

# Final Report of the UN ESCAP 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

18-22 August 2003, Bangkok, Thailand

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## STATEMENT OF RECOMMENDATIONS

*(Adopted by participants on 22 August 2003)*

*We, the participants in the UNESCAP workshop on women and disability and the promotion of full participation of women with disabilities in the process of elaborating an international convention to promote and protect the rights and dignity of persons with disabilities, having met from 18-22 August 2003 in Bangkok,*

Representing governmental and non-governmental organizations, national disability and human rights institutions, and independent experts, unanimously recognize that,

1. Despite their significant numbers, women and girls with disabilities, especially in the developing countries, remain hidden and silent, their concerns unknown and their rights unrecognized;
2. Throughout the region, in urban and rural communities alike, they face triple discrimination - because of their disabilities, being female and poor;
3. Studies on women with disabilities in rural areas of many countries in the Asian and Pacific region have found that more than 80 percent of women with disabilities have no independent means of livelihood, and are thus totally dependant on others for their very existence;
4. UNICEF has reported that women and children receive less than 20 percent of rehabilitation services;
5. Disabled women are less likely than men to make use of many other existing social services, including residential services, due to social, cultural and religious factors;
6. The problems that confront women with disabilities are even more severe in the rural areas due to lack of information, awareness, education, income, and contact resulting in extreme isolation and invisibility;

*We, further recognize that,*

7. CEDAW is a human rights treaty, which seeks to promote de facto equality for women with men, but lacks a clear disability perspective. As a consequence, the State Parties inadequately report on instances of discrimination and violations to the rights of girls and women with disabilities;
8. Article 32 of the Beijing Platform for Action recognizes that certain groups of women face multiple barriers to their empowerment because of, inter alia, race, age and disability, but in reality, disability mainstreaming in gender empowerment initiatives remains unaccomplished;
9. The launch of the Asian and Pacific Decade of Disabled Persons in 1993 gave a definite boost to the gender issues within the disability movement by adopting additional targets for gender strengthening of the Decade Agenda;

10. To give further impetus and visibility to the concerns of girls and women with disabilities, Biwako Millennium Framework, policy guidelines for the Second Asian and Pacific Decade of Disabled Persons, (2003-2012), has identified gender equity as one of its seven priority areas.

While women the world over are striving for equality with men, women with disabilities struggle to be recognized first as human beings and secondly as females. Therefore, we the participants of the workshop on women and disability in the ESCAP region, strongly urge all actors involved in the treaty elaboration process to ensure,

That the elements of the Convention be so structured and its provisions elaborated in a manner that girls and women with disabilities enjoy the full range of human rights and freedom with dignity and without any discrimination,

The new Convention should reaffirm and build on human rights norms laid down in the existing United Nations human rights treaties, including CEDAW, and treaties adopted by the specialised agencies and norms in the soft instruments such as Beijing Platform of Action and Biwako Millennium Framework,

The Treaty should be founded on the principle of non-discrimination and equality; in particular, it should address the compound effect of discrimination on grounds of gender and disability,

It is further recommended that the preamble to the new Convention should inter alia stress the impact of dual disadvantage and multiple discriminations caused by the intersection of gender and disability,

The convention should primarily contain rights that are enforceable, and should incorporate measures for equal and effective enjoyment of rights by women and men, girls and boys with disabilities,

The definition of equality should recognize that equality of opportunity and of outcome requires that any relevant restrictions or limitations caused directly or indirectly by a disability, or the intersection of disability with gender, poverty, race, caste and class should be remedied by appropriate modifications, adjustments or assistance and requires affirmative action, reasonable accommodation or special measures,

The term "access" is not an act or state, but a liberty to enter, to approach, to communicate with, to pass to or from, or make use of physical, environmental and societal structures, systems and processes regardless of type and degree of disability, gender or age.

State parties should have an obligation to implement various provisions of the treaty ensuring equal protection and promotion of the rights of women and girls with disabilities. In pursuance of this objective, gender sensitive measures must be consistently deployed.

State Parties have an obligation to provide support for other stakeholders, including care-givers and families of persons with disabilities.

Existing human rights bodies and mechanisms are urged to intensify their efforts to address issues of disability; particularly the monitoring body under CEDAW must adopt a more progressive rights based approach with regard to discrimination faced by girls and women with disabilities,

An independent, effective and dynamic monitoring mechanism must be an integral element of the new Convention. The composition of the structure should ensure disability, gender and regional balance, with particular emphasis on the participation of women with disabilities. The guidelines for the preparation of reports must be evolved to ensure gender disaggregated reporting by the State Parties. This approach must be consistently maintained and adequately resourced in the national monitoring mechanisms.

The meeting noted that the rights and freedoms guaranteed through existing instruments be tailored to the specific circumstances of girls and women with disabilities and highlighted the need for further elaboration of certain human rights.

The meeting strongly recommends equal participation of women with disabilities throughout the treaty elaboration, implementation and monitoring process.

## Supplementary

### List of rights suggested by the group

1. Right to adequate standard of life should include nutrition, clean water, sanitation, safe shelter;
2. Right to life and survival should include early identification, early intervention, and information and support services
3. Right to social protection includes unemployment allowance, old age homes, pension, maintenance for children, insurance cover for health and shelter particularly for disabled single mothers, widows and economically and socially disadvantaged girls and women with disabilities;
4. Freedom from all forms of violence and abuse including emotional, physical, psychological and gender based such as rape, forced sterilization, forced marriage and isolation.
5. Freedom of information and communication should recognize use of alternative and augmentative means of communication including accessible ICTs.
6. Family rights should ensure right to marriage and maintain family, maintenance in case of divorce, right to retain custody and nationality of children, etc.
7. Right to work shall guarantee access to various occupations in diverse but fair, just and accessible environment to reduce dependence of women with disabilities on others for survival.
8. Equal protection of law should include free legal aid, counseling and exemption from court fees.
9. Protection against eugenic practices, negative media portrayal, stereotype attitudes affronting the dignity of girls and women with disabilities.
10. Right to inherit, own and maintain property.

## II. PROCEEDINGS OF THE WORKSHOP

### A. Summary of presentations and discussions

#### OPENING SESSION and AIMS OF THE WORKSHOP

Extract from the note of the rapporteur of the workshop (Dr. Professor Pittaway Univ. of New South Wales)

#### Day One

In her welcome **Ms. Thelma Kay** identified Women with disabilities as one of the most marginalized groups in society. They are over represented in poverty and face the greatest incidence of disadvantage. They are denied community, family and employment opportunities, as well as opportunities to participate in organizations, in leadership roles and training. They are subject to exploitation in all areas of their lives. Sadly, many mainstream women's organizations do not include women with disabilities in their structures.

In her key note address, **Ms. Venus Ilagan** (President of DPI) spoke of the need for recognition and respect for the rights of women with a disability. She reminded us that people must not be valued solely on an economic basis, but that each person has their own inherent value and self worth and this is the basis of equality. People with a disability are often treated as disposable, ignored and sidelined. People with a disability are subjects not objects. Distinctions on basis of difference should never outweigh inherent value of all.

Women and girls the most vulnerable and least protected. They suffer triple discrimination - female and poor and disabled. She commented, "People with disabilities are genderless". A major task is to recognize and address gender issues in the new convention. The rally call must be "**Nothing about us without us**".

The Workshop tasks are: for participants to have significant impact on the formulation of the new convention via our recommendations to the Ad Hoc Committee and by feeding our thoughts through to the drafting committee via the two representatives of the committee who we are privileged to have with us at this workshop, **Ms. Venus Ilagan** and **Ms. Anuradha Mohit**.

In describing the second "Ad Hoc Committee" which is co-ordinating the process of producing the first draft of the new Convention, the comment was made that despite some excellent interventions and presentations from panel members in the plenary, on the whole women's issues were only a "side event" of the 2nd session of the Ad Hoc Committee. The work of this workshop is crucial to provide solid gender input into the drafting process.

It is important to note that disability self help movement and women with disabilities are the major shareholders and key actors in the regional and local input to this work.

The Bangkok Recommendation is the key document to be worked on at this workshop. We must critically evaluate the document to ensure that gender concerns are integrated into all sections and relevant paragraphs.

We need to devise advocacy strategies at a local and regional level to ensure that our governments incorporate any new convention and all existing conventions into domestic law, policy and practice. This must be done in a way that accords the full participation of people with a disability at all levels of society and accords to them full enjoyment of all human rights

We must ensure that the special concerns and issue of women with a disability are visible and acknowledged at every stage of the process, in all the actions suggested and in the final documentation

**Ms. Kay Nagata** (UN ESCAP) suggested that our main task was to get gender mainstreaming into disability, disability mainstreaming in gender, and gender and disability into Development. Gender mainstreaming has also to be incorporated into self help groups DSOs, and CPOs.

A brief history of disability issues in International Law gave us an understanding of where we have come from. We can take hope from the fact that the language and discourse about people with a disability has changed significantly over the years. Our challenge is to change rhetoric into reality.

## **HUMAN RIGHTS SYSTEMS AND DISABILITIES**

### **Key elements**

Human Rights are universal and indivisible. They create duties, duty bearers (mainly States, but increasingly multinational corporations) and claim holders.

We have to pay special attention to ensure that the rights of vulnerable groups such as women and girls with a disability are realized, and sometimes affirmative action will be needed to redress their historic lack of rights.

Non-discrimination is a core principle of human rights and includes people with a disability and all sub groups which come under that umbrella. We were introduced to the role of the 7 core human rights treaties and their monitoring bodies. They are all rights which should be accorded to people with disabilities.

The Drafting Committee of the new convention will decide if there will be a treaty body.

We need to advocate for this. (See Session on Monitoring Mechanisms, Day 2).

In looking for examples and precedent of human rights instruments which relate to people with a disability, we should examine "general comments" which "add-on" to Conventions to suggest how states may respond to various issues (See CEDAW General Comment on women with a disability).

The workshop decided that it was not sufficient to leave all responsibility for human rights abuses of people with a disability with the Disability Rapporteur. All human rights rapporteurs need to examine and address disability issues within their area of expertise - all rapporteurs need a framework to guide investigation of disability issues

### **The "Shape" of the new Convention**

Ms. Anuradha Mohit flagged "nature and structure, scope and elements, complementarity and monitoring as the most complex issues for discussion. - she said it would be boring but captivated us all

In examining the typology of a convention, she posed us a challenge which we should incorporate into our work in the next three days: what sort of convention do we want? There are three possible models

1. **Holistic model** of International Legal instruments - covers a whole range of rights - economic, social and cultural and civil and political. A good example is the Convention on the Rights of the child This model promotes rights and equalities
2. **Non discrimination Model** - is a curative model. An example is CEDAW
3. A third possible model is a **Hybrid Model**, combining social development and HR elements. It would combine legal and program instruments. A convention such as this is not yet in place. It is a challenge to be taken up. We will break new ground with the Disability Convention if we employ this model

We have to decide if the two can be combined? Can we run a middle course which has both principles and specificity. Each country will respond to principles in terms of their own stages of development, economy and social structures.

The major reason for exploring this third model is because we have to move beyond the removal of discrimination in the creation of a new convention and look at positive measures to ensure equality

### **Complementarity**

A theme that was repeated in several presentations was for the need for complementarity between the new convention and existing standards and their monitoring systems.

What will be the relationship between the new treaty and the six core treaties?

Key points to remember are that all rights are universal. Therefore do we have to repeat existing rights in the new instrument? The convention has to be manageable and workable, the monitoring system has to be streamlined. The issues of complementarity must be addressed in the preamble of any new convention and reinforced in the monitoring procedures

A new Disability Convention should strengthen the existing rules and reflect other relevant documents and agreements. We must incorporate best of the "Standard Rules" and its monitoring mechanism (Special Rapporteur under ECOSOC)", Biwarko (BMF), and General Comments in CESCRC and CEDAW

It was noted that Asia Pacific does not have a regional Human Rights body, instruments and monitoring mechanism. Do we want to push for these?

### **A RIGHTS BASED APPROACH TO DEVELOPMENT**

A key concept for the new convention is that it must reflect a Right Based Approach to Development, not a social welfare approach.

We examined the value of CEDAW to the movement, even without specific mention of women with a disability. The importance of the strategic preparation and use of shadow reports both as a process of focusing grassroots ownership of the concept of rights, and as a way of holding governments accountable was also discussed.

### **Recurrent themes**

A theme which came up in every session and every workgroup was the sexual exploitation, rape and abuse of women with a disability. This is seldom explicitly addressed, and unless this happens it will remain a hidden evil.

An anomaly which must be addressed is the denial of the right to sexual expression and sexuality, versus universal sexual exploitation. A second emerging issue is the couching the right to sexual expression under the banner of right to bear children - women as walking wombs. It is far greater than this.

It was noted that forced sterilization is not done to protect women from the outcomes of their self determined sexual actions, but to minimize the consequences of rape and sexual abuse by those supposed to be protecting their right to safety and dignity.

Problems to be addressed are lack of access to information and contraception for many women with a disability and lack of prosecution of the criminal offences perpetrated against women with a disability, and the impunity enjoyed by so many men for these crimes.

### **SUMMARY DAY 2**

We started by finalizing our discussion of CEDAW and examined the practice of "reservation" in the process of ratification of UN Documents. It is extremely important that we understand this process as part of our advocacy work

When a new Convention is introduced there is a two stage "sign off" process. Firstly, Governments sign off on the text of the document. Then States choose whether or not they will ratify the Document, which is a second and much more significant process. The implication of Ratification is that they will then incorporate the Convention into Domestic Law, either directly, through a mechanism such as a Bill of Rights, or indirectly through their own domestic processes. Once they have ratified, they are accountable for the implementation of the Convention both domestically and internationally via the UN. Conventions are only operational after a certain number of countries have ratified them.

In some cases countries decided that they will ratify nearly all of the paragraphs within a convention, but not others. They use a process called "reservation" for these paragraphs, which means that they are not agreeing to implement them and are not accountable for them.

The implications for our work in lobbying for a new convention is that we need to ensure that there is a provision that Sates can not "reserve" on key paragraphs in the new convention, and at a local level we have to lobby governments so that they will sign and ratify in the shortest possible time after the sign off process when the Convention is completed. This lobbying should begin now so that Governments are engaged in the process from the beginning.

### **GENDER MAINSTREAMING**

This session began with an exercise in which we identified that the word 'sex' in this context is used to describe physical difference, while gender is used to describe social and cultural difference. The fundamental principle of gender mainstreaming is to address the social cultural and economic inequality between men and women. It must ensure that their special needs are addressed in all policy, procedures and practice, to ensure access and equity in all areas of life.

We examined Gender Mainstreaming with two goals. One was to understand how we could use the concept to incorporate the concerns of women and girls with a disability into the new convention and all related legislation and policy; and secondly as a model for disability mainstreaming, which will be necessary for the implementation of the convention at a local level.

We examined a range of models for gender mainstreaming which are available in the workshop notes. A note of caution was sounded about the practice of some governments to use the concept of gender mainstreaming to remove "women specific" projects on the grounds of mainstreaming, but to not follow through with actions. This can further marginalize and make women invisible in the policy process.

### **Tools for Mainstreaming**

Rita introduced a range of Tools for gender mainstreaming, most of which can be easily adapted for use as Disability and gender mainstreaming tools. Our work is to ensure that both issues are reflected in all convention, legal and policy documents. Gender in disability and disability in gender. Gender and disability in Development.

If governments are not familiar with best practice in mainstreaming, as civil society we must take an active role in encouraging training of government bodies and key disability organisations

Institutional mechanisms, that is the structures of governance, are critical for successful mainstreaming. Disability focal points in governments and ministries, gender budget allocation, the possibility of a disability budget were all discussed as possible options to support mainstreaming. Advocacy is needed to ensure that disability issues are placed in an appropriate and high status Ministry.

We should consider strategies such as quotas for people with disability in the political process. Finally we were reminded that much support is needed to ensure that mainstreaming works. People need training, and we must be careful that people are not put into positions of power without the requisite skills and experiences; otherwise we are setting the systems up to fail.

We participated in two exercises in this session. The group identified the range of issues specific to women with a disability which would need to be included in the new convention to underpin Gender Mainstreaming policies. We identified that many of these issues are generic to all women with a disability, such as social exclusion, lack of access to education etc, but that the degree to which these are experienced depend to a large extent on the socio-economic status of the women and whether she live in a rural or urban area, or in a slum. This highlights the complexity, or intersectionality of the experience of women with a disability. These are not just layers of separate discrimination, each one compounds the other. This then has to be again cross referenced with the specific experiences of women with different types of disability. Our task is to ensure that the wording of the convention, law and policy does not exclude any of these groups.

The second exercise, to begin the process of 'engendering' of the Bangkok Recommendations was a lively and very participatory session. The groups made some excellent suggestions for the addition of language such as replacing "persons with a disability" with "women and men, girls and boys", whenever appropriate, in order to ensure that women are not invisible in the process. Suggestions were also made for including gender specific language whenever possible. We will build on this work on Thursday.

### **Children with a Disability**

Penny reminder us that children with a disability are the most marginalized, most invisible of all, and girl children are often the very last in the family to receive scarce resources including attention.

Early intervention must become a right, equal to the right to education. Without early intervention, many children will never cope with education even if it is made accessible.

The multiple causes of disability, such as extreme poverty, must be considered in relation to the rights of children with disability. The right to Development underpins the rights of children with a disability.

Penny introduced a range of strategies and case studies for working with Children with Disabilities. The groups considered critical issues of children with disabilities that should be included in the convention, and identified strategies to advocate for the rights of children at the local level.

### **DAY 3**

#### **Community Based Rehabilitation (CBR), Dr Maya Thomas Addressing concerns of women in CBR.**

Maya gave a presentation on the role and value of Community Based Rehabilitation Programs (CBR'S)

She described how CBR's have moved from a medical model to a social model over the last 25 years. She noted that CBR's need to put strategies in process to be more inclusive of WwD. CBR programs and address these issues by:

- Culturally appropriate strategies
- Recognition of special needs of women with disabilities
- Assistance in achieving traditional gender roles
- Access to services via training more women workers
- Opportunities for self reliance
- Self help groups

Several participants shared their very positive experience of involvement with these programs

Discussion focused on the difficulties caused by the demography of Women with disabilities especially in rural areas where there are often insufficient women to form groups in forming groups. Several example of CBR best practice were discussed and eh importance of training girls in self advocacy was highlighted. This is particularly important because men dominate organizations s at grass roots levels. The importance of empowerment was really clear and the affirmation that "we can do what they can do" was identified as critically important. Building confidence to take the first steps is a major role of self help groups.

The debate focused on the debate between Individual and Group Rights. From a legal standpoint human rights fall into two sets, individual and group rights. These are present in both international and domestic law. Should we be seeking group rights for all people with a disability, or rights for each individual person with a disability? They are both important. (e.g. the right to work is an individual right - not a group right because it would be impossible o enforce and monitor for an entire group).

Therefore individual rights are not the same as individualistic rights, which are seen to be self-centered. They are personal rights. We have to be clear which type we want in the various sections of the new convention.

## **ILO Convention 159: THE INTERNATIONAL LABOUR ORGANISATION (ILO)**

### **The right to work for Women with a Disability**

The majority of developing countries in the Asia Pacific Region have not ratified the ILO Convention 159.

It is a broad convention, which has a set of supplementary rules. Recommendations 168 relates to vocational rehabilitation and implementation. It has a set of specific guidelines, Recommendation 99, which relates to people with a disability. ILO refers to disabled workers.

It suggests a series of measures to be taken to ensure that people have access to employment. The open market will never employ all people with a disability. We therefore have to consider alternative means of income generation for people with a disability to ensure income and dignity. Sheltered employment does not mean sheltered life - it is a way of gaining income.

There is no best model. The new convention must be complementary to these recommendations. Employment quotas are also a very important strategy for consideration.

Workers with a disability need to be aware of their rights and responsibilities, and legal rights. Disabled workers must be members of unions and exploitation of workers with a disability must be addressed and stopped. Largest civil society movement in the world is the labour unions.

Ay model for the convention must refer to civil and political rights, but also social and economic rights which will ensure the access to income for people with a disability. Some people are questioning the relationships between ILO (2nd generation human rights) and new convention (perhaps political and civil human rights or holistic?), particularly in rich countries where social security or quota schemes exist (e.g. Japan). Forming the new Convention is a very political process. We must remember that different countries and different lobby groups have sometimes conflicting concerns about this.

We need innovative projects and strategies. Fair Trade, Green Food are a good examples of creative and value added markets. We can think bigger about employment. Capacity building, and access to full bank credit for women and/or disabled - why should we always be restricted to always "micro credit"

New guidelines must build on existing guidelines - they can not undercut them. We have to argue on market economic rational grounds, use cost benefit analysis. We need evidence based research on the position of women with disability in the labour market

## **Personal Reports**

Participants shared their personal experience and the work which they are involved in. The stories were moving and inspirational, and highlighted the many issues discussed in the course of the workshop. Thank you to participants for sharing so much of their personal lives. The key issues for women and girls with disabilities which emerged during the working session and form the personal sharing are listed below.

## **THE RANGE OF DISCRIMINATIONS FACED BY WOMEN AND GIRLS WITH A DISABILITY IDENTIFIED DURING THE COURSE OF THE MEETING.**

### **General principles**

Socio economic circumstance has major implications for the way in which women with a disability are able to function in society, access specialist services and achieve a satisfying and fulfilling lifestyle.

Some forms of cultural and religious practice which impact negatively on the full realization of human rights for all women cause on additional layer of discrimination for women and girls with a disability.

The lack of distinction between private and public life evident in so many Human Rights instruments must be corrected in the new convention.

The many forms of discrimination and exclusions faced by women and girls with a disability are intersectional. Each compounds the effect of the other, magnifying the impact on the lives of women and girls. These include issues such as ethnicity, caste and class.

The rights of disabled women and girls in developing countries and countries in transition must be clearly linked to Development goals.

### **The group noted that:**

There is less tolerance of women with a disability in poor areas where women are most valued for their productive and reproductive capacities. Women and girls with a disability are often allocated the smallest amounts of food, and other resources. The survival rate of girl children with disabilities is lower than for boys.

Women and girls with a disability living in slums face extreme problems of lack of shelter, clean water, sanitation and high levels of gender based violence.

Discrimination and exclusion in all areas of life exist. Women with a disability are invisible.

The barriers experienced by Women with a Disability are both attitudinal, and structural.

### **COMMON ISSUES INCLUDE:**

#### **Right to life**

- Eugenic practices
- Inadequate food and nutrition
- Unequal access to family and community resources

#### **Lack of social protection**

- Lack of social security for widows, single women, single mothers
- Lack of access to secure shelter and accommodation
- Lack of access to health insurance
- Lack of access to the law

### **Lack of individual protection**

- Under-protection and devaluing of women and girls with a disability
- Rape and sexual abuse by carers and/or family
- Vulnerability to all forms of violence
- Sexual exploitation, rape and abuse by wider community
- Forced marriage to older men.

### **Access to Education**

- Lack of early intervention services for children with a disability
- Denial of and/or restricted access to education
- Excluded from education on financial grounds as well as access problems, resources allocated to males and able bodied siblings first.

### **Social isolation**

- Over protection by some families, in particular when girls reach puberty
- Virtual "imprisonment" at home
- Lack of opportunities to marry and bear children
- Lack of opportunities to form relationships
- Denial of sexual expression
- Denial of the rights of children to live with family
- Lack of access to sports and culture
- Lack of access to entertainment, specific television programmes

### **Access to employment**

- Lack of employment opportunities and career paths,
- Lack of employment opportunities for women and girls with a disability with intellectual impairment or psychiatric illness
- Lack of sheltered or home based employment for rural, isolated and women with multiple forms of disability and severe disabilities.
- Exploitation in the work place

### **Health Issues**

- Lack of access to appropriate health care, in particular to adequate reproductive health care
- lack of medical staff with expertise in and understanding of disability issues
- lack of access to specialist services.
- Lack of rehabilitation services
- Lack of training and support for the families of women and children with a disability
- Lack of appropriate services for women and girls with intellectual impairment
- Lack of appropriate services for women and girls with psychiatric illness
- Forced sterilisation, abortions and other forced treatments

### **Structural Issues**

- Denial of inheritance rights,
- Lack of prosecution of perpetrators of crimes against women and girls with a disability (impunity)
- Exclusion for the decision making process
- Lack of information which exclude participation at a micro and macro level

## Emotional Issues

- Lack of access to counselling
- Repressed emotions about life situation and relationships
- Low self esteem and depression
- High suicide rates
- Restricted freedom of choice in all areas of life

## B. Working group sessions

On the last two days, participants formed three working groups to discuss each issue and to elaborate on the group recommendations. These recommendations are to be synthesized into the set of recommendations of the workshop in the form of a Joint Statement. This process is the main dimension of the workshop, with full participation of individuals so as to share the ownership of this workshop. The participants reviewed the Bangkok Recommendations (outcome of ESCAP EGM on the Convention that took place from 2 to 4 June 2003) from a gender perspective. The recommendation was reviewed in the following manner:

1. **Group one:** Nature of the Convention, Structure, Preamble, Definitions, and Accessibility;
2. **Group two:** General State obligations (guarantee of equality and non-discrimination, guarantees of specific rights; and other states obligations);
3. **Group three:** Monitoring mechanisms and participation of women with disabilities.

## III. ORGANIZATION OF THE WORKSHOP

### A. Background

Governments in the UNESCAP region declared the extension of the Asian and Pacific Decade of Disabled Persons, 1993-2002, for another decade, 2003-2012. As policy guidelines for the renewed decade, the high-level intergovernmental meeting to conclude the Asian and Pacific Decade, Otsu, Shiga, October 2002, adopted the Biwako Millennium Framework for Action towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific (BMF).

BMF incorporates disability concerns into national policies and programmes for the purpose of achieving the targets of the United Nations Millennium Development Goals (MDG). BMF also promotes the paradigm shift from a charity-based approach to a rights-based approach to disability and development, and supports the elaboration of an international convention on the rights and dignity of persons with disabilities.

The review of the achievements of the Asian and Pacific Decade of Disabled Persons, 1993-2002 revealed that progress was evident in all twelve policy areas under the Agenda for Action for the Asian and Pacific Decade of Disabled Persons; however, the achievements were uneven in terms of the policy areas as well as among sub regions.

Based on this review of the outcome of the current Asian and Pacific Decade, Governments in the region proclaimed the extension of the Asian and Pacific Decade of Disabled Persons, 1993-2002, for another decade from 2003 to 2012, through Commission resolution 58/4, adopted at the 58th session in May 2002. Governments also adopted the Biwako Millennium Framework for Action towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific (BMF), guiding policies for the renewed Decade from 2003 to 2012. The BMF identifies the following seven priority areas: (1) self-help organizations of persons with disabilities and related family and parental associations, (2) women with disabilities, (3) early detection, early intervention and education, (4) training and employment, including self-employment, (5) access to built environments and public transport, (6) access to information and communications, including information and communications and assistive technologies, and (7) poverty alleviation through capacity-building, social security and sustainable livelihood programmes.

Indeed, the BMF singled out women with disabilities together with self-help organizations of persons with disabilities as the two main agents (as well as beneficiaries) for positive changes to be brought up by implementing these priority areas.

Women with disabilities are one of the most marginalized groups in society in the Asia and Pacific region, as they are multiply disadvantaged through their status as women, as persons with disabilities and are over-represented among persons living with poverty. Women and girls with disabilities (far more than boys and men with disabilities) face discrimination within the family, and denied equal access to health care, education, training, employment and income generation opportunities, and are excluded from community activities.

In fact, within self-help organizations of persons with disabilities in some countries, women with disabilities face further discrimination. Women with disabilities tend to be under-represented in membership of mainstream self-help organizations and not so visible in leadership and executive roles. Their concerns are often not sufficiently addressed in the advocacy agenda of NGOs and self-help organizations. Women with disabilities may not have been targeted to leadership training. Furthermore, mainstream women's organizations may not have included women with disabilities in their membership, and their issues are not addressed.

In conclusion, women with disabilities lack the advocacy skills and training to improve this situation. In the process of preparation for UNESCAP regional input to the International Convention on Promoting and Protecting the Rights and Dignity of Persons with Disabilities, these women's opinions must be well reflected.

The overall project, of which this workshop is a component, was designed to disseminate the BMF and the Standard Rules, and provide advocacy skills for women with disabilities, through two regional workshops. These workshops will ensure that the gender-mainstreaming targets and strategies of the BMF will be well recognized and incorporated into future plans, policies and programmes of NGOs and self-help groups in order to achieve truly inclusive, barrier-free and rights-based society for persons (women and men) with disabilities in the region. At the end of the project (this workshop and a one day follow-up workshop to be held in October), women with disabilities would be provided with a good package of advocacy skills, so that they can fully participate in the national, regional and global process of preparing for the International Convention.

Furthermore, the two workshops are expected to enhance the unified support for the International Convention in the ESCAP region and strengthen consolidated, ongoing regional activities toward the Convention. This would function as the regional input to the working group on elaboration of the Convention created under "the Ad-hoc Committee for the Comprehensive and Integrated International Convention on Protecting and Promoting the Rights and Dignity of Persons with Disabilities, based on the decision made during the 2nd session of the Ad Hoc Committee held in New York in June 2003.

The outcome of this workshop will be used for the forthcoming Convention-related ESCAP activities to be held in October and November 2003 as one of the main working papers. Also, the Joint Statement will be forwarded to the drafting committee under the Ad Hoc committee through the United Nations DESA New York.

The targets groups were policy makers and managers of civil society organizations (NGOs of persons with disabilities, mainstreaming women's NGOs, human rights organizations, etc.) and self-help groups of persons with disabilities, in addition to some representatives from governmental agencies. Special preference is to be given to women with disabilities (see the list of participants in the annex).

## **B. Attendance**

The workshop was attended by some 30 experts from 13 countries of the ESCAP region, 4 resource persons and number of observers from UN agencies, permanent missions, etc. (See Annex I).

## **C. Opening of the workshop**

The workshop was opened by Ms. Thelma Kay, the Chief of Emerging Social Issues Division, UNESCAP and in her opening statement; she drew the attention of the experts and observers to the background of the workshop.

She expressed her gratitude to the Division for Social Policy and Development, Department of Economic and Social Affairs (DESA), which has greatly supported the efforts of UNESCAP to promote full participation and equality of persons with disabilities, not only for this particular meeting but also for many other activities during the past Asian and Pacific Decade of Disabled Persons.

She referred to the Biwako Millennium Framework for Action towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific (BMF) that incorporates disability concerns into national policies and programmes for the purpose of achieving the targets of the United Nations Millennium Development Goals (MDG). She continued by mentioning that the BMF identified seven priority areas, including women with disabilities and the BMF supports the elaboration of an international convention on the rights and dignity of persons with disabilities.

She emphasized that women with disabilities are one of the most marginalized groups in society in the Asia and Pacific region, facing all kinds of discrimination within the family with their access to health care, education, training, employment and income generation opportunities being denied.

She pointed out that within self-help organizations of persons with disabilities in some countries, women with disabilities face further discrimination. Women with disabilities tend to be under-represented in membership of mainstream self-help organizations and not so visible in leadership and executive roles.

She concluded her opening statement by emphasizing her hope that at the end of the workshop, all of participants would have been provided with a good package of advocacy skills so that they would be able to participate fully in the national, regional and global process of preparing for the international convention.

#### **D. Adoption of the training subjects**

The workshop adopted the following training elements:

1. Opening of the Workshop.
2. Toward the Elaboration of an International Convention on the Rights of Persons with Disabilities:
  - a. Overview of issues related to elaboration of an international convention on the rights of persons with disabilities and ESCAP expert group meeting (2-4 June 2003);
  - b. Norms and Standards Related to the Rights of Persons with Disabilities and Development;
  - c. Elaboration of an International Convention and further implementation of the Standard Rules on the Equalization of Opportunities of Persons with Disabilities, including the report of the 2nd session of the Ad Hoc Committee held in June 2003.
3. Disability mainstreaming
  - a. Disability mainstreaming in development; Implementation of the Biwako Millennium Framework (women and disability, early intervention, education, employment and poverty alleviation);
  - b. Review of Regional, Sub-Regional and National Situation on the Rights of Persons with Disabilities and gender mainstreaming;
  - c. Empowerment and Advocacy;
  - d. Rights based approaches to development and advancement of persons with disabilities in the Asian and Pacific Region.
4. Gender Mainstreaming
  - a. Convention of the Elimination of All Forms of Discrimination against Women;
  - b. Gender Mainstreaming in Development.
5. Working Group Discussions  
Critical Analysis of the Bangkok Recommendations from a gender perspective.
  - a. Group one: Nature of the Convention, Structure, Preamble, Definitions, and Accessibility.
  - b. Group two: General State obligations (guarantee of equality and non-discrimination, guarantees of specific rights; and other states obligations);
  - c. Group three: Monitoring mechanisms and participation of women with disabilities.
6. Discussion of Recommendations and drafting the joint statement.
7. Closing.

#### **E. Adoption of the joint statement during the workshop**

The participants in the workshop discussed, agreed upon and adopted the set of the recommendations included in the Joint Statement (see the section 1 of this report)

## **Annex I: List of participants**

### **AFGHANISTAN**

Ms Ruhafza Mohd Omar Nadri Rawof, Ministry of Martyrs and Disabled, Kabul

### **MALAYSIA**

Ms Su Zhen Cheong, Clerk, Malaysian Spinal Injuries Association, Kuala Lumpur

### **PHILIPPINES**

Ms Mirafior Rayla, Building Inspector/ Accessibility Officer, Office of the City Building Official, Cagayan de Oro City

### **THAILAND**

Asia-Pacific Development Center on Disability (APCD)

Mr Akiie Ninomiya, JICA-APCD Chief Advisor, Bangkok

Ms Lasapan Toomsawasdi, ICT Chief, Bangkok

Ms Naoko Ito, JICA-APCD Expert on HRD, Bangkok

Mr Hisao Chiba, JICA-APCD Expert on ICT, Bangkok

Mr Toshiyuki Okui, JICA-Coordinator, Bangkok

Ms Phacharamont Phanthong, ICT Officer, Bangkok.

Ms Suwapa Prasitwises, HRD Officer, Bangkok

Ms Saowalak Thongkuay, Project Assistant, Bangkok

Ms Jureeratana Pongpaew, APCD Resource Person, Bangkok

Ms Janjira Ekareechit, APCD Resource Person, Bangkok

Ms Marcella Ninomiya, APCD Associate, Bangkok

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### **UNITED NATIONS BODY**

Food and Agriculture Organization of the United Nations (FAO) Ms Johanne Hanko, RAPS Consultant, FAO, Bangkok

United Nations Development Programme (UNDP) Ms Sirisupa Kulthanan, Assistant Resident Representative, United Nations Development Programme, Bangkok Ms Mallika Sukumalchart, Programme Assistant and UNV Focal Point, United Nations Development, Bangkok

United Nations Children's Fund (UNICEF) Mr Cliff Meyers, Regional Education Advisor, United Nations Children's Fund, Bangkok

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## **NON-GOVERNMENTAL ORGANIZATIONS**

Asia Pacific Disability Rehabilitation Journal: Ms Maya Thomas, Policy Advisor & Consultant, Disability and Rehabilitation Editor, Asia Pacific Disability Rehabilitation Journal, Bangalore, India

Association for Women with Disabilities: Ms Kuhu Das, Director, Association for Women with Disabilities , West Bengal, India

Bangladesh Protibandhi Kallyan Somity (BPKS): Ms Bilkis Begum, Senior Assistant Coordinator, Training, Bangladesh Protibandhi Kallyan somity (BPKS), Dhaka, Bangladesh

Bright Future Group for People with Disability (BFG): Ms Van Duong Thi, Chairperson, Bright Future Group for People with Disability (BFG), Hanoi, Viet Nam

Centre for Disability in Development: Ms Anika Rahman Lipy, Associate Coordinator, Centre for Disability in Development (CDD), Dhaka, Bangladesh

China Disabled Person' Federation: Ms Ling Xu, Liaison Officer, China Disabled Person' Federation, Beijing, China

Disabled Peoples' International (DPI): Ms Venus Ilagan, Chairperson, Disabled Peoples' International (DPI), Quezon City, Philippines Ms Supattraporn Tanatikom, DPI Asia Pacific Regional Office, Nonthaburi, Thailand

Disabled Rehabilitation and Research Association, (DRRA): Ms Farida Yesmin, Executive Director, Disabled Rehabilitation and Research Association, (DRRA), Dhaka, Bangladesh

Pakistan Christian Peace Foundation: Ms Naseem Malik, Secretary Women Development, Pakistan Christian Peace Foundation, Rawalpindi, Pakistan

People with Disability Australia Incorporated: Ms Heidi Forrest, President, People with Disability Australia Incorporated, New South Walse, Australia Ms Samantha French, Senior Education Officer, People with Disability Australia Incorporated, New South Walse, Australia

National Association of the Deaf in Thailand: Ms Panomwan Boontem, National Association of the Deaf in Thailand, Bangkok Ms Nongluk Sangjan, National Association of the Deaf in Thailand, Bangkok Ms Malinee Chantratit, National Association of the Deaf in Thailand, Bangkok

National Human Rights Commission of India: Ms Anuradha Mohit, Special Rapporteur, National Human Rights Commission of India, New Delhi

University of New South Wales: Professor Eileen Pittaway, Professor, School of Social Work, Sydney, NSW

Women's Group: Ms Salote Vulavou, Secretary, Women's Group, Suva

Women With Disability of Korea: Ms Ye Ja Lee, President, Women With Disability of Korea, Seoul

## **CONSULTANT**

Ms Penelope Price, UNESCAP Consultant, Bangkok

## **OTHERS**

Mr Marvin Rayla, Assistant to Ms Miraflor Rayla, Building Inspector/Accessibility Officer, Office of the City Building Official, Cagayan de Oro City, Philippines

Ms Hazel Joy Borja, Attendant/accompanying persons to Ms Venus Ilagan, Quezon City, Philippines.

Ms Ritu Kumar, Legal Assistant, Assistant to Ms Anuradha Mohit, Special Rapporteur, National Human Rights Commission of India, New Delhi, India

Ms Puangpet Limpisuree, Sign Language Interpreter for Ms Panomwan Boontem, National Association of the Deaf in Thailand, Bangkok

Ms Piyanan Khemmuenwai, Assistant to Ms Supattraporn Tanatikom, Disabled Peoples' International Asia Pacific Regional Office, Nonthaburi

Mr Leopoldo N. Valdes, Web Master, Vision Office Support Services Ltd., Vancouver, Canada

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## SECRETARIAT

Mr Kim Hak-Su Executive Secretary

Ms Keiko Okaido Deputy Executive Secretary

Mr S. Thampi, Principal Officer

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Ms Thelma Kay Chief, Emerging Social Issues Division

Mr Jerrold W. Huguet Chief, Population and Social Integration Section, Emerging Social Issues Division

Ms Kay Nagata Social Affairs Officer, Population and Social Integration Section, Emerging Social Issues Division

Ms Aiko Akiyama Project Expert on Disability, Population and Social Integration Section, Emerging Social Issues Division

Ms Penelope Price Consultant, Population and Social Integration Section, Emerging Social Issues Division

Ms Rita Reddy Social Affairs Officer, Gender and Development Section, Emerging Social Issues Division

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Ms Keiko Okaido Officer-in-Charge, a.i., Administrative Services Division

Mr Christian de Sutters Chief, Conference Services Section, Administrative Services Division

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Mr David Lazarus Chief, United Nations Information Services

## Annex II: Programme of the workshop

18 August 2003 (Monday)	
0900-0915	Opening statement
0915-0945	Self-introduction of participants Keynote Speech: Venus Ilagan, Chairperson of Disabled People's International

0945-1000	Coffee break
1000-1015	Objectives of the workshop (ESCAP Secretariat)
1015-1045	Toward the Elaboration of an International Convention on the Rights of Persons with Disabilities (ESCAP Secretariat)
1045-1145	Human Rights and Disabilities: Where do disabilities fit into the UN Human Rights System? (UN OHCHR)
1145-1300	Lunch break
1300-1400	Elaboration of an International Convention and further implementation of the Standard Rules on the Equalization of Opportunities of Persons with Disabilities, including the report of the 2nd session of the Ad Hoc Committee held in June 2003 (Ms. Anuradha Mohit)
1400-1500	Rights based approaches to development and advancement of persons with disabilities in the Asian and Pacific Region UN OHCHR)
1500-1515	Coffee break
1515-1600	Convention of the Elimination of All Forms of Discrimination against Women (ESCAP)
<b>19 August 2003 (Tuesday)</b>	
0900-1000	Gender Mainstream into Development (ESCAP/Dr. Eileen Pittaway)
1000-1015	Coffee break
1015-1145	Continuation of Gender Mainstreaming into Development (participants) Review of Regional, Sub-Regional and National Situation on the Rights of Persons with Disabilities and gender mainstreaming
1145-1300	Lunch break
1300-1430	Definition, Early Intervention and Education for People with Disabilities
1430-1445	Coffee break
1445-1600	Continuation of Early Intervention and Education of People with Disabilities
<b>20 August 2003 (Wednesday)</b>	
0900-1000	Community-Based Rehabilitation (Dr. Maya Thomas)
1000-1015	Coffee Break
1015-1130	Rights to Decent Work (ESCAP)
1130-1300	Lunch break
1300-1430	Gender and Disability: Sharing experiences and good practices about "Empowerment and Advocacy" (panel discussion)
1430-1445	Coffee break
1445-1530	Continuation of Gender and Disability (panel discussion)
1530-	Briefing of group work and formation of 3 groups

1600	
<b>21 August 2003 (Thursday)</b>	
0900-1400	Field visit to Slum Area of Bangkok and Barrier Free Park (including group lunch at the slum)
1400-1600	Group work (3 groups):Critical review of the Bangkok Recommendations from a gender perspective: <ul style="list-style-type: none"> <li>• Group one: Nature of the Convention, Structure, Preamble, Definitions, and Accessibility.</li> <li>• Group two: General State obligations (guarantee of equality and non-discrimination, guarantees of specific rights; and other states obligations);</li> <li>• Group three: Monitoring mechanisms and participation of women with disabilities</li> </ul>
Evening	Continuation of group work at Thai Hotel (optional)
<b>22 August 2003 (Friday)</b>	
0900-1030	Presentation of group work
1030-1045	Coffee Break
1045-1115	Continuation of group work
1114-1330	Lunch Break + Drafting Team on drafting a Joint Statement
1330-1500	Discussion and adoption of the Joint Statement
1500-1530	Closing

## Annex III: Report of three working groups

(Note: Suggested changes are underlined)

### Working Group 1

Group one discussed the integration of gender into the recommendations and made the following amendments:

- Section A, paragraph 5, page 1
- Section A, p.7, (a), page 2
- Section A, p.8, page 2
- Section B, p.11 (additional point following point one), page 3
- Section B, p. 11, point 7 (original) editorial revision, page 3
- Section B, p.12, page 4
- Section B, p.13 (d) (f) (k), page 4
- Section B, p.20 (d), page 6
- Section B, p.21, page 6
- Section B, p.22 complete change of definition of accessibility, page 6

**Post-Seminar E/ESCAP/EGM-PWD/Rep  
4 June 2003, ENGLISH ONLY  
(Not formally edited)**

## **Bangkok Recommendations on the Elaboration of a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities**

We, the participants in the Asian and Pacific regional expert group meeting on an international convention to promote and protect the rights and dignity of persons with disabilities, met from 2-4 June 2003 in Bangkok.

As experts from governmental and non-governmental organizations, national disability and human rights institutions and independent experts, we have formulated these recommendations in response to the invitation by the General Assembly in Resolution 57/229 to "make available to the Ad Hoc Committee suggestions and possible elements to be considered in proposals for a convention."

We are convinced that a new international human rights treaty is necessary to ensure that persons with disabilities enjoy all their human rights.

### **A. BACKGROUND AND GENERAL APPROACH**

1. While international human rights standards require that people with disabilities should enjoy the same basic human rights as all other human beings, persons with disabilities throughout the world are subjected to widespread violations of their human rights. These violations include malnutrition, forced sterilisation, sexual exploitation, the denial of educational and vocational training opportunities, inaccessible public services, institutionalisation, and the denial of voting rights, rights to communication, and the right to participate in policy-making.
2. There is a pressing need for the elaboration of a new international convention on the human rights of persons with disabilities. A coherent, integrated and focused approach to disability in international law cannot be developed under the present treaty system. Therefore, an exclusive convention is necessary to give "status, authority and visibility" to disability issues, which cannot be achieved through the process of reform of existing international instruments and monitoring mechanisms.
3. A single comprehensive treaty would enable the States Parties to understand their obligations to set targets for the development of disability-inclusive infrastructure and processes. Adding a new treaty would complement existing international standards for the rights of the disadvantaged.
4. A new convention should be a human rights treaty, which reaffirms that human rights and fundamental freedoms apply to all human beings, including persons with disabilities, thus reflecting the movement from a social welfare approach to a rights-based model embodied at the international level in documents such as the World Programme of Action concerning Disabled Persons and the Standard Rules for the Equalization of Opportunities for Persons with Disabilities. A new human rights convention would play a critical role in enhancing the advancement of persons with disabilities in the context of all aspects of development.
5. A new convention should reaffirm and build on human rights norms laid down in the existing United Nations human rights treaties (including the Convention on the Elimination of All Forms of Discrimination against Women and treaties adopted by the specialised agencies such as the International Labour Organisation and the) and other norms (such as the Standard Rules, the Beijing Platform of Action). A new treaty should in no way diminish existing guarantees of rights under those treaties, but should supplement existing guarantees as appropriate and address issues of particular concern to persons with disabilities.
6. A new convention should include guarantees of both civil and political and economic, social and cultural rights, and should provide for appropriate remedies at the international and national levels for violations of all the rights it guarantees.
7. The adoption of a new convention should be one part of a multi-track approach to the fulfilment of the human rights of persons with disabilities and the achievement of the goals of human and social development. In particular:
  - a. existing human rights bodies and mechanisms should increase their efforts to address issues of disability that arise within the scope of their activities; particularly the monitoring body under CEDAW should adopt a more progressive human rights approach with regard to the particular circumstances of girls and women with disabilities.

- b. there should continue to be strong support for the work of the Special Rapporteur on Disability of the Commission for Social Development (and the panel of experts) in monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities;
- c. governments, international organizations, and civil society groups (including disabled people organizations and non-governmental organizations) should continue to work to implement the Standard Rules, as well as to implement other instruments or programmes which address disability issues, such as the World Programme of Action and the Biwako Millennium Framework for Action towards an Inclusive Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific.

The Meeting noted the importance of the role of national institutions in realising the human rights of persons with disabilities and the need for governments to establish national human rights institutions and other appropriate bodies to give effect to those rights at the national level.

8. Member States and the United Nations system should take steps to ensure the full participation of representative disability groups ensuring equal participation of women and men with disabilities (OMIT: disability groups and persons with disabilities), especially those from developing countries, in the process of elaboration of a convention. Governments which are in a position to do so are urged to make contributions to the United Nations Voluntary Fund on Disability for this purpose. All governments in the Asia-Pacific region should ensure that they consult DPOs for their views on the issue of a convention, facilitate the participation of DPOs in the discussions of the Ad Hoc Committee established by General Assembly resolution 56/168, and should include persons with disabilities from DPOs in their official delegations to the Ad Hoc Committee.

## **B. ELEMENTS OF A CONVENTION**

### **NATURE OF THE CONVENTION**

9. The Convention should be comprehensive, containing an explicit restatement of the rights contained in existing human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other relevant instruments. The Convention should thus go further than a simple statement of the right to equality and non-discrimination in the enjoyment of human rights and fundamental freedoms.

### **STRUCTURE**

10. The Meeting considered that a Convention should include the following elements:

- Preamble
- Statement of objectives and general principles
- Scope/Definitions (including definitions of disability and discrimination)
- General obligations of States Parties to respect and ensure the rights guaranteed in the Convention
- Guarantee of equality and non-discrimination (generally and in the enjoyment of the rights guaranteed in the Convention; statement of gender equality)
- Guarantees of specific rights (drawing on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other instruments, expanded by reference to disability perspectives)
- Other State obligations
- Monitoring mechanisms
- Miscellaneous provisions

### **PREAMBLE**

11. The Meeting considered that the following matters might be usefully addressed in a Preamble:

- Recognition of the value of international human rights guarantees in existing United Nations human rights instruments
- Recognition of the impact of dual disadvantages and multiple discriminations faced by women and children with disabilities
- Recognition of international and regional disability-specific instruments, declarations, norms, and guidelines to promote human rights and non-discrimination against people with disabilities

- Recognition of the continuing widespread denial to persons with disabilities of their internationally guaranteed human rights and fundamental freedoms
- Recognition of the fact that, despite the increase in emphasis placed on disability issues by mainstream human rights institutions, the adoption of a new convention is necessary to ensure that the human rights of persons with disabilities and their representative organizations receive adequate attention and action;
- Recognition of the relevance of the Standard Rules to the interpretation and implementation of the Convention;
- Recognition of the efforts, achievements and obstacles during the Asian and Pacific Decade of Disabled Persons (1993-2002)
- Reaffirmation of disability-focused documents such as the Biwako Millennium Framework, the Manila Declaration on Accessible Information and Communication Technologies, the report for the World Summit for Information Society, and other regional instruments.

## STATEMENT OF PRINCIPLES AND OBJECTIVES

12. It would be important to set out clearly the objectives of the Convention and the basic principles underlying its interpretation and application. The statement of principles and objectives of the Convention might include reference to an affirmation of dignity, autonomy, equality, solidarity, and gender balanced representative participation as overarching values underpinning any convention.

13. The Convention should:

- a. be a "rights-based" instrument built on international human rights norms and standards of social justice, citizenship and well-being. Standards below already existing human rights standards must not be accepted;
- b. ensure that that all persons with disabilities, without exception, are entitled to the full benefit and enjoyment of all fundamental human rights and freedoms on the principles of equality, dignity and autonomy and without any discrimination;
- c. stress that the situation of all disability groups and the diverse conditions related to gender, race, colour, age, ethnicity and other considerations must be taken into account, and recognize the impact of dual disadvantage and multiple discrimination faced by individuals such as, women, children or indigenous people with disabilities;
- d. ensure that the principles of non-discrimination and equal opportunity apply to (OMIT: persons with disabilities) women and men with disabilities and their organizational issues;
- e. acknowledge that the lack of provision of reasonable accommodation and/or positive actions to eliminate barriers to full participation is a form of discrimination;
- f. primarily contain rights that are enforceable, and should incorporate measures to enable women and men and girls and boys (OMIT: persons) with disabilities to exercise their human rights and fundamental freedoms;
- g. provide for a mechanism for the participation of organizations of persons with disabilities in the monitoring and implementation of the treaty;
- h. promote international cooperation to support national efforts;
- i. promote cooperation between governments and DPOs at the national level and ensure recognition of the successful initiatives of DPOs;
- j. promote an inclusive and barrier-free society; and
- k. promote the participation and proper representation of (OMIT: persons) women and men and children with disabilities in policy- and decision-making.

## DEFINITIONS

14. The convention should include definitions of disability, discrimination, and accessibility.

### *Disability*

15. There is a range of definitions of disability adopted at the international level. This reflects different purposes as well as changes in the understanding of disability. The meeting noted that the WHO-ICF definition might be taken as a starting-point, but also noted that there were concerns about some definitions currently employed, particularly in relation to survivors of mental illness or users and survivors of psychiatry.

16. The Convention should contain a definition of disability that reflects an understanding of disability as something which is the result of social and environmental factors. A definition of disability should not be restrictive. For example it should cover physical, sensory, intellectual, psychiatric and multiple disabilities. It should acknowledge that disability can be permanent, temporary, episodic and perceived.

17. In elaborating the definition of disability, it should be recognized that, while individuals have impairments, disability is not an individual pathology. It has a range of implications for social identity and behaviour, and largely depends upon context. Disability may also be a consequence of discrimination, prejudice and exclusion.

### ***Discrimination and equality***

18. With regard to the definition of "discrimination" the Convention should address all forms of discrimination including direct, indirect, intended and unintended, hidden, and systemic discrimination. The convention should contain a definition of discrimination on the basis of disability which draws on existing international definitions but which modifies them to reflect the particular nature of equality and discrimination in relation to persons with disabilities.

19. There is a consistent approach taken to the definition of discrimination by the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, ILO Convention No 111 on Discrimination in Occupation and Employment, and by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. Discrimination exists where there is "any distinction, exclusion or restriction on the basis of a prohibited characteristic (i.e. disability) which has the purpose or effect of impairing or nullifying on a basis of equality the recognition, enjoyment or exercise of human rights"..

20. A definition of discrimination should:

- a. cover direct (disparate treatment), indirect (disparate impact), hidden and systemic discrimination, including all arrangements, practices, and social structures that lead to the denial of rights and freedoms;
- b. include a failure to accord reasonable accommodation as discrimination (as does the Committee on Economic, Social and Cultural Rights in its General comment 5), and should include a definition of reasonable accommodation;
- c. clarify the different types of "positive measures" that may be required to ensure equality (some continuing, some which may need to be only temporary) and the relationship of these "positive measures" to the definition of discrimination;
- d. provide that affirmative action or special measures to reduce or remove barriers to full participation of women and men and to provide enabling environments in order to achieve equality of opportunity and equality of treatment should not be regarded as discriminatory;
- e. equality of opportunity requires that any relevant restrictions or limitations caused directly or indirectly by a disability should be remedied by appropriate modifications, adjustments or assistance;
- f. recognize that discrimination can result where different treatment is based on multiple grounds including disability (intersectionality) - for example, women with disabilities, indigenous people with disabilities - and that there can also be discrimination where different disabilities are treated differently and where in relation to different treatment there is a disparate effect on an individual or group;
- g. include protection for associates of persons with disabilities against discriminatory treatment because of their association; and
- h. provide protection against discrimination where disability is suspected, assumed or perceived, or where the discrimination is based on a past disability.

21. The definition of equality should recognize that equality of opportunity requires that any relevant restrictions or limitations caused directly or indirectly by a disability should be remedied by appropriate modifications, adjustments or assistance and requires affirmative action, reasonable accommodation or special measures to provide barrier free access in all spheres for full participation of women and men and to provide enabling environments, where necessary, in order to achieve equality of opportunity and treatment. Such action or measures should not be regarded as discriminatory. The Meeting raised the issue of whether the concept of equality to be adopted was one of equality of opportunity or equality of outcome/result.

### ***Accessibility***

[OMIT: 22. The concept of accessibility, which was a critical component of any convention, needs to be defined carefully. The following definition was proposed:

"Accessibility" means the measure or condition of things and services that can readily be reached or used (at the physical, visual, auditory and/or cognitive levels) by people including those with disabilities, which could be achieved, through design and adaptation irrespective of any types of disabilities. The term "accessibility", as commonly used in the disability-related field, may include but is not limited to:

- (i) access to physical/built environments and public transport;
- (ii) access to information and communications, including information, communications and assistance technology.

The Meeting also noted the elaboration of accessibility with reasonable accommodation contained in the Manila Declaration on Accessible Information and Communications Technology adopted by the United Nations Interregional Seminar and Demonstration Workshop on Accessible ICT and Persons with Disabilities (Manila, 3-7 March 2003). That meeting was organized in response to General Assembly resolution 57/229, which inter alia calls for accessibility with reasonable accommodation in United Nations facilities and documents. ]

22. Access is not an act or state, but a liberty to enter, to approach, to communicate with, to pass to or from, or make use of physical, environmental and societal structures, systems and processes regardless of type and degree of disability, gender or age.

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## Working Group 2

Group 2 discussed the integration of gender into the recommendations and made the following assumptions, comments and amendments:

### Assumptions

**Assumption 1: Wherever "*persons*" with disabilities has been used it will be replaced by "*Women and girls, men and boys*". The question was raised as to whether "of all ages" should be added.**

**Assumption 2: All Conventions should be referred to in the Preamble or Principles**

**Assumption 3: States Parties cannot "reserve" on key provisions of the Convention.**

### Amendments

#### General Obligations

Insert new pre-para 23 (1), page 7

Insert new pre-para 23 (2), page 7

Insert new para post-25, page 7

Guarantees of equality and non-discrimination

Para 27, page 7

Guarantees of specific rights

Para 29 (a), page 7

Para 29 (c) page 8

Para 29 (e), page 8

Para 29 (f) - new para inserted

Para 30, page 8

Para 31, page 8

Para 31 (a), page 8

Para 31 (c), page 8

Para 31 (f), page 8

Para 31 (g), page 8

Para 31 (h), page 8

Para 31 (i) to (m), - new paras inserted

## GENERAL OBLIGATIONS

Pre-23( 1)

States Parties should work with all relevant stakeholders to implement positive measures to ensure the enjoyment of rights set out in the Convention.

Pre-23(2)

State Parties should amend all legislation in pursuance of the provisions of the Convention

23. The Convention should contain a clear statement of the obligations of a State Party to implement its provisions, in particular the obligations to respect, ensure and provide remedies for violations of the rights set out in the Convention. States Parties should be obliged to take legislative, programmatic and policy actions to implement the provisions of the Convention, in particular the obligations to respect, ensure and provide enforcement mechanisms for violations of the rights set out in the convention. These measures should include specific constitutional or legislative guarantees of the rights of persons with disabilities to enjoy human rights and fundamental freedoms without discrimination. States should be obliged to ensure an enabling environment and a barrier-free society.

24. The convention should clearly set out the obligations of States Parties in relation to the acts of non-State actors which involve the denial of the human rights of persons with disabilities.

25. States Parties should provide guarantees of equality of opportunity and of non-discrimination, both generally and in the enjoyment of rights guaranteed in the convention.

Post 25. States Parties obligations should recognize and reaffirm all articles of CEDAW, with reference to women and girls with disabilities.

## **GUARANTEE OF EQUALITY AND NON-DISCRIMINATION**

26. The Convention should contain a general guarantee of equality and non-discrimination in the enjoyment of the rights set forth in the Convention, as well as a free-standing guarantee of equality and non-discrimination as set out in article 26 of the ICCPR.

27. The Convention should make specific reference to the right of women and men to equality and non-discrimination in the enjoyment of human rights and fundamental freedoms.

## **GUARANTEES OF SPECIFIC RIGHTS**

28. The Convention should reaffirm the entitlement of persons with disabilities to the enjoyment of all human rights and fundamental freedoms. It should therefore contain a statement of specific rights guarantees, drawing on the rights contained in the UDHR, ICCPR, ICESCR and other instruments. These rights should be supplemented by more detailed elaborations of what is required for persons with disabilities to enjoy those rights on the basis of equality, or by new formulations that reflect the perspectives of persons with disabilities. The Convention on the Rights of the Child and the Convention on the Rights of All Migrant Workers and Members of Their Families may provide useful starting-points for developing such an approach.

29. The Meeting noted that all rights could be further elaborated to ensure that persons with disabilities enjoyed them on an equal basis. A number of specific examples were given:

a) the linguistic rights of persons with disabilities (as illustrated by the rights of deaf persons to use sign language to communicate, to have interpretation services in sign language and education in sign language as well as effective access to all systems of communication; or by the right of persons with visual impairment to use Braille, which might be derived from various rights including the rights to freedom of expression;

b) the rights to effective access to, and use of, alternative modes of communication, including augmentative communication for persons with intellectual disabilities, persons with severe and profound disabilities and persons with diverse learning difficulties, which might be derived from various rights including the rights to information and freedom of expression;

c) the rights to respect for private and family life, and to freedom of expression might be relied on to underpin the right to sexuality of persons with disabilities;

d) right to liberty and security of the person and to freedom from cruel, inhuman or degrading treatment and from all forms of exploitation, violence and abuse (could be drawn on) as well as in relation to forced intervention, sterilization, forced marriage, and institutionalization;

e) the right to non-discrimination in relation to nationality and immigration might be drawn on to support the rights of persons with disabilities to immigrate to join family members (a field in which some countries discriminate); and

f) the rights to freedom of association, freedom of expression, and of political participation could be drawn on to ensure the full representation of DPOs, including organizations of women with disabilities in decision-making at all levels.

g) Equality as a person before the law could be drawn in relation to existing discriminatory legal practices such as marriage nullification, or the adoption of children by a disabled parent.

30. The meeting also noted that the implications of some rights for persons were contentious. The example of the right to life and its implications for the use of genetic counselling, or rights of access to abortion was mentioned. It was recognized that a convention would not necessarily resolve debates over these contentious issues. *(It was questioned whether this was worth retaining?)*

31. In addition to specific interpretations of existing human rights guarantees, participants identified a number of additional perspectives or aspects of existing rights that might be considered for explicit inclusion in a convention, with particular emphasis on equal access for girls and women with disabilities. These included:

a) Right to participation and right to inclusion [delete and provide a statement in the preamble or principles]

b) Right of access to the physical environment (including access to places, services and facilities) right to a barrier-free society;

c) Right of access to information and to communication, including entertainment (which should reflect the specific modifications necessary for effective access);

d) Right to enjoy resources; [Expand and explain or delete]

e) Right to personal self-determination and to independent living in the community\*;

f) Right to freedom from all forms of physical, psychological and social violence and abuse; and the right to legal redress

g) Right of access to basic economic resources, including safe food, water and shelter;

h) Provisions recognizing rural-urban and affluent-poor disparities

i) Right to survival

j) The right to family support

k) The right to rehabilitation, including community-based services.

l) The right to early child identification and early intervention

m) The right to all forms of education for all children and youth with disabilities, with particular reference to CRC, Articles 1, 2, and 23, the recommendations contained in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the Salamanca Statement and Framework for Action.

n) The right to work, in accordance with ILO Convention 159, with the provision of a particularly enabling environment for women and girls with disabilities

o) The right to inherit, own and maintain property, with specific protection and promotion of the rights of women with disabilities

32. There was some discussion of whether the concept of reasonable accommodation should be seen as involving a separate right or whether it was better understood as part of the concept of discrimination. Some consideration was also given to whether third generation rights, such as the right to development, should appear in the Convention. The consensus of the Meeting was that, given the complexities of introducing such a collective right into the proposed convention, it might be more appropriate to focus on guaranteeing enjoyment of individual rights as a means to enhancing the participation of persons with disabilities in the development process and ensuring that they enjoy the benefits of development, rather than including the right to development as such in the body of the convention.

## **OTHER STATE OBLIGATIONS**

33. The Convention should also contain provisions dealing with other measures to be taken by States Parties, which could include:

- a) provision for national institutional frameworks to monitor and promote compliance with the convention, in which national human rights institutions can play a role;
- b) provisions requiring that national governments ensure that the responsibility for matters relating to upholding the rights of persons with disabilities should be allocated to a specific focal point within Government with authority for implementation;
- c) provision for setting clear targets for the development of disability and gender-inclusive infrastructure and processes;
- d) provisions requiring States Parties to provide and promote accessibility for all persons with disabilities and their associates;
- e) provision for collection of statistics and other data, disaggregated by gender, for reporting and monitoring purposes;
- f) provision requiring States Parties to promote awareness of the Convention; and
- g) provisions requiring States Parties to set aside specific resources to implement the Convention and to provide support for the activities of DPOs, including organizations of women with disabilities
- h) provisions requiring States Parties to set aside specific resources to implement the Convention and to provide support for the activities of other relevant stakeholders and civil society organizations engaged in disability-related activity

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## **Working Group 3**

### **Monitoring Workshop report back**

There must be a committee to monitor implementation of the new Convention.

### **Committee Membership (para 37)**

Committee membership must be composed of people who have personal experience of disability, including direct experience, or as a caregiver/advocate and/or someone who has had recognised experience in the field of disability.

The committee must represent all categories across disabilities including intellectual disability, psychiatric illness, caregivers and parents of disabled children. There must be gender equity, including women with a

disability and regional representation, and the inclusion of indigenous people in the composition of the committee.

50% of the Committee members must be women.

Information about the committee, terms of reference, guidelines etc must be appropriate and in alternative formats for persons in all categories of disabilities.

### **Establishment of the committee**

Once established the committee will decide on the guidelines in consultation with DPOs, CPOs and people with a disability, ensuring gender equality and the inclusion of women with a disability in the consultative process. They shall also put in place a procedure for the acceptance of processing alternative shadow reports.

### **Terms of Reference**

The committee shall also have powers to make recommendations, proposals on: appropriate legislation, policies, measures, equitable gender distribution of budget appropriations, (we recommend that states allocate then minimum of 3% of national budget to disability issues), and in relation to any person with a disability present within the territory.

With a view to mainstreaming gender concerns the committee shall monitor all issues using a gender perspective.

Regional monitoring frameworks shall be undertaken in an inclusive, participatory and consultative manner involving DPOs, CSOs and people with a disability and their advocates. (refer CEDAW) Regional monitoring committees shall have equal representation of women, including women with a disability.

### **Country Reports**

#### **Preparation of Reports**

State party reports must to be prepared in consultation with DPOs, CSOs and DWOs, and women with a disability.

States shall provide resources to enable the preparation of the alternative reports by NGOs, DPOs, CSOs, WwD and other stakeholders including groups of women with disabilities, parents' groups, etc. These shall be prepared using inclusive and participatory processes

#### **Consideration of Reports by the Committee**

The committee shall consider the State party report and the Alternative report in a consultative and participatory manner, recognising that genuine and full participation of people with disabilities and women with a disability in the consultation process may require additional time and resources.

### **National Monitoring Mechanisms**

National Human Rights Mechanisms to include a Commissioner for Disabilities

State bodies shall establish a commissioner for disabilities with decentralised sub-commissioners at provincial/state/district/commune level to monitor the implementation of the convention at the local level. The selection of sub-commissioners will be based on the principle of gender equity.

Local level grass-roots groups committees will be established by the sub committees to assist the commissioner and the sub commissioners in the task of monitoring. These sub committees will be comprised of DSOs, CSOs, WDOs and be established using the principle of gender equity, and include women with a disability.

## **Remedies**

The commissioners should be empowered to intervene to address any violation of the convention and will establish mechanisms to address the additional forms of discrimination and violence experienced by women and girls with a disability.

State parties shall establish and adequately resource a system to address violations of the rights of persons with disabilities through the non implementation of the provisions of the convention.

In recognition of the general accessibility of formal legal systems to people with disability due to lack of resources, the complexity of the systems and the trauma induced by the system we recommend that state parties create alternative, appropriate alternative creative redressal mechanisms. These mechanisms will acknowledge the additional forms of discrimination and violence experienced by women and girls with a disability

### **Resource Allocation for monitoring at all levels.**

State parties shall allocate adequate budgetary appropriation to enable the smooth functioning of the national and decentralised monitoring mechanisms.

State parties shall make every effort to inform the public about the convention and the monitoring mechanisms, and ensure the inclusion of persons with a disability in the communication process.

Adequate resources must be provided for the creation of appropriate alternative and creative redressal mechanisms, and for the preparation of and participation in the preparation of the State party report and the alternative report by DPOs CSOs WDOs including the participation of women with a disability.

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