

**PROMOTING THE RIGHTS OF
PEOPLE WITH DISABILITIES:
TOWARDS A NEW UNITED NATIONS
CONVENTION**

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

**Organised by the National Human Rights Commission of India, the British
Council and the Asia Pacific Forum of National Human Rights Institutions**

**Financial support provided by the National Human Rights Commission of India,
the United Kingdom Foreign and Commonwealth Office and the United Nations
Office of the High Commissioner for Human Rights**

**26 – 29 May 2003
New Delhi, India**

CONTENTS

1.	PURPOSE	2
2.	BACKGROUND	2
2.1	Establishment of Ad Hoc Committee	4
3.	THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS.....	6
3.1	Participation by NHRIs	6
3.2	Participation by People with Disabilities.....	8
3.3	Accessibility	9
3.4	Key preparatory actions for NHRIs.....	9
4.	CONTENTS OF A DISABILITY CONVENTION.....	10
4.1	Preamble of the convention	11
4.2	Objectives of the convention	11
4.3	Definition.....	12
4.4	The state party's obligations.....	13
4.5	Elements of the convention	14
4.6	Monitoring, evaluation and implementation	15
4.7	Publication.....	16
5.	EXISTING INTERNATIONAL STANDARDS.....	16
5.1	History	17
5.2	International Covenant on Civil and Political Rights.....	17
5.3	International Covenant on Economic, Social and Cultural Rights.....	20
5.4	Declaration on the Rights of Disabled Persons	20
5.5	Declaration on the Rights of Mentally Retarded Persons.....	21
5.6	Declaration on the Rights of the Child	22
5.7	Convention on the Rights on the Child	22
5.8	ILO Discrimination (Employment & Occupation) Convention 1958.....	24
5.9	Mental Illness Principles	25
5.10	Standard Rules.....	27
5.11	Other International Standards and Activities	27
6.	CONCLUSION.....	29

1. PURPOSE

The main purpose of this background paper is to assist in the consideration of options for the proposed new United Nations (UN) Convention on the Rights of People with Disabilities.

This paper does not attempt to give comprehensive details of all the possible intricacies that a new international convention on disability could contain, nor is it an exhaustive study of all aspects of discrimination faced by people with disabilities. The emphasis is rather on the broader issues that must be considered in the context of developing an appropriate convention, drawing on the concerns that have been raised by national human rights institutions (NHRIs) and from consultations with people with disabilities.¹

2. BACKGROUND

International human rights law has not always adequately acknowledged people with a disability as part of what the “human”, in human rights, means.

Disability is an inherent part of the human condition. In all parts of the world, and in all sections of the community, disability is a pervasive dimension of human diversity like gender, race and culture. This is true even where there are not the additional causes of disability that exist in many places – such as war or the after effects of war, or because of poverty and poor health.

In the last two decades, however, there has been increasing international attention to issues concerning the human rights of people with disabilities. But to date this has not resulted in a specific binding international treaty, as there is on racial discrimination, or discrimination against women, or the rights of children.

In late 2001 the UN revived consideration about the development of a specific ‘convention’ – a binding treaty – on the human rights of people with disabilities.

This was not the first time that a proposal for a convention had been made. In 1987, the Global Meeting of Experts to Review the Implementation of the World Programme of Action concerning Disabled Persons, at the mid-point of the UN Decade of Disabled Persons, had recommended that the UN General Assembly convene a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities. A draft outline of a convention was prepared by the government of Italy. At a subsequent meeting of the UN General Assembly, a further effort was made by the government of Sweden. On both occasions, however, no

¹ This background paper has been prepared by the Asia Pacific Forum of National Human Rights Institutions (APF). Specific acknowledgement should be made to the New Zealand Human Rights Commission for their work on this – and previous – papers on the subject.

consensus was reached as many government representatives were of the opinion that existing human rights documents guaranteed persons with disabilities the same rights as other persons, and there was, therefore, no need for a special convention.

It is true that international human rights standards require that people with disabilities should enjoy the same basic human rights as all other human beings. However, in many respects, people 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.

While the major UN conventions relate “indirectly to the rights of persons with disabilities”² only the UN Convention on the Rights of the Child³ makes explicit reference to the issue of disability.⁴

In addition, again apart from the UN Convention on the Rights of the Child, international human rights instruments with explicit reference to people with disabilities are generally non-binding⁵ such as, for example, the UN Declaration on the Rights of Disabled Persons⁶ and the UN Standard Rules on Equalisation of Opportunities for Persons with Disabilities 1993 (“Standard Rules”).⁷ With regard to the Standard Rules, while they were drafted and adopted as an alternative to a convention, they are neither comprehensive nor legally binding.⁸

Therefore over the last twenty years many advocates have continued to push for the development and adoption of a legally binding international treaty specifically focused on the issue of disability. For example, a meeting of international disability related non-governmental organisations (NGOs) in March 2000 adopted the Beijing Declaration on

² Commissioner Charlotte McClain, South African Human Rights Commission, address to 4th Conference of African Human Rights Institutions 14-16 August 2002 Kampala Uganda. See www.nhri.net

³ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entered into force on 2 September 1990 in accordance with article 49.

<http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>

⁴ Articles 2 and 23 provide, respectively, for the principle of non-discrimination irrespective of disability and for the rights of the disabled child.

⁵ Though, on this point, note ILO Convention Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983, which has been ratified by 73 countries.

⁶ Proclaimed by General Assembly resolution 3447 of 9 December 1975.

<http://www.unhchr.ch/html/menu3/b/72.htm>

⁷ The Standard Rules were adopted by the United Nations General Assembly, forty-eighth session, resolution 48/96, annex, of 20 December 1993. <http://www.un.org/esa/socdev/enable/dissre00.htm>

⁸ Nonetheless the Standard Rules have contributed to the establishment of new legislation and national policies in a number of countries. This has been assisted by the Special Rapporteur on Disability who has monitored their implementation. UN Special Rapporteur on Disability, Day 8 NY August 7 2002, Ad Hoc Committee on Disability Convention

the Rights of People with Disabilities.⁹ This Declaration called for a wide consultation process between NGOs, UN organisations and governments aimed at the preparation and adoption of an international convention to promote and protect the rights of people with disabilities.

More recently the final declaration of the World Conference against Racism, held in Durban, South Africa in September 2001, included the following invitation to the General Assembly:¹⁰

*... to consider elaborating an integral and comprehensive international convention to protect and promote the rights and dignity of disabled people, including, especially, provisions that address the discriminatory practices and treatment affecting them.*¹¹

2.1 Establishment of Ad Hoc Committee

In response to this continued advocacy for a specific disability convention, in December 2001 the UN General Assembly passed a resolution establishing 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, based on the holistic approach in the work done in the field of social development, human rights and non-discrimination, taking into account the recommendations of the Commission of Human Rights and the Commission for Social Development.*¹²

In this resolution the UN General Assembly recognised that governments, UN bodies and NGOs had not been successful in promoting the “full and effective participation by and opportunities for persons with disabilities in economic, social, cultural and political life”. Expressing deep concern “about the disadvantaged and vulnerable situation faced by 600 million persons with disabilities around the world” the General Assembly stated it was “conscious of the need to advance in the elaboration of an international instrument”.¹³

The Ad Hoc Committee held its first session over the period 29 July to 7 August 2002. During that time the Committee heard general statements from representatives of a number of countries, two UN agencies – the International Labour Organisation (ILO) and the Office of the High Commissioner for Human Rights – and a number of NGOs.¹⁴

⁹ This NGO declaration was adopted by Disabled Peoples International, Inclusion International, Rehabilitation International, the World Blind Union and the World Federation of the Deaf. <http://www.unescap.org/decade/beijdeclarfin.htm>

¹⁰ This was an initiative of the government of Mexico.

¹¹ Paragraph 180 of the Programme of Action of the Final declaration of World Conference on Racism, September 2001. <http://www.unhcr.ch/html/racism/Durban.htm>

¹² United Nations General Assembly Resolution 56/168 adopted 19 December 2001

¹³ id.

¹⁴ A report outlining the views submitted by governments, intergovernmental organisations and UN bodies can be obtained at http://www.un.org/esa/socdev/enable/rights/a_ac265_w.htm

The Committee decided that accredited NGOs could participate in its work in various ways, and extended an invitation to regional commissions, UN bodies and mechanisms, experts, national human rights institutions as well as national disability institutions to participate in its future sessions. It recommended that:

- the Ad Hoc Committee hold its second session in New York in May/June 2003;
- the Secretary-General implement measures to facilitate accessibility to UN premises, technology and documents for people with disabilities and invited persons with disabilities and experts to present proposals on this issue.

The Ad Hoc Committee drafted a General Assembly resolution in which the preamble:

- stressed the importance of active participation by NGOs in the work of the Ad Hoc Committee, recognising the important contribution by NGOs in the promotion of human rights and fundamental freedoms of persons with disabilities;¹⁵
- underlined that the consideration of proposals for a convention shall complement concrete efforts to further mainstream the disability perspective into the implementation of international obligations and into the monitoring mechanisms of the six core UN human rights conventions, as well as the process of implementing and strengthening the Standard Rules;
- welcomed the work of national, regional and international meetings of governments, experts and NGOs contributing to the Ad Hoc Committee's work;
- reaffirmed the need to promote and protect the equal and effective enjoyment of all human rights and fundamental freedoms by persons with disabilities, aware of the contribution a convention could make in this regard and thus convinced of the need to continue the consideration of proposals.

The draft resolution's substantive recommendations were that the UN General Assembly should:

- encourage States to hold meetings or seminars to contribute to the work of the Ad Hoc Committee;
- request the Secretary-General to seek States, UN bodies and organisations' views on proposals for a convention including:
 - Questions relating to its nature and structure;
 - Elements to be considered including the work done in the field of social development, human rights and non-discrimination;
 - Follow-up and monitoring issues;
 - The complementarity between a new instrument and existing instruments.

¹⁵ An information note on how NGOs can participate in the work of the Ad Hoc Committee can be obtained at <http://www.un.org/esa/socdev/enable/rights/adhoc2ngonote.htm>

- request the Secretary-General to provide the Ad Hoc Committee with a comprehensive report comprising views submitted before its 2nd session;¹⁶
- invite regional commissions and inter-governmental organisations, NGOs, *national* disability and *human rights institutions* and independent experts to “make available suggestions and possible elements to be considered in proposals for a convention”.

The Committee resolution following its first session was adopted by the UN General Assembly. The Committee will hold its second session from 16 to 27 June 2003 to continue its consideration of proposals. This second session is likely to be a crucial one in helping the Committee to decide whether or not to recommend to the General Assembly that a Convention should be elaborated.¹⁷

3. THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

In advancing the promotion and protection of disability rights at the UN treaty level there are a number of steps which national human rights institutions (NHRIs) can take to ensure that the important opportunity provided by the upcoming meeting of the Ad Hoc Committee is used to the full.

The Ad Hoc Committee has specifically invited NHRIs to submit directly to the Ad Hoc Committee suggestions and possible elements to be considered in proposals for a Convention. To take advantage of this offer, NHRIs will need to determine:

- *How* to participate in this process;
- *What* to focus participation on.

3.1 Participation by NHRIs

In April 2002 the UN High Commissioner for Human Rights stated that “it will be of utmost importance that not only States but also National Human Rights Institutions and NGOs are able to contribute their experience to the elaboration of the new Convention”. Such a role would be consistent with the powers and functions of many national institutions as defined by the Paris Principles.

Following the advocacy of the OHCHR and some States and NGOs, the Ad Hoc Committee decided at its first session “to extend an invitation to regional commissions, United Nations bodies and mechanisms, experts, national human rights institutions and national disability institutions to participate in its future sessions.”¹⁸

¹⁶ The report of the Secretary General can be obtained at http://www.un.org/esa/socdev/enable/rights/a_ac265_z.htm

¹⁷ A provisional agenda for this second session of the Ad Hoc Committee can be obtained at <http://www.un.org/esa/socdev/enable/rights/adhoc2meetagenda.htm>

¹⁸ Note by the Secretary-General, General Assembly Doc A/57/357

With the mandate provided by the Paris Principles and with the specific invitation of the Ad Hoc Committee, NHRIs therefore have the opportunity to participate in the development of the proposed convention.

It is the aim of this workshop to provide support for the participation of NHRIs in the development of the proposed convention. It is hoped that participants at this workshop will exchange views, knowledge and experiences and gain an improved understanding of norms and standards related to disability. In particular it is hoped that participants will gain an understanding of the context and structure of the proposed convention.

On the basis of this exchange of information and increased knowledge the workshop will aim to formulate policy options and build a consensus among NHRIs on the proposed convention. Finally it is the aim of this workshop to produce an agreed strategic framework for NHRI advocacy about how they wish to participate in the Ad Hoc Committee process and the broader development of the proposed convention.

Specifically, with regards to the work of the Ad Hoc Committee, as envisaged in their invitation to NHRIs and in operative paragraph 4 of UN General Assembly resolution 57/229, the outcomes of this workshop will be presented for the consideration of the Ad Hoc Committee at its second session from 16 to 27 June 2003.

In addition, individual APF member institutions have made arrangements to send representatives to participate in the meetings of the Ad Hoc Committee. At the Seventh Annual Meeting of the APF, held in New Delhi, India, in November 2002, APF member institutions:

*... discussed a proposal to develop a new international convention on the rights of people with disabilities. Forum institutions agreed to respond positively to the invitation of the United Nations Ad Hoc Committee to participate independently in the development of the possible new convention. The Forum adopted the recommendations contained in the discussion paper presented to the meeting and welcomes the United Nations Office of the High Commissioner's support in their implementation ...*¹⁹

The specific recommendations referred to in the above decision of APF members are useful in illustrating the range of potential activities NHRIs could undertake and are therefore outlined in full below:

1. *That Forum member institutions consider the recommendations of the Ad Hoc committee that:*
 - i. *Human rights institutions make available suggestions and possible elements to be considered in proposals for a convention;*
 - ii. *Organisations' views be sought on proposals for a convention including*

¹⁹ Paragraph 13, Concluding Statement of the Seventh Annual Meeting of the APF, http://www.asiapacificforum.net/activities/annual_meetings/seventh/concluding.htm

- *Questions relating to its nature and structure;*
 - *Elements to be considered including the work done in the field of social development, human rights and non-discrimination;*
 - *Follow-up and monitoring issues;*
 - *The complementarity between a new instrument and existing instruments.*
2. *That Forum member institutions consider what role they can play in responding to recommendations of the Ad Hoc committee in relation to the development of a convention (a) at the national level and (b) in the regional forums within the UN system;*
 3. *That Forum member institutions consider how they can best respond to recommendations that national institutions should consult with NGOs in their respective countries in relation to the development of a convention;*
 4. *That Forum member institutions adopt reasonable efforts to facilitate the participation of persons with disabilities in the course of NGO consultations;*
 5. *That the APF take steps to develop a disability rights component within its work programme;*
 6. *That Forum member institutions request that the Forum secretariat provide support, as requested and to the extent possible, for the activities of its member institutions in responding to the Ad Hoc Committee's recommendations.*
 7. *That Forum member institutions request that the Forum secretariat, in cooperation with its member institutions, develop and advocate proposals for a possible new convention for the consideration of the Ad Hoc Committee.²⁰*

3.2 Participation by People with Disabilities

NHRIs do not operate within a vacuum. It is recognised that “it is disabled people who are experts in their own experience”.²¹ Therefore to promote and enable a fully inclusive Ad Hoc Committee process, a key principle should be the participation by people with disabilities in the negotiation process.

It is therefore recommended that NHRIs continue to ensure that they take the necessary steps to ensure the participation of persons with disabilities in their activities.

²⁰ Discussion paper, Seventh Annual Meeting of the APF, http://www.asiapacificforum.net/activities/annual_meetings/seventh/meeting_papers.htm

²¹ Objective 1, New Zealand Disability Strategy, APF7 meeting papers, www.asiapacificforum.net/activities/annual_meetings/7.htm

3.3 Accessibility

To ensure appropriate participation by people with disabilities, both the Ad Hoc Committee process and NHRIs should observe the principles of inclusiveness – therefore their own processes and work must be accessible to people with disabilities. To achieve accessibility:

- barriers to information and physical access should be removed;
- adequate support should be made available;
- disabled people should be consulted to ensure that actions are appropriate to meet the special needs of different groups.

3.4 Key preparatory actions for NHRIs

Mr Brian Burdekin, former Special Advisor on National Institutions to the UN High Commissioner for Human Rights, has suggested that NHRIs:

- Review the situation of disability rights in their own countries;
- Recommend to their governments the value of a disability convention;
- Ensure that NGOs:
 - are informed of the proposals for a disability convention;
 - have the opportunity to participate in any national considerations whether to support a convention;
 - have the opportunity to contribute whatever they think should be included in a disability convention.²²

In accordance with these suggestions NHRIs should have information on the following:

- the situation of disability rights in their own countries, including provision of supporting basic information e.g. good statistical data;
- what recommendations have been made to their governments regarding the value of a disability convention;
- the contribution made by NGOs in their countries to proposals for a disability convention.

Finally, while the Ad Hoc Committee is looking for suggestions and proposals from NHRIs regarding the nature and structure of a convention, it needs to be stressed that no decision has yet been taken on whether a convention should be developed at all. The request of the Ad Hoc Committee may seem to imply that a decision to elaborate a convention has already been taken, and that submissions should deal only with the possible content of the convention. It needs to be emphasised, therefore, that *it has not yet been decided to establish a convention*. Indeed there are many States that have yet to be convinced that there should be a convention at all. It would be important, therefore, if

²² Extract from letter from Mr Brian Burdekin, Special Advisor on National Institutions to the High Commissioner to National Institutions, September 2002

NHRIs agree there should be a specific convention, that their submissions stress the need for the development of the convention, in addition to offering suggestions on aspects of the content of the convention.²³

4. CONTENTS OF A DISABILITY CONVENTION

This section of the background paper will examine the range of possible issues that should be considered in the development of the proposed convention.

At the outset one major issue to consider is whether a convention on disability should deal only with discrimination issues, or whether it should seek to cover human rights issues more broadly.

In a paper prepared for the Osaka Forum (in Japan) last October, the Special Rapporteur on Disability of the UN Commission for Social Development said that, in relation to a new Convention:

We are now at a crossroads. We must make up our minds if we want a convention based on international human rights norms and standards, or if we prefer a more general convention on development of measures (such as rehabilitation, assistive devices or building codes for accessibility) to improve the living conditions of persons with disabilities.

In June 2002, a draft text of a convention was presented by the Mexican Government at a meeting of international experts.²⁴ That text was generally agreed to have a social development, and not a human rights, approach.

If a human rights approach is adopted, a convention on the rights of persons with disabilities will be structured in a similar way to other human rights conventions. There will, however, be some significant differences because of the context of disability. Like all other international instruments it will draw on existing agreed language for many elements of the convention as a means of maintaining consistency with other human rights conventions and for expediting agreement. The UN Economic and Social Commission for the Asia Pacific (UNESCAP) have produced a useful working paper on this issue which takes into account the basic structure of human rights treaties but also explores issues that would be specific to a convention on disability.²⁵ The following key points have been based on the UNESCAP paper – supplemented with additional comments provided by NHRIs and the results of the Expert Group Meeting on the subject held in Mexico last year.²⁶

²³ Arguments for the development of a new convention can be found in Chapter 13 of Quinn & Degener, *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability*, which is available at <http://www.nhri.net/Disability.htm>

²⁴ The draft text prepared by the Mexican government can be obtained at <http://www.un.org/esa/socdev/enable/rights/adhocmeetaac265wle.htm>

²⁵ For a full copy of this paper see <http://www.worldenable.net/bangkok2003/basic.htm>

²⁶ For a full copy of the results of this meeting see <http://www.sre.gob.mx/discapacidad/whatrights.htm>

4.1 Preamble of the convention

The preamble to a convention essentially sets out the factors that stress the need for the convention. The preambular paragraphs also establish the factual context for interpreting the convention. They stress the convention's links to other human rights instruments and demonstrate how the convention fits into the larger international treaty regime. The rationale for having a new specific convention rather than simply relying on the existing conventions should be clearly stated. The following points therefore could be included:

- Recognition of the value of universal human rights stipulated in existing UN Human Rights instruments, such as UN Charter, the Universal Declaration of Human Rights and core International Covenants on Human Rights treaties such as CEDAW, etc;
- Recognition of international and regional disability-specific instruments, declarations, norms, and guidelines to promote human rights and non-discrimination against people with disabilities such as the 1971 Declaration on the Rights of Mentally Retarded Persons; the 1975 Declaration of Rights of Disabled Persons; the 1982 World Program of Action Concerning Persons with Disabilities; 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities, and 2002 the Biwako Millennium Framework for Action towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in the Asia and Pacific Region;
- Clarification of the link between these existing instruments and this Convention;
- The role of provisions contained in the Standard Rules in implementation of this Convention;
- Emphasising the need for a specific convention on disability.

4.2 Objectives of the convention

The main objectives and aims of the convention should be outlined. This could include the following:

- Recognise that persons with disabilities are entitled to the full range of rights;
- Promote and protect the rights of persons with disabilities as full-fledged citizens in order to manifest the paradigm shift from a charity-model approach to a human rights approach to disability concerns;
- Ensure non-discrimination and equal opportunity. Acknowledge that lack of provision of accommodation and/or positive actions to eliminate barriers is a form of discrimination;
- Ensure that principles of non-discrimination and equal opportunity apply to persons with disabilities, without any distinction of kind and degree of disability, gender, socio-economic and national status of a person.
- Promote modalities for the regional collaboration to support national efforts.

4.3 Definition

Definitions and terminology relating to disability have altered over the years, along with changes in our understanding of the type and nature of conditions which lie within its scope. These alterations are in turn, linked to changes in societal attitudes towards people with a disability.

For example the **United Nations Declaration on the Rights of Disabled Persons** defines “disability” to mean:

any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.

The above definition does not indicate that the social environment must also be considered among the functional causes of disability and its effects. The definition refers to a person being unable to secure “the necessities of a normal individual and or social life” by him or herself as a result of “deficiency in his or her physical or mental capabilities”. Clearly, however, significant numbers of people with disabilities are, or would be, able to secure for themselves the necessities of individual and social life, so long as they are not hindered by discrimination, unnecessary barriers, or lack of appropriate facilities.

The above definition, which emphasises in which respects a person cannot participate equally in social life, may also be thought to be inappropriate for a new convention intended to recognise and acknowledge their ability, and promote and protect their rights, to participate. It should not be necessary, in order for a person with a disability to receive protection against discrimination and human rights violations, to be categorised as a “disabled person” incapable of securing the necessities of life.

A wide variety of more detailed legal definitions of disability have been adopted for the purposes of anti-discrimination and related legislation throughout the world. The variety of definitions reflect changing social theories about disability. In part, they represent different attempts to get the language of the law to reflect medical and social theories and knowledge.

The most valuable approaches to defining disability focus attention on the fact that for many people with disabilities, restrictions on their ability to participate equally in different aspects of life are not the inevitable, medical consequence of a particular impairment. Rather, in many cases, restrictions on equality for people with disabilities result from features of the social or physical environment – features which can be altered, and which in some cases the law can help to change.

Therefore an important point to recognise in any discussion of improved international legal protection of the rights of people with disabilities is that defining disability for the purposes of the new convention will be difficult and complex. The situations, problems

and needs of people with disabilities vary widely – including in the origin, nature and degree of disability, and in the social responses to different disabilities.

It is therefore important to ensure that individuals needing protection against discrimination or human rights violations on the basis of disability are not excluded from this protection because of technical problems caused by the use of an inappropriate definition of ‘disability’. At the same time, it is important that the definition be as clear as possible so that all interested parties can interpret the convention with reasonable certainty and ascertain what their rights and obligations are. The following points could therefore be included:

- Disability is not just a medical diagnosis of a person. Environmental and social factors greatly influence any disability experienced by a person.
- Disability includes physical, sensory, intellectual, psychiatric and multiple disabilities. Disability can be permanent, temporary and perceived.

In addition to a definition of ‘disability’ it will be necessary to define ‘discrimination’. In particular, some conventions make it clear that affirmative action policies or ‘temporary positive measures’ are sometimes needed in order to eliminate discrimination.²⁷ The difference between a convention on disability and the other conventions is that these affirmative action measures are unlikely to be ‘temporary’. In all likelihood they will be permanent. It will be important to ensure that these measures are not seen to be discriminatory to other people. This section should therefore include the following:

- The proposed convention should recognise that equality of opportunity exists only when any relevant restrictions or limitations caused directly or indirectly by a disability have been compensated for by appropriate modifications, adjustments or assistance. The proposed convention should therefore require governments not merely to abstain from and prevent measures which might discriminate against persons with disabilities, but also to take affirmative action to reduce or remove barriers to full participation and to give preferential treatment, where necessary, in order to achieve equality of opportunity and treatment. Such affirmative action measures should not be regarded as discriminating against other persons.

4.4 The state party’s obligations

All conventions place obligations on States – these are the things that States agree to do as a result of becoming a party to the convention. Usually these are in the form of the type of legislative and policy actions that would be necessary to achieve the convention’s objectives. These could include:

- National laws, policies and programmes;
- Enforcement mechanism for compliance;

²⁷ For example, temporary affirmative action measures to encourage a greater representation of women elected to Parliaments.

- Protection of the international human rights instruments in the national court system;
- Ensuring the active participation of people with disabilities in the drafting, monitoring and reviewing process of national chapter of the Convention;
- Non-discriminatory judicial system;
- Political and civil rights of persons with disabilities;
- Freedom of association;
- Public awareness of the rights of people with disabilities.

One aspect which should be considered in some detail is the principle of ‘progressivity’.²⁸ This principle relates to the realisation of rights whose implementation requires the significant allocation of resources. Should retrogressive measures be considered a prima facie violation of the convention unless the State can prove that the measures are taken for the protection of other rights and take into account the situation of the most vulnerable groups?

4.5 Elements of the convention

In the various international human rights conventions there are articles dealing with specialised areas and issues.

The working paper on the draft convention produced by the government of Mexico suggests 13 areas:

- Article 5. Stereotypes and media
- Article 6. Accessible movement
- Article 7. Alternative communication
- Article 8. Accessible Information
- Article 9. Violence
- Article 10. Legal capacity
- Article 11. Political participation
- Article 12. Education
- Article 13. Medical and rehabilitation services
- Article 14. Employment
- Article 15. Social Security
- Article 16. Recreation, culture and sports
- Article 17. National institutions

In addition to the above issues the convention could contain:

²⁸ For the example of the application of this principle see Article 2.1 of ICESCR which provides that “each State Party ... undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the right recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

- The prohibition of eugenic laws and policies
- Freedom from torture, inhuman and degrading treatment
- Right to bodily and psychic integrity
- Right to privacy
- Right to liberty
- Right to justice
- Right to form associations
- Family rights
- Freedom of religion
- Freedom of expression
- Right to participate in civic life
- Right to non-discrimination with respect to immigration and asylum
- Right to health
- Right to an adequate standard of living
- Right to development

The rights of particularly vulnerable persons with disabilities (eg indigenous people with disabilities; women with disabilities; rural people with disabilities etc) could also be incorporated into the convention.

The Convention will have to have one article for each of the main areas that are identified. The following points are specifically recommended for inclusion in the convention:

- The convention should cover civil, cultural, economic, political and social rights of persons with disabilities.
- As public services become generally more privatised, private employers and providers of goods and services, and other non-public bodies should increasingly become subject to both non-discrimination and equality norms in relation to persons with disabilities – in addition to the norm of State Parties.

4.6 Monitoring, evaluation and implementation

All UN human rights conventions have the same type of monitoring system – a committee elected by the States party. While a convention on disability would not necessarily have such a committee it can be presumed that it is likely. The key question is what would be the most effective monitoring mechanism for the convention and should it function in the same way as the other human rights monitoring bodies. The following points could be included:

- Ratification and signatories;
- Reservations;
- Treaty body of experts at the international level;

- Compositions of the Committee and elective system of its members. The convention should establish an expert committee, composed of persons with various disabilities to monitor and evaluate it.
- International Convention Conference among signatories;
- Amendments of the convention;
- State's obligation for submitting the report to the UN GA, or the Committee. Governments should submit self-evaluation reports periodically, and civil society participation in the report should be mandated.
- Monitoring and evaluation mechanism of the implementation of the convention should accord with other UN treaties.
- The provisions of the proposed convention should be regarded as minima, which States may improve on in national law, policy and practice.
- While the proposed convention should address itself primarily to governments, with whom the main responsibility rests, private employers and providers of goods and services and other non-public bodies should be subject to its provisions.
- Rights can only be properly exercised and protected if people are aware of their existence and are in a position to access them. In other words, rights must be visible and accessible, and there should be access to justice through easy-to-use dispute prevention and settlement systems and to legal aid.
- The proposed convention should recognise the importance of having an institutional framework to deal with the rights of persons with disabilities, appropriate to national conditions – this should also include the valuable role played by NHRIs and/or specific disability commissions.
- The importance of international cooperation in the promotion of development and, hence, in the effective implementation of the proposed convention should be strongly reflected, and governments in particular urged to adopt special measures to help achieve that goal.

4.7 Publication

The convention should be translated into various languages with accessible formats

5. EXISTING INTERNATIONAL STANDARDS

This section of the paper examines issues concerning the application of the existing international human rights standards in relation to the development of a new international convention on disability.

This is not an exhaustive examination of existing international instruments as this work has already been thoroughly undertaken elsewhere.²⁹ However the main international human rights instruments are examined and their application to people with disabilities is critically evaluated.

²⁹ See, for example, part 2 of the Quinn and Degener paper, op cit.

5.1 History

A range of international standards on human rights have been developed through the UN system since 1945. These standards fulfil part of the mandate of the UN under its Charter to promote universal respect for and observance of human rights.

In 1948 the UN adopted the Universal Declaration of Human Rights which proclaimed fundamental rights to which “everyone” should be entitled without discrimination. The Declaration was intended as a common standard of attainment for all nations. It was not, however, seen at the time as imposing binding legal obligations on governments (although many international lawyers have concluded that the Declaration now has substantial legal force). Moreover, it proclaimed rights only in general terms, rather than setting out in detail how those rights should be translated into law and practice.

In the last fifty five years the development of more detailed instruments has continued. Standards have been developed concerning the human rights of particularly vulnerable groups. These standards are involved in a series of Declarations, Covenants, Treaties, Principles and Rules.

5.2 International Covenant on Civil and Political Rights

The **International Covenant on Civil and Political Rights** (ICCPR) was adopted by the UN General Assembly in 1966. The ICCPR requires that all Parties “respect and ensure to all individuals within their territory and subject to their jurisdiction” the rights which the Covenant recognises. These rights include (amongst others):

- the right to life (Article 6);
- the right to freedom from cruel, inhuman or degrading treatment or punishment (Article 7);
- the right to liberty and security of the person (Article 9);
- the right to be treated with respect for dignity and with humanity, if deprived of liberty (Article 10);
- the right to freedom of movement and choice of residence (Article 12);
- the right to equality before courts and tribunals, and to a fair hearing in any criminal case or law suit; to be presumed innocent until proved guilty if charged with a criminal offence; and in determination of any criminal charge to guarantees including the right of every person:
 - to be informed promptly, in detail and in a language the person understands of the nature and cause of the charge;
 - to be tried without undue delay
 - to be tried in his or her presence, and defend him or herself in person or through counsel of his or her own choosing;
 - to have legal assistance assigned where required by the interests of justice, free of charge where the person has insufficient means to pay;
 - to examine witnesses;

- to have the free assistance of an interpreter if he or she cannot speak the language used in court (Article 14);
- the right to recognition as a person before the law (Article 16);
- the right to freedom from arbitrary interference with privacy or family life (Article 17);
- the right to freedom of conscience and religion (Article 18);
- the right to freedom of opinion, expression and information (Article 19);
- the right to freedom of association including the right to form and join trade unions (Article 22);
- the right to marry and found a family (Article 23);
- the right of children to special protection (Article 24);
- the right to take part in public affairs, to vote and to be elected, and to have access on equal terms to public service (Article 25);
- and the right of people belonging to ethnic, religious or linguistic minorities to enjoy their own culture, practice their religion or use their own language, in community with other members of their group (Article 27).

Effective protection of these rights obviously involves many areas of government legislation and practice. Clearly, not all these rights can be effectively addressed by a new international convention of disabilities alone. Equally clearly, however, an international convention is important if these rights are to be actually implemented.

The ICCPR contains a number of provisions relevant to disability. These include:

ICCPR Article 2.1

The ICCPR requires each Party:

to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The terms of this Article indicate that discrimination “of any kind” (including, by definition, discrimination relating to disability) which affects the exercise or enjoyment of rights recognised elsewhere in the ICCPR is covered. This is in fact implicit in the requirement to ensure these rights to “all individuals”.

On this basis, disability related discrimination affecting these rights would fall within the obligations under Article 2.2 to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised” and under Article 2.3 “to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy”.

In addition “disability” would also appear to be covered by the concluding phrase “or other status” in Article 2.1. There is no general consensus among legal writers as to the

breadth of the obligation imposed by the term “or other status” or whether disability constitutes a “status”. As originally used in the Universal Declaration of Human Rights, the term appears to have been intended to refer to distinctions analogous to the term “property status” originally proposed.³⁰ However, when the phrase “or other status” was subsequently discussed in the drafting of the ICCPR, it was regarded as an all inclusive term.³¹ On accepted rules of interpretation in international law, the view held by the drafters of the Covenants should be applied.

ICCPR Article 26

Article 26 of the ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

There is debate, similar to that relating to Article 2.1, concerning the ambit of the second sentence of this Article and whether it is limited to the specified list of grounds (including “other status”). A separate and significant issue, which is also the subject of debate, is whether there is any obligation imposed by this Article to prohibit discrimination in the private sector (in addition to discrimination by governments).

This is a separate question from that discussed above concerning the effect of Article 2, in conjunction with substantive Articles 6 to 25 and 27, in requiring protection against discrimination affecting the rights recognised in these Articles, including in the private sector.

The scope of Article 26 is important primarily because, unlike Article 2, it deals with discrimination not only with respect to those rights recognised in the ICCPR itself but with discrimination in any area of law or government action. Decisions of the Human Rights Committee (the UN body responsible for monitoring compliance with the ICCPR) indicate that the obligation embodied in the first sentence of Article 26 to respect and ensure the “equal protection of the law” constitutes an obligation to prevent discrimination in the law, in the application of the law or in any action under the authority of law.³² It is also clear from the text of Article 26 that the obligation imposed by the first sentence of this Article is not limited to the particular grounds specified in the second sentence.

³⁰ see U.N. Doc. A/2929

³¹ See M. Bossuyt, Guide to the Travaux Préparatoires of the International Covenant on Civil and Political Rights, 1987, p.486

³² See e.g. Broeks v. Netherlands (Communication no.172/1984) U.N. Doc A/42/40 (1987), a case concerning social security legislation.

In summary, therefore, the international treaty obligations contained in the ICCPR require protection against discrimination on the basis of disability:

- affecting the rights set out in the ICCPR, whether such discrimination occurs in the public or private sector; and
- by public authorities, or in the law or the administration of the law, whether or not in areas not specifically addressed by rights enumerated in the ICCPR.

5.3 International Covenant on Economic, Social and Cultural Rights

The **International Covenant on Economic, Social and Cultural Rights** (ICESCR) was adopted by the UN General Assembly together with the ICCPR in 1966. In addition to recognising rights concerning employment,³³ the ICESCR recognises rights in a range of other areas, including housing,³⁴ health³⁵ and education.³⁶

Article 2.1 of the ICESCR requires States Parties to “take steps ... by all appropriate means, including particularly the adoption of legislation ...” with a view to the progressive realisation of the rights which the Covenant recognises. This provision allows for progressive, rather than immediate, implementation in recognition that many of the rights set out require significant resource allocation. However to whatever extent enjoyment of these rights is achieved in a particular nation, the ICESCR requires that they be guaranteed on a non-discriminatory basis.

Article 2.2 provides that States Parties must:

guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

For the same arguments advanced with regard to the ICCPR, this includes discrimination based on disability.

In addition to the ICCPR and ICESCR there are two UN Declarations which deal more specifically with the rights of people with disabilities.

5.4 Declaration on the Rights of Disabled Persons

The **Declaration on the Rights of Disabled Persons** was adopted by the UN General Assembly in 1975. It recognises that people with disabilities are entitled to:

- the inherent right to respect for their human dignity;

³³ Articles 5 and 6.

³⁴ Article 11.

³⁵ Article 12.

³⁶ Article 13.

- the same fundamental human rights, *whatever the origin, nature and seriousness of their handicaps and disabilities*, as their fellow citizens, including the right to a decent life, as normal and full as possible (Principle 2);
- the right to legal safeguards against abuse of any limitation of rights made necessary by the severity of a person's handicap, including regular review and the right of appeal (Principle 4);
- the right to any necessary treatment, rehabilitation, education, training and other services to develop their skills and capabilities to the maximum (Principle 6);
- the right to economic and social security and the right, according to their capabilities, to secure and retain productive employment and to join trade unions (Principle 7);
- the right to have their needs considered in economic and social planning (Principle 8);
- the right to family life, the right to participate in all social, recreational and creative activities, and the right not to be subjected to more restrictive conditions of residence than necessary (Principle 9);
- the right to protection against exploitation or discriminatory, abusive or degrading treatment (Principle 10);
- the right to qualified legal assistance to protect their rights, and for legal procedures to take their condition fully into account (Principle 11).

5.5 Declaration on the Rights of Mentally Retarded Persons

The **Declaration on the Rights of Mentally Retarded Persons** was adopted by the UN General Assembly in 1971, before it was accepted in many countries that the term “mentally retarded” could be offensive and inappropriate. It was also some years before the Declaration on the Rights of Disabled Persons. The existence of a separate Declaration in this area does not, therefore, imply that the Declaration on the Rights of Disabled Persons does not apply equally to people with intellectual disabilities.

The Declaration on the Rights of Mentally Retarded Persons provides that a person with an intellectual disability has:

- the same rights “to the maximum degree of feasibility” as other human beings (Principle 1);
- the right to medical care, therapy, and such education, training, rehabilitation and guidance as will enable him or her to develop his or her ability and maximum potential (Principle 2);
- the right to economic security, a decent standard of living and to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his or her capabilities (Principle 3);
- the right to live with his or her own family wherever possible, and for the family to receive assistance, or, if institutional care is necessary, for the circumstances and surroundings to be as close as possible to normal life (Principle 4);

- the right to a qualified guardian when necessary to protect his or her well-being and interests (Principle 5);
- the right to protection from exploitation, abuse and degrading treatment;
- the right, if prosecuted for any offence, to due process of law with full recognition being given to his or her degree of mental responsibility (Principle 6); and
- the right that any procedure for restriction of rights due to the severity of a person's handicap must include proper legal safeguards against abuse, including periodic review and a right of appeal.

5.6 Declaration on the Rights of the Child

Another UN Declaration is the **Declaration of the Rights of the Child** adopted by the General Assembly in 1959. This Declaration specifically provides that “the child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his [or her] particular condition” (Principle 5). The Declaration of the Rights of the Child also provides that every child should have the right, without discrimination, to:

- opportunities and facilities, by law and by other means, to enable him or her to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity (Principle 2);
- a name and nationality from birth (Principle 3);
- enjoy the benefits of social security;
- grow and develop in health, and for this purpose is entitled to special care and protection;
- adequate nutrition, housing, recreation and medical services (Principle 4);
- where possible, to grow up in the care and protection of his or her family (Principle 6);
- receive education which will enable the child, on the basis of equal opportunity, to develop his or her abilities, judgment and sense of responsibilities and to become a useful member of society;
- opportunities for play and recreation (Principle 7);
- protection from neglect, cruelty and exploitation, from child trafficking, and from any occupation or employment which would prejudice his or her health or education or interfere with his or her physical, mental or moral development.

Although these Declarations do not create international legal obligations in the same way as a treaty, such as the ICCPR, they represent accepted international standards.

5.7 Convention on the Rights on the Child

The **Convention on the Rights of the Child** (CRC) was adopted by the UN General Assembly in 1989.

The Convention applies to all human beings under the age of 18 and requires State Parties to the Convention to:

*respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*³⁷

There is absolutely no doubt, therefore, that the non-discrimination provisions of this Convention apply to children with disabilities.

The Convention deals with a much wider range of rights than the Declaration on the Rights of the Child. These include:

- rights to life, survival and development (Article 6);
- rights concerning identity (Article 8);
- rights against interference with family life (Articles 9 and 16);
- rights to support services for families (Article 18);
- rights to freedom of expression, association and information (Articles 13 and 15);
- rights to protection from abuse, neglect or exploitation (Article 19 and Articles 32 - 36);
- rights concerning health care (Article 24);
- rights concerning education, including that primary and secondary education be available and accessible to all (Article 29);
- rights to social security and adequate living standards (Articles 26 and 27);
- rights of refugee children (Article 22);
- rights of children in substitute care or alternative family care (Articles 3 and 25);
- rights of children of minority communities or indigenous peoples (Article 30); and
- rights in the administration of justice and for children deprived of liberty (Articles 37 and 40).

The rights in each of these areas are therefore required to be guaranteed without discrimination, including to children with disabilities.³⁸ The Convention also makes specific provision relating to children with disabilities in Article 23, which includes requirements that State Parties take steps to:

ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

³⁷ Article 2.

³⁸ See Article 2.1

Finally, State Parties to the Convention are obliged, under Article 4, to:

undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention.

5.8 ILO Discrimination (Employment & Occupation) Convention 1958

In addition to the UN human rights instruments, the International Labour Organisation has developed a number of international instruments relevant to disability – including ILO Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons, Convention No. 142 concerning Vocational Guidance and Vocational Training in the Development of Human Resources, Convention No. 168 concerning Employment Promotion and Protection against Unemployment, Convention No. 102 concerning Minimum Standards of Social Security, Convention No. 121 concerning Benefits in the Case of Employment Injury and related ILO instruments, such as the ILO Code of Practice on Managing Disability at the Workplace.³⁹

Of particular note is the **Discrimination (Employment and Occupation) Convention 1958** (International Labour Organisation Convention no.111) which defines “discrimination” as:

any distinction, exclusion or preference" [made on any of the grounds specified in the Convention itself or specified by the State concerned] "which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.⁴⁰

Distinctions in respect of any particular job, based on the inherent requirements of the job, do not constitute discrimination.⁴¹ The Convention also specifies, in Article 5, that special measures, including affirmative action, for people with disabilities may be introduced without being prohibited as discrimination against other workers:

- 1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.*
- 2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.*

³⁹ For the full text of all of these instruments see <http://www.ilo.org/public/english/>

⁴⁰ ILO 111, Article 1

⁴¹ id.

ILO Recommendation no.111 (Article 4) – which (as indicated by the term Recommendation) is not a treaty but gives further guidance on measures which should be taken in this area – expressly endorses conciliation as a feature of mechanisms for the resolution of disputes relating to discrimination in employment and occupation. It does not, however, specify conciliation as the only or final permissible mechanism for dispute resolution. Rather, it clearly requires that additional measures be available where conciliation is not successful in resolving complaints.

Article 4 of ILO Recommendation 111 requires that “appropriate agencies” be established, assisted where practicable by advisory committees composed of employers' and workers' representatives and other interested bodies, to promote the policy required by Article 2 of the Recommendation (and by the Convention). These bodies are, in particular, to have the function of receiving, examining and investigating complaints that the policy is not being observed, and “if necessary by conciliation to secure the correction of any practices regarded as in conflict with the policy”. However, Article 4 goes on to specify that these bodies should be able “to consider further any complaints which cannot be effectively settled by conciliation and to render opinions or issue decisions” concerning the manner in which discriminatory practices revealed should be corrected [emphasis added].

5.9 Mental Illness Principles

Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care were adopted by the UN Commission on Human Rights in 1991.

These principles offer important guidelines for standard setting. The Principles focus primarily on human rights in relation to the mental health system. However, they also confirm:

- that every person with a mental illness has the same basic rights as every other person, specifically including the rights set out in the ICCPR and the rights recognised in the Declaration on the Rights of Disabled Persons [Principle 1.5];
- that discrimination on the basis of mental illness is not permitted [Principle 1.4];
- that every person with a mental illness has the right to live and work, as far as possible, in the community [Principle 3]; and
- that people being treated for a mental illness must be accorded the right to recognition as a person before the law [Principle 13].

The Principles re-affirm that individuals who have a mental illness or who have experienced mental illness have the right to protection from:

- exploitation - whether economic, sexual or in other forms;
- abuse - whether physical or in other forms; and
- degrading treatment [Principle 1.3].

In relation to mental health care, the Principles are not restricted to a remedial approach (dealing only with abuses and the means to prevent them). Rather, they recognise the positive contribution which mental health care should make to the enjoyment of human rights, and the right of everyone in the community to such care when necessary.

The Principles lay down that:

All persons have the right to the best available health care, which shall be part of the health and social care system [Principle 1.1];

and

every patient shall have the right to receive such health and social care as is appropriate according to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons [Principle 8].

This emphasises, first, that people with mental illness or people who have experienced mental illness should not be stigmatised, or disadvantaged in the care available, simply because of the nature of their illness. The Principles also provide that it is not acceptable to have lower standards for mental health care, in terms of either standards or resources, than for the rest of the health system. They specifically require that every mental health facility be inspected by competent authorities with sufficient frequency to ensure that the conditions, treatment and care of patients comply with the principles. The principles also give important emphasis to the principle of the “least restrictive alternative” in relation to treatment. They require an individualised plan for treatment, to be discussed with the patient and reviewed regularly. They recognise the right to be treated and cared for as far as possible in the community, and the right to treatment suitable to each person's cultural background.

At the same time, treatment in the community is clearly required to provide adequate care and adequate resources. Treatment is required to be directed towards enhancing personal autonomy. Accordingly, patients in mental health facilities are to have their rights respected, including privacy and freedom of communication. Such facilities are to include opportunities for education and vocational training, in addition to appropriate professional care and treatment.

The Principles embody detailed requirements for informed consent, the protection of children and the administration of medication. The Principles also require that patients in mental health facilities be fully informed of their rights, and have access to their own health records except in exceptional circumstances. They require that confidentiality of information must be respected.

Statements of rights without effective monitoring of their implementation, or remedies for their violation, are of little effect – as experience in this area has demonstrated. The Principles therefore require that [Principle 22]:

States shall ensure that appropriate mechanisms are in force to promote compliance with these principles, for the inspection of mental health facilities, for the submission, investigation, and resolution of complaints and for the institution of appropriate disciplinary or judicial proceedings for professional misconduct or violation of the rights of a patient.

They also require appropriate legislative, judicial, administrative, educational and other measures of implementation [Principle 23].

Clearly, not all the rights recognised in these Principles can be addressed by a new international convention alone. The Principles clearly indicate, however, that discrimination on the basis of mental disorder or psychiatric disability must be addressed in any national disability discrimination legislation.

5.10 Standard Rules

In 1990 the UN Commission for Social Development was authorised to prepare a set of “standard rules” on the equalisation of opportunities for disabled people, to be submitted to the General Assembly in 1993. Work on drafting of these rules was formally authorised in May 1991. The drafting was undertaken by government experts in close collaboration with UN agencies, other relevant intergovernmental bodies and non-government organisations, “especially organisations of disabled persons themselves.”⁴²

The status of the Standard Rules are not that of an international Convention, such as the Convention on the Rights of the Child. Rather, they have a similar effect as the UN Standard Minimum Rules on the Treatment of Prisoners which – apart from having considerable moral authority – assist in the promotion, application and interpretation of relevant instruments which are binding (such as the ICCPR). Its status as a supplementary instrument also avoids any impression that existing international standards are not applicable, as a matter of international law, to people with disabilities.

The Standard Rules do not have the same level of reporting and monitoring machinery that the formal human rights treaties have. However, there has been some modest international monitoring of their implementation, through reports from a UN Special Rapporteur and from governments.

5.11 Other International Standards and Activities

It should be apparent from the previous sections that there are international standards applicable to a wide range of the human rights problems faced by people with disabilities. Implementation of these standards and application to particular situations, however, clearly remains incomplete.

⁴² UN Doc.E/CN.5/1991/1 p.6

In 1982 the UN General Assembly adopted a World Programme of Action Concerning Disabled Persons, outlining measures required to equalise opportunities open to people with disabilities. The Programme represented a significant advance in international consideration of disability:

- in identifying full and equal participation in society as the primary goal;
- in emphasising that the major barriers to achieving this goal in most cases relate to the way in which society responds or fails to respond to disability - rather than to the inherent nature of a person's disability.

To encourage implementation of this Programme, the General Assembly proclaimed the period 1983 to 1992 as the UN Decade of Disability. A further indication of international concern in this area is provided by Resolution 45/91, adopted by the UN General Assembly in 1990, which stressed the need for programmes on disability to focus on action rather than only on awareness-raising, and for a sustained political commitment from all nations to the objectives of the World Programme on Disability.

A review of the Decade makes it clear that – despite some progress – the goals of the World Programme were only partially achieved. A decade further on, substantial barriers remain to equal participation by people with disabilities in all areas of social life, and equal enjoyment of the human rights to which all people are entitled.

Governments in the Asia Pacific region have acknowledged the lack of progress and the obstacles faced in implementing the goals and objectives of the Decade. In the UN Commission resolution 58/4 of 22 May 2002 “Promoting an inclusive, barrier-free and rights-based society for people with disabilities in the Asian and Pacific region in the twenty-first century,” the governments of the region extended their period of focus on this issue and proclaimed 2003-2012 to be the Asian and Pacific Decade of Disabled Persons.⁴³ Commission resolution 58/4 also urged governments in the region to support and contribute the work of the Ad Hoc Committee.

In addition, a high-level Intergovernmental Meeting, which met at Otsu, Shiga, Japan, 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).⁴⁴ The BMF encourages Governments to support and implement rights-based approaches to advancement of persons with disabilities. The BMF identifies targets and strategies to promote various rights of persons with disabilities; it also advocates that Governments support and contribute to the work of the Ad Hoc Committee. The BMF urges Governments to incorporate disability concerns into national policies and programmes to further achieve the United Nations Millennium Development Goals (MDG).⁴⁵

It is clear from the above analysis that insufficient attention to existing human rights standards has been a major limitation of a number of initiatives aimed at improving the

⁴³ See <http://www.unescap.org/sps/res58-4.htm>

⁴⁴ For a full copy of this document see <http://www.unescap.org/sps/bmf.htm>

⁴⁵ For a full copy of this document see <http://www.un.org/millenniumgoals/index.html>

position of people with disabilities. Therefore it is advocated that, at the international level, a ‘two-track’ approach be adopted. The first approach is the improved elaboration and application of existing human rights standards to ensure their appropriate protection of the rights of people with disabilities. Secondly, NHRIs should strongly advocate for a specific convention on the rights of people with disabilities.

6. CONCLUSION

In conclusion, the workshop organisers hope that this background paper has assisted NHRIs in their consideration of the proposed new UN Convention on the Rights of People with Disabilities.

As previously stated the paper does not attempt to give comprehensive details of all the possible intricacies that a new international convention on disability could contain, nor is it an exhaustive study of all aspects of discrimination faced by people with disabilities. It will be necessary, therefore, for NHRIs to continue to work hard to improve their expertise on these issues in the continuing development of the proposed convention.

It should be noted that the drafting of the Convention on the Rights of the Child took ten years while the drafting of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights took almost twenty years. While it is hoped that the development of a new convention on disability will not be such a long drawn-out process, it will be important for NHRIs to acknowledge and prepare themselves for the sustained commitment and effective involvement participation in this process will require.

Finally it is important to stress, that while the involvement of NHRIs in the development of a new international convention on disability is important, it is not a substitution for practical NHRI activity at the domestic level to promote and protect the rights of people with disabilities.

A questionnaire was distributed to all participants prior to this workshop requesting information on the activities of NHRIs on disability issues. The many responses received clearly indicate that important work is already being undertaken at the domestic level.⁴⁶ This work must continue and be further strengthened if the human rights of people with disabilities – as contained in the existing international instruments as well as the proposed new international convention – are to be honoured in their observance rather than their violation.

⁴⁶ An analysis of all the questionnaires received will be contained in the final report of this workshop – which will be available from the APF website by 30 June 2003 – www.asiapacificforum.net