate in the reporting procedure by providing information to the United Nations treaty bodies. For example, the Danish Institute informed that it is participating - along with a network of organizations dealing with children's rights - in the drafting of a supplementary report to the Committee on the Rights of the Child. The Institute has created a committee of organizations representing groups vulnerable to discrimination, which will be involved in the future in the preparation of supplementary reports to the relevant United Nations committees. The Swedish Disability Ombudsman reported that he does not have a mandate to submit information to the treaty-monitoring committees in his own capacity.

43. Most of the responding NIs report to be closely involved in the ongoing discussion on the proposed new convention on the human rights of persons with disabilities. The Norwegian Centre for Human Rights, for example, follows closely the various activities organized at the European level with regard to the proposed new convention. As recommended in the study on disability, several NIs participate in working groups or other initiatives relating to the proposed new

convention. The Swedish Ombudsman reported that national institutions cooperate on this issue within the framework of the International Coordinating Committee of National Institutions (ICC). The Human Rights Commission of New Zealand is a member of the Disability Working Group of the Asia-Pacific Forum of National Institutions (APF), which contributes to the work of the Ad Hoc Committee by providing comments and suggestions on several aspects of the proposed new treaty.

E. Civil society

44. The study on disability notes that disability non-governmental organizations (NGOs) have expertise on issues relating to disability and human rights, but often fail to engage with the human rights system. According to the study, the experience of Rights of Disabled Children, an NGO which provides regularly country-based information to CRC on the situation of children with disabilities, shows the important role that NGOs - in particular those established by persons with disabilities - could play in the promotion and protection of the rights and dignity of persons with disabilities. Therefore, the study recommends that disability NGOs contribute more actively to the monitoring activities carried out by treaty bodies. In order to achieve this goal, the study suggests creating “a new kind of disability NGO - or amalgam of NGOs - with a clear mandate to monitor human rights developments around the world as they affect persons with disabilities”. **iv[61]**

45. The following NGOs have provided information: Disability Rights Promotion International (DRPI); Landmine Survivors Network (LSN); and the World Network of Users and Survivors of Psychiatry (WNUSP). The few replies received, and more generally, a lack of involvement in the monitoring activities carried out by treaty bodies, seems to suggest that disability NGOs are still not fully aware of the potential of existing human rights treaties in promoting and protecting the rights of persons with disabilities. This may be due to a lack of resources necessary to engage more effectively with the human rights system, and can also be due to the need of using limited resources for ensuring participation in other international activities, like the discussion concerning the adoption on the proposed new convention on disability.

46. Disability Rights Promotion International (DRPI) is a project aimed to build capacity among disability and traditional human rights NGOs to monitor the human rights of persons with disabilities and to use the information acquired to engage with the international human rights system. Landmine Survivors' Network (LSN) informed that the organization is not directly engaged in monitoring States compliance with their human rights obligations towards disabled persons. However, LSN's activities - consisting in developing human rights education materials and providing human rights education training sessions for disability activists and disabled persons' organizations in various countries - aim at building the capacity of other disability groups, and in particular grass-roots disability organizations, to become involved in monitoring and reporting. WNUSP reported that its member associations do not participate in the treaty-reporting process in their countries, and acknowledged that “this points to a need to pay greater attention to capacity-building in this regard”.

47. LSN and WNUSP expressed their strong support for the adoption of a new international convention on the rights of persons with disabilities. With respect to the study's recommendation that disability NGOs strengthen their collaboration with traditional human rights NGOs, LSN reported that it coordinates a Geneva-based working group focusing on the issue of possible monitoring mechanisms for the new disability treaty. WNUSP reported that its general assembly, held in July 2004, adopted a resolution on new disability convention calling on the organization to work towards the achievement of the following goals: (a) reference in the treaty to the user/survivor concerns, including self-determination and the right to make decisions; (b) inclusion of specific provisions aimed at guaranteeing such rights as the right to be recognized everywhere as a person

before the law, the right to refuse involuntary hospitalization or institutionalization, and the right to be free from forced treatment.

II. OHCHR programme of work on the human rights of persons with disabilities

48. OHCHR considers that its action in the field of the promotion and protection of human rights of persons with disabilities should remain tri-dimensional (multi-track approach), and focus on:

- Encouraging the integration of disability issues in the activities of treaty bodies and human rights extra-conventional mechanisms, including facilitating the contribution of national human rights institutions, NGOs, and United Nations agencies with a mandate on disability to the work of the human rights treaty-monitoring bodies;
- Providing technical support to the elaboration of a international convention on the rights and dignity of persons with disabilities; and
- Reinforcing social development efforts in the field of disability, through assistance and support to the Special Rapporteur on disability of the Commission for Social Development.

49. During 2004, OHCHR has continued its efforts to disseminate the study on human rights and disability to States, national institutions, disability and human rights NGOs, academic institutions and disability advocates. To make information concerning the possible use of the existing human rights machinery available to the general public, OHCHR prepared a “Fact Sheet on human rights and disability” to present in concise and non-technical language the main findings of the study. The Fact Sheet, which will be published in 2005, also aims to facilitate the submission of disability-related information to the treaty bodies by disability NGOs, national human rights institutions and specialized agencies of the United Nations.

50. As requested by the General Assembly lvi[62] and the Commission on Human Rights, lvii[63] the Office continued in 2004 to provide support to the Ad Hoc Committee on a comprehensive and integral international convention on the rights and dignity of persons with disabilities, in close collaboration and coordination with the Division for Social Policy and Development of the Department of Economic and Social Affairs, which acts as the substantive secretariat of the Ad Hoc Committee. OHCHR took part in the session of the Working Group established by the Ad Hoc Committee “with the aim of preparing and presenting a draft text which would be the basis for negotiation by Member States and Observers at the Ad Hoc Committee of the draft convention” [64] (New York, 5-16 January 2004). The Office also attended the third and fourth sessions of the Ad Hoc Committee, which took place in New York on 24 May-4 June and 23 August-3 September 2004, and provided technical advice on procedural and substantial issues, as requested, to the States and Observers participating in the discussion.

51. OHCHR collaborates with other United Nations agencies and bodies with a mandate on disability issues. The Office works closely with the International Labour Organization (ILO) and the World Health Organization (WHO), and maintains working relations with other international agencies such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children’s Fund (UNICEF) and the World Bank. In 2004, the Office continued to organize informal meetings on human rights and disability with other Geneva-based United Nations agencies/bodies and civil society organizations. These informal meetings aim to enhance collaboration and exchange of information on disability-related issues, and to coordinate initiatives regarding the proposed new convention. OHCHR also attended the annual informal consultation of United Nations agencies working in the field of disability, which took place at UNESCO Headquarters in Paris on 26 March 2004.

52. The Office provides support and assistance to the Special Rapporteur on disability of the Commission for Social Development, Ms. Al-Thani, in her efforts to promote the implementation of the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities. In December 2003, OHCHR attended an expert meeting organized by the Special Rapporteur in Doha (Qatar) to discuss the relationship between the Standard Rules and the proposed convention on disability. The Office also provides assistance and support to the Special Rapporteur during her visit to Geneva to participate in the sixtieth session of the Commission on Human Rights.

III. Conclusions and recommendations

53. Since the publication of the study in 2002, there have been some encouraging developments in the way in which disability issues are addressed within the human rights treaty system. The implementation of the recommendations contained in the study on disability could undoubtedly contribute to increasing the attention devoted to disability under existing human rights mechanisms and should therefore be carefully considered by States, treaty bodies, national institutions, non-governmental organizations and other relevant actors - including relevant United Nations bodies, agencies and programmes.

54. States have started to treat disability as a broad human rights issue, and references to the rights of disabled persons in State parties' periodic reports have increased in recent years. There are positive examples of collaboration between States and national institutions and human rights/disability NGOs during their preparation and discussion of State party periodic reports. However, the degree of attention that States devote to disability under the existing human rights instruments varies from one treaty to another. It is vital that States refer more systematically to the human rights of persons with disabilities when complying with their reporting obligations. In particular, greater attention to disability issues under ICCPR and CAT is necessary to ensure the promotion and protection of the civil and political rights of persons with disabilities.

55. This report contains several examples of the work carried out by the treaty bodies in the context of disability in the period 2002-2004. The increase in the attention to disability issues in treaty bodies' general comments and recommendations is encouraging. However, it would be important that these references be more systematic, and focus on the specific situation and needs of persons with disabilities rather than dealing with persons with disabilities as one of the groups particularly vulnerable to discrimination. There is still room for improvement with regard to the attention to disability in their lists of issues and concluding observations/comments. As suggested in the study, the Organization of thematic discussions on disability could contribute to increase attention to the rights of disabled persons under each treaty and clarify the content of relevant human rights standards with regard to this category of individuals.

56. Several national human rights institutions already participate in the preparation of State reports by providing comments and input to the relevant departments in charge for their elaboration. NIs have an important role to play in ensuring the implementation of international human rights treaties at the national level, and should be encouraged to continue - and if possible, enhance - their collaboration with Governments and civil society organizations. They should also be encouraged to enhance their level of contributions to the work of existing human rights treaty bodies.

57. Despite some positive examples of the work carried out by disability non-governmental organizations (NGOs) in raising awareness on the potential of existing human rights treaties in the context of disability, the level of NGO cooperation with treaty monitoring bodies still seems to be limited (with the exception of CRC). Disability NGOs should be encouraged to enhance their contribution to the treaty body monitoring process.

58. OHCHR supports the elaboration of a new international convention to promote and protect the rights and dignity of persons with disabilities, and considers that such an instrument could strengthen the protection already afforded by existing human rights treaties by tailoring existing human rights and standards to the particular situation and needs of persons with disabilities. OHCHR welcomes the valuable contribution offered by national human rights institutions and civil society organizations to this process, and would like to encourage their continuing active and meaningful participation in discussions on the proposed new treaty.

Notes

lviii[1] G. Quinn and T. Degener, “ Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability”, HR/PUB/02/1, United Nations, New York and Geneva, 2002. For more detailed information on the content of the study, see E/CN.4/2002/18/Add.1.

lix[2] General Assembly resolution 56/168 of 19 December 2001.

[3] G. Quinn and T. Degener, “ Human rights and disability”, p. 177.

[4] CESCR general comment No. 5 on persons with disabilities, 1994.

[5] Adopted by General Assembly resolution 48/96 of 20 December 1993.

[6] Third periodic report submitted by Chile (E/1994/104/Add.26, paras. 70 and 72). The initial report submitted by the Slovak Republic states that in the preparation of the report, the drafters have used “the extensive documentation of the Committee, recommendations adopted by the Committee and general comment s, which have been of invaluable assistance” (E/1990/5/Add.49, para. 174).

[7] E/1990/6/Add.30.

[8] E/1990/6/Add.32.

[9] E/C.12/4/Add.12.

[10] E/1994/104/Add.26.

[11] CCPR/C/BEN/2004/1; CCPR/C/FIN/2003/5; CCPR/C/MAR/2004/5; CCPR/C/SEMO/2003/1; CCPR/C/COL/2002/5; CCPR/C/LKA/2002/4; CCPR/C/GEO/2000/2; CCPR/C/SWE/2000/5.

[12] CCPR/C/ALB/2004/1; CCPR/C/BEL/2003/4; CCPR/C/LVA/2002/2; CCPR/C/EGY/2001/3; CCPR/C/YEM/2001/3.

[13] CCPR/C/POL/2004/5.

[14] CCPR/C/PRT/2002/3.

[15] CCPR/C/ISR/2001/2.

[16] CERD/C/476/Add.2.

[17] CERD/C/430/Add.2.

- [18] CERD/C/431/Add.17.
- [19] CEDAW general recommendation No. 18, on disabled women, 1991.
- [20] CEDAW/C/DOM/5.
- [21] CEDAW/C/DEU/5.
- [22] CEDAW/C/JPN/4; and CEDAW/C/JPN/5.
- [23] CEDAW/C/YEM/5.
- [24] CAT/C/55/Add.8.
- [25] CAT/C/34/Add.16.
- [26] CAT/C/49/Add.3.
- [27] CAT/C/54/Add.2.
- [28] CAT/C/59/Add.2.
- [29] G. Quinn and T. Degener, “ Human rights and disability”, p. 140.
- [30] See for example CRC/C/70/Add.23; CRC/C/11/Add.26; CRC/C/8/Add.49; CRC/C/83/Add.7.
- [31] CRC/C/104/Add.4.
- [32] CRC/C/104/Add.2.
- [33] Australia ; Japan; Mexico; Thailand.
- [34] CESCR general comment No. 15, on the right to water, 2003.
- [35] Committee on the Elimination of Discrimination against Women, general recommendation No. 25, on temporary special measures, 2004.
- [36] Committee on the Rights of the Child, general comment No. 4, on adolescent health and development in the context of the Convention on the Rights of the Child, 2003.
- [37] CRC, general comment No. 3, on HIV/AIDS and the rights of the children, 2003.
- [38] CRC, general comment No. 5, on general measures of implementation for the Convention on the Rights of the Child, 2003.
- [39] Committee on the Elimination of Racial Discrimination, thematic discussion on “non-citizens and racial discrimination”, (CERD/C/2004/SR.1624), 1-2 March 2004.
- [40] E/C.12/Q/GRC/1.
- [41] E/C.12/Q/CHL/1.

- [42] E/C.12/1/Add.91.
- [43] E/C.12/1/Add.86.
- [44] E/C.12/1/Add.93.
- [45] CCPR/C/80/L/BEL.
- [46] CCPR/C/79/L/LVA.
- [47] CCPR/C/77/L/EST.
- [48] CCPR/C/74/L/SWE.
- [49] CCPR/C/NZL/2001/4.
- [50] CCPR/CO/77/EST.
- [51] CCPR/CO/81/BEL.
- [52] A/57/18, paras. 344-366.
- [53] CEDAW/PSWG/2004/II/CRP.1/Add.2.
- [54] CEDAW/PSWG/2003/I/CRP.1/Add.5.
- [55] A/59/38, paras. 267-8.
- [56] A/58/38, paras. 421-2.
- [57] G. Quinn and T. Degener, “ Human rights and disability”, p. 82.
- [58] CAT/C/CR/32/6.
- [59] CRC/C/15/Add.241.
- [60] CRC/C/15/Add.237.
- [61] G. Quinn and T. Degener, “ Human rights and disability”, p. 179.
- [62] General Assembly resolution 58/246, para. 7.
- [63] Commission resolution 2004/52, para. 6.
- [64] A/58/118 and Corr. 1, para. 15
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