

PROMOTING THE RIGHTS OF PEOPLE WITH DISABILITIES: TOWARDS A NEW UN CONVENTION

**An International Workshop for National Human Rights Institutions from the
Commonwealth and Asia Pacific Region**

New Delhi, India, 26 to 29 May 2003

Introduction

1. National Human Rights Institutions (NHRIs) from the Commonwealth and Asia Pacific region, consisting of NHRIs from Afghanistan, Australia, Fiji, Ghana, India, Iran, Republic of Korea, Malawi, Malaysia, Mauritius, Mongolia, Nepal, New Zealand, Nigeria, Northern Ireland, Philippines, South Africa, Sri Lanka, Thailand and Uganda, met in New Delhi, India from 26th to 29th May 2003 to discuss a proposal to develop a comprehensive and integral United Nations Convention to promote and protect the rights of persons with disabilities.
2. The workshop participants expressed their gratitude to the National Human Rights Commission of India for hosting and organising the workshop in partnership with the Asia Pacific Forum of National Human Rights Institutions, the British Council and the United Nations Office of the High Commissioner for Human Rights and to the United Kingdom Foreign and Commonwealth Office and the United Nations Office of the High Commissioner for Human Rights for their financial support.
3. Participation also included representatives from governments, non-governmental organisations, international agencies and experts working in the field of human rights and disability.
4. Dr Justice A.S. Anand, Chairperson of the National Human Rights Commission of India and the Chairperson of the Asia Pacific Forum of National Human Rights Institutions, Dr Morna Nance, Acting Director, British Council India and Mr Orest Nowosad, United Nations Office of the High Commissioner for Human Rights, spoke at the inaugural session. In their statements the distinguished speakers highlighted the important role of national human rights institutions in protecting and promoting the human rights and dignity of persons with disabilities and in the possible development of a proposed new United Nations Convention in this respect.
5. The workshop held nine working sessions relating to various aspects of the rights of persons with disabilities. It considered, inter alia, country papers on the impact of national legislation and administrative practice; the role of NHRIs in promoting the rights of persons with disabilities; “mainstreaming disability” – experiences of UN Conventions (hard instruments); existing (soft) UN instruments relevant to disability;

international monitoring mechanisms and complaints procedures; the nature and key elements of the proposed new Convention on disability – perceptions of NHRIs and NGOs; and partnership strategies for action in the lead up to the new UN Convention.

6. Following detailed discussions on each of the above matters, the workshop adopts the following preliminary conclusions and recommendations to the Ad Hoc Committee. These are without prejudice to the more detailed positions that NHRIs may adopt, individually or jointly, as work on the new Convention proceeds.

Conclusions and Recommendations to the Ad Hoc Committee adopted by the New Delhi Workshop

The NHRIs present at the workshop from the Commonwealth and Asia Pacific region:

7. Welcome the decision of the United Nations General Assembly to establish an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities (the Convention).
8. Welcome the decision of the Ad Hoc Committee to specifically invite NHRIs to participate in their work and agree to respond positively to the invitation and to make available suggestions and proposals to be considered in the development of the proposed Convention.
9. Request the United Nations and the Ad Hoc Committee to take the necessary measures to ensure the participation of persons with disabilities in their activities and ensure the widest possible participation of organisations of persons with disabilities.
10. Strongly affirm the need for the development of a comprehensive and integral Convention.
11. Stress that the Convention should be a ‘rights based’ instrument built on international human rights norms and standards and social justice. It should be informed by the overarching principle that all persons with disabilities, without exception, are entitled to the full benefit and enjoyment of all fundamental human rights and freedoms on the basis of equality, dignity and without discrimination.
12. 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 when elaborating the Convention.
13. Propose that the following elements should be included in the proposed Convention.

Preamble

14. The Preamble to the Convention should:

- stress the need for the Convention;
- recognise the value and applicability of existing international human rights instruments (both hard and soft) to disability;
- recognise the impact of dual disadvantage and multiple discrimination faced by individuals such as, women, children or indigenous people with disabilities, or other status, and
- stress the Convention's links to these instruments and the need for a comprehensive rights based treaty.

Objectives

15. The objectives of the Convention should:

- recognise that persons with disabilities are entitled to the full range of civil, political, economic, social and cultural rights;
- recognise the progressive realisation of certain rights;
- ensure that the principles of non-discrimination and equal opportunity apply to persons with disabilities;
- acknowledge that the lack of provision of reasonable accommodation and/or positive actions to eliminate barriers to full participation is a form of discrimination; and
- promote international cooperation to support national efforts.

Definitions

16. With regard to the definition of 'disability' the Convention should:

- stress that disability is not an individual pathology. It has a range of implications for social identity and behaviour, and largely depends upon the context and is a consequence of discrimination, prejudice and exclusion.
- not be restrictive. For example it should cover physical, sensory, intellectual, psychiatric and multiple disabilities. Disability can be permanent, temporary, episodic and perceived.

17. With regard to the definition of 'discrimination' the Convention should:

- address all forms of discrimination including direct, indirect, hidden and systemic discrimination;
- recognise 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;
- require affirmative action, reasonable accommodation or 'special measures' to provide barrier free access in all spheres for full participation 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 discrimination.

Scope

18. The Convention shall apply both to public and private institutions and spheres.

State Party Obligations

19. The Convention should place a positive obligation on State Parties to take legislative, programmatic and policy actions to achieve the Convention's objectives.

20. The Convention should recognise the responsibility of State Parties to ensure an enabling environment and a barrier free society.

Specific Articles

21. The full range of civil, political, economic, social and cultural rights contained in existing international human rights instruments should be incorporated in the Convention.

22. In addition to the application of existing international human rights law, the Convention should contain specific articles dealing with specialised areas and issues relating to civil, political, economic, social and cultural rights that, by the very nature of the context of disability, require codification, with due respect being paid to the principles of natural justice.

Monitoring

23. The Convention should have an effective monitoring mechanism which includes the possibility of conducting inquiries into systemic violations.

24. Any expert committee established under the Convention should include persons with disabilities.

25. The Convention should include national institutional frameworks to monitor and promote compliance with the Convention, in which national human rights institutions can play a constructive role.

Appendix – Additional Conclusions and Recommendations

The workshop also made the following conclusions and recommendations to other bodies.

Recommendations to National Human Rights Institutions

26. NHRIs should inform their governments about the importance of developing a comprehensive and integral Convention and recommend that they actively support its development.
27. NHRIs should raise awareness within their respective societies about the importance of developing the proposed Convention while, at the same time, ensuring the implementation of existing international human rights standards relating to the rights of persons with disabilities.
28. NHRIs should consult with persons with disabilities and relevant non-governmental organisations about the development of the proposed Convention.
29. NHRIs should continue to participate actively in the development of the proposed Convention.
30. NHRIs should establish and strengthen a disability rights component in their work, including their complaint handling procedures.
31. NHRIs should take the necessary measures to ensure the participation of persons with disabilities in their activities.

Recommendations to the United Nations Office of the High Commissioner for Human Rights

32. The United Nations Office of the High Commissioner for Human Rights is encouraged to continue to support to the extent possible within available resources, including through technical cooperation and advocacy, the effective participation of NHRIs and their regional associations in the development of the proposed Convention.
33. The United Nations Office of the High Commissioner for Human Rights is encouraged to support the work of NHRIs in the protection and promotion of the rights of persons of disabilities at the national level.
34. The United Nations Office of the High Commissioner for Human Rights is encouraged to assist in the establishment of a disability ‘focal points’ network amongst NHRIs and to facilitate the establishment of a comprehensive and accessible website on issues relating to disability.

35. The United Nations Office of the High Commissioner for Human Rights is encouraged to continue to work with other partners, as exemplified by this workshop, in the promotion and protection of the rights of persons with disabilities.

Recommendations to the Asia Pacific Forum of National Human Rights Institutions

36. The Asia Pacific Forum of National Human Rights Institutions should continue to provide support, as requested, for the activities of its member institutions in the development of the proposed Convention.
37. The Asia Pacific Forum of National Human Rights Institutions should, on request, support the work of its member institutions in the protection and promotion of the rights of persons of disabilities at the national level.
38. The Asia Pacific Forum of National Human Rights Institutions should continue to implement the decisions of its members relating to the rights of persons with disabilities reached at its Seventh Annual Meeting.
39. The Asia Pacific Forum of National Human Rights Institutions should, in consultation with the United Nations Office of the High Commissioner for Human Rights, seek to arrange for the circulation of the paper prepared for the New Delhi workshop entitled “Promoting the Rights of People with Disabilities: Towards a new UN Convention” as a conference paper of the Ad Hoc Committee.

Recommendations to the British Council

40. The British Council should continue to support the effective participation of NHRIs in the development of the proposed United Nations Convention.
41. The British Council is encouraged to continue to work with other partners as exemplified by this workshop in the promotion and protection of the rights of persons with disabilities.

A full report of this workshop will be available at the website of the Asia Pacific Forum
www.asiapacificforum.net
and the National Institutions website
www.nhri.net