Persons with Disabilities and Human Rights

Seminar Proceedings of the 16th Informal ASEM Seminar on Human Rights (ASEMHR16)

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ACKNOWLEDGEMENTS

Persons with disabilities exist everywhere in the world, and everywhere in the world they deserve to fully participate in society and have their human rights be fully realised. The 16th Informal ASEM Seminar on Human Rights provided an opportunity to discuss the issue of Persons with Disabilities and Human Rights. Over 100 civil society and government representatives from across Asia and Europe came together for the Seminar. The quality of the discussions and recommendations that came from the Seminar once again exceeded expectations. For these satisfying results, the organising partners are indebted to a long list of institutions and individuals.

Our thanks must first go to all of the participants who generously shared their experiences and expertise and contributed to intense and productive discussions. Their active engagement made the Seminar and its findings possible. It is our sincere hope that the discussions in Beijing were just the beginning, and that the networks and connections established over the three days of the Seminar will result in future collaborations and exchanges between Asia and Europe.

We are deeply grateful to the Ministry of Foreign Affairs of the People’s Republic of China for hosting the Seminar in Beijing. We would especially like to thank the Vice Minister of Foreign Affairs, Mr LI Baodong, for opening the Seminar. We would also like to thank Mr JIA Yong, President of the China Disabled Persons’ Federation, and Mr HUANG Jin of China’s University of Political Science and Law for their contributions to the official opening. We would also like to extend our gratitude to the China Administrative Centre of Sports for Persons with Disabilities for providing us with their accessible venue.

Special thanks go to Professor Gerard QUINN, Director of the Centre for Disability Law and Policy at NUI Galway, for his tireless work as the main rapporteur. We would also like to thank Ms LI Xiaomei, Dr Seree NONTHASOOT, Mr David RUEBAIN, and Ms Orsolya BARTHA for their work as rapporteurs and their contributions to the final Seminar Report. We also note the hard work of Ms Rosemary KAYESS, Dr Arthur LIMBACH-REICH, Mr Yoshikazu IKEHARA, and Ms Martina ORSANDER for their roles as Moderators of the Working Groups and for facilitating the discussions towards constructive debate.

We would also like to express sincere gratitude to our co-organisers, the Raoul Wallenberg Institute, the French Ministry for Europe and Foreign Affairs, the Swiss Federal Department of Foreign Affairs and the Department of Foreign Affairs of the Philippines, who together with the members of our Steering Committee, provided valuable support and advice to ensure a strong and relevant programme. In particular, we would like to thank Professor Göran MELANDER, Professor Emeritus of the Raoul Wallenberg Institute, for his speech at the opening of the Seminar, and we would like to thank the Philippines’ Ambassador to Singapore, Ambassador Antonio MORALES, for his concluding remarks at the end of the Seminar.

Finally, we also thank the members of the secretariat at the Asia-Europe Foundation (ASEF) for their tireless work in bringing this Seminar from planning to full fruition: Ms Rebecca STETTER, Ms Ayesha ISKANDAR; and Ms Ratna MATHAI-LUKE for her contribution to the completion of the Background Paper.

Ambassador Karsten WARNECKE
Executive Director
Asia-Europe Foundation (ASEF)
LET US WORK TOGETHER TO BREAK THE SHACKLES ON THE DEVELOPMENT OF PERSONS WITH DISABILITIES

Li Baodong, Vice Minister for Foreign Affairs, China

(Opening speech at the 16th Informal ASEM Seminar on Human Rights)

Your Excellency Executive Director WARNECKE,
Your Excellency President JIA Yong,
Your Excellency President HUANG Jin,
Ladies and Gentlemen,

This year marks the 20th anniversary of ASEM and the 10th anniversary of the adoption of the UN Convention on the Rights of Persons with Disabilities. The theme of the 16th Informal ASEM Seminar on Human Rights, “Persons with Disabilities and Human Rights”, is of great significance. On behalf of the Chinese government, I wish to express sincere congratulations on the opening of the seminar and extend a warm welcome to all distinguished guests.

The Eurasian continent boasts infinite potential. It is home to over four billion people, more than half of the world’s economic aggregate and 70% of global trade. There are both mature, advanced economic circles and fast-growing emerging economies in this region. It represents a staunch force for world peace and new hope for global growth.

Mechanisms in Eurasia have yielded fruitful results. Over the past 20 years, we in Eurasia have registered parallel progress in the political sector, the economy and cultural and people-to-people ties, actively engaged in trade, investment and connectivity endeavours, and made continuous efforts to promote inter-civilization dialogue and protection of human rights, thus drawing a new roadmap for our mutually beneficial development in the future.

Candid and practical exchanges on human rights have been conducted in Eurasia. On the affairs of persons with disabilities, we have worked to include this issue in the 2030 Agenda for Sustainable Development, established cooperation mechanisms on persons with disabilities in Eurasia, advanced the development of and exchanges in the industry of assistive devices for persons with disabilities, and set up new platforms for cooperation on persons with disabilities.

Ladies and Gentlemen,

Currently, the global economy is undergoing profound adjustments, and transformation of the international landscape and order is accelerating. At the same time, inequality, intolerance and lack of tranquillity continue to exist, and global development is still highly unbalanced, uncoordinated and unsustainable. Persons with disabilities, as a disadvantaged group, often bear the brunt of these problems. Among the one billion persons with disabilities in the world, 700 million are in Eurasia, and persons with disabilities account for 20% of the 800 million people living in poverty globally. Improving the welfare of persons with disabilities remains an arduous and long-term task.

Persons with disabilities are an important part of the human civilization and an important force for human development. To foster a social environment that is more fair, inclusive and sustainable and ensure equal access for persons with disabilities to social progress at an early date, China proposes that efforts be made in the following aspects.
First, earnestly protect the rights and interests of persons with disabilities. The international community needs to take the 10th anniversary of the Convention on the Rights of Persons with Disabilities as an opportunity to comprehensively implement the goals of the Convention. Countries that have yet to join the Convention need to ratify it at an early date, and include the principles of respect, equality, non-discrimination and accessibility of the Convention into their domestic laws and regulations, so that these principles will be turned into national will and translated into concrete actions. We need to accelerate the implementation of the missions related to persons with disabilities in the 2030 Agenda for Sustainable Development, formulate sound development strategies, and ensure that persons with disabilities will have equal access to education and vocational training, enjoy decent employment, and take an active part in social and political lives by 2030.

Second, strive to foster a harmonious and inclusive social environment. Clearing the barriers holding back persons with disabilities is the prerequisite and key for their integration into the society. We need to step up oversight and enforcement of laws and regulations; and eliminate the physical barriers as well as barriers that hinder the integration and communication of persons with disabilities. We need to improve the social security and basic public services for them, enhance support for their education, employment, legal aid and rehabilitation training, and facilitate their equal participation in social activities and work. We need to eliminate disabilities-based discrimination, step up guidance and education of the general public, and advocate a social atmosphere that features humanity, respect, care and support for persons with disabilities.

Third, increase input in the welfare of persons with disabilities. Helping persons with disabilities eradicate poverty should be a priority for the international community to implement the “zero poverty” goal of the 2030 Agenda for Sustainable Development. The international community needs to raise poverty standards, step up financial input, strengthen policy coordination, take multi-pronged measures, and ensure no one with disabilities is left behind in the process of poverty eradication. The international community, particularly developed countries, must deliver on their Official Development Assistance pledges and provide technology and funding to help developing countries continuously enhance their capacity building.

Fourth, conduct international exchange and cooperation on the welfare of persons with disabilities. Eurasia needs to play a leading role in improving the implementation mechanism of the Convention; leverage the role of ASEM, APEC and other multilateral platforms, include the issue of persons with disabilities in their agendas, and deepen cooperation in areas such as education, health, poverty alleviation and assistive devices for persons with disabilities; enhance the development of Rehabilitation International and other international organisations for persons with disabilities and the sharing of best practices; and explore cooperation for persons with disabilities in various areas such as science and technology, arts and sports, with the aim of mutual learning and common progress.

Ladies and Gentlemen,

There are over 85 million persons with disabilities in China. The Chinese government attaches great importance to the welfare of persons with disabilities. President Xi Jinping vowed that persons with disabilities must not be left out. This is not only a testament to the special attention and extraordinary care that the Chinese government gives to persons with disabilities, but also a solemn commitment that China makes to the world. Over the past five years, China’s capacity for the welfare of persons with disabilities has been further enhanced, the welfare of persons with disabilities has been improved in a way that is more in sync with the socio-economic growth of the country, and an environment of greater understanding, respect and inclusiveness for persons with disabilities has been fostered. China has lifted 5.88 million impoverished rural citizens with disabilities out of poverty, provided subsistence allowance to over 10 million urban and rural citizens with disabilities, and made rehabilitation services available to more than 10 million persons with disabilities. The basic rights and interests of Chinese citizens with disabilities are earnestly guaranteed by over 70 relevant laws, including the Constitution and the Law on the Protection of Persons with Disabilities. In the next five years, we will ensure that the 85 million people with disabilities in China will embrace a moderately prosperous society together with their fellow countrymen.
Ladies and Gentlemen,

China is striving to realise the Chinese Dream of great renewal of the Chinese nation. This is also a dream of human rights of the Chinese people and a dream for a better life with greater dignity, prosperity and happiness for every person with disabilities. Let us work together to break the shackles on the development of persons with disabilities, foster a society that is more fair, inclusive and harmonious, respect every life, and uphold the human rights of every person with disabilities.

With that, I wish this seminar a full success.

Thank you.
INTERNATIONAL COOPERATION IS IMPORTANT FOR THE DEVELOPMENT OF THE WORLD’S 1 BILLION PERSONS WITH DISABILITIES

JIA Yong, President, China Disabled Persons Federation

(Opening speech at the 16th Informal ASEM Seminar on Human Rights)

Distinguished Minister LI Baodong
Dear President HUANG Jin,
His Excellency Ambassador Kasten WARNECKE,
Dear Professor Miranda,
Dear Delegates,
Ladies and Gentlemen, Dear Friends,

Good afternoon.

Today we have representatives from member nations of the ASEM Seminar on Human Rights here at the China Administration of Sports for Persons with Disabilities in Beijing discussing the issue of promoting the human rights of people with disabilities.

On behalf of the China Disabled Persons’ Federation, Chairperson ZHANG Haidi and President LU Yong, I would like to extend my warm welcome to all friends here. Also, I would like to express my heartfelt thanks to the Asia-Europe Foundation, Ministry of Foreign Affairs, Ministry of Justice and China University of Political Science and Law for your support and attention to persons with disabilities.

At this time last year, at this same venue, we organised the Asia-Europe High-Level Meeting on Disability. This followed the recommendation made by Premier LI Keqiang at the 10th ASEM Summit that the rights of the disabled be included in the Asia-Europe cooperation framework.

The “Joint initiative on Strengthening Asia-Europe Cooperation in the Field of Disability”, which was adopted by the ASEM Summit, covers the promotion of social progress, human rights protection and economic growth as the three pillars of cooperation in the field of the disabled. Based on equality and mutual respect, with the aim of overcoming obstacles and bringing about common developments, the initiative calls for communication and cooperation in the field of disabilities, a concerted effort to create a more inclusive social environment for persons with disabilities, and the promotion of the inclusion and development of persons with disabilities.

The meeting marked the formal establishment of a long-term cooperation mechanism for disabled people under the ASEM framework. Representatives shared their experiences, analysed the difficulties and challenges faced by the persons with disabilities, and put forward many important opinions and suggestions and reached consensus on some important points. In order to transform Asia-Europe’s political consensus on the disability field into pragmatic cooperation in the auxiliary equipment industry, we also held the Global Auxiliary Equipment Industry Development Conference and the Global Expert Conference on Auxiliary Technology Cooperation.
Ladies and gentlemen,

At this seminar on Persons with Disabilities and Human Rights, we will explore how to better implement the important theme of promoting human rights protection in three pillars of Asia-Europe cooperation in the field of disability. The human rights protection of the disabled has become the core driving force of the work of persons with disabilities in various nations. This year, we solemnly commemorate the 10th anniversary of the adoption of the UN Convention on the Rights of Persons with Disabilities. The convention provides guidance for the practices, theories and approaches of the work being done internationally for and by people with disabilities.

Another far-reaching development in our work on persons with disabilities is the adoption last year of the UN 2030 Agenda for Sustainable Development which included the development of persons with disabilities. With its core aim of leaving no one behind, it mirrors international communities’ solid commitment to the inclusion of persons with disabilities.

Ladies and gentlemen,

The China Disabled Persons’ Federation (CDPF) consistently adheres to the purposes and principles of the Convention on the Rights of Persons with Disabilities and takes an active part in fulfilling its responsibilities as an organisation that represents the disabled, striving to promote the People’s Republic of China Disabled People Protection Law as the core of the laws and regulations related to persons with disabilities. Only by vigorously developing the work of persons with disabilities, continuously improving their living conditions, and promoting the sense of integration and sharing can we effectively enhance the awareness and protection of their human rights.

Poverty alleviation is the first and foremost task in China’s work on persons with disabilities. The CDPF will play an active role in promoting a moderately prosperous life for the persons with disabilities, helping the disabled and their families to get out of poverty and to improve their living standard.

Rehabilitation is the focus of the disability work. We pay special attention to the rehabilitation of children with disabilities, for children aged up to six. A great number of such children have been accepted into general schools and enjoy a happy childhood as other kids do.

This year, we are actively promoting the National Disability Prevention Action Plan to accelerate the enactment of the Rehabilitation Act of People with Disabilities. We are also working to create more employment opportunities for persons with disabilities, enabling them to integrate into the society. In recent years, many people with disabilities found jobs through the Internet, allowing them to lead dignified and fulfilling lives.

We are committed to accessibility and services for the disabled in terms of buildings, transport, information and communities. The adoption in 2012 by the State Council of the accessibility environment construction regulations means that there is now legal and institutional protection for the construction of accessible environments for the disabled.

Last year, the Chinese government launched a survey for more than 26 million people with disabilities in order to implement accurate poverty alleviation and rehabilitation services. The aim is that by 2020 people with disabilities, together with people from all over the country, will be able to enjoy a moderately prosperous life.
Ladies and gentlemen,

There are 1 billion persons with disabilities in the world. The concerted efforts of the international community play an important role in promoting the balanced development of disabled people in the world and helping the disabled people in developing countries to better survive and develop. In recent years, the CDPF has actively promoted the integration of the disabled into the United Nations 2030 Agenda for Sustainable Development. With our efforts, disabled people have been successfully incorporated into regional cooperation mechanisms such as APEC, ASEM and the ASEAN Forum. Meanwhile, wide cooperation in the field of disabilities has been adopted between governments. The China Disabled Persons’ Federation welcomes the broad cooperation of Asian and European counterparts with open minds, and is willing to share our experience and contribute to the development of Asia and Europe’s work for the disabled.

China will hold the second Asia-Europe High-Level Conference on Cooperation for Persons with Disabilities in the year 2017. I would like to sincerely invite all our friends from the relevant departments in charge of disability affairs, organisations of persons with disabilities, the fields of business, education and research institutions to attend the conference. We will at the conference exchange views on further strengthening the international cooperation in disability work, reach consensus and formulate plans to jointly create a long-term mechanism of Asia-Europe cooperation in the field of disabilities. A warm welcome to all of you here today. I look forward to seeing you again next year.

Thank you.
IT IS EVERYONE’S RESPONSIBILITY TO ENSURE THE DISABLED CAN PARTICIPATE FULLY IN ALL ASPECTS OF LIFE

HUANG Jin, President, China University of Political Science and Law

(Opening speech at the 16th Informal ASEM Seminar on Human Rights)

Honorable Mr WARNECKE, Executive Director of Asia-Europe Foundation,
Vice Foreign Minister LI Baodong,
President of the China Disabled Persons’ Federation JIA Yong
Delegates,
Ladies and Gentlemen,

First of all, please allow me to express my sincere congratulations on the convening of the 16th ASEM Informal Seminar on Human Rights in Beijing and extend my warm welcome to friends and experts from various parties of the Asia-Europe Meeting (ASEM) and other international organisations, on behalf of China University of Political Science and Law.

As cradles of ancient civilizations, both Asia and Europe are playing a significant role in current international affairs. Although various Asian and European countries have different historical processes, levels of development and cultural traditions, they share the same social development goal of respecting, protecting and realising human rights. With the encouragement of this common ideal, since its birth in 1997, the ASEM Informal Seminar on Human Rights has become an important platform of equal communication among various countries in Asia and Europe on the human rights issue, which has laid down a sound foundation for different parties to expand consensus increasingly on human rights.

It is an honour for the Institute for Human Rights at China University of Political Science (CUPL) and Law to host this seminar together with the Chinese Foreign Ministry and China Disabled Persons’ Federation. This shows the public confidence in us and recognition of our teaching, scientific research achievements and public service capacity. Since its foundation in 2002, in keeping with China University of Political Science and Law’s humanistic spirit of putting people first and respecting human rights and the sense of responsibility of advancement on rule of law and human rights, the Institute for Human Rights has not only turned out nearly one hundred masters and doctors of human rights law but also held training and conferences, both international and domestic, on human rights. We are privileged that CUPL is one of the conference hosts so that we can provide some help for the discussion and promotion on disabled persons’ rights.

Ladies and Gentlemen,

It has been ten years since the adoption of the Convention on the Rights of Persons with Disability, which is why the theme of the ASEM Informal Seminar on Human Rights this year is the rights of persons with disability.

Persons with disability are an equal part of our society and they make a big contribution to the world as well. However, they have been facing a lot of barriers in the process of social participation, which is one of the reasons why they become a vulnerable group. It is the responsibility of the state, government, society and every single one of us to ensure that the disabled fully participate in political, economic, social and cultural life and are entitled to human rights equally.
The 2030 Agenda for Sustainable Development adopted by the UN in September 2015 integrated indices such as education, employment and accessibility into the social development agenda and raised the developmental principle of no one being left behind. Therefore, it is an urgent challenge all countries face to improve human rights protection, build an inclusive, accessible and equal society and provide reasonable accommodation for persons with disability.

As one of the biggest human rights seminars in the world, the ASEM Informal Seminar on Human Rights has become an indispensable bridge between Asia and Europe. The Institute for Human Rights at CUPL hopes that this seminar will be a platform where experts and scholars from various Asian and European countries discuss problems such as integrating the disabled into mainstream society to promote full implementation of the Convention on the Rights of Persons with Disability and the 2030 Agenda for Sustainable Development so that persons with disability have access to social development achievements equally.

With hope this seminar will promote communication and discussion on rights protection for persons with disability, deepen international cooperation within the framework of Asia-Europe Meeting (ASEM), and lead to important new ideas about bettering disabled persons’ human rights and perfecting legal systems for this. We also hope this seminar will promote mutual respect and understanding on human rights issues among countries in Asia and Europe and that participants will come up with more thoughts on multilateral cooperation for human rights protection.

Looking to the future, to provide intellectual support for the promotion of rule of law and construction of democracy and human rights, the Institute for Human Rights at CUPL will continue to integrate academic resources both inside and outside the school and focus on deep research on important human rights theory and practice. Together with all of you here, we will make efforts to enhance social awareness, cultivate the cultural environment, improve relevant systems and protection standards on human rights. The Institute for Human Rights at CUPL, meanwhile, is expecting to develop more communication and cooperation at different levels with Asia-Europe Foundation so as to make more contributions to the human rights dialogue and progress among countries in Asia and Europe.

Autumn represents harvest and joy in China, so I wish this seminar fruitful results.
NEW APPROACHES IN LAW & POLICY ARE NEEDED TO BRING ABOUT A MORE INCLUSIVE FUTURE FOR PERSONS WITH DISABILITIES

(Report of the 16th Informal ASEM Seminar on Human Rights)

Introduction

The United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) which entered into force on 3rd May 2008 aims to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity’. The CRPD is a first in many ways – in addition to being the fastest negotiated human rights treaty and having the highest number of signatories on the date it was opened for signature, it is also the first human rights convention open for signature by regional integration organisations. As of November 2016, 47 ASEM Partners have ratified the CRPD. It therefore sits at the heart of common efforts across ASEM countries to advance justice for persons with disabilities.

The 16th Informal ASEM Seminar on Human Rights on the topic “Persons with Disabilities and Human Rights” was organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (as delegated by the Swedish Ministry for Foreign Affairs), the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, and the Swiss Federal Department of Foreign Affairs. It was hosted by the Chinese Ministry of Foreign Affairs, the China Disabled Persons’ Federation, and the China University of Political Science and Law. Additional events at the Seminar included an exhibition on assistive technologies and a study-visit to the Braille press and library (organised by the China Disabled Persons’ Federation). The Seminar co-organisers also conducted a panel discussion on “Mainstreaming Disabilities and Human Rights: Sharing Best Practices from Asia and Europe” during the closing plenary session.

Key Messages

The Seminar brought together over 120 official government representatives and civil society experts, representing 47 ASEM Partners, to discuss the application of a rights-based approach in strengthening and promoting the rights of persons with disabilities as exemplified by the UN CRPD. The Seminar also reflected on the mutually reinforcing overlap between the UN CRPD and the UN Sustainable Development Goals (UN SDGs). The symmetry between both instruments was highlighted especially, given that the structural changes demanded by the UN CRPD can be usefully channelled through the implementation of the UN SDGs. At the same time, as emphasised by world leaders in the Declaration accompanying the announcement of the UN’s 2030 Agenda on Sustainable Development, the implementation of such structural change must be “grounded in the UN Charter, the Universal Declaration of Human Rights, international human rights treaties”, in this case, the UN CRPD.

The Seminar acknowledged that one of the main messages of the UN CRPD was to treat persons with disabilities as ‘subjects’ and not as ‘objects’ to be managed by others. This profound attitudinal shift means that more positive public attitudes need to be nurtured. In this regard, the media plays an important role in raising awareness, empowerment and effecting societal perceptions. Media outlets should avoid patronising or ‘inspirational’ coverage of disability; they should learn how to report on disability in an appropriate and sensitive manner.
The ability to participate in political processes is an essential element of every democratic society. For one thing it helps to sustain a positive process of reform. Studies consistently show that persons with disabilities are highly motivated to participate in political life. However, they remain under-represented, with little provision for accessing information and participating in public life. In almost all countries, traditional legal capacity laws tend to follow a medical model to disability; they place ‘best interests’ over ‘individual choice’. Determination of legal incapacity often leads to an automatic loss of the right to participate in political life of the nation. Increasingly, there is a policy shift towards ‘supported decision-making’ as an alternative to traditional guardianship. This should gradually remove one of the biggest barriers to political participation. Movement in this direction is to be encouraged among ASEM Partners.

Access to and participation in culture was also highlighted at the Seminar since it enables groups like persons with disabilities to shape their own narrative and to correct narratives that reinforce negative policies. Furthermore, access to information and communication are also crucial to access social services. However, media consumption by persons with disabilities remains low due to inaccessibility (such as the absence of captioning and the lack of legal status for sign language in some countries) and access to published materials can also be limited by intellectual property barriers. More is needed to create space for persons with disabilities to participate in the broader cultural life of the nation. Mention was made of the positive potential of the UN WIPO Marrakesh treaty which seeks to rebalance intellectual property rights with the access rights of persons with disabilities and of the need for more ratifications from ASEM Partners.

One of the barriers to social, political and economic participation is the absence of children with disabilities in mainstream education systems. The Seminar felt that inclusive education is vital for imparting marketable skills, enabling active citizenship and instilling an ethic of respect for differences in all children. It was noted that one of the main benefits of widening work opportunities for persons with disabilities in the open and supported labour market was not just economic independence but also increased independence in other dimensions of life – including independent living. In providing services to persons with disabilities, the Seminar concluded that there needs to be a shift from a traditional welfare and medicalised approach, which separates persons with disabilities from the general population, toward a new service provision model that is increasingly personalised to enable the person to live the life they aspire to and does not entrap them at the edges of society.

Access to justice was also highlighted at the Seminar as a crucial way of enabling persons with disabilities to vindicate their rights and challenge the discriminatory behaviour of others. It follows that the system of justice in any country is of vital interest in advancing the rights of persons with disabilities. Unfortunately, in the criminal law codes of many countries, disability is still not acknowledged as grounds for hate-crime. Legal capacity issues still negatively impact the ability of persons with disabilities to initiate legal proceedings. And evidence given by persons with disabilities may not always be given the same level of credibility. This just adds to the difficulty faced by individuals with disabilities to report discrimination, crime and abuse, particularly sexual abuse. In addition to the physical barriers that prevent disabled persons from accessing police stations and courts, the lack of interpretation services and alternative communication methods can also prevent them from full participation in legal proceedings. Disabled Persons’ Organisation (DPOs) in some countries do not have standing to participate in legal proceedings or bring cases on their clients’ behalf to the courts. Many DPOs are funded through member contributions. They may not qualify for legal aid and their own resources may not allow for meaningful access to justice.

As mentioned, the Sustainable Development Goals (UN SDGs) have firmly included disabilities in the international development agenda. The UN SDGs, unlike the Millennium Development Goals that preceded them, now cover all countries (and not just developing countries) and also contain very specific references to persons with disabilities. Official Development Assistance (ODA) is one of the mechanisms by which disability-inclusive development can be realised. Persons with disabilities should be active stakeholders (not just beneficiaries) in such project consultations and design. In addition to providing technical and economic assistance, States should also facilitate international
cooperation to support the implementation of the CRPD. Support for international research and joint advocacy on disabilities will improve CRPD implementation and monitoring among States Parties.

Data collection is crucial for rational disability policy-making in terms of design, monitoring, and reporting; the need for disability disaggregation in all data collection has been specifically noted in Goal 17 of the SDGs. However, because there is a lack of shared methodologies, civil society and governments still approach data collection on an ad-hoc basis. ASEM Partners need to implement systematic data collection. There are existing tools which are designed specifically for collecting disability data and particularly for persons with disabilities to use them; ASEM Partners should encourage the use of such tools. In future, the focus of data collection should be on the barriers faced by persons by disabilities and not just the prevalence of disability.

Recommendations

The 16th Informal ASEM Seminar on Human Rights convened four working groups which focused on participation in political life; social and economic inclusion; legal status, justice and remedy; and national implementation and international cooperation. The main recommendations from the Seminar were shared with the ASEM Partners and are noted here in some detail.

1. Ensure Participation in Political & Cultural Life

1) States must respect the principle of participation and must meaningfully include persons with disabilities in political decision-making and policy-framing processes.

   a) They must recognise that all persons with disabilities, including those with intellectual and psycho-social disabilities, have their own individual will and preferences that must be respected;

   b) New technologies and accessible media formats must be provided to ensure that all voters can make informed and independent voting decisions.

2) ASEM Partners must follow universal design principles so that persons with disabilities have equal opportunities to participate in political, cultural and public life.

3) States should sign and ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, to reduce copyright and intellectual property barriers for accessing printed works.

2. Make Social Services Inclusive

1) Social services to persons with disabilities should be inclusive and follow a rights-based approach. They should not be segregated from services provided to the rest of the general population.

2) More efforts should be made to personalise social services to ensure they underpin the autonomy as well as the will and preference of the person. Where services are outsourced or delegated to private operators, a clear set of key performance indicators must be put in place to ensure equality and quality of those services; accreditation of services can also be instituted.

3) All persons with disabilities have equal rights to health. Service providers should provide information and services about sexual and reproductive health issues to all persons with disabilities.
3. **Provide Opportunities for Economic Inclusion**

1) To provide equal opportunities and training to participate in the labour market, States should strengthen existing anti-discrimination legislation to ensure hiring practices are bias-free.

2) Government agencies should assist private employers and businesses in hiring persons with disabilities, and also provide disability awareness training for staff and human resources personnel.

3) Entrepreneurship skills and training should be provided to persons with disabilities so that they have the opportunity to establish their own independent businesses.

4. **Promote Disability–Inclusive Education**

1) ASEM Partners should implement their commitments made under the CRPD towards achieving inclusive education for all learners. In this regard, they should take note of the guidelines and clarifications provided by the UN Committee on the Rights of Persons with Disabilities in its General Comment no. 4 on Article 24: Right to Inclusive Education.

2) Education and research institutions should encourage student and staff mobility to forge deeper university research links between Asia and Europe, including legal research; more importantly, persons with disabilities should be enabled to conduct research through participatory research methodologies directly and in collaboration with universities.

5. **Strengthen Advocacy & Awareness**

1) Self-advocacy is crucial for empowerment, and persons with disabilities including those with intellectual and psycho-social disabilities should be given opportunities to represent and speak for themselves. In this regard, ASEM Partners need to:

   a) Stimulate more international civil society exchanges so that civil society and DPOs can share lessons and best practices in strengthening regional and national advocacy efforts;

   b) Encourage cooperation between the Asian and European regional disability organisations’ networks and promote the establishment of university-based disability studies centres in both Asia and Europe to complement the voice of civil society and DPOs;

   c) Create more forums where persons with disabilities can participate; exchange programmes and inter-regional visits by persons with disabilities in specific fields such as sports, arts and culture can increase awareness on disabilities as well as enhance mutual understanding between the two regions.

2) Disability sensitivity should be an integral part of journalism training. Media practitioners with disabilities should be encouraged, along with their non-disabled peers, to cover international stories and events and be given equal opportunities to create and share content.
6. Mainstream Disabilities in Development Assistance Projects

1) International and regional financial institutions should include disabilities in all development assistance projects. ASEM Partners should mainstream disabilities in their own ODA programmes to bring them in line with Article 32 of the CRPD and must ensure that:

a) Persons with disabilities are not just beneficiaries in ODA projects; they are stakeholders who should be actively consulted for project design, implementation and monitoring.

b) Reporting on disability inclusion and accessibility should be a requirement for grant recipients and should include feedback from persons with disabilities who were involved in the project.

c) The continuation of disability-inclusive practices should be designed into the grant’s exit strategy from the beginning of the project itself, so that grant recipients are able to continue the project under the accessibility conditions set by donor agencies.

7. Ensure Access to Justice & Remedy

1) Law enforcement agencies, national human rights institutions, ombudsman offices and civil society organisations need to work together to provide specialist assistance to persons with disabilities to combat crime and to seek appropriate civil and criminal remedies. In addition,

a) Training is required for the judiciary and law enforcement officials on the CRPD, on how to identify and address disability-related abuse and crime, as well as on how to use alternative means of communication with victims and plaintiffs.

b) Such trainings should ideally be delivered by people with disabilities and/or by DPOs so that awareness and understanding is created on the social model of disability and the lived experiences of persons with disabilities.

2) Training is required for persons with disabilities to understand their rights and legal protections, including knowledge of the legal system, especially legal capacity laws, in their countries.

8. Improve National Implementation of the UN CRPD & SDGs

1) States must ensure that their existing domestic legislation (including Federal and local law) is harmonised with CRPD standards; aside from amending existing regulations, additional legislation may be required to achieve the comprehensive inclusion of all disabled persons.

2) The 2030 Agenda for Sustainable Development provides a special platform for the promotion of human rights of persons with disabilities. As the CRPD and the SDGs are inter–linked, ASEM Partners should utilise both to promote and implement disability-inclusive development and human rights.

9. Enhance Regional Cooperation on Disabilities

1) Regional organisations in Asia and Europe are encouraged to step up their engagement on disability–related reform issues to add value to the efforts of their relevant Member States.

2) They should establish a desk on CRPD international cooperation within their own networks, creating focal points for sharing information on CRPD implementation progress and include contact information for support.

3) Philanthropy in Europe and Asia should be encouraged to support meaningful and focused dialogues and mutual research.
Introduction

The discussion ranged freely over the topics of participation in the political and cultural life of the nation. The deliberations were divided into three parts: (1) the right to political participation, challenges and opportunities, (2) the right to cultural participation, challenges & opportunities and (3) general ideas on how to continue the dialogue to mutual advantage. There was a high degree of consensus within the group especially about the nature and effects of the barriers encountered.

What arose in the discussions were the many links between the immediate rights in question (political and cultural participation) with other rights in the convention including the right to accessibility (Article 9), the right to legal capacity (Article 12), the right to inclusive education (Article 24), the right to equality and non-discrimination (Article 5) and the nature of the mechanisms to be put in place for domestic implementation and monitoring (Article 33). The participants were also at pains to point out how different groups of persons with disabilities experienced the barriers differently (especially those with intellectual disabilities) as well as the cumulative disadvantages that flow from intersecting identities (age, gender, race, disability, etc.). The panel shared many examples of positive practice that all can learn from and be inspired by. And they were of one view that this dialogue was valuable and should continue in some shape or form into the future.

A:  The Right to Participation in Political & Public life (Article 29 UN CRPD)

Principles, Purposes & Objectives

At the outset the participants discussed the nature and purpose(s) of this right. It was agreed that the right (or bundle of rights) was important in itself and also instrumental to the achievement of other rights and interests.

It is important in itself since admission to the political realm denotes full and equal citizenship – a right to share in the agenda of State. It is more important instrumentally because, unless one is politically engaged, quoting the words of one participant, “nothing happens”. In other words, in order to sustain reform and the momentum of change, it is vitally important to be engaged – and to have the right to be engaged. A practical example was given by one participant in the context of disaster relief where, at least in the past, the absence of participation from persons with disabilities from the process of designing and implementing disaster relief meant that such processes treated persons with disabilities as being virtually invisible.

Many participants remarked on the value of positive role models of persons with disabilities in political and public life. One participant noted that the increasing visibility of public and political figures with disabilities assisted to “reduce stigma and encourage participation”. Such engagement helps to create a virtuous circle of increasing levels of involvement.

One participant mentioned the findings of the EU Fundamental Rights Agency (EU FRA) to the effect that, on average, more persons with disabilities showed an interest in the political affairs of the nation (relative to other groups). This desire to be engaged does not merely cover issues that one might expect (such as those related to disability) but also many other issues such as the environment and economic affairs. Having reported this positive message, the EU FRA also observed that few persons

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4 Rapporteur: Dr Gerard Quinn (Centre for Disability Law and Policy, NUI Galway); Moderator: Dr Rosemary Kayess (Faculty of Law, UNSW). Dr Quinn was assisted by Mr Chen Bo (PhD student, Centre for Disability Law and Policy, NUI Galway).
with disabilities actually vote. This was explained by a range of factors including inaccessibility and, in some cases, the lack of legal capacity as adjudged by outdated laws. The good news is they wanted to be involved.

Many participants tied the right to participation in political and public life (Article 29) with the institutional framework for domestic implementation and monitoring arising under Article 33 of the UN CRPD. It was noted that Article 33 ‘brought the convention home’ by enabling domestic political systems ‘to take ownership.’ That is to say, the convention isn’t just ‘out there’ in the UN system – it has to be internalised domestically under the guidance of Article 33. In the matrix provided by Article 33, Governments become smart by having a clear Focal Point and, if deemed necessary, a clear policy coordination mechanism. Civil society has a right to be engaged. And a ‘reality’ check in the shape of human rights institutions is also deemed needed. It is this triangulation between Government, civil society and human rights bodies that will increasingly drive change with respect to the disability rights agenda. Whilst political participation is important generally, it is important specifically to the efficient functioning of the Article 3 mechanism.

Several noted the disadvantages persons with disabilities – or certain cohorts of those with disabilities – face in any political system. Unlike many other civil society organisations, persons with disabilities faced (and continue to face) high opportunity costs associated with political participation. Advocacy was difficult for many since mere survival was the priority. This was especially so for those with intellectual disabilities. In the past this has led to some unevenness with respect to disability policies and laws. Forging alliances with other interest groups could also be hard because of the stigma sometimes attached to disability. An example was given of the relationship between disability advocacy groups and groups advocating for the rights of older people. Only recently have grand disability alliances been forged to overcome this obstacle and only recently have effective alliances been forged between disability DPOs and other advocacy groups. Some participants mentioned the rise of university-based disability studies centres, disability law centres and disability clinics in both Asia and Europe as an added factor to complement the voice of civil society.

**Barriers – Outdated Legal Capacity Laws & Policies**

The conversation covered a variety of obstacles or barriers to the enjoyment of the right of effective participation in public and political life. Many put forward outdated legal incapacity laws as the foremost legal barrier. The main problem was that the declaration of legal incapacity had the effect of denying or substantially rolling back the right to vote and to be involved in political and public affairs. Some cited constitutional provisions in many countries that not only denied the right to vote to certain categories of persons with disabilities but which mentioned disability as a ground for removal from office, even that of the Head of State. Such provisions, the participants noted, ‘set a tone’ that made the deprivation of the right to vote and otherwise engage in political affairs seem ‘natural.’ Such barriers disproportionately affect persons with psycho-social disabilities. It was noted that this creates a catch–22 situation – while there is a need for reforms to include persons with psycho-social disabilities to advance change, there is also the relative exclusion of persons with psycho-social disabilities from the process of change which makes change less likely.

The participants noted the many reforms taking place around the world on the topic of legal capacity as it affects the right to participate in political and public life. Mention was made of a landmark decision of the Tokyo High Court in 2013 (restoring the right to vote) as well as the caselaw of the European Court of Human Rights in the past few years. It was noted that the Court has been active on the issue of legal capacity in the last 10 years or so by, firstly, narrowing the scope of legal capacity laws and demanding due process and, secondly, in de-coupling the loss of legal capacity with any automatic loss of an ancillary right like the right to vote or stand for elections. The Court has yet to reach the issue of supported decision-making. Mention was also made of the Council of Europe’s Venice Commission’s *Interpretive Guidance on its Code on Electoral Matters* as it applies to the right to vote for persons with disabilities. It was observed that the Venice Commission has come a long way in acknowledging a plenary right to vote regardless of disability. Mention was also made of the
many pilot projects around the world on supported decision–making (particularly in Australia) that are, collectively, tending to demonstrate the viability of a right to vote regardless of disability. This gave rise to the question posed by one of the participants ‘what does the right to decision-making actually mean in the context of political participation?’

**Barriers – Inaccessibility**

The other major barrier discussed had to do with inaccessibility. The participants noted that inaccessibility takes many forms and is itself a major deterrent to participation. The participants identified inaccessible election materials including inaccessible material provided by political parties. If electors are to make real and effective choices then they must have available to them material and information that distinguishes between the candidates and their respective platforms. Very often such information is in inaccessible formats especially for visually impaired citizens. For those with intellectual disabilities the failure of candidates and parties to provide ‘easy to read’ versions of their materials and manifestos also amounts to a serious barrier.

Another manifestation of inaccessibility identified by the participants has to do with the voting card itself. Such cards can be easily overlaid with a plastic cover that imparts the choices through braille with a space to mark a vote. These are cheap and easily made. What is more, they would allow for the secrecy of the ballot to be maintained. Otherwise, in the words of one participant, “I have to whisper to an assistant or a relative” which is hardly conducive to maintaining the secrecy of the ballot. Mention was made by some participants of the beneficial work done by the International Foundation for Electoral Systems (IFES) in providing models for accessible voting cards and procedures. The point was made that there are models ‘out there’ that do not have to be reinvented - simply use them.

Inaccessible polling stations figured prominently as an example of physical barriers to political participation. The point was made by several participants that polling stations carry symbolic significance. It is where the collective will and conscience of the nation is expressed. Exclusion - or effective exclusion through inaccessibility - does not just mean a denial of a basic right, it also connotes a deep indignity that no citizen should have to face. The participants agreed that it was no answer to carry a person up steps no matter how well intentioned the officials or bystanders might be. And the participants also emphasised that the goal of accessibility cannot be effectively met by only designating certain polling stations to be accessible.

Another aspect of inaccessibility arose in the context of overall environmental accessibility. One participant emphasised that living in an “inaccessible location makes it hard if not impossible to attend political events”. A direct link was drawn between Article 29 and Article 9 (Accessibility). The main point was that engagement on political and public life is not just restricted to election day. It happens every day throughout the year. To a certain extent, election day is just the culmination of the political life of the nation and if people with disabilities cannot gain access to political and public events then it is hard to see how they can be politically educated as citizens and voters.

This was brought vividly home by one participant from an Asian country with many islands. He said, “because of inaccessible ferries and public transport it is simply impossible to follow political events”. Transport barriers had the effect of narrowing down the range of political and other experiences opened up for others. Most citizens take for granted the right and opportunity to meet their public figures and question them in person. Not so for many persons with disabilities.

And, as if transport inaccessibility wasn’t bad enough, the main substitute for physical presence at events, namely the media, is also often inaccessible. The legal requirement of captioning for TV is still a rarity. Few governments require accessibility on the internet. This applies not just to government departments and their websites, but also to political parties and other webcasts or broadcasts of a political nature. Furthermore, hate speech directed at persons with disabilities on the web and in social media is insufficiently regulated in many places. It was felt by the panel that ‘we need principles of universal design at all stages in political participation’.
Barriers – Awareness

The discussion was fascinating as it turned on culture and conceptions of culture. One participant posed a question at the outset - “Are you really a citizen or just an object of charity?”

The point was made by a participant that “even good laws can be undone or misapplied or not applied at all with the wrong mindset”. So having new laws was only the beginning of a process of change. If old stereotypes persisted then this would inevitably drag down good laws. The process of reform had to be accompanied, as one participant put it, by a “whole society attitudinal change”. The group felt that “more targeted measures need to be found to project an image of persons with disabilities as active citizens”. It was asserted that “persons with disabilities need to be visible within political parties, assume positions of high level responsibility and act as role models”. A particular point of emphasis and consensus was the “need for civil society to be involved in the design of awareness rising programmes” and “to be centrally involved in the training of election officials”.

Barriers – Lack of Inclusive Education

It was recalled that one purpose of the right to inclusive education is to equip the person with the skills for a lifetime of active citizenship. Active citizenship means taking pride in collective achievements and taking responsibility to help bring about change where change is needed. Another related purpose is to acquire and practice tolerance toward others who hold different views or are simply different. It stands to reason that if one is excluded from education or if one does not have access to a system of inclusive education, then one will be less prepared than others for active citizenship in political and public life. This exclusion, the group felt, reinforces negative attitudes in others towards persons with disabilities. And, persons with disabilities themselves can too easily internalise these attitudes causing ‘spoilt identity’ and further exclusion.

Barriers Compounded by Inter-Sectional Disadvantages

The above barriers were felt by the panel not to stand in isolation. People with disabilities bear other identities - as older persons, as persons of ethnic minorities, as women and girls, as prisoners, as refugees, etc. The panel felt that “persons with disabilities come with a mix of identities” and this can draw in its wake “a set of overlapping and accumulated disadvantages”.

Pointers toward Future Good Practice

The panel agreed that there are now many resources to point to in order to inform a process of policy reform to overcome the many barriers identified. These resources took the shape of ideas or positive national practices.

At the level of ideas there are many useful resources to draw on:

1. The use of ‘indicator sets’ such as those developed by the EU Fundamental Rights Agency (FRA) have proved relevant in securing the right to political participation of persons with disabilities in Europe. At a global level the International Foundation for Electoral System (IFES) has also produced extremely useful material and guidance on electoral systems and disability.

2. At the level of positive national practice in both Europe and Asia in the increasing dialogue between DPOs, governments, political parties, as well as between DPOs and National Human Rights Institutions (NHRIs) and law reform commission bodies or similar bodies to analyse barriers and come forward with solutions.

3. New laws on supported decision-making and the right to vote are emerging. And specific mention was made of non-discrimination laws in several European and Asian countries (with effective and robust remedies) that have been applied by the courts to break down the barriers faced by people with disabilities in the political sphere.
B: The Right to Participate in Cultural Life, Recreation, Leisure & Sport (Article 30 UN CRPD)

There was much discussion among the participants on why participation in cultural life, recreation, leisure and sport, was so important. Firstly, it gives a person access to shared understandings of the world and philosophies of life. Secondly, it affords an equal right to influence change in those ideas. It was felt that cultural expression is close to self-expression, both in an individual and in a collective sense. One participant said, “the personal is political” and that “this space for imagination and re-imagination in culture is the bedrock of an open, tolerant and ever changing society”.

Cultural space has many domains including cultural sites such as theatres, libraries, public stadiums, recreation facilities, sports facilities, churches, temples, mosques, etc. And access to these sites - when not physical - can be mediated through the mass media (TV, radio), ICT (web based links) and social media.

Several barriers were identified and discussed by the participants including the following:

**Attitudinal Barriers**

These barriers both excluded and deterred people with disabilities from cultural participation. One participant stressed the need to move from policies based on “deficits, to diversity toward recognition as normal”. To a certain extent it was emphasised that the relative invisibility of persons with disabilities in culture and sports reinforced the impression that they did not belong. On the other hand, the visible involvement of more people in culture and sports meant that there was an expectation that they would participate. And such an expectation created a welcoming environment that helped reduce inhibitions. This was why the participants felt that tackling the attitudinal barriers was critically important.

**Physical Barriers**

The discussion on physical barriers with respect to culture mirrored the earlier discussion on physical barriers with respect to political participation. Interestingly, the possibility that some available supports might in themselves amount to barriers also figured. One participant pointed out that his ‘interpreter might be a barrier.’ This was meant to emphasise that a solution for one barrier might itself create more unintended barriers. The solution was proper training and accreditation.

**Media Barriers**

It was again emphasised that inaccessible media (e.g., the absence of captioning on television, the absence of regulations mandating an accessible web experience, the absence of sign language) and the related problem that sign language tends not to have legal status in many European and Asian countries, all figured in the discussion.

Much of the discussion was taken up by the question of the needed reform/liberalisation of intellectual property rights to make space for equality of access for visually impaired readers. Intellectual property law has effectively created a book famine whereby only a limited amount of published work is available to visually impaired readers. This blocks off entire zones of culture from visually impaired readers and seriously undermines their right to inclusive education.

**Good Practice Pointers into the Future**

Despite the many barriers, many participants pointed to the flourishing of artistic expression by persons with disabilities in Europe and Asia. Positive practices include:

1. Countries like Iceland have moved to make sign language an official language in its Constitution. Publications by organisations such as the European Union of the Deaf which monitor the legal status of sign language throughout Europe are good tools to gauge positive trends.
2. The increasing ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled is promising for the growth of good practices. This treaty, which liberalises copyright law to allow for greater access to published material (available electronically) by blind and visually impaired readers, has been signed by the European Union - signalling its intention to ratify.

3. Public procurement law in many European and Asian states is playing an expanding role in demanding accessibility with respect to cultural facilities that are privately provided. This is a good example of the state using its purchasing power to nudge private actors in the direction of accommodating persons with disabilities in their new facilities. Overall, there seems to be an increasing degree of accessibility for such facilities.

4. A new generation of cultural and sporting personalities in the public media serves to encourage others and helps to raise expectations for the younger generation. Singular mention was made of Robert Martin, a disability rights activist from New Zealand, who has joined the UN Committee on the Rights of Persons with Disabilities as an equal peer. It was also stressed that a close examination and monitoring of the accessibility of cultural and other sporting facilities is now attracting the attention of NHRIs and DPOs working together.

C: Views on Moving the Asia-Europe Dialogue on Disability Forward

All working group discussants welcomed the dialogue and several ideas for maintaining it and strengthening it arose during the course of the day.

1. One idea was to work more intensively to ensure that overseas development aid was more inclusive of persons with disabilities. The idea here was for a transfer of know-how to enable the recipients of assistance to find their own solutions for themselves.

2. More civil society-to-civil society links and dialogue should be fostered. Such links and supports were felt by all participants to be of inestimable value in both valorising the rights paradigm as applied to disability as well as moving it forward.

3. Similarly, government-to-government links should also be stepped up. It should be possible, for example, to do staff exchanges as a way of facilitating the building up of focal points and coordination mechanisms. Such exchanges need not be a drain on resources as they can be reciprocal.

4. The growing number of disability studies and disability law centres in both Asian and European Universities presents an ideal opportunity for useful research exchanges.

5. Finally, the growing engagement of philanthropy both in Asia and in Europe offers scope for bringing them together to facilitate joint Asia-Europe comparative research that could be very helpful to policy reform on both sides.
Working Group 2: Social & Economic Inclusion

Introduction & Crosscutting Issues

There are a number of crosscutting issues to social and economic inclusion. The first relates to the heterogeneity and classification of disabilities. There are various types of disabilities that result from many causes, including congenital conditions and accidents. Persons with disabilities are not a homogenous group and persons with different disabilities have diverse conditions and needs. Hence, to classify them as a single group will deny some groups proper care and services. This is often the case for those with mental illness, autism, neuro-developmental and psychosocial disabilities or disorders, whose specific needs will not be met in the situation of standardised services.

Participants also discussed the differences of the terms ‘inclusion’ and ‘integration’ that are often used interchangeably. It was pointed out that in the 1970s the term ‘integration’ was primarily in use and ‘inclusion’ subsequently gained momentum, having been adopted explicitly in the provisions of the Convention on the Rights of Persons with Disabilities (CRPD). However, the concept of ‘inclusion’ is not comprehensively defined with the CRPD and may change overtime. The ultimate objective of inclusion is an effective and meaningful participation in public life. For persons with disabilities, in many instances inclusion can only be achieved through reasonable accommodation.

Another issue that crosscuts the social and economic inclusion landscape is the intersectionality of disabilities with other subjects. Two were pointed out. The first is disabilities and gender perspective, including violence against women and education for women with disabilities. Already women have suffered from multiple discriminations and women with disabilities are more prone to discrimination than others. It is important that the gender perspective be mainstreamed so that social and economic measures can be effectively inclusive. The other intersectional subject with disabilities is the direct relevance of the Sustainable Development Goals (SDGs) that contain references to persons with disabilities. A number of SDG targets include persons with disabilities and these must be integrated into the policy arena at the national level.

Diversity of stakeholders and providers of social and economic services for persons with disabilities was also mentioned. While states as duty bearers to persons with disabilities continue to play an undeniable role as social service providers, examples are provided from a number of countries of provision of services by civil society organisations (CSOs), disabled peoples’ organisations (DPOs) as well as private operators. In some instances CSOs provide financial support to groups of persons with disabilities to run businesses and inclusive education and social service programmes. Partnership between states and these non-state providers is becoming an instrumental element in the effective provision of different social services and states are recommended to foster closer cooperation. As a note of caution, stakeholders must also ensure that financial interests do not overshadow the rights and needs of persons with disabilities; their interests and needs must come first.

Attitudinal stigma and physical barriers continue to be an impediment to social and economic inclusion. A misconception that persons with disabilities are not able to undertake certain activities remains a major cause of stigma against them. At the same time, one must also be aware of the possible risk that inclusion in the mainstream labour market, which is economically driven, may result in competitive pressure for which labour market participants particularly those with disabilities require support. Awareness raising programmes are a tool that must be utilised more widely and continuously to redress misconceptions.

Proper access to social services is predicated on communications and information that must be made available to persons with disabilities who are users of those services.

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5 Rapporteur: Dr. Seree Nonthasoot (DPhil (Oxon), Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights); Moderator: Mr. Arthur Limbach-Reich (Academic Network of European Disability)
While persons with disabilities are the target of social and economic inclusion measures, their family and caregivers must not be neglected since they bear the primary responsibility providing frontline care and assistance. It is essential that the family and caregivers of persons with disabilities be provided with adequate training and support as well as be considered an integral part of the social protection programme since they play an important role for persons with disabilities. Their understanding and supportive attitude toward persons with disabilities is a precondition for their meaningful participation and inclusion in the various aspects of society.

Accessibility to Social Protection

Celebrating its 10th anniversary in 2016, the CRPD is credited as a transformative instrument that has brought a new level of protection for persons with disabilities around the world. As the most popular international human rights instrument, with the highest number of ratifying countries since its adoption in 2006, the CRPD has led to a multitude of novel structures and services. In some countries, new government agencies have been instituted to discharge protection mandate and services in compliance with the Convention while in others governments have relied on existing bureaucratic infrastructure to provide the services like healthcare and education to persons with disabilities.

Participants took turns to discuss and refer to new developments in social protection for persons with disabilities. The first notable point is a shift from social and medical models to the rights-based approach which has been mainstreamed in many areas, including social protection. This new approach focuses on the individual not merely as a welfare recipient or a subject of medical attention, but a rights holder to whom services must be offered. This has led to a change in many countries in how social services are administered and provided. Services are now individualised, based on specific needs of the person.

The so called ‘case management’ that is used in European examples revolutionises both the cost structure and the quality of services. By constructing relevant services based on the needs and specific conditions of the individual, delivery of social protection becomes targeted and responsive. It is pointed out that despite the initial higher cost of delivery, this form of individualised package of services is financially viable in the long run. Another change is the funding or financing of services that are traditionally state-driven and delivered. In some countries, funds are now directly transferred to the persons for whom services are required. They then ‘acquire’ the relevant services from providers in the market. This new method thus alters the status of persons with disabilities from recipients to ‘buyers’ of services. Also noteworthy is the provision of personal assistance in a European example. Appointment of a personal assistant is cited as a solution to the abuses and violence sustained by women with disabilities from the carers in their households.

Despite the progress that has made social protection more accessible to persons with disabilities, challenges persist. First and foremost is the question of sustainability of the various social protection programmes that have been created. The lack of a comprehensive and reliable database is one challenge, especially in countries with geographical issues such as being an archipelago and having dispersed islands. Without adequate data to develop identification of those requiring social protection, they remain in a marginalised situation and out of reach. While education and employment are salient social services for persons with disabilities, a key concern is the absence of a bridge between these services, invariably resulting in persons with disabilities who are educated but remain unemployed. For persons who are blind or deaf-blind, the lack of proper communications through braille or sign language creates an insurmountable barrier for their access to social services and protection to which they are entitled.

**Good Practices on Private Operators on Public Services**

The first point of departure when discussing public services is the mandate of states as duty bearers toward persons with disabilities to provide them the services as well as to ensure their quality, regularity and accessibility.
A good practice that should be replicated is where a state provides social services through a centralised system, transparency measures that include publication of data and assessment of services can serve as benchmark for good service delivery standard for providers especially at municipal level. Competition among public providers, especially municipalities, to deliver accessible services should be recognised and promoted.

Increasingly, states have relied on private operators to provide services. This can result from limitations in public budget, capacity, manpower or technology. The service partnership can come in many forms, including outsourcing and Public Private Partnerships (PPPs) contracts. In such instances, it is of utmost importance that relevant legislation puts in place a clear set of key performance indicators (KPIs) to ensure equality and quality of services to persons with disabilities. In countries where private operators are significantly relied upon, accreditation of services has been instituted for such a purpose.

Apart from the KPIs or accreditation system, participants raised concerns about the lack of awareness and understanding of the rights and needs of persons with disabilities by personnel of private firms that service them. A good practice in this respect is a training programme for employees of private firms that are on the front line of services to have a clear understanding of the conditions and requirements of persons with different types of disabilities that use their services. At the most basic level, such understanding will help prevent disruption and violations of rights. A situation of a person with autism whose outward appearance and gesticulation may give rise to concern in public spaces like a bus or train is cited as an example where the knowledge of their condition by transport personnel will prevent alarm and negative impacts to both the person with such a condition and the commuting public.

Community-Based Interventions

Community-based interventions that include community-based rehabilitation represent a shift from institutionalisation. Such interventions can provide integration and inclusivity, especially for persons with mental health conditions. However, a participant cited the absence of sufficient and disaggregated data on the prevalence of mental illness among men and women to constitute a more gender responsive delivery.

For community–based interventions to be effective, training of parents of children, especially those with cerebral palsy, is instrumental. Increased awareness of parents of the conditions and appropriate ways to provide assistance to their children will directly contribute to the inclusion of their children into community.

Information Access

Information and communication are key to access social services, especially for blind and deaf persons. Adequate information about social services intended for persons with disabilities must be provided to them. Participants alerted the meeting to the fact that it is not unusual that information is given primarily and sometimes exclusively to service professionals who are the first point of contact with persons with disabilities. The assumption is that service professionals will then convey the necessary information to persons with disabilities who are the recipients of those services. It is emphasised that the requirement of communication and provision of relevant information must be considered a constitutive part of the social services themselves. Needless to say, communication is to be made in the form and manner that will allow persons with different disabilities fully to understand the types and requirement of services to which they are entitled and have accessibility.

ICT infrastructure is a new area toward which mainstreaming efforts must be directed. As telecommunication networks expand and increasingly become a backbone of the new digital economy, the issue of accessibility of persons with disabilities to ICT systems, in addition to the conventional social services, becomes relevant.
Discussion on labour market participation or employment commenced with a call for a paradigm shift from fragmented models that focus on education or employment to an integrated system that provide a whole-of-life social protection. Social protection, it was emphasised, must provide and serve as a bridge between education and employment.

A problem that continues to exclude persons with disabilities from the labour market is the dichotomy of expectations of their workability. While their parents and caregivers have low expectation of their ability and capability to have a gainful employment, their prospective employers may impose expectation of mainstream workability on them, expecting persons with disabilities to be able to function and perform like their non-disabled peers. This mismatched expectation naturally leads to exclusion at home and at the workplace where persons with disabilities who do not fit the workable expectation are viewed as liabilities rather than contributing agents.

Some participants pointed to sheltered employment that is still used in many countries as an employment platform for persons with disabilities who cannot work in the mainstream environment. The products from these shelters are supported through public procurement regulation that lays down a requirement for acquisition of shelter products as preferred and priority sources. Other participants emphasised that deployment of sheltered employment should be an exceptional rather than a general form of labour market participation for persons with disabilities since by definition shelters create physical exclusion and impede inclusion. It was suggested further that human rights principles such as non-discrimination and equality must continue to be the underlying direction for sheltered employment.

To enable persons with disabilities to be included in the mainstream labour market, some countries utilise positive discrimination in the form of quota through legislation. In some instances, the fines that are collected from non-compliance are pooled into a fund that is used for various skill development programmes for persons with disabilities. Some other countries observe meritocracy but institutionalise training and vocational courses for persons with disabilities to be equipped with necessary skill and learning background for their intended employment.

A new model of employment support by CSOs/DPOs was mentioned during the discussion. “Supported employment” or “job-coaching” is a personalised social support system that is administered by CSOs/DPOs. It puts persons with disabilities at the centre and creates support programmes that provide measures fitting the specific needs and conditions of each individual.

Participants also shared the view that the increasingly expanding digital economy represents a variety of promising opportunities that have not been fully explored for and by persons with disabilities.

Rights to Inclusive Education

The suggested educational theme was on adult and non-formal education. However, participants exchanged views primarily on the interplay between inclusive and special education. The first issue is definition. It was pointed out that there is no universal meaning of ‘inclusive’ or ‘special needs education’ and this has made it difficult to collect comprehensive data.8

While the recently adopted General Comment No. 4 by the CRPD Committee focuses on the right to inclusive education, the text of the CRPD itself does not explicitly favour one type of education over the other. It was emphasised that a person with disabilities should have equal rights to access inclusive education like everyone. As the primary duty-bearers, states have an obligation to provide both systems of education. A critical question that was subject to a debate is: Who has the right to choose the type of primary education for children with disabilities? Their parents? Or the children themselves?

There was a divergence of views among the participants. One group pointed to the ‘prior’ right of the parents to choose the type of education for their children, which is recognised by the Universal
Declaration of Human Rights\textsuperscript{9} The other group indicates the unequivocal recognition by the CRPD Committee that education is the right of each individual learner, including children, and the responsibilities of the parents in the area of education are ‘subordinate’ to the rights of the child.\textsuperscript{10}

Discussion on inclusive and special needs education invariably implies physical separation of their facilities. It was pointed out, however, that institutions providing these two types of education can co-exist in the same compound and share the same facilities, which will foster inclusion for students with disabilities.

A number of challenges persist in the education system designed for persons with disabilities. First, there is the capacity of teachers. In an inclusive system, teachers are not aware of specific needs of children with disabilities, especially the deaf and those with learning disabilities. The lack of a sign language interpreter or the inability of the teachers to provide sign language interpretation hampers inclusion of and comprehension by deaf students.

Secondly, there is tension between parents and teachers in regard to the appropriate type and delivery of education for children with disabilities. Thirdly, physical barriers still abound in education facilities. The absence of a ‘friendly’ environment or ecosystem is a basic impediment to inclusion. Fourthly, even in an inclusive education system, there is a lack of socialisation between students with disabilities and their mainstream peers.

Fifthly, no education system will be effective if it does not lead to a successful transition to employment. Participants pointed to an inadequacy of job matching for children with disabilities who have graduated from school. Finally, the effectiveness of special education is cast into doubt when in some countries special education institutions function as ‘storage’ and not an enabling environment for students with disabilities.

On a positive note, there are many examples of good and innovative practices on education for persons with disabilities, such as those compiled and indicated by the Zero Project.\textsuperscript{11} These good practices should be further shared and discussed.

Inclusive Healthcare

Despite being the last issue to be discussed, inclusive healthcare received great attention from participants. The starting point of discussion is the general observation that women and men with disabilities are often considered as a population in need of special health care. It is often ignored that people with disabilities have the same general health care needs as others and that the need for special care is in addition to their need to access general health care services and not an alternative to it.

Lack of understanding and awareness about the health of people with disabilities, and the barriers experienced by men and women with disabilities in accessing health and rehabilitation, result in their exclusion from health promotion and disease prevention programmes.

A point on the scope of ‘inclusive health’ was also raised. ‘Inclusive health’ implies a comprehensive approach to health including health promotion, prevention, medical care as well as habilitation and rehabilitation. Some participants raised concern on the prevailing use of ‘rehabilitation’ to cover every aspect of states’ obligation to enable persons with disabilities to attain and maintain maximum independence and inclusion and the notable lack of usage of ‘habilitation’, which has a different meaning from ‘rehabilitation’. The CRPD,\textsuperscript{12} it was noted, adopts both habilitation and rehabilitation and they should be utilised accurately.

The SDGs, specifically Goal 3 on ensuring healthy lives and promoting well-being for all at all ages, include a target to ensure that universal access to sexual and reproductive healthcare (SRH) services, information and education is available to all by 2030. While the SDG3 is a great opportunity to
advocate for inclusive access to SRH services, information and education at the global level, this objective cannot be achieved without significant actions that ensure access to health care for all people with disabilities.

An impediment to inclusive health for persons with disabilities is the predominant assumption and misconception that they have no sexual and reproductive need. There is also a deep-rooted suspicion that persons with disabilities may not have the capability to function as good parents. In this respect, the CRPD has called for a revolutionary recognition that as rights-holders, persons with disabilities are also entitled to sexual and reproductive matters and decision-making. As a duty-bearer, states, particularly public service providers, are obliged to give comprehensive and adequate information about safe sex and reproductive health to persons with disabilities who hold the ultimate right to make decisions for and by themselves.

A government participant gave a reference to an example where a government provided anonymous counselling services on SRH to the public, including persons with disabilities. However, availability of these services in the rural area remains an issue.

Violence against people with disabilities continues to be an overlooked component of health and, therefore, an unaddressed obstacle to the inclusive healthcare target of the SDGs. The interconnection between violence, health, gender and disability remains largely neglected, with disaggregated data on violence and disability lacking and actions to prevent violence not consistently put in place. Gender sensitive actions on prevention of violence need to be fully considered as a way to promote the health and wellbeing of men and women with disabilities as well as to prevent disabilities which are often caused by violence, the reduction of which is also adopted as an explicit target of the SDG16.

Advocacy actions, therefore, must address the need for the following:

1. Undertaking further research and investigations on violence and disability to develop a clear picture of the current situation at the country and at the global level and to better identify and understand the violence prevention factors;
2. Increasing the awareness and the knowledge on violence against men, women and children with disabilities (including domestic violence) and on the consequences of violence in terms of disability;
3. Disseminating the findings of these investigations among decision and policy makers; and
4. Developing disability inclusive violence prevention approaches. All of these are essential steps towards the achievement of the SDG3.

Way Forward

A good way to start addressing inaccessibility and enhancing accessibility to social protection as well as fostering social and economic inclusion is to examine the current weaknesses and challenges. Participants also suggested specific measures that, if implemented concurrently, will systematically yield concrete results.

1. Introduction of legislation and effective implementation of relevant legal frameworks are the key to ensuring equality and quality of social services and inclusion of persons with disabilities.
2. Further commitment can provide enhanced accessibility. There is a consensus among participants that the CRPD has brought significant positive changes to legal, regulatory and social frameworks on disabilities at the national level. Ratification of additional treaties will widen the scope of commitment and lead to greater accessibility. In this respect, states are encouraged to become parties to:
1) the Optional Protocol to the CRPD on communications procedure and

2) the Marrakesh Treaty that facilitates access to published works for persons who are blind or visually impaired.

Additionally, states are asked to mainstream and implement the Sustainable Development Goals and their various targets, bearing in mind that those goals and targets have already incorporated disability-related provisions.

Accessibility is an important precondition to inclusivity. It encompasses not only physical structures like buildings and facilities but also services like information and technology. It is recommended that accessibility as a principle and concrete measures, including universal and friendly design, should be incorporated in the design process of policies and infrastructure.

The Sustainable Development Goals represent a new instrument for development that explicitly includes a number of indicators related to persons with disabilities. There are two suggestions on the SDGs. Firstly, awareness raising campaigns should be organised on the SDGs and their substantive compatibility with the CRPD. Secondly, goals and indicators that are linked to disability rights should be systematically mainstreamed at the national level through all appropriate measures, including policy and legislation.

Systematic monitoring and evaluation (M&E) programmes play an important role in ensuring the effectiveness and quality of the various accessibility measures and M&E should be incorporated at the design stage of accessibility programmes.

Meaningful participation of persons with disabilities is an indispensable component in every policy stage from design to implementation and evaluation. The shift of mindset from the social model that views persons with disabilities as recipients of state-sponsored programmes to the rights-based model that focuses on their rights and the obligation of the duty bearers will not be successful unless persons with disabilities who are the agents of change are provided space and opportunity to engage and express their opinions concerning policies and measures that will have an impact on their lives. In other words, ‘nothing about us without us!’
Introduction

For the purposes of the working group discussion, the group considered seven key questions for this workshop as outlined in the concept paper:

1) For persons with disabilities who have been placed under legal guardianship; what guarantees need to be in place to ensure there is no breach of trust in that position?

2) What efforts have been undertaken (and are further required) to reduce the legal and physical barriers to access? What special considerations are needed for vulnerable groups to be able to participate in legal proceedings?

3) How can law enforcement agencies and civil society organisations provide specialist assistance to persons with disabilities in reporting crime and to seek appropriate remedy?

4) What have been the experiences (successes and challenges faced) of NHRI s and ombudsman offices in ASEM countries in conducting inquiries and receiving complaints?

5) What training does the judiciary need in order to be sensitive to a human–rights based approach to disability? Also for law enforcement bodies and other agencies?

6) What has been the experience of DPOs (organisations representing persons with disabilities) in approaching the Courts on behalf of individuals? What cooperation efforts exist?

7) In the context of implementing the CRPD at the judicial level, are specific laws required to protect persons with disabilities or is it just a matter of mainstreaming the Convention into existing human rights protection laws?

Question 1 - For persons with disabilities who have been placed under legal guardianship; what guarantees need to be in place to ensure there is no breach of trust in that position?

This discussion principally related to Article 12(4) of the CRPD. The focus of the discussion was how Persons with Disabilities (PwDs) can retain as much choice, independence and autonomy as possible and how best to deal with limitations of capacity in accordance with CRPD principles.

There was a discussion of the ‘best interest’ approach taken by a number of countries, a normative approach which effectively seeks to determine an objective preference for a person without necessarily having regard to the individual perspectives of that person. A question was asked if that is the right way forward and if not, what is the right way?

Generally, countries have legislation to ensure protection of personal and property rights, particularly relevant to people with an intellectual disability. A distinction is made between legal and mental capacity. However, colleagues gave examples of instances of PwDs being subject to orders and being subject to guardians when arguably they don’t need them. Guardianship is meant to be a last resort but often it is not. In some countries, guardians can be family members, organisations or an appointed public official. Generally, countries have measures to safeguard against exploitation on the part of the guardian, including the need for court approval to determine the assets of a PwDs and criminal sanctions for guardians who abuse their position.

13 Rapporteur: Mr. David Reubain (Equality); Moderator: Mr. Yoshikazu Ikehara (Tokyo Advocacy Law Office).
There was also a discussion about the focus on a medical examination of the PwD as part of the process of determining guardianship, which can be very unhelpful and arguably not conducive to the social model of disability. In some countries, it would appear that medical model approaches which engage psychiatrists are used, emphasising medical diagnosis; for example bluntly saying that a person with schizophrenia cannot make decisions. In one country, the civil code of the country includes the social worker as a recognised individual to bring evidence as to what the capacity of the individual is but it was reported that judges tend to ignore the social worker’s assessment and rely very much on that of the psychiatrist.

A number of colleagues reported developing work around supported decision-making to try to ensure full compliance with Article 12. In some cases, this may require a change in legislation. Colleagues discussed alternatives to a ‘best interest’ approach which seek to maximise the choice of the PwDs, such as progressive capacity and supported decision-making or ‘will and preference’ (a reference to a phrase in Article 12(4)). A question was asked about what a social model to approach to capacity and the use of guardianship would look like. In at least two countries there are pilot changes on supported decision-making, focusing on helping the PwDs to make decisions whilst minimising limitations placed on their decisions.

Regarding ‘will and preference’ or best interest, there was a discussion about it involving changing from thinking about what the dominant world view might assume about PwDs and what they should or shouldn’t do, to thinking which focuses on each individual’s preferences. In other words, a shift from objectifying people to thinking about people as individuals and keeping the individual’s preferences at the centre of the process. One way of understanding this is that ‘will and preference’ places choice and control with the individual and best interest places choice and control in someone else. There was a discussion of the use of facilitated decision-making with individuals with significant needs, using ‘will and preference’ at the heart of that.

There was a discussion about remedies available to PwDs who wish to dispute guardianship orders or the choice of guardian. In some countries, the person under guardianship can ask for cancellation of the guardianship decision but the law may still take a strongly medical perspective - the main evidence for giving or cancelling guardianship being based on the reports of the doctor, psychologist or psychiatrist. Article 12 requires every country to have a monitoring mechanism for guardians and guardianship. Meanwhile, it was reported that in some countries, only financial and property rights can be restricted to guardianship, not other rights (such as to vote, marry etc).

It appeared that not all countries’ legislation complies with Article 12 of the CRPD.

Summary

1. Discussion around decision-making and legal capacity (as distinct from mental capacity).
2. Guardianship orders should be the last resort because these can lead to disadvantageous outcomes
3. Dangers of reliance on psychiatrists and doctors because that may not fit in with the social model. The social model can work with support schemes as a way of maximising choice for people with limited capacity.
4. Discussion around best interest vs will and preference, and the dominant world view which may not reflect will and preference.
5. Consideration as to how to put disabled people at the centre of decision-making.
Recommendations

1. **The preferences of PwDs should always be central to decision-making.**

2. **Use of medical professionals in decisions relating to capacity should be only part of any process, which should always include the PwDs themselves as well as supporting professionals such as advocates and social workers.**

3. **Good practice should be shared between countries.**

**Question 2 - What efforts have been undertaken (and are further required) to reduce the legal and physical barriers to access remedy? What special considerations are needed for vulnerable groups to be able to participate in legal proceedings?**

This discussion principally related to Articles 9, 12(3) and 13(1) of the CRPD. Many countries have passed specific anti-discrimination laws for PwDs and some have enacted further legislation in light of the obligations of the CRPD. Some countries embed rights for PwDs in their Constitutions. Aside from anti-discrimination laws, there are a variety of laws to provide support and welfare and also compensation for PwDs. Some countries still use quotas (requiring employers to hire PwDs) to try and increase opportunities of employment for PwDs or in some cases will subsidise salaries with public funds.

However, there are difficulties in resourcing and supporting PwDs, a disproportionate number of whom are also poor, to enforce those rights; in some cases resulting in a lack of case law and precedent. Some countries offer legal aid or assistance but it is limited and the quality of support is not always good. Physical barriers that limit access to courts and other premises have been addressed in some countries but not all.

Some colleagues told of difficulties in effective communication of rights, legal processes, etc for some PwDs and of the need to work with the police, legal profession and the judiciary to increase education and awareness. Specific suggestions included the need to translate court documents into Easy Read and the provision of sign language, pictures and braille (as happens in some countries).

In at least one case, it was reported that a country prohibited legal action against the government, which significantly limits rights and available remedies (and which is arguably in breach of the CRPD). Meanwhile, colleagues reported that some countries have entered reservations in respect of some of the articles of the CRPD (for example Article 15 regarding torture and mistreatment and Article 18 regarding the right to liberty of movement and nationality).

In some countries, ombudspersons are key to handling complaints; especially where there are few specialist human rights or disability lawyers and little available training in these areas. NGOs try and assist but resources are limited. In addition, some PwDs are vulnerable and afraid and therefore anxious about enforcing their rights.

One colleague reported different challenges that PwDs face from the private sector as opposed to the public and third sectors.

There was general agreement about the need for further training, work and understanding regarding capacity and autonomy for PwDs, including for judges and lawyers.

There was a discussion about PwDs having less power than other people in society and therefore less ability to reduce barriers. Again, participants reported inadequate funding for legal support which affects the ability of PwDs to ensure that their position as rights holders is made manifest. One participant reported that people with learning disabilities had talked about wanting to learn about judicial processes from others with learning disabilities and another participant reported that judges questioned whether the country’s adversarial system is appropriate for those with learning disabilities.
and also the need to change court attire to make the atmosphere less threatening and having closed courts to make them less confrontational. Regarding empowering disabled people, one participant sought to situate this issue within a broader perspective – thinking about empowerment from an economic perspective, ensuring the PwDs attain a decent job with adequate income, which is the approach of their government.

Summary

1. Variety of arrangements of specialist support, ombudspersons, etc are in place in different countries to support access to remedies.
2. For people with intellectual disabilities, guardianship is often used, but this can be unhelpful.
3. An issue is the limited resources for PwDs to take cases (legal aid, support services).
4. In some countries, a lack of human rights lawyers and of lawyers with human rights expertise.
5. Issue of guardianship versus progressive capacity vs will and preference.
6. PwDs aren’t so willing to take up court cases.

Recommendations

1. Consideration should be given to providing effective and comprehensive resource and support to PwDs and organisations to enable effective enforcement of rights.
2. Consideration should be given to the provision of comprehensive training and support for the judiciary and others, based on the social model of disability and the CRPD.
3. The availability of alternative means of communication (Easy Read, braille, sign language) in court proceedings should be ensured.

Question 3 - How can law enforcement agencies and civil society organisations provide specialist assistance to persons with disabilities in reporting crime and to seek appropriate remedy?

This discussion principally related to Articles 9, 12 and 13 of the CRPD.

Generally, colleagues discussed the need for specific training for police and other agencies including the judiciary, ideally delivered by PwDs and their NGOs (and it is also important to ensure adequate resources to enable this). Some police forces have specialist victims units to handle situations affecting particular marginalised or oppressed groups, including PwDs; particularly where there has been evidence of poor responses to such crimes in the past. In some cases, the media has been active in exposing abuses against PwDs (for example exposing an incident of a child with disabilities being kept in a cage).

There was a discussion about differing approaches to PwDs in the judicial system. In some countries, criminal sentences may be reduced for convicted PwDs whilst in others, if a PwD is the victim, then that may result in a more severe sentence for the perpetrator (particularly as offences against PwDs may be classified as ‘hate’ crimes, although there is evidence that it may be hard to establish proof of this). There was a discussion about difficulties in obtaining convictions against perpetrators when the victim has an intellectual disability and whose evidence may not be trusted.

On the other hand, participants cited examples of inadequate police investigations which did not take into account the experience of disability, the social model and the wider understanding of the ways in which disabled people can be mistreated. In one country, the criminal code provides for a lower sentence for those convicted of sexual offences against a PwD who lacks capacity than it does for offences relating to the grooming of children.
Summary

1. Specialist units to support disabled victims.
2. Training for prosecutors, for example for a better understanding of hate crimes.
3. Sometimes, the evidence of disabled witnesses is not afforded as much credibility.
4. Interpretation facilities are needed.
5. We heard of an instance of a piece of legislation that provided that a criminal sentence for a conviction for sexual grooming is lower if the victim is disabled!
6. Learning about the lived experience of disabled people and to help disabled people to understand processes which would make them more willing to take legal action.

Recommendations

1. Consideration should be given to the provision of comprehensive training and support for the judiciary, police and others, based on the social model of disability and the CRPD.
2. Consideration should be given to the establishment of specialist units to investigate crimes against PwDs.

Question 4 - What have been the experiences (successes and challenges faced) of National Human Rights Institutions (NHRIs) and ombudsmen offices of ASEM Partners in conducting inquiries and receiving complaints?


Not all countries have NHRIs (which is the collective term for Human Rights Commissions and Ombudsmen) and for those that do, the level of resourcing varies considerably (in one case, with only one member of staff working on disability). Some have attained ‘A’ status in accordance with the Paris Principles whilst others are seeking it (some participants stressed the importance of attaining ‘A’ status for effectiveness). The powers available to NHRIs vary, with some able to take legal and other enforcement action and intervene in cases whilst others can only make recommendations, negotiate or mediate (albeit that approach can sometimes be effective and relatively quick), as well as policy and advocacy work and promoting good practice and awareness-raising. Funding, often from the government, can compromise the independence and autonomy of NHRIs (notwithstanding the Paris Principles). Some countries have a number of Human Rights Commissions and some countries have specific, disability-focused agencies whilst others incorporate disability into broader equality and human rights agencies.

There was a discussion about difficulties in bringing forward cases, complaints or examples for NHRIs to act upon. Some PwDs would rather ‘suffer in silence’, because of a fear of what may happen to them if they complain. PwDs don’t always know about the availability of NHRIs and it is often important for the institutions to actively reach out to PwDs.

In some cases, NGOs provide information/knowledge to support NHRIs but NGOs may not be funded for human rights protection and advocacy. There was a discussion about the impact on a country of not having a body which monitors and takes requests and complaints and generally it was considered that this makes a big difference. Capacity building for NGOs and capacity building for PwDs - to know what their rights are, how to implement and realise their rights in practice – is also very important as, otherwise, there is a lack of complaints and legal cases which then weakens the impact of NHRIs.
1. Discussion of independence of NHRIs and category A status.

2. Some NHRIs, ombudsman, commissions are under-resourced and under-staffed.

3. Some countries don’t have NHRIs.

4. Some commissions work on policies but don’t take cases.

5. Bodies can have a role in alternative dispute resolution.

Recommendations

1. All countries should aim to establish NHRIs which attain ‘A’ status.

2. NHRIs should be effectively resourced and have a sufficient degree of independence to not compromise activities.

3. NHRIs should have sufficient training and specialism to enforce the CRPD.

4. Consideration should be given to support NGOs and build capacity to enable them to play an active role in enforcing and advancing the CRPD.

Question 5 - What training does the judiciary need in order to be sensitive to a human rights based approach to disability? Also for law enforcement bodies and other agencies?

This discussion principally related to Article 13(2).

In one country at least, judges have received specific training around the social model of disability and more particularly on the nature of exclusion and disadvantage that disabled people face. The aim of this is also to increase understanding of the context of PwDs lives in any court proceedings. Some colleagues reported specific training on human rights, although not necessarily focused on disability. Other colleagues reported that there is currently no formal training for judiciary or law enforcement agencies. Others stated that their countries provide training to understand people with different types of impairment or provide courses on better equipping courts to interact/communicate with PwDs. Finally, some colleagues indicated that more general training is provided on equality and non-discrimination, though not specifically related to disability.

Some participants again stressed that any training should be delivered by PwDs and NGOs, not advocates or academics!

Summary

1. The social model of disability and the lived experience of disabled people

2. Alternative means of communication

3. The CRPD

4. Equality and non-discrimination, law and practice generally

5. Training should be delivered by people with disabilities and/or disabled people’s organisations
Recommendations

1. Consideration should be given to the provision of comprehensive training and support for the judiciary and law enforcement agencies, based on the social model of disability, the nature of exclusion and disadvantage faced by PwDs, and the CRPD.

2. Training should also be provided on the impact of different types of impairment and on effective alternative means of communication.

3. Where possible, training should be delivered by PwDs and DPOs.

Question 6 - What has been the experience of DPOs (organisations representing persons with disabilities) in approaching the Courts on behalf of individuals? What cooperation efforts exist?

This discussion included reference to Articles 13 and 33(3).

A question was raised about the extent to which DPOs can generally bring cases rather than individuals having to bring cases - because when DPOs bring them they can raise bigger, strategic issues. In some countries, DPOs only undertake campaigning and lobbying (partly because they don’t have capacity or resources to do more or don’t have legal standing before courts) whilst in others they may undertake advocacy or can bring collective, strategic or test complaints.

There was a discussion about the difference between organisations of PwDs as opposed to organisations for PwDs; the former being run by PwDs whereas the latter may not be. In one country, there is a national council of persons with disability but whose members are a mix of civil servants and representatives of disabled people (who may or may not be disabled themselves). That council has not been active or effective in promoting any outstanding changes.

Summary

1. DPOs can bring collective complaints but some do not or cannot or do not have the resources to bring collective complaints.

2. The standing of a DPO – is the DPO recognised by the court to bring a case?

   But DPOs may have a legal standing before the CRPD committee itself.

Recommendations

1. Consideration should be given to supporting and empowering DPOs to support or bring complaints.

2. Consideration should be given to the importance of supporting organisations of (as opposed to for) PwDs.

Question 7 - In the context of implementing the CRPD at the judicial level, are specific laws required to protect persons with disabilities or is it just a matter of mainstreaming the Convention into existing human rights protection laws?

This discussion principally related to Article 4.

As a starting point, one participant indicated that this issue is not a question of either one or the other option but both. It is not sufficient just to ratify the CRPD and seek to mainstream it. What is needed is to pass specific laws that apply those principles to domestic situations. For example,
regarding Article 24 – the right to education; a lot more detail is needed beyond that set out in the CRPD to ensure comprehensive inclusion of all disabled people, and additional legislation may also be needed to ensure comprehensive change. It may be difficult to transpose human rights instruments directly into domestic law since they may not reflect the particular nuances of that country's legislative framework. There are also issues of interpretation of the CRPD between countries and in a local context. Another participant commented on the need for new, distinct legislation because there is a perception from some corners of the legal fraternity in that country that the CRPD does not ‘trump’ domestic law. One participant indicated that it is very hard to implement international instruments and so domestic legislation is important. In another country, judges have respect for international treaties but have to be supported with local provisions to ensure implementation.

Not all countries have signed the Optional Protocol to the CRPD and this is another reason why effective domestic remedies may need to be enacted (indeed, Article 2(d) of the Optional Protocol requires that domestic remedies be first exhausted).

Many countries have now implemented rights–based anti-discrimination legislation and a lot of progress has been made, but there are still issues to resolve. In some countries, provinces, regions and sub-national jurisdictions have a level of autonomy and may develop regional laws on disability, including in making infrastructure and public services accessible. One participant stated that ratifying the convention is not enough and neither is mainstreaming the obligations through federal legislation, since their country is politically complex and requires action by local authorities. There was a discussion about helping to implement CRPD obligations by providing model laws and by–laws.

In one country, the reporting procedure set out in Article 35 of the CRPD is considered even more important than the right to individual petition set out in the Optional Protocol. However, a question was raised regarding to what extent anyone is willing to criticise their state, particularly NGOs which may feel vulnerable. In one country, the national commission on disability has 10 government members and 9 NGO representatives but it only meets once a year and is ineffective.

In other cases, there is little consequence to the state in failure to implement the CRPD, and there is a view that it has ‘no teeth’. In another country, very little happens at the domestic level even where concluding observations are critical since these are not widely disseminated within the country. Accordingly, governments and NGOs have an important task in widely disseminating reports and concluding observations the country. One participant reported that their NGO prepared its own translation of the concluding observations which was actually different from that of the government. In that case, the concluding observations effectively criticised the government and argued for a change in the law on mental health to prevent involuntary hospitalisation and to change terminology.

One participant indicated that their country views the convention reporting process as the key method for reviewing the situation for PwDs and that workshops are arranged to enable civil society involvement. One participant commented that it may take three or four reports and concluding observations relating to one country before change happens. Another participant concurred by raising the importance of long-term dialogue between the government and civil society arising from reports.

There was also a discussion about the importance of public procurement legislation to enforce rights, requiring companies that contract with the state to reflect minimum standards. Reference was made by one participant to a statutory duty on public bodies (which is related to but different from public procurement legislation) as an additional way of addressing inequality and lack of diversity. In that country, the duty arose in recognition of institutional discrimination in the way that disadvantage can be embedded in structures and arrangements of an organisation. Another participant reported that in their country, it is in fact the private sector that acts more to further equality!
Summary

1. General consensus on the need to build the UNCRPD into domestic legislation for a number of reasons:
   a) international treaties are sometimes not given as much credence as domestic legislation
   b) to enable the treaty obligations to reflect country specific and regional arrangements (without weakening them)
   c) to ensure domestic legislation builds on the UNCRPD.

2. There was a view that the optional protocol of individual petition and reporting procedure can be very helpful, although some felt that their governments paid little attention to the concluding observations following reporting. On the other hand, others thought it was a way of engaging civil society.

3. Regarding other legislation, public procurement and proactive obligations on bodies can also be important.

4. Specific laws that may need changing to comply with the UNCRPD are likely to include mental health legislation, but anyway the UNCRPD needs to be worked through into all relevant laws and bi-laws.

Recommendations

1. Give careful consideration as to what domestic and regional legislation is required to ensure full compliance with the CRPD.

2. Consider regional and trans-national co-operation and collaboration to ensure best and most effective legislative arrangements which give full effect to the CRPD.

3. Ensure that NHRIs are effective and potent.

4. Consider support for NGOs to enable them to play a full and active role.

5. Consider related legislation, such as public procurement provisions and public sector duty provisions which can also advance the CRPD.
Working Group 4: International Cooperation & National Implementation

Introduction

The discussion was organised in two segments: general comments and group discussions. The report is in three parts:

i. Explore Multi-layers of International Cooperation & its Impact on National Implementation of the CRPD.

ii. Explore Methodologies to make International Cooperation more Effective.

iii. Conclusions & Recommendations.

I. Explore Multi-Layers of International Cooperation & its Impact on National Implementation of CRPD

Article 32 of CRPD stipulates four key areas of international cooperation, namely:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices

(c) Facilitating cooperation in research and access to scientific and technical knowledge

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

This is not an exhaustive list. All participants acknowledged that international cooperation plays a key role in national implementation by raising both governmental and public awareness in terms of promoting and protecting the human rights of persons with disabilities.

International cooperation is explored in the following political, policy and programme layers.

Political Commitments are Essential in International Cooperation

Since there is a gap between ratification and implementation of CRPD by state parties, the engagement of the United Nations is quite important. Most participants acknowledged the importance of international cooperation in influencing their governments to sign, ratify or implement CRPD. Since CRPD itself is a result of inter-governmental efforts, its implementation and monitoring can hardly be conducted without the international mechanism, i.e. the CRPD Committee.

Although the UN system is the main engine to promote implementation of CRPD, the importance of regional inter-governmental mechanisms, such as ESCAP, EU and ASEAN were also highlighted. These regional frameworks play roles similar to that of the United Nations, but they can be even more effective in mobilising countries in a certain region.

The engagement of civil society organisations, especially DPOs, in the decision making process of international cooperation is important because they are working directly with persons with disabilities.

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14 Rapporteur: Ms. Xiaomei Li (China Disabled Persons’ Federation); Moderator: Ms. Martina Orsander (MyRight-Empowers people with disabilities);
and understand their situations and needs. International organisations should involve DPOs more when discussing disability-related issues. The UN has set a good example in this regard.

Many participants believed that the UN 2030 Development Agenda will be a special platform for further promotion of human rights for persons with disabilities. Its principle to ‘leave no one behind’ has special implications for persons with disabilities. It is of great importance to apply a human rights and development approach to the implementation of both the UN 2030 Development Agenda and CRPD.

International Policy Exchanges on Disability Mainstreaming

Some ASEM Partners have already established bilateral or multilateral cooperative relations. Several participants described their experience of incorporating disability issues into the existing cooperation frameworks, such as APEC, ASEM and EU. Such cooperation is often in forms of meetings, seminars and symposiums where government officials, legislators, researchers and service providers share their experiences, measures taken and methodologies. Many of such dialogues and exchanges are organised periodically, and often involve academic and research institutions and result in policy suggestions to their government. Participants noticed that there are many articles in the CRPD calling for mainstreaming disability into other areas, such as social welfare, cultural activities, daily life.

When there is a policy dialogue between two countries or among several countries, disability-related issues usually cause no contradictions, and countries can learn from each other.

Best Practices Sharing of International Cooperation Programmes

The participation of both governmental development agencies and local DPOs allows the sharing of experiences of disability-related programmes, such as training and capacity building efforts. One example is the Asia Pacific Development Center on Disability (APCD) based in Bangkok, Thailand, which promotes accessibility and empowerment of persons with disabilities around Asia and the Pacific.

In some developing countries, international development funding is allocated to help DPOs to translate policy documents, legislation and CRPD into the local language or accessible formats. However, these provisions are still not easily understood, especially by persons with disabilities. The participants felt that official development aid (ODA) should be delivered in accessible ways.

Participants pointed out that it is important for the donors to consult the beneficiaries before launching a project, and let them know what is working and what is not working, as well as the positive aspects and negative aspects of the project. They should also take into consideration the local culture and social environment. A holistic approach should be applied in project design and evaluation, which goes beyond disability to related factors such as culture, history and tradition. Also, the existing local governmental infrastructure should be fully utilised, so that the project can reach every person with disability in need.

Opportunities for collaboration between the diverse actors working towards disability-inclusive international development and humanitarian action should be sought. A mechanism facilitating this is the Global Action on Disability (GLAD) Network. GLAD supports bilateral and multilateral donors and organisations, the private sector, foundations and others contributing resources to work together, in collaboration with DPOs and partner governments, to enhance the inclusion of persons with disabilities in international development and humanitarian action.

NGO participants from developing countries pointed to their need for international aid to initiate projects. However, donors should consider their domestic ownership of the projects, and the projects should take into account the local culture.
The variation in definitions of persons with disabilities is one of the cross-cutting issues in the concept note. Since different countries have different explanations of disability, it makes the collection of statistics very difficult. Participants believe that whether or not we need to have a common definition in order to produce accurate statistics, the most important thing is to make policies accessible for all, including persons with disabilities.

II. Explore Methodologies to Make International Collaborations More Effective

For international collaborations to be more effective in facilitating the national implementation of the CRPD, three key issues should be addresses:

1. Advocacy & Capacity Building
2. Media & Empowerment
3. International & Regional Networks

Advocacy & Capacity Building

Before we get to advocacy for persons with disabilities, there are some crucial issues that need to be clarified. The working group did not spend much time on the definition of advocacy itself. Instead, they focused on what, and to what level, advocacy should address, whom do we advocate for, how to make effective advocacy, and how to find the best practices.

Cultural and environmental differences should be considered so as to put together a successful advocacy strategy. When we advocate, we are targeting three levels: a) government/state; b) community and DPOs; c) individuals. The message to governments is that we want policy changes, then we advocate to a larger group of people to raise their awareness, and eventually to reach the goal of our advocacy.

How can we advocate? The working group identified three key features:

1. **Self-advocacy.** Self-advocacy calls for persons with disabilities to speak up for themselves. The message is that persons with disabilities want to take control of their own lives. Advocacy also helps donors understand the real needs of persons with disabilities.

2. **Self-representation.** This is both in cultural and political contexts. It is to encourage persons with disabilities to represent their own interests within a particular culture. It intersects with capacity building, and involves education, training and all sorts of empowerment. The crucial concept here is inclusion.

3. **Supported decision-making.** A reliable supportive mechanism is essential for persons with disabilities to make decisions when needed. The working group addressed the importance of making legal representations through a supported decision-making mechanism.

Advocacy calls for solidarity. DPOs need to promote sharing of resources and experiences (both good and bad) of advocacy efforts. Furthermore, capacity building and advocacy are mutually reinforcing, both serving the ultimate goal of international cooperation. The working group also touched on methodologies such as encouraging sharing experiences between different advocating groups, technical cooperation and information sharing.

Media & Empowerment

There is a growing awareness of how to better use media as a tool to advocate for the rights for persons with disabilities. The group recognised that media, particularly social media, which is free and accessible, provides great opportunity for awareness-raising for persons with disabilities and DPOs.
A key element of empowerment comes from education and being able to represent oneself. Just as people with disabilities need education and training to enable them to enter employment, so do employers and new businesses need education on hiring people with disabilities. Support is also needed for entrepreneurship. The working group came up with the following recommendations:

1. Media education and engagement on disability-related issues: Media should avoid patronising or ‘inspirational’ coverage of disability. Media practitioners with disabilities should be encouraged to cover international events and meetings (Examples include the MyRight codex in Bosnia-Herzegovina; SUSTENTO easy-to-read radio news broadcasts in Latvia).

2. Capacity-building for journalists: Journalists should receive training in how to talk about disability issues, how to interview and deal with people with disabilities in an appropriate and sensitive manner, and also how to present information in an accessible and easy-to-understand way.

3. Disability awareness training: Employers, businesses and members of staff need training and support that will assist them in hiring people with disabilities. Businesses need to be persuaded that being inclusive is good for business.

4. Disability Equality Training (DET). Apart from working with experienced journalists, we need to work towards developing a curriculum and introducing disability sensitivity as an integral part of training for future journalists. DET contains training based on the social model of disability, facilitated by persons with disabilities.

5. Education and training for people with disabilities: Strengthening the capacity building of persons with disabilities and DPOs to engage with the media. People with disabilities should be trained to provide DET on a broader level.

**Developing & Strengthening International and Regional Networks**

1. In the longer term, it is necessary to create an international institution, network or a unified framework like the UN system which focuses specifically on disability. It will serve as the focal point for each region to share experiences, as well as monitor and evaluate the implementation of CRPD.

2. Regional organisations should set up a desk on international cooperation on disability issues to promote intra-regional cooperation. Furthermore, regional focal points should be established to strengthen the cooperation between Asia-Pacific organisations and European organisations.

3. Countries and aid institutions should develop a ‘golden standard’ by which development assistance programmes are linked to Article 32. This standard should be short and in an easy to read format, and which can be used in international development or cooperation aid projects.

4. Development aid programmes should be required to include disability/inclusive aspects; persons with disabilities should be included as key stakeholders not only in the implementation of a project but also in its planning and preparation. Attention should be paid to the wrapping up of such programmes. This should be done in a manner that ensures that the inclusive aspects of development assistance projects are sustainable in the long run.

5. Governments and donors should make sure persons with disabilities in remote areas are as taken into consideration and can benefit from inclusive development assistance.

6. To encourage international level events for persons with disabilities for sharing experiences. International exchange programmes and visits among persons with disabilities in specific fields such as sports and culture are good areas for cooperation and for improving visibility in the media.
7. Know when to focus on differences and when to ignore them. Differences should be considered, for example, in rehabilitation and accommodation. However, in general, services and information should be accessible for all persons with disabilities. It is even more crucial in cross-region cooperation.

III. Conclusion & recommendations

The working group came up with the following recommendations:

1. More inter-governmental efforts are necessary on political perspectives, especially through the UN system or within regional cooperative frameworks.

2. Policy exchanges and dialogues should be strengthened among countries already having bilateral or multilateral dialogue mechanisms.

3. Sharing experiences and methodologies in programme implementation is important.

4. International development programmes should focus more on the disability-related areas, and should continue in the long run.

5. Capacity building is one of the ultimate goals for the persons with disabilities, and is addressed both in Articles 12 and 32, so we should continue to facilitate and support capacity-building, including the exchange and sharing of information.

6. Inclusive development. Persons with disabilities should enjoy inclusive education, employment, access to materials, and eventually a better life.

7. Data collection, and outcomes evaluation and measurement, are very important.

8. It is necessary to create a platform or an organisation that can represent the over 1 billion persons with disabilities in the world. This is to ensure effective coordination of the work for persons with disabilities and for sharing experiences and information. A world disability organisation might be considered in this context.

9. ODA should be accessible to persons with disabilities.

10. More sports-related international cooperation should be conducted.

11. A general comment on A32 of CRPD should be drafted by CRPD Committee.

12. The golden standard rule shall be applied in raising awareness of CRPD.
CONCLUSIONS

The overall consensus of the Seminar was that the legacy of the past needs to be overcome and new orientations in law and policy need to be built for a more inclusive future. There is an overwhelming need to recognise persons with disabilities as individuals – not as ‘objects’ of the law or charity but as equal human ‘subjects.’ Persons with disabilities are not a homogenous group. The heterogeneity of different types of disabilities must be recognised along with the realisation that disability intersects with other identities (e.g. gender, age, membership of an ethnic minority or indigenous community) which affect each individual’s experience and needs.

The CRPD does not establish new rights nor does it attempt to provide a definition of what ‘disability’ is. Instead it lays down the minimum standards that are required to promote and secure the enjoyment of all existing human rights by persons with disabilities. This means that ASEM Partners who have ratified the CRPD need to undertake more efforts to incorporate the CRPD into country-specific arrangements because domestic legislation is vitally important in realising the rights of persons with disabilities. Systemic change implied by the UN CRPD can be usefully moved forward by robust efforts to implement the UN Sustainable Development Goals. Both are mutually reinforcing.

At the same time, regional action is also needed to help guide and sustain action at the national level. A high degree of regional action both in Europe and in Asia was acknowledged as providing a good platform for supporting change, and inter-regional efforts such as this ASEM level meeting are particularly useful fora to discuss the challenges as well as the good practices.
Endnotes:

6 Eg, CRPD Art 27 para 1, in both English and French versions.
7 A reference was made to the ‘inclusive education’ that is defined in the WHO’s World Report on Disability (2011) as “[e]ducation which is based on the right of all learners to a quality education that meets basic learning needs and enriches lives. Focusing particularly on vulnerable and marginalized groups, it seeks to develop the full potential of every individual.” Another related term that is also defined in the same document is ‘inclusive society’ which means “[o]ne that freely accommodates any person with a disability without restrictions or limitations.” See further discussion in Section VII below.
8 See n. 3 for a definition provided in the WHO World Report on Disability (2011). Additionally, the same report states: “There are no universally agreed definitions for such concepts as special needs education and inclusive education, which hampers comparison of data.” However, the CRPD Committee provides further elaboration of the two terms in the General Comment No. 4: “Integration is a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions. Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.” See para 11 of the General Comment.
9 UDHR Art 26(3) Parents have a prior right to choose the kind of education that shall be given to their children.
10 General Comment No. 4 para 10.
11 See http://www.zeroproject.org/practice-type/innovative-practices-2016-on-education-and-ict/
12 CRPD Art 26.
BACKGROUND ON PERSONS WITH DISABILITIES & HUMAN RIGHTS: SOCIAL DEVELOPMENT, CHALLENGES & INNOVATIONS, & THE WAY FORWARD

Introduction

As we face the 21st century, we now have at our disposal a new human rights instrument on disability that legally demands reform strategies (UN Convention on the Rights of Persons with Disabilities, or UN CRPD) as well as a new development instrument with clear references to disability that underpins reform with clear special development goals (UN Sustainable Development Goals, or UN SDGs). This combination offers unprecedented opportunities for reform and systemic change, and it also opens up the need for new kinds of dialogue to learn from one another as well to support one another.

The number of people affected by these developments is enormous; persons with disabilities have been called the largest minority in the world. The World Health Organisation (WHO) estimates that about 1 billion people (15% of the world’s population) experience some form of disability, with about 80% of them living in developing countries. The World Report on Disability 2011 indicates that the female disability prevalence rate is 19.2%, while the rate is 12% for males. In low- and middle-income countries, this ratio is even more lopsided - women constitute 75% of all disabled people. It is estimated that there are at least 80 million Europeans with a disability, and that around 650 million persons with disabilities live in the Asia/Pacific region.

The numbers alone of those affected should warrant close attention, but the sad fact is that the status of persons with disabilities around the world remains a grave cause for concern. Perceptions of persons with disabilities vary across the world. Persons with disabilities often face multiple discriminations at many levels, which could affect the recognition and enjoyment of their rights - from socio-cultural and economic barriers to participation in mainstream society, to more distinct violations of their individual rights. Such discrimination could lead to exclusion and reduction of their living standards. The World Bank estimates that 20% of the world’s poorest people are disabled and are often regarded as being the most disadvantaged in their communities.

Sections 1, 2 and 3 of this Paper will lay the groundwork for discussions by clarifying the human rights-based approach to disability as well as the contribution of the UN Sustainable Development goals. Section 4 will set out the high-level regional arrangements on disability in ASEM regions and States. Regional arrangements are important for they add to national efforts and underpin them. Finally, the concluding section of this Paper will summarize recent challenges and innovations, looking towards the future.

Implications of the Human Rights Frame & the CRPD on Systems and Frameworks

“Disability studies provide the theoretical background for what we call the shift from the medical to the social model of disability. The social model of disability was developed as a critique to the medical model of disability. However, within disability studies, the social model of disability has been almost as strongly criticized as the medical model of disability. Michael Oliver, one of the founding fathers of the social model of disability, has recently called for a halt to this criticism, unless someone can come up with a better alternative.
The CRPD offers such an alternative: the human rights model of disability. It is by no means the only alternative to the social model of disability (many models have been developed, among them recently the capability approach model), but the human rights model is an improvement on the social model of disability, and it is a tool to implement the CRPD."

Theresa DEGENER

1.1. Shift from a ‘Medical Model’ to a ‘Human Rights Model’

The move to the human rights frame is revolutionising the way people, governments and national human rights institutions (NHRIs) view disability. Of course, there is nothing revolutionary in human rights, but its application to disability is still novel, especially considering from where most countries have come.

The shift from one way of thinking to another has practical implications in both policy and law. It provides a new prism through which to view reality. Facts that may not seem relevant within an old framework suddenly come to life within a new one. For example, the exclusion of children with disabilities from mainstream schooling might have seemed ‘natural’ under an old framework, but it should strike us as unfair under a new human rights frame. A rights-based frame can also provide new moral norms and legal tools with which to judge the facts which now can be seen differently. Indeed, this new framing provides the normative basis for advocacy to bring about systemic reform; a blueprint for change that goes beyond seeking redress for individual violations.

The move to the human rights frame also entails a wholesale change in how we think about disability. Instead of making the person the ‘problem’, we are required to identify the barriers to the enjoyment of human rights facing persons with disabilities. Traditional approaches rely on out-dated notions of disability that focus more on the peculiarities of the person (as medically understood) than on the barriers to their self-realisation in the world. It follows that one of the first and most important implications of the move to the human rights frame has to do with how disability is framed in law, in public policy, and in community attitudes.

Disability has historically been regarded as a ‘problem’ of – and primarily for – the individual. It has commonly been seen as a ‘deficit’ of some kind; a physical, sensory, intellectual or mental deviation from a norm. Indeed, the term ‘able bodied’ has been used to mark persons with disabilities apart. This understanding informed the development of the old WHO International Classification of Impairments, Disabilities and Handicaps (ICIDH). The obvious intent – seen through the medical frame – was to correct the deficit (‘fix’ the person) or, failing that, care for the person. Transferred into the public policy arena, this resulted in policy responses that sought to either cure or care, or a mix of the two. In the process, the impairment was used to define the person and the person, in turn, became the ‘problem’.

1.1.1 The ‘Medical Model’

The ‘Medical Model’ understanding of disability was not just about ‘control’ of the person by medical and other professionals. It centred on the idea that a person’s impairment was the primary thing that required attention, not the person behind the impairment. As a consequence, respecting and honouring the individual’s personhood was overlooked, along with their equal right to pursue their own lives and dreams, with support where needed.

The medical model of disability reflected and reinforced the broader public policy response of ‘cure or care’. While the seeming intent of this agenda was to care, it actually served to segregate and isolate persons with disabilities over time. The expectation that underpinned this policy response was that persons with disabilities could not and would not take part in mainstream community life and activities.

In practical terms, this meant that, for example, education was provided through segregated schools. Employment options were geared toward segregated facilities and sheltered workshops, with little or
no support for people to enter the open labour market. It meant that the various pathways into the physical (and online) environment were not adjusted to take account of the presence of persons with disabilities. Social supports, when they were forthcoming, cushioned persons with disabilities rather than facilitated their active engagement in mainstream activities. It meant that the controlling voice we all expect to hold in our own lives was surrendered to others, including service providers.

In relatively affluent States, it meant that there was the development of a social care floor that provided a minimum material baseline but did nothing to open up opportunities and enable people with disabilities to take charge of their own lives and to pursue their goals on an equal basis with others. In less affluent States, it meant confining people with disabilities to their family homes, or otherwise out of sight.5

If confronted to justify the status of persons with disabilities, most people in the past would automatically do so in terms of providing social welfare or social protection. They would not naturally view the situation of persons with disabilities from a broader perspective of social justice or human rights. This made it difficult for civil society organisations to advocate for a human rights frame on disability since they might be criticised for being ungrateful for the social supports provided to persons with disabilities. The resulting inequality, however, contributed to a vicious cycle of inequality and poverty. As persons with disabilities were marked apart – and then kept apart by public policies – their personal skills and capacities became degraded, which only served to reinforce in others the idea that the resulting inequalities were somehow ‘natural’. The resulting “spoiled identity”6 set in train a self-perpetuating cycle of exclusion.

The problematic nature and unacceptable consequences of the ‘medical’ approach to disability was summarised by the Office of the United Nations High Commissioner for Human Rights (OHCHR):

“[W]hen disability is perceived in this way, society’s responses are restricted to only one of two paths: individuals can be ‘fixed’ through medicine or rehabilitation (medical approach); or they can be cared for, through charity or welfare programmes (charity approach). According to this old model, the lives of persons with disabilities are handed over to professionals who control such fundamental decisions as where they will go to school, what support they will receive and where they will live.”7

1.1.2 The ‘Social Model’

The process of challenging this framing of disability only took hold in the past 30 years. The shift from the medical model to the ‘social model’ meant, first of all, understanding that a person with a disability is not defined by their disability; in other words, their personhood transcends their disability. Disability is something that complicates life, but it does not efface it. Second, it means locating the human rights ‘problems’ that people with disabilities experience in the barriers that society has established. In other words, it is society that compounds the problems associated with the impairment and thus creates the disability; the so-called ‘social construction’ of disability.8 While the impact of impairments or health conditions on the functional capacities of individuals is not denied, ‘disability’ is now best regarded as the product of an interaction between impairments and socially constructed disabling barriers that prevent people with impairments from exercising their own autonomy and from participating fully in all spheres of life. This is sometimes referred to as the ‘social model’ of disability or the ‘human rights model’.

1.1.3 The ‘Human Rights Model’

Though closely related, the social model of disability does not exactly overlap with the human rights model of disability. One eminent commentator, Theresia DEGENER, current Vice President of the Committee on the Rights of Persons with Disabilities, draws six interesting distinctions between the two models.9
A first point of distinction is that the human rights model moves beyond social observation to provide the moral signposts for reform. Degener says that ‘while the social model merely explains disability, the human rights model encompasses values for disability policy that acknowledge the dignity of disabled persons.’ Further, “the social model does not seek to provide moral principles or values as a foundation of disability policy. The CRPD, however, seeks exactly that.”

A second point of distinction to Degener is the broader scope of the human rights model, which extends beyond traditional anti-discrimination laws. She notes that “while the social model approach to disability policy supports anti-discrimination policy and civil rights reforms, the human rights model is more comprehensive in that it encompasses both sets of rights; civil and political, as well as economic, social and cultural rights.” This point is particularly relevant when it comes to the UN CRPD because the human ‘rights model’ has enabled the Convention drafters to go beyond the traditional scope of anti-discrimination law to focus on the deeper foundations for the personhood of persons with disabilities, including their full legal capacity to make decisions. This approach has also enabled the drafters to bring together economic, social and cultural rights with traditional civil and political rights.

A third point of distinction involves an honest acknowledgement of the difference – and sometimes the pain – associated with impairment. The social model, on one reading, does not give sufficient attention to the reality of this difference. The human rights model, according to Degener, “acknowledges these life circumstances and demands them to be considered when social justice theories are developed.” In other words, disability is not purely a social construction. It is real and it requires us to face it and respond positively.

A fourth point of distinction is that there is greater scope within the human rights model to acknowledge multiple identities and the importance of identity. The point Degener makes is that traditional human rights law has within it the capacity to move beyond an identity-specific focus - for example, women, race or disability – and that this capacity is underlined by several provisions in the Convention that acknowledge overlapping and intersecting identities, especially in relation to women with disabilities and children with disabilities and the intersection between old age and disability.

A fifth point of distinction is that while prevention is not encompassed within the social model, it can be part of a human rights approach – albeit under certain limited circumstances. According to Degener, the focus of the social model was not on people with disabilities but on how they were treated by others. However, to her at least, public health preventive strategies can be encompassed within a human rights frame, provided that they do not stray into eugenics or worse.

### China’s Progress for Persons with Disabilities

These three models work as a troika that protect and stimulate the development of persons with disabilities. Only when the three models of disability - medical, social and human rights – are taken together can the rights of the disabled be properly protected. The effectiveness of applying these three models together has been proven by counties like China, which is home to 8.5 million disabled people.

“Over the past 30 years, China has made tremendous progress for the disabled in rehabilitation, education, employment, poverty alleviation and accessibility. Many laws and regulations to protect their rights and interests have been adopted. Their living conditions have seen visible improvement. The poverty-stricken disabled population is decreasing. Most provinces or autonomous regions have already built up their own rehabilitation centers. Many disabled children had access to inclusive education.”

Finally, the sixth point of distinction is that while the “social model of disability can explain why two thirds of the one billion disabled persons in the world live in poverty, the human rights model offers a roadmap for change.” This highlights a key success of the Convention. It seeks to put in place the necessary social and economic supports that can enable persons with disabilities to take charge of their own lives and assist them out of poverty.

These distinctions are worth bearing in mind. An important lesson that can be derived from Degener’s analysis is that while the human rights model of disability builds on the social model, it also complements it in two important ways: first, by providing a normative basis on which to judge the status of persons with disabilities and, even more importantly, to drive a process of reform and change.

1.2. Conceptual Re-framing & Changing the Narrative

1.2.1 Evolution of Narrative Changes

Over the past 40 years, the change of the narrative on disability, from the medical model, to the social model, and now to the human rights model, has travelled a long journey. The traditional narrative and focus on prevention and rehabilitation, based on the medical model, still persisted even as recently as the United Nations World Programme of Action on Disability in 1982. The equality agenda, in as much as it featured, was generally tacked on as an extra consideration.

The traditional narrative changed dramatically in the 1990s, with pioneering legislation in the US and at a global level with the UN General Assembly Resolution on the equalisation of opportunities for persons with disabilities in 1993. Almost at the same time, in 1992, the Council of Europe adopted a set of policy guidelines for its Member States that were based almost exclusively on an equality frame. Likewise, the European Union signalled its formal policy adoption of the equality of opportunities model in 1996.

This early shift to the equality model – an essential element of the social model of disability – in the 1990s paved the way for civil society organisations to make a leading contribution to drafting the Convention on the Rights of Persons with Disabilities.

1.2.2 Human Rights Model of the CRPD

While it employs an equality frame, the UN CRPD goes broader and deeper to encompass a fuller human rights model (in the sense understood by Degener above). This is reflected in Article 1 which states that the primary purpose of the Convention is to:

>Promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

This combined social model/human rights model has clear implications in how one views disability. The preamble to the Convention calls on States to recognise that:

>Disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

As such, the promotion of the rights of persons with disabilities involves identifying and removing socially constructed barriers that stand in the way of the enjoyment of human rights by persons with disabilities.

What the human rights framing of disability brings to light is the extent to which persons with disabilities were, in the past, treated as ‘objects’ to be minded, cared for and pitied, usually at the convenience of others. While the medical model marked people apart, it was the laws, public policies and a myriad of
spending programmes that actually kept people apart. It is this legacy that must now be tackled. The human rights model puts those laws, public policies and spending programmes front and centre of any agenda for change. It also ensures that persons with disabilities are treated as ‘subjects’ capable of taking charge of their own lives and with an equal right to do so. It means treating people with disabilities equally with others.

It is interesting to note that the WHO International Classification of Functioning, Disability and Health (ICF) – which is intended to be of use to States in designing their service systems – now embraces the social model/human rights model of disability by highlighting barriers to participation. So the keeper of the medical model has itself now moved beyond a strictly medical approach to disability.

The Convention on the Rights of Persons with Disabilities

2.1. The Human Rights Model in the Overarching Norms & Rights of the CRPD

If we turn the traditional framing of disability away from the person and towards the problems facing that person, the next logical step is to tackle those problems. Persons with disabilities do not claim special rights or even ‘disability rights’. They claim the same human rights that are afforded equally to all. This is why it is said that the Convention on the Rights of Persons with Disabilities does not create any ‘new’ rights. Rather, it seeks practical ways to make existing rights real and meaningful in the lives of people with disabilities. As Article 1 states, the Convention seeks the full and equal enjoyment of existing rights for and by persons with disabilities.

The 2007 UN Enable Handbook for Parliamentarians explains:

*The Convention is a complement to existing international human rights treaties. It does not recognize any new human rights of persons with disabilities, but rather clarifies the obligations and legal duties of States to respect and ensure the equal enjoyment of all human rights by all persons with disabilities. The Convention identifies areas where adaptations have to be made so that persons with disabilities can exercise their rights and areas where the protection of their rights must be reinforced because those rights have been routinely violated. It also establishes universal minimum standards that should apply to everyone and that provide the basis for a coherent framework for action.*

Given that the purpose of the Convention is to achieve equal enjoyment of all existing rights, it made sense for those who drafted it to identify the obstacles to the enjoyment of specific rights and to include specific obligations to deal with those obstacles, article by article. The general obligations of States to reform laws, policies and practices (Article 4) is, therefore, accompanied by specific obligations in each substantive article, depending on the subject area.

An overarching commitment to equality therefore underpins the human rights frame on disability. Professor Oddný Mjöll ARNADÓTTIR (University of Iceland) identifies three different generations of equality thinking in relation to disability:

- Universal sameness (1950s-1970s)
- Specific difference (1970s-1990s)
- Multidimensional disadvantage (current trends)

The first approach purports to treat people exactly the same, regardless of their differences. That approach, however, does nothing to advance the access rights of those in wheelchairs who, under this model, have an ‘equal’ right to climb stairs.
The second approach takes a much more positive view of the difference of disability and seeks to accommodate them, which is reflected in the ‘reasonable accommodation’ obligation in anti-discrimination law. While it is an improvement, this approach does not tackle the cumulative effects of generations of exclusion.

The third approach is much more attuned to accumulated disadvantages and multiple forms (and effects) of discrimination. It also seeks to reverse them. Arnadóttir characterises the Convention as belonging to the third approach and concludes that “the CRPD represents the more complex and layered human rights law appropriate to the challenges of the 21st century.”

Not surprisingly, the equality and non-discrimination provision informs the whole text of the Convention. Indeed, most of the substantive rights set out in the Convention are said to be secured “on an equal basis with others”. Article 5(1) (on equality and non-discrimination) more specifically recognises that:

... all persons [with disabilities] are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

Further, Article 5(2) requires States to take action to:

... prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

This does not mean that material differences are to be ignored. On the contrary, these differences are to be acknowledged and positively accommodated. Accordingly, the Convention borrows from advanced anti-discrimination law in different parts of the world to include ‘reasonable accommodation’ within the definition of discrimination (Article 2):

Discrimination on the basis of disability...includes all forms of discrimination, including denial of reasonable accommodation.

[emphasis added].

In summary, the concept of equality and non-discrimination lies at the heart of the human rights model of disability and is best exemplified in Article 5 of the Convention. It is central to the enjoyment of each human right since all the rights in the Convention are to be secured equally. A nuanced understanding of equality requires individually tailored ‘reasonable accommodations’ for people with disabilities. Space is also permitted for positive action measures and, in fact, many of the substantive articles of the Convention spell out what these measures entail.

**Constitutional Equality Guarantees for Persons with Disabilities**

Article 3 of the Basic Law of the Federal Republic of Germany states that all persons shall be equal before the law and no person shall be treated unfavourably because of disability.

*Source: Grundgesetz Für Die Bundersrepublik Deutschland [Basic Law], May 23, 1949, BGBl. I, Art 3 (DEU)*
Constitutional Equality Guarantees for Persons with Disabilities

The **1990 Law of the People’s Republic of China on the Protection of Disabled Persons** formulated in accordance with the Constitution for the purposes of protecting the lawful rights and interests of, and developing undertakings for, disabled persons, and ensuring their equal and full participation in social life and to endure their share of the material and cultural wealth of the society.

**Note:** specific articles to be expanded if suitable, sources to be inserted

While the norms of equality and non-discrimination underpin the entire Convention, Article 3 sets out a series of indivisible and interdependent principles. These principles are dignity, autonomy, equality of opportunity and non-discrimination, respect for difference, respect for intersecting identities, and full and effective participation and inclusion in society. Grounded in existing international human rights law and framed in light of historical problems relating to disability, it is useful to refer to them when in doubt about the meaning of specific articles and Rights of the Convention.

In light of the above-mentioned underlying principles of the Convention, the Rights of the convention can be categorised into the following four groups:

### 2.1.1 Dignity Rights

A number of Articles in the Convention are principally concerned with the respectful treatment of persons with disabilities, including:

Right to life (Article 10)

Right to respect physical and mental integrity (Article 17)

Freedom from torture, cruel, inhuman or degrading treatment (Article 15), with particular emphasis on the rights of persons with disabilities not to be subject to non-consensual medical or scientific experimentation

Freedom from exploitation, violence and abuse (Article 16), requiring action to prevent, monitor and prosecute instances of violence, including gender-based violence, against persons with disabilities and to provide support to persons with disabilities who have been the subject of violence

Situations of risk and humanitarian emergencies (Article 11), placing emphasis on the need for States parties to ensure measures are taken regarding the safety of persons with disabilities in relation to **“situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”**

Right to health (Article 25), including equal access to sexual and reproductive health programmes and in relation to life and health insurance

Right to an adequate standard of living and to social protection (Article 28), including assistance with respect to disability-related expenses.
Equality Act 2010 (United Kingdom)

The Equality Act 2010 consolidated and largely harmonised all of Britain’s anti-discrimination laws, including the previous Disability Discrimination Acts. It covers discrimination on the grounds of disability, gender, race, sexual orientation, religion or belief, age, marriage and civil partnership, and gender reassignment.

The Act extends to all areas of employment (with the exception of the armed forces in relation to persons with disabilities), education, access to goods, facilities and services, including the discharge of public functions, and membership of associations.

With respect to disability, the Act prohibits:

- **Direct discrimination**, including discrimination against people who do not have disabilities on grounds of their association with a person with a disability or because they are perceived to have a disability

- **Discrimination arising from disability**, in situations where the reason for the unfavourable treatment is not the disability itself, but something that arises as a consequence of the disability

- **Indirect discrimination**

- **Failure to make reasonable adjustments**, including in relation to policies, procedures and practices, auxiliary aids and services and physical features

- The use by employers of **pre-employment health questionnaires**.

- In relation to goods, facilities and services and education, the duty to make reasonable adjustments is owed to disabled persons rather than only individual people. It is therefore an ‘anticipatory duty’; that is, duty bearers are expected to take steps to make adjustments, such as step-free access or information in alternative formats, in anticipation of persons with disabilities wishing to make use of their services or attend their educational institution.

The Act also places a positive duty on public bodies to have ‘due regard’ to the need to eliminate discrimination, advance equality of opportunity and foster good relations (promote understanding and tackle prejudice).


2.1.2 Autonomy & Liberty Rights

A number of articles, individually and collectively, reinforce the right of persons with disabilities to be the author of their own lives, with choices equal to others, including:

- Equal recognition before the law and legal capacity (Article 12), which requires States parties to prohibit the deprivation of legal capacity on the grounds of disability and to transition from ‘substitute’ to ‘supported decision-making’ in law and practice;
• Living independently and to be included in the community (Article 19), which requires States parties to ensure that persons with disabilities enjoy choices equal to others with respect to where and with whom they live and to not be obliged to live in a particular living arrangement;

• Liberty and security of the person (Article 14), which requires States parties to prohibit the deprivation of liberty on grounds of disability (see Chapter 2 for more information);

• Freedom of movement and nationality (Article 18);

• Freedom of expression and opinion (Article 21), which requires action by States parties to support persons with disabilities to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice and to urge private entities and media outlets to provide information and services in accessible formats;

• Respect for privacy (Article 22), with particular emphasis on protecting the privacy of personal, health and rehabilitation information of persons with disabilities, and

• Respect for home and the family (Article 23), including the rights of persons with disabilities to get married, to retain their fertility, to have and bring up children and the equal right of children with disabilities to a family life.

2.1.3 Equality & Non-Discrimination

Equality before and under the law (Article 5) demands the prohibition of discrimination on the basis of disability with respect to all the rights in the Convention. It covers both public and private sectors and includes denial of ‘reasonable accommodation.’ Article 5 provides a framework to investigate the extent to which all of the rights are realised for persons with disabilities ‘on an equal basis with others’.

2.1.4 Participation Rights

The following articles concern the right of persons with disabilities to full inclusion and effective participation in community life:

• Participation in political and public life (Article 29) includes the right to vote and to be elected, as well as the right to accommodation and support in relation to exercising the right to vote and wider participation in political and public life;

• Participation in cultural life, leisure and sport (Article 30), includes access to cultural events, television and the media, and ensuring that laws regarding intellectual property rights do not create barriers of access to cultural materials by persons with disabilities and promote access to mainstream sport, leisure and recreation;

• Education (Article 24), which promotes the inclusion of children and adults with disabilities in the general education system and a shift away from segregated schools;

• Work and employment (Article 27) which promotes access to the open labour market for persons with disabilities and a shift away from ‘sheltered’ employment, and

• Access to justice (Article 13), including through ‘the provision of procedural and age-appropriate accommodations in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages’.
The right to education of persons with disabilities finds a place in regional instruments as well, although under a different focus. The Incheon Strategy of Asia and the Pacific, for example, puts as a policy direction of the region the enrolment rates of children with disabilities in primary and secondary schools. This is mirrored in the work plan of ASEAN as well. The regional emphasis is placed on access and enrolment for children, rather than inclusive education espoused in the CRPD. However, the obligation to provide equal access to inclusive education under the CRPD that applies to all member states means that its state parties in the region must pay equal attention to both quantity (enrolment) and quality (inclusivity).

Space constraints do not permit a comprehensive survey of the situation, but two key aspects deserve mention. First, it is an understatement to say that inclusive education remains a challenge in practice. Many countries have cited lack of resources—financial, infrastructure and capacity—to deliver inclusive education in a comprehensive and sustained manner. Adaptation of existing built educational environment and facilities has not been systematically rolled out. The number of teachers capable of teaching children with disabilities alongside their students with no disabilities is limited. Yet, in the face of these challenges, some developing countries have shown innovation to provide inclusive education. For example, in Da Nang, Vietnam, students with disabilities are enrolled in an inclusive school and enjoy the benefit of easy access to extra tuition, training and habilitation for designated hours in the specialised school situated across the street. In most countries, however, students with disabilities are still provided with education in a special, separate school or facility, which perpetuates segregation and exclusion.

Second, a goal of educating persons with disabilities is twofold. One is to provide them, on an equal basis with others, the opportunity to pursue higher education or other types of education that they need. The other is toward transiting them to employment and community living. Planning and coordination is essential to ensure that once students with disabilities obtain their education, they must be able to pursue higher or vocational education as well as to acquire employment, on an equal basis with others.

Sources: Priority Area 4 of the Mobilisation Framework of the ASEAN Decade of Persons with Disabilities (2011-2020) under the Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community. Target 5B of the Incheon Strategy.

2.2. General Obligations Imposed on States Parties (Article 4)

Article 4 of the Convention sets out the general obligations of States Parties with respect to implementation. Most of these obligations are eminently logical and designed to embed a positive dynamic of change at the country level.

In summary, these obligations are:

- Do no wrong (Article 4(1)(d));
- Reform old laws and adopt new ones (Article 4(1)(a),(b));
- Proactively tackle discrimination (Article 4(1)(e));
- Take the collective voice of persons with disabilities seriously in the setting of policies (Article 4(3));
Mainstream disability in existing laws and policies (Article 4(1)(c));

Progressively realise those elements of the Rights in the Convention that are economic, social and cultural in nature (Article 4(2));

Support research into universal design and accessibility (Article 4(1)(f));

Close the information gap (Article 4(1)(h)), sensitise professionals and those who work in services to the rights of persons with disabilities (Article 4(1)(i));

Ensure the full territorial coverage of the convention: ‘the provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions’ (Article 4), and

Listen to the voice of persons with disabilities: this point is made explicit in Article 33(3). Even if the obligation to listen to and respect the collective voice of people with disabilities was not set out in Article 33(3), it would be required as a direct implication of the logic of Article 4(3).

The Convention also includes a number of articles that are highly particular to persons with disabilities. While they have a relationship to existing rights under other international human rights treaties, they do not have exact equivalents:

Personal mobility (Article 20) promotes independence for persons with disabilities through the provision of training, assistance, aids and equipment, and

Habilitation and rehabilitation (Article 26) enables, respectively, persons with disabilities from birth and those who have acquired a disability to attain and maintain independence, especially in terms of health, employment, education and social services.

It is important to note that the Convention does not seek to separate out rights (and substantive provisions) according to whether they are primarily civil and political in character or economic, social and cultural in character. It is probably best to assume that each right (and the associated obligations) blends both sets of rights and obligations. As such, it probably makes more sense to characterise them according to their function (e.g. promoting dignity) rather than using traditional framings of rights and obligations. This co-mingling can be complicating but probably no more so than was originally intended by the Universal Declaration of Human Rights.
Snapshot of Asia: Right to Community Living

With the exception of the regional plan of ASEAN, the exact terminology of living independently is not used in the regional policy instruments of Europe and Asia examined in this part. However, the principles of accessibility, equality, participation and social protection serve as foundation on which autonomy and independence of persons with disabilities as well as State’s duty to provide them with personalised services are developed. For ASEAN, the Bali Declaration includes a priority area of ‘independent living and community inclusion’ with an emphasis on the development and strengthening of Independent Living Centres (ILCs) in ASEAN. The mid-term review of the ASEAN Decade for Persons with Disabilities conducted in 2017 indicates that not all ASEAN Member States have set up such centres and those that have been set up focus on enhancing ‘self-sufficiency’ skills of persons with disabilities. These ILCs must be guided by the objective of inclusion and must not be used as a disguised form of sheltered employment centres or institutionalisation that runs contrary to their fundamental purpose.

The situation or outcome of persons with disabilities living independently in the community assessed through the three aspects of Article 19 is, on the whole, not encouraging. An important factor is the multifaceted nature of the right itself. Manifestation of community living is dependent on and interdependent with a few other rights from legal capacity and accessibility to education and employment. However, underpinning the lack of comprehensive outcome of this right is the shortage of political will to implement measures that will lead to its meaningful realisation. The positive direction presented in various national and regional instruments will only take shape if states are committed to their implementation, by giving persons with disabilities full personal autonomy supported by legal recognition, individualised personal assistance and integrating universal design in the building codes and information system. While deinstitutionalisation will perhaps be the easiest to roll out, it may be the most difficult hurdle to surmount for persons with disabilities. Citing medical needs of ‘patients’ to obtain proper treatment, states rely on institutions to provide care for them. Many states do not disclose the number of these institutions and the disaggregated number of persons with disabilities confined in them.

Source: Bali Declaration, Priority Area 8. It is noted that the: “ILCs are community-based advocacy and resource centers for PWDs and their families. ILCs have been set up widely in many countries. There are ILCs in ASEAN Member States e.g. Viet Nam, Myanmar, Philippines, Cambodia, and Thailand.”

2.3. Implementation: Using the CRPD to tackle issues & barriers

2.3.1 Voice & Choice

If equality is the guiding principle of the Convention on the Rights of Persons with Disabilities, then it must be attached to substantive rights. There are many ways of characterising these rights. For ease of explanation, they are characterised here in terms of restoring voice and choice to people with disabilities; ending segregation and planning for social inclusion; removing access barriers; re-framing social rights and provision to ensure they serve the autonomy of the individual; and changing public attitudes to sustain change.

One way that the human rights model of disability advances the social model is to place a spotlight on fundamental considerations like personhood. It is commonly said that persons with disabilities were, in the past – and to a large extent, are today – treated as ‘objects’ and not as ‘subjects’ possessing equal rights. A profound effect of this has been the extent to which the very personhood of persons with disabilities was denied: their right to take charge of their own lives, to remain in charge of their own lives and to have their own wishes and preferences respected by others.
This ‘civil death’ – for example, through the transfer of the rights of personhood to a third party, such as a guardian – is not something that is unique to persons with disabilities. People who were enslaved and indeed many married women throughout history have suffered ‘civil death’. Restoring personhood to persons with disabilities, especially those with mental or intellectual disabilities, has become a litmus test of the move to the human rights model of disability. Ending ‘civil death’ (guardianship regimes) and restoring civil life (through supported decision-making regimes) is seen by most as being so important as to form one of the essential objects and purposes of the Convention.

Another result of this ‘civil death’ is that many persons with disabilities have been denied their right to live the way they want to live, where they want to live and with whom they want to live. Of course, none of us has a human right to live in a rich neighbourhood. Resource constraints dictate otherwise. Yet, even given these ‘natural’ constraints, most people choose their own homes and living conditions. This is important not merely because our home both protects and projects our identity, it is important because our homes connect us to the community. The denial of the right to live independently and be included in the community violates the autonomy rights of persons with disabilities and strips them of the possibility of growing with others in the community.

It is widely understood that the right to legal capacity – that is, to make decisions for oneself – and the right to live independently and be included in the community epitomise the paradigm shift in the Convention. In contrast to the medical model of disability, these principles support an unmasking of the person behind the disability, a refusal to allow the person to be defined by the disability, a restoration of power to the person over their own lives and, at its most basic, a right to choose where to live and with whom, according to one’s own preferences.

That is why, for example, the Convention places so much emphasis on the right to recognition before the law (Article 12) and the right to live independently and be included in the community (Article 19). The former right restores decision-making power and autonomy to persons with disabilities. It affords them the right to make decisions that suit their own wishes and preferences – a right not to be infantilised throughout their lives. Crucially, the exercise of this right depends on access to a range of supports, most of which occur naturally in the community and which most people take for granted. The latter right restores decision-making power over where to live and with whom. Furthermore, it envisages people with disabilities living in the community, with choices and services equal to others.

The concept of ‘voice’ has a collective dimension as well as an individual one. From one perspective, the big ‘problem’ in the field of disability is the cumulative impact of ‘bad’ legislation or practice. However, from a process-based perspective, the ‘big’ problem is the almost complete absence of people with disabilities and their representative organisations in the process of change. The concept of voice applies not only in relation to decision making on personal matters, it also has a group or collective component. Making sure that the collective voice of persons with disabilities are represented and heard is no guarantee that they will be followed. However, it does mean that their perspective cannot be ignored as was largely the case in the past.

This idea of collective voice has moral significance because it means that policies cannot be developed over the heads of people who will be affected by those policies. It has political significance because it enriches the policy process that would otherwise be impoverished without the input of those who are experts by experience. And it now has legal significance because the Convention requires States to include and actively involve persons with disabilities in policy developments and in other major decisions that affect them (Article 4.3).

2.3.2. Social Inclusion

Most people fulfil themselves and develop their own unique identity through free interaction with others. Most people integrate and socialise in the workplace, in school, in sports, in culture and in leisure. Most people have free access to the justice system and to the broader political system.
However, many persons with disabilities are either excluded from, or experience barriers within, all dimensions of community life. Since they are not expected to be there, they are effectively excluded since no allowance is made for their presence.

The Convention is resolute in its commitment to the rights of persons with disabilities to “full and effective participation and inclusion in society” (Article 3(c)). This principle is reflected in most of the headline Articles of the Convention dealing with, for example, inclusive education (Article 24) and the open labour market (Article 27). Fundamentally, this means that persons with disabilities have a right to “be everywhere in the world”, living, learning, working and socialising with and alongside persons with and without disabilities.

The Convention, therefore, also promotes a decisive shift away from all forms of involuntary and ‘congregated’ arrangements, such as institutional living, sheltered workplaces, special segregated schools, day centres and other arrangements that separate persons with disabilities from the wider community. However, doing so requires action by States and other actors to create the conditions necessary for effective participation and full inclusion of people with disabilities, including taking steps to ‘open up’ society and its institutions and dedicating public resources to remove barriers and support participation. For example, in relation to employment and work, this might include introducing and enforcing anti-discrimination law, conducting awareness-raising programmes to tackle negative employer stereotypes regarding the capabilities of persons with disabilities, and investing public resources in the supports that persons with disabilities and employers may require. In the field of education, it may require making adjustments to the curriculum and to teaching methods.

2.3.3. Accessibility

Giving people with disabilities power over their own lives and calling for an end to segregation will not deliver the desired results unless and until we dismantle the many barriers facing people with disabilities and build an inclusive environment. Inaccessibility is largely a legacy of ignoring the difference of disability and treating it negatively. Of course, accessibility was not a priority in the past since there was no expectation that persons with disabilities would take part in community life. The shift to the human rights model, therefore, makes accessibility an issue in a way that it wasn’t before. Importantly for our lives in the 21st century, the concept of access applies as much to the electronic environment as it does to the built environment. Article 9 of the Convention is devoted entirely to the issue of accessibility.

The rationales for accessibility are made clear in General Comment No 2 on Accessibility of the Committee on the Rights of Persons with Disabilities:

Accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society. Without access to the physical environment, to transportation, to information and communication, including information and communications technologies and systems, and to other facilities and services open or provided to the public, persons with disabilities would not have equal opportunities for participation in their respective societies.

Reversing this legacy of exclusion is difficult. As the 2011 World Report on Disability noted:

Built environments, transport systems and information are often inaccessible (to persons with disabilities). Lack of access to transport is frequently a reason for a person with disabilities being discouraged from seeking work or prevented from accessing healthcare. Even in countries with laws on accessibility, compliance in public buildings is often very low. The communication needs of persons with disabilities are often unmet. Information is frequently unavailable in accessible formats and some people with disabilities are unable to access basic information and communications technology such as telephones and television.
The right to work stands out as the first goal under the Incheon Strategy. It is intertwined with the goal of poverty reduction. Three relevant targets are adopted:

- Target 1.A - Eliminate extreme poverty among persons with disabilities
- Target 1.B - Increase work and employment for persons of working age with disabilities who can and want to work
- Target 1.C - Increase the participation of persons with disabilities in vocational training and other employment-support programmes funded by governments

The Bali Declaration of ASEAN also reflects the link between the right to work and poverty reduction and emphasises entrepreneurship and Corporate Social Responsibility (CSR) that contributes to sustainable economic development.

Four ‘situations’ on employment of persons with disabilities should be pointed out. First, affirmative action through a mandatory employment quota system has gained currency in many countries, particularly those in Asia and the Pacific. A levy or fine is imposed on employers who fail to hire the required number of employees with disabilities. The fines collected are in turn utilised for disability-related activities. Apparently, the goal is to realise the equal right to work and not to collect fines. Employers in the private sector have claimed insufficient number of qualified employees with disabilities as the main reason while public agencies, if not exempted from the quota requirement altogether, have not shown good employment practice in hiring them. Women with disabilities are in a worse situation than men. Subjected to double discrimination, they are less likely to be employed and those in employment often face poorer work conditions.

Second, a key challenge to implement the rights-based obligations under the CRPD is the lack of an holistic approach. All rights are interconnected and interdependent. Without realisation of accessible transport and office space that incorporates universal design, persons with disabilities who are employed in a workplace risk being a mere token and will not enjoy meaningful employment.

The third situation is interconnectedness of employment and vocational and professional rehabilitation. Article 27 obligations encompass measures beyond job creation and placement. Those whose disabilities result from the workplace or old age are entitled to vocational and professional rehabilitation. In practice this is sometimes implemented through public agencies tasked with social security programmes and a challenge is how to integrate and coordinate their policies with those responsible for employment promotion to ensure proper help for rehabilitated employees to return to work or to find suitable jobs.

Finally, the situation pertaining to self-employment and entrepreneurial activity of persons with disabilities has gained international and regional attention. Until recently, this cluster of rights was not a subject of serious consideration. It was generally assumed that employment rights of persons with disabilities meant they were entitled to be employees. Provisions of Article 27 have made clear that their rights include equal opportunities to be self-employed or to be ‘employers’. However, they invariably face multiple barriers. Access to capital, the first step in running a business, is hindered by the challenges of opening a bank account and obtaining an insurance policy. As business owners, persons with disabilities do not enjoy supporting state measures similar to when they are employees. This can mean significant opportunity costs to states; with their knowledge and understanding of the needs of persons with disabilities, entrepreneurs with disabilities can respond to a market segment that mainstream employers may have missed.


The concept of universal design is central to the creation of infrastructure that is accessible to persons with disabilities. Article 2 of the Convention provides the following definition:

> “Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.
The concept of accessibility relates to persons with disabilities as a whole, while the concept of ‘reasonable accommodation’, while complimentary, considers the individualised needs of particular persons. The obligation of ‘reasonable accommodation’ on its own will not solve the major inaccessibility issues; something more programmatic is also needed.

2.3.4. Social Support

Social support has seldom provided the right kinds of support to persons with disabilities in the past. Indeed, our social protection/welfare systems typically attempt to “cushion” persons with disabilities, ignoring that they would want to live an active and productive life. This approach dominated disability policy and public opinion in the recent past. It is also important to reframe discussion to focus on the rights of people with disabilities and to promote their inclusion in all aspects of community life in order to reduce the risk of poverty faced by persons with disabilities.

Persons with disabilities face significant disadvantage in obtaining employment and a fixed income and they also face extra health-related costs. In OECD countries, the employment rate of people with disabilities (44%) hovers around half that for people without disabilities (75%). People with intellectual disabilities and mental health problems experience the greatest disadvantage. This inequity is partly due to the way social rights were delivered in the past; persons with disabilities were ‘compensated’ for their absence from the workplace. Often, to remain entitled for such payments, they had to impoverish themselves further. The overall effect was that by the time the Convention was being drafted, economic and social rights were seen by many as part of the problem rather than part of the solution.

The Convention faces this challenge; many of the rights contained in the substantive provisions of the Convention blend a fundamental right – for example, freedom of expression – with socio-economic rights, supports and obligations to help secure that right in practice for people with disabilities. Nearly all of the rights contained in the Convention have this unique blend of obligations that are of ‘immediate effect’ and those that require ‘progressive achievement’.

2.3.5. Breaking the Cycle of Exclusion

Hearts and minds also need to change if the human rights frame on disability is to sink deep roots and fully replace the old charity model. That is why Article 8 on awareness-raising was included in the Convention. It requires States to take steps to raise awareness about the rights of persons with disabilities, to combat negative or harmful stereotypes and to promote an understanding of the capabilities and contributions of persons with disabilities. If a human rights agenda is successful, it should lead to an increased presence of persons with disabilities across all parts of community life and endeavour. Greater visibility of persons with disabilities should also help shift public attitudes and counter negative stereotypes. This would be a natural by-product of inclusion strategies. The Convention goes even further to demand more positive and intentional action on the part of the State to promote respect for the rights of persons with disabilities; for example, by encouraging positive images about disability in the media.

The importance of nurturing public opinion cannot be overstated. Without it, progress for persons with disabilities can be easily seen as them receiving ‘special treatment’. Similarly, setbacks for persons with disabilities will not be viewed as setbacks but simply as the ‘natural’ result of constrained public resources and the need to make economic growth and wealth creation the priority. This resulting – and seemingly indefinite – postponement of realising human rights commitments affects many people and groups but has devastating effects for persons with disabilities who are, in effect, told to wait a generation or two until the local economy improves. And without nurturing public opinion, third parties – for example, parent groups of children without disabilities – might resist inclusion in schools since they might see it as a potential ‘drag’ on the quality of education for their children rather than the
equal enjoyment of a right by a child with a disability. That might blinker them from seeing educational inclusion as a positive for non-disabled children in terms of learning and practicing diversity, tolerance and citizenship.

In sum, the move to the human rights frame on disability envisages a theory of change in which people with disabilities are themselves to the fore. It grounds this theory of change on certain core values like dignity, autonomy and social inclusion. It imagines social rights as supporting the material needs of people with disabilities – both minimal needs to survive but also their needs to take charge of their own lives and to participate. And it amounts to a sharp break from segregation.

2.4 Government Implementation & Domestic Monitoring (Article 33)

As highlighted earlier in this Working Paper, the Convention contemplates a deep process of change and reform in States parties. It involves more than simply requiring governments to comply with the treaty. Unique among human rights treaties, the Convention requires, and sets out in clear terms, an institutional architecture for change that States parties must establish. Indeed, and as an engine of change, the very success of the Convention will depend on how successfully this domestic architecture is able to work.29 The three core elements of this architecture for change are described below.

2.4.1 Smart & Joined-up Government

A clear focal point within government (Article 33(1))

A lack of coherent focus on persons with disabilities within governments in the past has led to wide gaps in policies across a range of issues. As a result, people with disabilities have fallen through these gaps, with terrible personal consequences. Joined-up government is important for everyone, but it is especially important for persons with disabilities. They have been particularly ill-served by processes of governance and service delivery that do not recognise the dangers that arise from policy ‘grey areas’ or discontinuing services.

The Convention does not set out what form a government focal point (or focal points) should take or the specific functions that should be performed by the focal point. In some cases, new arrangements may have to be established. In other cases, existing arrangements may be capable of assuming this role.

The 2014 note by the Secretariat to the Conference of States Parties suggested some key elements that should be considered when establishing a government focal point:30

- **Mainstreaming:** A lead focal point in government should ideally be complemented by focal points across government departments/ministries to encourage mainstreaming and to coordinate the implementation of policies and programmes. In other words, more than one focal point may be necessary. One very successful example is the coordination of civil rights divisions within key United States government departments (e.g. the Department of Education) with the ‘lead’ civil rights division located in the Department of Justice.

- **Reflect the principles underlying the Convention:** The choice of location for the lead focal point should reflect the principles that underlie the Convention, ‘with preference given to ministries responsible for human rights, social affairs and justice (and designation to the ministries of health or of welfare and labour avoided)’. In other words, it is both the symbolism and the power of the relevant department that should be the guiding principle in locating the lead focal point. It is the power to generate sustained change that matters most.

- **Senior level support:** The focal point should be either located in, or enjoy support from, the most senior levels of government, such as the Office of the President or Prime Minister, and be accountable to a senior minister.
• The power to lead and coordinate: Related to the previous point, it is critical that the focal point has the authority to lead and coordinate government-wide initiatives and that it has the expertise to promote, guide, inform and advise across government.

• Oversight of the Convention: The focal point should take the lead role on monitoring, reporting, awareness raising, liaison with the monitoring framework and interacting with civil society, including organisations of persons with disabilities, regarding implementation of the Convention.

Importantly, and consistent with the theme of ‘voice’, the focal point (or focal points) should actively consult with persons with disabilities. It is not advisable, however, that the focal point should directly include persons with disabilities and their representative organisations. That would cross the line into executive territory. But, at a minimum, the focal point should only act after close consultation with civil society, which can be done by setting up a consultative forum or platform.

2.4.2 A Coordination Mechanism Across Government

Even when there is a strong and effective focal point on disability policy within government, there is no guarantee that the implementation of policy will be coherent within and across all government responsibilities. Setting policies without ensuring their full implementation is sure to create cynicism about the sincerity of government’s commitment to change. That is why an extra step is often needed: establishing or designating a coordinating mechanism within government to ‘facilitate related action in different sectors and at different levels’ (Article 33(1)).

Policy and implementation needs to be more than theoretically coherent. It must be delivered in a way that minimises gaps. Article 33(1) does not explicitly demand the existence of a coordination mechanism, nor does it specify an ideal form or describe the functions it should assume. However, the 2014 Note of the Secretariat to the Conference of States Parties states that:

Several States have coordination mechanisms on disability issues in place, in some cases predating the ratification of the Convention. Although arrangements differ, coordinating committees often include representatives from various ministries and organisations of persons with disabilities as well as other civil society organisations, the private sector and trade unions. Their mandates often focus on policy development, the promotion of dialogue in the disability field, awareness-raising and similar functions. Coordination committees often have a secretariat, in several cases housed within ministries of social welfare.31

2.4.3 A Framework Outside Government to Monitor

We have seen that the general obligations contained in Article 4 are there to drive and inform a process of change. However, any credible theory of change requires a ‘reality check’, one that is capable of highlighting deficiencies or gaps and otherwise assisting in the process of embedding the principles of the Convention across the work of government. Article 33(2) establishes this framework.

Governments need tools to inform them about how well they are doing on disability issues, what kinds of obstacles exist and how they might be addressed. In addition, government action often needs to be complemented by the actions of other actors. That is why Article 33(2) requires States to:

....maintain, strengthen, designate or establish at the national level a framework that includes one or more independent mechanisms, to promote, protect and monitor implementation of the Convention.
The Convention specifies that when designating or establishing the ‘independent mechanism(s)’ to be included in the framework, States parties are to ‘take into account’ the principles relating to the status and functioning of national institutions. This is usually read as meaning the Paris Principles.\textsuperscript{32} Constructive ambiguity in the text meant that the Paris Principles are not mentioned explicitly. However, a reading of the travaux préparatoires reveals that it was indeed the Paris Principles that were intended\textsuperscript{33} and it is now standard practice for the CRPD Committee to demand that the relevant ‘independent mechanism’ complies with the Paris Principles. In effect, the term ‘take into account’ is usually interpreted as meaning that the States parties must adhere to the Paris Principles. The framework – which can be very broad and inclusive – must contain at least one, if not more, ‘independent mechanisms’.

The 2014 Note of the Secretariat to the Conference of States Parties\textsuperscript{34} suggests that three key requirements need to be given effect in the monitoring framework:

- The framework must include one or more independent mechanisms that take into account the Paris Principles. This does not mean that only entities complying with the Paris Principles should be part of the framework; rather, it means that at least one mechanism that is established and functions on the basis of the Paris Principles must be included;
- The framework must be capable of adequately promoting, protecting and monitoring the implementation of the Convention. This means that the framework needs to be given an adequate mandate and the institutional capacity required to effectively perform its functions;
- Civil society, and persons with disabilities and their representative organisations in particular, need to be involved and fully participate in the monitoring process.

Frameworks are generally composed of bodies outside of government. They can – and probably should – include subject-specific bodies like national disability policy advisory authorities. The independent mechanism(s) should be genuinely independent. They need not each individually possess all the functions needed to perform the tasks required by Article 33(2) to promote, protect and monitor. However, between them – and especially between all the entities in the framework – these tasks have to be performed.

\begin{quote}
\textbf{Irish Human Rights & Equality Commission}

The Irish Human Rights and Equality Commission recently completed a study looking at what sort of monitoring ‘framework’ is best suited to different domestic circumstances, following ratification of the Convention. Establishing a Monitoring Framework in Ireland for the United Nations Convention on the Rights of Persons with Disabilities, published in May 2016, summarises how different countries constitute their frameworks and how civil society is generally engaged with these frameworks. The report also considers the Irish context and identifies options for the Irish framework, including designating the Commission as a ‘single-body independent mechanism and framework’. While the decision is ultimately one for the government, the report provides a useful contribution to the discussion.

\end{quote}
Implications of the Human Rights Frame & the CRPD on Systems & Frameworks

3.1. Defining Disability

3.1.1. New Definitions in Anti-Discrimination Law

The human rights framing of disability is especially important when it comes to anti-discrimination law. If persons with disabilities have been treated in the past as ‘objects’ and not ‘subjects’, and if one consequence of this has been a systematic denial of their rights, then it makes sense that ensuring equality for persons with disabilities must be the primary objective of any legislative tool. That is to say, the law must promote respect for the equal and effective enjoyment of all rights by persons with disabilities.

The Convention is probably best understood as a thematic equality instrument that fits alongside similar instruments such as CEDAW and CERD. And it is no accident that most of the substantive rights (e.g., the right to equal recognition before the law or legal capacity – Article 12) is said to be secured ‘on an equal basis with others.’ So, a violation of Article 12 (legal capacity) can also be seen as a violation of Article 5 (Equality). This, of course, begs a theory of equality that underpins the convention (see 2.1. below).

Regardless of whichever theory of equality one feels best fits the Convention, it is obvious that anti-discrimination law is one of the strongest and most visible tools available to States to challenge outdated practices. The forerunner and most famous example of this is the Americans with Disabilities Act (ADA) of 1990, which is probably one of the most widely-copied pieces of civil rights legislation in the world. Legislation, such as the CRPD, is a necessary first step towards embedding the human rights model of disability. Of course, it alone is not enough, and it must be complemented by a broader range of programmes and initiatives that help to deliver broader systemic change. The advantage of anti-discrimination legislation is that it places power in the hands of the individual to challenge outdated practices.

Given that such laws are generally directed against the behaviours of others, it might even seem unnecessary to include a definition of disability. After all, what matters most is that the relevant parties are clear about their responsibilities to persons with disabilities and are clear about those behaviours that are prohibited. However, some States have enacted anti-discrimination laws – which generally pre-date the Convention – with impairment-specific definitions of disability. This can have the effect, intended or otherwise, of undermining the human rights model of disability and even restricting a person’s legal standing or entitlement to use the law.

For example, for a person in Britain to bring a complaint of disability discrimination, a court or tribunal must first establish that the person has ‘a physical or mental impairment which has a substantial and long term adverse effect on a person’s ability to carry out normal day to day activities’. This approach still focuses on the impairment and its impact, rather than on the aggravating factors found outside the impairment. In addition to containing qualifications not found in the Convention, such as the requirement that an impairment must be “substantial” and have an “adverse effect on normal day to day activities”, it has been argued that this definition, which was originally included in Britain’s Disability Discrimination Act of 1994, is based upon the medical model of disability, and is therefore out of place in anti-discrimination law. Similarly, Australia’s Disability Discrimination Act 1992 includes a very broad medicalised definition of disability. While the Australian legislation avoids the particular qualifications included in the British legislation, it also appears to resonate with the medical model of disability rather than the social model or the human rights model.
In defence of impairment-based definitions in anti-discrimination legislation, it might be argued that, since the underlying purpose of such laws is to counter discriminatory barriers and behaviours of others, then those third parties should know with reasonable clarity to whom their obligations apply. An interesting paradox arises here, as impairment-based definitions have generally not created any barriers to accessing justice – unlike more social definitions of disability used in, for example, the Americans with Disabilities Act. In a series of cases known as the Sutton trilogy, the United States Supreme Court arguably failed to understand the social model approach used in the Americans with Disabilities Act and narrowed the categories of those entitled to protection under the Act. Regardless of the merits, many litigants with disabilities found it hard to get their day in court since they failed to meet the definitional threshold demanded by the Supreme Court. This required amending legislation from Congress to “re-right the ADA”.

In sum, one important implication of the move to the human rights frame is that impairment-specific definitions of disability should be avoided in anti-discrimination law where the focus is clearly on countering discriminatory barriers and behaviours. If it is necessary, for the sake of legal clarity, to define those groups protected by the law, it should be done in a way that does not undermine the focus of the legislation or create unnecessary barriers in terms of access to justice.

### 3.1.2. Defining Disability with Respect to Impairments

On occasion – and especially with regard to setting eligibility criteria for entitlement programmes – States will be confronted with the need to define persons with disabilities with respect to certain impairments or the severity of the impairment. The shift to the human rights framing of disability – grounded as it is in the social model – does not entirely remove the need to make such definitions. After all, States need clarity about the coverage of the relevant legislation and need to be able to distinguish persons with disabilities from others. Accordingly, the Convention provides that:

> Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

So impairment counts, whether it is physical, mental, intellectual or sensory. The Convention also insists that the impairment be long-term in nature, although it may be intermittent. However, severity does not count. This means, for example, that the right to live independently applies equally to those with severe or multiple disabilities as it does to those with impairments of a lesser degree or order. The nature or source of the impairment does not count. Indeed the preamble to the Convention reminds States of the need:

> ... to promote and protect the human rights of all persons with disabilities, including those who require more intensive support.

This is something that is too easily forgotten when it comes to, for example, the exclusion of some children from inclusive education, or persons with disabilities - who have high support needs - from community living. Contrary to the ‘natural’ inclinations of some, the severity of impairment is itself not an excuse for exclusion. Of course, it might prove more difficult to achieve, as in the case of community living for those with high support needs. However, a situation such as this is exactly what the concept of ‘progressive achievement’ seeks to address. The existence of a severe impairment is not, by itself, a reason to deny a person with high support needs the right to live in the community with others. Although the severity of the disability may require different approaches to the realisation of that right, it does not in itself negate the right.

The human rights framing of disability and, specifically, the rights set out in the Convention are relevant to an extremely broad section of the world’s population. As the WHO World Report on Disability (2011) noted:
Persons with disabilities are diverse and heterogeneous, while stereotypical views of disability emphasise wheelchair users and a few other ‘classic’ groups such as blind people and deaf people. Disability encompasses the child born with a congenital condition such as cerebral palsy or the young soldier who loses his leg to a land mine, or the middle-aged woman with severe arthritis, or the older person with dementia, among many others. Impairment-specific definitions are acceptable if they do not undermine the broad goals and principles of the UN CRPD. Of course, there may be instances where such impairment-specific definitions are too removed from the key goal of overcoming disadvantage and advancing equality; for example, a law that preserves certain low-paying and low-status jobs for particular impairment groups. In principle, however, such approaches are not necessarily at odds with the human rights frame and the spirit of the Convention.

The 1988 - 1992 Five Year Work Programme for the Disabled in China enables the disabled to participate in social life and share the fruits of the whole society. It embodies the superiority of the socialist system and mobilises all aspects of society.

In its 13th 5-year plan (2016 – 2020), public services to improve the participation of people with disabilities will be introduced; in particular, China plans to establish a dedicated university to provide training in disability rehabilitation by 2020.

3.1.3. Further Definitional Applications of the Human Rights Frame

Considering and defining disability within a human rights frame should also take into account a ‘life-course perspective’, the intersectionality of disability with other identities, and the impact on people who are associated with persons with disabilities.

A ‘life-course perspective’ is very important in relation to disability. Impairment is not, for many people, from birth. Many more people with disabilities are now ageing and many more people who are ageing are developing disabilities. This means that persons with disabilities encounter the very same transition points experienced by others; for example, the transition from school to employment, parenthood, the advent of sickness or disease, and old age. As a result, policies designed to deal with these ‘normal’ transition points must be extended to embrace persons with disabilities. NHRIs whose work focuses on these ‘normal’ transition points will have to mainstream persons with disabilities.

The relation between disability and old age is also relevant. While not all older persons are persons with disabilities, there is sufficient overlap to justify a strong focus on age and disability. This is the subject of the very fine 2012 Toronto Declaration on “bridging knowledge, policy, and practice in aging and disability”. The distinct but overlapping fields of ageing and disability mean that the Convention on the Rights of Persons with Disabilities will be a useful guide in framing of an eventual Convention on the Rights of Older Persons.47

It is also important to note that not everyone is affected equally by the various challenges and barriers that can arise in relation to disability. The aforementioned 2011 World Report on Disability noted that:

... while disability correlates with disadvantage, not all persons with disabilities are equally disadvantaged. Women with disabilities experience the combined disadvantages of gender as well as disability ....People who experience mental health conditions or intellectual impairments appear to be more disadvantaged in many settings than those who experience physical or sensory impairments.
Overlapping or multiple discrimination on several or combined grounds – for example, age and disability – magnifies the impact on the person. In other words, having multiple identities can bring with it multiple disadvantages that might – separately – be associated with those identities. The Convention takes a major step forward by expressly covering this ‘intersectional’ discrimination. This is important because such overlapping identities can compound the discrimination experienced by some groups.

**Women with Disabilities** (Article 6)

The preamble to the Convention highlights that ‘women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation’ and emphasises ‘the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities’. Article 6 explicitly requires States parties to take measures to protect, promote and ensure the rights of women and girls with disabilities.

**Children with Disabilities** (Article 7)

Article 7 creates a bridge between the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, reinforcing the principle that ‘the best interests of the child shall be a primary consideration’ in decisions that concern them and stating clearly that ‘children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children’.

Furthermore, discriminatory behaviour on the grounds of disability is not limited to only persons with disabilities. The prohibition of discrimination ‘on the basis of disability’ (Article 5(2) of the Convention) may cover those who are not themselves disabled, as understood under the broad definition in Article 1. However, they may experience discrimination because of their relationship to someone who is disabled. This is known as ‘associative discrimination’.

The ripple effects of discrimination can be felt by carers, family members and others with whom persons with disabilities share their lives. For example, associative discrimination can profoundly affect mothers of children with disabilities who may find it difficult, if not impossible, to enter, stay in, or re-enter the workforce. Furthermore, the high opportunity costs associated with caring may mean that a career is penalised later on in life by not having had the opportunity to grow a pension, thereby exposing them to poverty in old age.

Associative discrimination has been held by many courts to be implicitly protected by anti-discrimination law. Furthermore, some anti-discrimination laws protect people who do not have a disability but who are assumed to have a disability. This makes sense if the goal of the legislation is to tackle social and attitudinal barriers in relation to disability.

### 3.2. Civil Society at the Heart of Change

While, ideally civil society should be consulted by the focal point within government, they can and should be part of the coordination mechanism within government. They must certainly be part of the framework for monitoring set out in Article 33(2).

Persons with disabilities should also be involved in the work of NHRIs. They may be directly involved; for example, where persons with disabilities are appointed as Commissioners or staff within NHRIs or where they sit on advisory groups or committees. Involvement may also be via representative organisations.
Here it is important to draw a distinction between organisations ‘for’ persons with disabilities, such as some charitable organisations and service providers that are led and staffed overwhelmingly by persons who do not have a disability, and organisations ‘of’ persons with disabilities, which are led overwhelmingly by persons with disabilities. It is also important that organisations of persons with disabilities represent the plurality of persons with disabilities including, in particular, the experiences and perspectives of people with psychosocial disabilities, intellectual disabilities, women and children with disabilities, older persons with disabilities, and persons with disabilities from minority ethnic or indigenous groups. Representation – and judgments about representation – are inherently difficult and will no doubt prove challenging.

**Promising Practice**

In 2013, the United Kingdom’s Government Office for Disability Issues published Fulfilling Potential: Building a deeper understanding of disability in the UK today, which sought to:

- Provide an analysis of the current evidence on disability in the United Kingdom to inform the development of the next stage of work on the government's disability strategy ‘Fulfilling Potential – the development of actions, outcomes and indicators’
- Inform public understanding and prompt debate about disability and the issues faced by persons with disabilities
- Raise awareness, drive a change in attitudes and support an increase in commitment to improving the lives of persons with disabilities in the United Kingdom

The evidence base is structured in two parts. The first part provides analysis of the number of persons with disability in the United Kingdom, as well as looking at the way disability develops over the life course and at the fluctuating nature of disability. The second part focuses on the lives of persons with disabilities by looking at trends in outcomes and barriers to taking part in different areas of life. The evidence is structured around the themes of early intervention; choice and control; and inclusive communities. The document also summarises the analytical evidence on disability.


**3.3. International Cooperation & Conference of States Parties (Articles 32 and 40)**

It was inevitable that international cooperation would figure prominently in the Convention (Article 32). Some States have made tremendous progress on disability issues and the lessons of this progress should be shared to enable other States to take stock. In addition, development aid programmes should, at a minimum, not cut across or undermine the objectives of the Convention. Given that the ultimate aim of the Convention is change and sustaining a process of change, it makes sense to ensure that development aid programmes do not support old or segregationist systems. In fact, these programmes should be reviewed and recalibrated to contribute directly to the process of change. However, where there are deficiencies in development aid programmes, contracting States cannot cite this article as a defence for their own failure to meet their treaty obligations (Article 32(2)).

There are three sets of overlapping obligations in Article 32. First, there is an obligation to ensure that international cooperation and international (and bilateral) development assistance programmes are accessible to persons with disabilities (Article 32(1)(a)). Second, States parties have an obligation to facilitate capacity building, including the sharing of information, experience and training programmes.
These capacity-building measures should include capacity building between NHRIs. Third, States parties have an obligation to facilitate cooperation in research and access to scientific and technical knowledge. This can and should include research done by NHRIs. Fourth, States parties have an obligation to provide, as appropriate, technical and economic assistance, including sharing accessible and assistive technologies.

Furthermore, the Convention is innovative because it moves beyond a sole focus on violations. It recognises that an open exchange of experiences and ideas is required to generate and sustain long-term change. Accordingly, the Convention envisions a standing conference of States parties (Article 40). This provides a potentially powerful platform for States to learn from one another in a multilateral forum.

States that have ratified the Convention meet annually at the UN headquarters in New York for the Conference of States Parties to the Convention on the Rights of Persons with Disabilities. Within these meetings, agendas span a broad range of topics, such as the inclusion of persons with disabilities in the post-2015 sustainable development goals and, most recently, implementation and monitoring of the Convention at the national level.52

Support for the Conference of States Parties is provided by the Secretariat for the Convention on the Rights of Persons with Disabilities.53

3.4. The CRPD in Conjunction with the 2030 Agenda

The Millennium Development Goals (2000-2015) famously (or infamously) omitted references to disability, leading to the exclusion of persons with disabilities from key development initiatives and funding streams around the world. With an estimated 1 billion persons with disabilities worldwide,54 with 80% living in developing countries and overrepresented among those living in absolute poverty,55 governments and civil society partners recognised that the ambitions of the MDGs were greatly inhibited by the exclusion of persons with disabilities. Consequently, through sustained advocacy by organisations of persons with disabilities and their allies, the 2030 Agenda for Sustainable Development explicitly includes persons with disabilities and has opened doors for their participation and recognition as active contributing members to the future of sustainable development.

The 2030 Agenda has offered the global community a holistic vision of sustainable development which is inclusive of all people, and where the three pillars of sustainable development: social, economic, and environmental are interlinked and inseparable, and do not - and should not - function in isolation. As elaborated in Article 13 of the 2030 Agenda, ‘Sustainable development recognises that eradicating poverty in all its forms and dimensions, combating inequality within and among countries, preserving the planet, creating sustained, inclusive and sustainable economic growth and fostering social inclusion are linked to each other and are interdependent.’ (Article 13, 2030 Agenda)

While the Sustainable Development Goals (SDGs) comprise an integral part of the 2030 Agenda, it is important to keep in mind that the SDGs are just one component of the 2030 Agenda alongside the Preamble, Declaration, Means of implementation & the Global Partnership, and Follow-up & Review, many of which are inclusive of disability and contribute to the full and meaningful inclusion of persons with disabilities in sustainable development. Disability is explicitly referenced 11 times throughout the 2030 Agenda; three times in the Declaration, 7 times within the Sustainable Development Goals and targets, and once within Follow-up and Review.

The Declaration of the 2030 Agenda introduces the principle of the 2030 Agenda as universally applicable to all people, and establishes the inclusion of persons with disabilities within groups termed as ‘vulnerable’. Paragraph 19 of the Declaration reaffirms the importance of connecting human rights instruments with development policies, by emphasising the ‘importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law […] to respect, protect and promote human rights and fundamental freedoms for all.’ Paragraph 23
includes persons with disabilities within the term ‘vulnerable’ by stating, ‘People who are vulnerable must be empowered. Those whose needs are reflected in the Agenda include all children, youth, persons with disabilities (of whom more than 80% live in poverty).’ Whilst the disability community generally prefers the term ‘at risk’ as opposed to ‘vulnerable’, including persons with disabilities within the groups termed as ‘vulnerable’ makes the provisions directly applicable to persons with disabilities in the 18 references to ‘vulnerable’ throughout the Agenda. Paragraph 25 within the Declaration finally highlights the Agenda’s commitment to ‘providing inclusive and equitable quality education at all’, explicitly referencing persons with disabilities.

The UNCRPD and the SDGs are symbiotic in nature and share the fundamental commitment to ensure that every person has a decent, dignified and rewarding life, and achieves their full human potential by eradicating poverty in all its dimensions. The SDGs, while being a powerful political tool, remains a voluntary commitment without legal enforcement, and as such, must be guided by the UN CRPD to effectively transform the lives of persons with disabilities worldwide. The SDGs are largely programmatic in character - tacking poverty and all its causes, manifestations and symptoms - and must be delivered before the deadline of 2030. Advances in implementing the Goals help - perforce - the implementation of the UN CRPD. Milestones achieved in advancing the UN CRPD help - perforce - in the achievement of the Goals. The two are mutually reinforcing - with the added benefit of the force of law behind the UN CRPD.

See for example, the following. Note that these are just some of the many ways in which the SDGs and the CRPD overlap.

**Goal 4: “Ensure inclusive and equitable quality education and promote life-long learning opportunities for all.”**

It is estimated that between 93 million and 150 million children live with disabilities and millions of these children have been denied the right to an education. Currently children with disabilities are the most marginalised globally with an estimated 90% of children with disabilities in the developing world not attending school. Target 4.5 states that the States will work ‘[B]y 2030, (to) eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.’ Furthermore, target 4.a. relays that States will ‘Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.’ This is not to be taken as a substitute for the concept of ‘progressive achievement’ as outlined under the UN CRPD which envisages that many such facilities can be upgraded before 2030. Taken together, target 4.a of the 2030 Agenda and Article 4.3 of the UN CRPD demand the rapid change to the physical environment to truly achieve inclusive education.

**Goal 8: ‘Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.’**

The ILO states that the higher rates of unemployment and labour market inactivity among persons with disabilities are a result of barriers to education, skills training and transport. This exclusion has been estimated to cause the needless loss of 7 of national GDPs. Additionally, income earned from productive employment can substantially mitigate the incidence of extreme poverty among persons with disabilities and their families, thereby building more resilient communities. As such, Target 8.5. relays that States will work ‘[B]y 2030, [to] achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value’. Once again, this SDG goal does not delay or impede the responsibility of States to meet their obligations under Article 27 of the UN CRPD, as well as their obligation of ‘reasonable accommodation.’ Many of the obligations of the UN CRPD are to be implemented immediately (including some under Article 27 of the CRPD).
Goal 10: ‘Reduced Inequalities: Reduce inequality within and among countries.’

States agreed in Target 10.2 to ‘[B]y 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.’ As with the previous goals, having such a target does not diminish the obligations incumbent on States to achieve economic and social inclusion under the CRPD.

Goal 11: ‘Sustainable Cities and Communities. Make cities and human settlements inclusive, safe, resilient and sustainable.’

Many built environments, including housing, transport and information systems are not yet accessible to persons with disabilities. The systematic lack of access to transportation is a frequent reason for persons with disabilities to be discouraged from seeking work or prevented from accessing other services such as healthcare or education. In addition, information is rarely available in accessible formats, including sign languages, and there are access barriers for basic products and services such as telephones, television and the internet. Target 11.2 seeks to address such barriers in that ‘[B]y 2030, [to] provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities and older persons.’ Access is further reinforced by target 11.7. which states, ‘[B]y 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities.’ These targets sit alongside Article 9 on Accessibility in the UN CRPD which aims to be ‘progressively achieved’ by States well before 2030.

As reflected in the above highlighted Goals and targets, the 2030 Agenda represents a brave new world for sustainable development and signifies the ambition of the global community’s aspirations. However, as with all high-level commitments, such aspirations are meaningless without implementation.

While the 2030 Agenda is not legally binding and cannot supplant existing obligations arising under treaty law, it is an agreement that Member States voluntarily committed to and have invested in the follow-up and review of its implementation. As such, the central platform for this follow-up and review of the 2030 Agenda is the High-level Political Forum (HLPF) on Sustainable Development, held yearly at the United Nations headquarters in New York. In addition to this global platform, yearly intergovernmental forums within the five UN regions have been established to engage Member States, the United Nations, civil society and other actors in dialogue on the implementation, follow-up and review of the 2030 Agenda at the regional level. Such follow-up and review mechanisms aim to promote national ownership in SDG implementation, recognising that each country has different approaches and tools for implementing sustainable development and that each government must decide how the SDGs should be incorporated into national planning processes, policies and strategies. Additionally, such Forums also serve as a platform for Member States to share best practices and challenges the encounter in implementing the SDGs, to cultivate partnerships with other States and civil society, and more broadly, provide a platform for governments to be accountable to their citizens, including persons with disabilities.

An integral part of the follow-up and review forums, both at the global and regional levels, are the Voluntary National Reviews (VNRs). Governments volunteer to report on the achievements and challenges of implementing the SDGs from their national perspectives and how they have included the SDGs into national development plans and strategies.

Of the 22 VNRs in 2016, 16 submissions and 8 oral presentations of Member States explicitly elaborated on the situation of persons with disabilities in their national context. Of the 43 VNRs in 2017, disability was included within 41 of the written reports and issues directly affecting the lives of persons with disabilities were increasingly represented.
Overview in ASEM Regions and States

4.1. The Council of Europe & Disability

The Council of Europe, based in Strasbourg, is an inter-governmental organisation including 47 Member States (28 of which are also members of the European Union). Its primary aims are to advance and protect democracy, the rule of law and human rights. It works largely by adopting treaties and issuing policy recommendations to its Member States.

The Council of Europe’s inter-governmental machinery is quite elaborate and allows for intensive cooperation between Member States on particular topics. Disability has been the subject of such cooperation ever since the landmark 1992 Recommendation (92)6. There is now a Council of Europe strategy on disability. The Council of Europe Disability Action Plan (2006-2015) provided guidance to Member States on the following action areas:

- Participation in Public & Political life
- Participation in Cultural Life
- Information & Communication
- Education
- Employment, Vocational Guidance & Training
- The Built Environment
- Transport
- Community Living
- Health Care
- Rehabilitation
- Social Protection
- Legal Protection
- Protection Against Violence & Abuse
- Research & Development
- Awareness Raising.

The Council of Europe has adopted at least 12 treaties relating to human rights. All 47 Member States are signatories of the European Convention on Human Rights, which is probably the most famous treaty concluded under the auspices of the Council. This instrument seeks to protect civil and political rights, with supervision of the Convention overseen by the European Court of Human Rights. Enforcement of the Court’s judgments is left to the Council’s Committee of Ministers, a political body.

Article 14 of the European Convention on Human Rights prohibits discrimination with respect to the enjoyment of the rights set out in the Convention. Although it does not explicitly mention discrimination on the grounds of disability, the Convention refers to ‘other status’, which is interpreted to provide protection to persons with disabilities. Protocol 12 to the Convention establishes a freestanding right to non-discrimination. The Protocol has been ratified by 17 of the Council of Europe’s 47 Member States and has entered into force in respect to them.

The European Court of Human Rights has prepared a very useful dossier on its case law as it relates to persons with disabilities. It has directly cited the Convention on the Rights of Persons with Disabilities several times and especially in its case law on legal capacity, which generally tends to accord with Article 12 of the Convention on the Rights of Persons with Disabilities.

The European Revised Social Charter is another Council of Europe treaty which secures social and economic human rights, including housing, health, education, employment, movement of persons, non-discrimination and legal protection. Article 15 of the Charter is specifically dedicated to the rights of persons with disabilities, focusing on independence and integration, education and vocational training, employment and access to services and support. The European Committee on Social Rights
oversees States’ conformity with the Charter. The Committee has adjudicated on several high-profile disability collective complaints, beginning with the famous case of *International Association Autisme-Europe v France of 2004*, which deals with the inclusion of children with autism in education. The Committee has published a useful factsheet on its disability jurisprudence.71

Similar to the UN system, the Council of Europe has its own Commissioner for Human Rights.72 The Commissioner has been very active on disability issues and has produced three influential ‘issue papers’ on the rights of persons with disabilities. They have examined the broad implications of the Convention on the Rights of Persons with Disabilities for Europe73, equal recognition before the law74 and the right to live independently and to be included in the community.75 Furthermore, the Commissioner has strongly argued against the elaboration of a draft Protocol to the Oviedo Biomedicine Convention, a treaty of the Council of Europe, on the grounds that it would conflict with the CRPD Committee’s understanding of the requirements of Article 14 (on liberty) of the Convention on the Rights of Persons with Disabilities. This is an interesting spectacle; one part of the Council of Europe arguing against another on the basis of an external treaty. This clearly demonstrates how powerful the Convention has become within the work of regional organisations.

What this brief survey shows is that the relatively old instruments of the Council of Europe are steadily being informed by the standards and principles of the Convention on the Rights of Persons with Disabilities. This has implications for NHRIs who engage with the Strasbourg system in their regular work.

**4.2. The European Union & Disability**

The European Union, which has 28 Member States, is a ‘regional integration organisation’ as understood under Article 44 of the UN CRPD. Its Member States have transferred some aspects of their sovereignty to the EU institutions, have shared others with the EU, and have reserved many others. Because it enjoys the exercise of transferred or shared sovereignty, the EU has standing to accede to the Convention on the Rights of Persons with Disabilities – and has done so.

The EU Charter on Fundamental Rights76 enshrines certain political, social, and economic rights for European Union citizens and residents into EU law. The provisions of the Charter are addressed to the institutions and bodies of the European Union and to Member States only when they are implementing EU law. The Charter does not add to existing EU competences. At the end of the day it is these legal competences that matter.

Article 21 of the Charter prohibits discrimination, including on the grounds of disability. Article 26 specifically concerns the integration of persons with disabilities:

> The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

EU treaty law requires mainstreaming of the elimination of all forms of discrimination into all activities and in policy development.77 An Employment Equality Directive of 2000 – EU legislation requiring Member States to introduce certain measures in their own laws – lays down minimum standards to prohibit direct discrimination, indirect discrimination, harassment, victimisation and instructions to discriminate.78 It includes discrimination based on disability. It requires that employers and providers of vocational training should be placed under an obligation to provide ‘reasonable accommodation’ to disabled job applicants and employees.79

In 2008, the European Commission proposed the enactment of an additional Equal Treatment Directive in relation to the provision of goods and services, transport and education and social protection, which would also include disability.80 The proposed Directive would introduce the concept of ‘anticipatory’ reasonable accommodation into EU law. It has not yet been enacted.
In 2011, the European Union ‘concluded’ (ratified) the Convention on the Rights of Persons with Disabilities in its capacity as a regional integration organisation under Article 44 of the Convention. It was the first international human rights treaty to be ratified by the EU. This has implications for law reform at EU level and has already had an impact on regulations governing how EU funds are spent in lesser developed regions of Europe. The CRPD Committee’s assessment of the Initial Report of the European Union was published in 2015. The main features of the concluding observations were that the EU should conduct a thorough review of its legislation to assess its consistency with the Convention, that dialogue with civil society should be further strengthened, that the monitoring mechanism of the EU needs to be changed and that the EU should facilitate the search by its Member States for new models in the field of assisted decision-making. The Committee also recommended speeding up the enactment of a broader equality Directive.

The EU Disability Strategy (2010-2020) is a central vehicle through which the EU pursues implementation of the Convention. The Strategy is focused on eight priority areas of concern to the EU and its Member States (but only when implementing EU law):

- Accessibility
- Participation
- Equality
- Employment
- Education & Training
- Social Protection
- Health
- External Action (international development).

The European Union Agency for Fundamental Rights is tasked with providing evidence-based advice to the European Union and its Member States when implementing EU law on human rights. To do so, the Agency has carried out analysis regarding political participation of persons with disabilities, legal capacity, and the right to live independently and to be included in the community. It has developed indicators regarding political participation and is presently developing indicators regarding the right to live independently (see Part III for further details). The Agency has also started to look at the issue of targeted violence and hostility experienced by children with disabilities.

The Agency is a central part of the EU monitoring framework for the Convention, which includes the European Parliament, the European Commission, the European Disability Forum and the EU Ombudsman. However, in its 2015 concluding observations to the European Union, the CRPD Committee called on the European Commission to withdraw from the monitoring framework as it is primarily an executive body.

The impact of the Convention in the work of the EU is extremely powerful, which is due in large part to the EU’s accession to the Convention. It is also powerful because the instruments used by the EU are themselves powerful. A recent example is in how the Regulations for the EU Structural Funds (a fund to be distributed from richer to poorer EU countries) has been changed to ensure that taxpayer’s monies are not spent on opening or even refurbishing institutions, but are spent instead to assist States to transition towards community living models. NHRIs are increasingly engaging with EU institutions, as evidenced by locating the European Network of National Human Rights Institutions in Brussels.

As previously mentioned, the 2015 concluding observations of the CRPD Committee include a recommendation that the European Commission should withdraw from the monitoring framework the EU established under Article 33(2) of the Convention. In March 2016, the European Parliament requested an ‘Opinion’ from the Fundamental Rights Agency on how the monitoring framework might be reconstituted in light of the concerns expressed by the CPRD Committee. This ‘Opinion’ – an extensive 36-page document – was delivered on 13 May 2016. It makes for compelling reading as it considers the conclusions of the Committee and skilfully applies them to the specific circumstances of
the EU as a regional integration organisation. It should be read by anyone interested in how NHRIs can actively contribute to shaping the relevant Article 33(2) ‘frameworks’.

### 4.3. Initiatives at Asia/Pacific Level

At the wider Asia-Pacific level, the UN Economic and Social Commission for Asia and the Pacific (UNESCAP) proclaimed 1993-2002 the *Asian and Pacific Decade of Disabled Persons* and in 2012, UNESCAP member States adopted the Incheon Strategy to ‘Make the Right Real’ for Persons with Disabilities in Asia and the Pacific. Based on the principles of the CRPD, the Incheon Strategy comprises of 10 specific time-bound disability-inclusive development goals, 27 targets and 62 indicators similar in structure to the Millennium Development Goals. It is the first set of regionally agreed disability-inclusive development goals. The Incheon Strategy builds on the CRPD and the 2004 Biwako Millennium Framework for Action whose goal was ‘to promote an inclusive, barrier-free and rights-based society for persons with disabilities in Asia-Pacific.’ In 2015, 12 governments reported on the implementation of the Incheon Strategy – all 12 reported that they had established national focal points to coordinate its implementation.

At the sub-regional level, ASEAN proclaimed 2011-2020 as the ASEAN Decade of Persons with Disabilities, dedicated towards ensuring the effective participation, and mainstreaming the perspectives, of persons with disabilities in ASEAN policies and programmes. In 2011, ASEAN adopted the Bali Declaration on the Enhancement of the Role and Participation of Persons with Disabilities in the ASEAN Community, establishing with it the ASEAN Disability Forum.

The ASEAN Disability Forum (ADF) was introduced by DPOs in ASEAN countries with the aim ‘to mainstream and the needs of disabled people to enter their perspectives in the policy framework of ASEAN’. The ADF conducts its advocacy work with various ASEAN institutions, including AICHR and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC). The ASEAN Intergovernmental on Human Rights (AICHR) has also created a *Task Force on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community*. The mandate of this Task Force is to ‘draft a regional instrument that will serve to implement the ASEAN Vision 2025 on the mainstreaming of the rights of persons with disabilities across all three pillars of the ASEAN Community through consultation among relevant ASEAN Sectoral Bodies and stakeholders in the region, including disabled people organisations (DPOs)’. The 1st and 2nd regional dialogues were held in December 2015 and June 2016 to create a common regional strategy to mainstreaming the rights of persons with disabilities in ASEAN member states and also at the ASEAN community level - namely the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC). A 3rd regional dialogue is planned for 2017 to prepare a regional strategy document that can then be submitted to the ASEAN Summit.

As a result of the first Asian and Pacific Decade of Disabled Persons, the Asia-Pacific Development Centre on Disability (APCD) was established by Thailand and Japan, and was endorsed by UNESCAP as a regional centre on disability and development, to implement the Incheon Strategy, to build multi-sector collaboration and to encourage ‘private sector engagement in disability-inclusive business’. The Government of Japan supports the APCD through the JICA Technical Cooperation Projects and the Japan-ASEAN Integration Fund (JAIF) Projects.

In 2015, APCD organised an ASEAN-Japan Senior Officials’ Meeting on International Cooperation and Disability at which the *Tokyo Recommendations on International Cooperation and Disability 2015 and Beyond in the ASEAN Region* was adopted which call to ‘[S]trengthen collaboration between the ASEAN Member States and Japan in the field of disability and development, and explore new initiatives to maximize the capacities of each country to protect the rights and respond to the needs of persons with disabilities, as well as build the capacities of persons with disabilities for Community-based Inclusive Development’.
As established and UNESCAP, is probably the most substantial of all regional efforts to implement the CRPD, providing as it does, the first set of regionally agreed disability-inclusive development goals with 10 goals, 27 targets and 62 indicators to be achieved by Asia-Pacific member countries. Building on the CRPD and the 2004 Biwako Millennium Framework for Action, the adoption of the Incheon Strategy provides a mechanism for monitoring and reporting and its adoption was accompanied by the new Asian and Pacific Decade of Persons with Disabilities (2013 - 2022) whose goal is to ‘give greater impetus to the drive for integration of disability perspectives into national, sub regional and regional development agendas across Asia and the Pacific’.98

At the Asia-Pacific Economic Cooperation (APEC) forum, a high-level meeting on “Equal Access, Inclusive Development” was organised in 2014 at which the Group of Friends on Disability Issues (GOF) was launched – proposed by China, the GOF has six founding members Australia, China, Hong Kong, China, Mexico, the Philippines and the United States99. The purpose of the GOF is to “promote awareness and knowledge sharing for the participation of persons with disabilities in the regional economic development, meanwhile trigger cooperation among APEC members with a view to contribute to the outcomes of future APEC Economic Leaders' Weeks”100.

In South Asia, although a concrete regional action plan remains unavailable, the South Asian Association for Regional Cooperation (SAARC) recognised 1993 as the SAARC Year of Disabled Persons and organised in the same year, a ministerial conference in Islamabad where they endorsed the “Islamabad Resolution on Disabled Persons”.101 At its 10th Summit in 1998, SAARC had accepted Bangladesh’s proposal of establishing a SAARC Voluntary Fund for Disabled Persons102 and since have also introduced a virtual group on disability statistics103. Given the political considerations in which SAARC works, efforts at the non-governmental level have been more active; Disabled People’s Organisations (DPOs) have set up a sub-regional network called the South Asian Disability Forum (SADF)104 to ‘work as a think-tank for the disability sector in the eight countries in South Asia’.

Disability has also been included in the agenda for the BRICS meetings; the Proposed Agenda for Brazil, Russia, India, China, South Africa (BRICS) Cooperation on Population Matters 2015-2020105 includes disability – inclusive development under agenda item 12 and calls for ‘sharing experiences in adopting and implementing disability-inclusive national development strategies and disability-targeted actions amongst BRICS countries is vital to strengthen the commitment of Member States on the inclusion of this demographic group’.

At the Asia-Europe Meeting (ASEM) level, disability has been noted by different ASEM fora106 as a part of the ASEM cooperation and was explicitly put on the ASEM agenda in 2015 at the first ASEM High-level Meeting on Disability Joint Initiative – led by China — with three disability cooperation objectives of social development, human rights, and economic development.107 The Outcome document, titled “Enhancing Disability Cooperation among ASEM Members” provides some of following goals for future ASEM cooperation108:

- To make full use of relevant resources to initiate and implement more disability-related international cooperation projects and more mainstreaming of disability concerns in general projects;
- To support the capacity building of civil society organizations of persons with disabilities, and to effectively promote the pragmatic cooperation in the field of disability;
- To explore the possibility to establish a platform of exchange and cooperation in assistive devices and technology under the ASEM cooperation, and
- To include disability issues into the existing multilateral and bilateral dialogue or cooperation mechanism among ASEM members...and promoting common development in this regard.
51 ASEM Partners have also endorsed the Busan Partnership for Effective Development Co-operation which provides common principles to make development cooperation more effective. As per the agreement, development aid must be ‘in accordance with commitments towards human rights, decent work, gender equality, environmental sustainability and disability’.

**Innovations, Challenges & the Way Forward**

Since its adoption in 2006, the CRPD has been a key catalyst in the increased awareness of disability rights globally. The switch in thinking about disability is still new and has yet to sink deep roots to sustain a dynamic process of change in both Europe and Asia. However, remarkable steps forward have been made at both regional levels and in individual States. The convention serves as a benchmark upon which related standards, campaigns and activities pertaining to these rights are formulated and measured. Furthermore, the addition of the new UN SDGs is of inestimable value - helping to keep a focus on the systemic process of change needed to complement the UN CRPD. It must be noted, however, that disability rights and indeed the very concept of ‘disabilities’ are evolving in response to new forms of ‘barriers’, including those deriving from interactions of diseases, old age and technology with society.

### 5.1 Innovations

Two innovative approaches have emerged that will directly contribute to the realisation of disability rights under the CRPD. The first is the reaffirmed requirement for businesses as a duty bearer to ‘respect’ human rights, pertinent the rights of persons with disabilities specified in the CRPD. The other innovation is regarding regional level developments. Being open to formal confirmation or accession by a ‘regional integration organisation’, the CRPD is unique among international human rights instruments. At the present, the European Union is the only such an organisation that has acceded to the Convention. The commitment by the EU will help integrate CRPD rights not only among its member states, but also among states with which it has relations. The fact that a regional organisation considers itself duty bound to respect, protect and fulfil the rights of persons with disabilities, irrespective of whether it fits the qualifications to accede to the CRPD or not, stem from two reasons. First, such an organisation has explicitly adopted human rights responsibilities in its constitutional or legal provision. Second, and more fundamentally, it pursues disability-related policies and programmes owing to the recognition of the adverse impact or potential benefits from regional integration on persons with disabilities. This also helps maintain or enhance its legitimacy and relevance among its peoples.

Even though the issue of its eligibility and preparedness to accede to the CRPD has not been formally addressed, ASEAN has achieved a few milestones on the advancement of the rights of persons with disabilities that deserve reference and evaluation. First and foremost, with ratification of Brunei Darussalam in 2015, the CRPD is now a ‘common’ human rights treaty in the Community, following the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

Second, it has made clear since 2011 that the rights of persons with disabilities are an integral part of the commitment to enhance the livelihood of its peoples; a decade for persons with disabilities is also declared, covering the year 2011 to 2020. Most recently, it has embarked on a plan to further mainstream the rights of persons with disabilities through its three pillars: the ASEAN Political and Security Community (APSC) to the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC). The programmatic work that began in 2015 with the annual regional dialogue on disability rights focusing on different themes each year is conducted alongside the development of a regional document that will map out the regional goal and plan toward making disability rights real and relevant in every community sector.

The regional disability rights-based programme has been led by the ASEAN Intergovernmental Commission on Human Rights (AICHR). It has set up a multi-stakeholder Task Force to prepare and
negotiate a regional plan, ‘ASEAN Enabling Masterplan 2025’, to mainstream the rights of persons with disabilities in the Community. The designation of the year 2025 reflects the basic goal of the plan to implement the ASEAN Vision 2025 that was adopted at the commencement of the Community in 2015 and puts as the key character of ASEAN the ‘people-centred, people-oriented Community’. A major barrier to the promotion of disability rights in ASEAN is its compartmentalized structure and the emphasis on regional economic integration that is tasked to the AEC, the pillar with which most people associate the Community. Apart from the key mandate on trade liberalization—the free movement of goods, services, professionals, capital and investment, the AEC also handles a number of ‘behind border’ issues such as consumer protection, competition policy and intellectual property rights as well as ‘connectivity’ sector like transport and tourism. Disability rights are generally perceived as a ‘social’ issue that should be dealt with as a safety net agenda by the political and social pillars.

The Masterplan will be an important document that makes clear the relevance of disability rights, even in the AEC. Advocating for the Community-wide recognition of disability rights, the Task Force has initially identified relevant aspirations and key action plans for each Community pillar. For the AEC, these include the benefits of trade liberalization to persons with disabilities—enhanced access to assistive devices and personal assistance, free and unfettered access to copyrighted materials for persons with visual impairment, mainstreaming of universal design in regional transport connectivity, and protection of persons with disabilities as consumers, to name a few.

The advantage of a regional instrument or document for ASEAN is not simply to enhance visibility of persons with disabilities and their rights, but also to ensure compatibility of regional policies and plans with disability rights that are endorsed in the CRPD, the 2030 Agenda, the Incheon Strategy as well as other international and regional instruments like the Sendai Framework for Disaster Risk Reduction. The Masterplan is scheduled to be finalized and adopted by the end of 2018, in time to commemorate the International Day of Persons with Disabilities on 3 December and the 70th anniversary of the Universal Declaration of Human Rights on 10 December.

Apart from the two innovative developments, disability rights can be further strengthened through the implementation of the 2030 Agenda and the Universal Periodic Review mechanism. The 17 sustainable development goals espoused by the 2030 Agenda will have positive impacts for persons with disabilities as countries around the world are paying increasing attention on how to implement these goals effectively. One way is to develop a detailed national plan of action and indicators to measure concrete progress. Another is to enhance regional awareness and complementarity of the SDGs. ASEAN is moving in this trajectory by developing regional indicators that will bolster awareness at the Community level and reinforce national implementation. The UPR can complement both the CRPD and the SDGs through the review of human rights situations among UN member states. The voluntary pledges of the state under review to adopt recommendations by other states can lead to the increase of membership of the CRPD (new ratification to the Convention or its Optional Protocol), deepening of CRPD’s commitment (withdrawal of reservations), or broadening of obligations to complement those under the CRPD (ratification of related instruments such as the Marrakesh Treaty). Through the periodic four-year review cycle and voluntary mid-term review that allow participation of civil society organisations including Disabled People’s Organisations, sustained and concrete progress on disability rights can be systematically benchmarked and promoted.

5.2 Challenges

Arguably the two biggest challenges have to do with restoring power and visibility to persons with disabilities over their own lives, and the effective fulfilment by States as the primary duty bearer.

The challenge of restoring power and visibility is hardly surprising, as it seeks to reverse decades if not centuries of policies and expectations. In a sense, the success of the whole social inclusion agenda depends on this. There is little point being included in the community unless it is on one’s own terms. There is little point having a theoretical right to participate in the political life of the nation unless one is granted the legal capacity to participate. There is little point having the theoretical access to the
legal system to vindicate one’s right unless one is seen as a full legal person in the law. And there is little point to all these advances unless the process of change is maintained through a transparent and inclusive monitoring and implementation process. Europe and Asia/Pacific share all these challenges. Europe comes at these challenges with the legacy of a developed social model that now needs to be radically refreshed to enable it to underpin the rights of persons with disabilities. Asia/Pacific comes at these challenges as part of a broader development strategy - one that will not necessarily lift all boats unless dedicated attention is given to persons with disabilities who are likely to be left behind even in the context of positive economic growth.

Regarding the role of States, at the basic level, the lack of empathy and negative perception toward impairments and disabilities have not been systematically addressed and states must be reminded of their responsibilities to embed disability awareness through education programmes, including curriculums and capacity-building for teachers and education personnel. As the CRPD Committee elucidates in the fourth General Comment that is referenced above, inclusion of persons with disabilities requires change of environment to correspond to their needs and preferences with a view to providing them with equity and participation in the community and society. A holistic policy approach is required, and changes must be implemented systematically at various levels. Existing physical and informational environment must be adapted while those that are to be built must integrate accessibility and universal design concepts. Although economic, social and cultural rights that are discussed in this part are subject to progressive realization through available resources, the failure to provide reasonable accommodation is a discrimination and violation of rights according to the CRPD.

As the CRPD enters the second decade of operation, many states are noted for its implementation through the establishment of a focal agency. While this dedicated unit framework gives greater focus on disability rights, States must ensure that it does not lead to neglect by other ‘silos’ or agencies that conveniently claim the lack of responsibilities. Disability rights must continue to be made relevant in every agency.

5.3 The Way Forward

Change revolves around people. Our respective civil society groups are now highly active and engaged in the process for reform. One can detect a new stage of evolution. If the first stage of evolution was to acquire a voice and visibility, and the second stage was to highlight injustice, the next stage is to enter the policy process with blueprints for change. Our civil society groups have become policy entrepreneurs - providing solutions as well as critiques. This was only made possible by the ‘new politics’ of disability opened up by both the UN CRPD and the UN SDGs. The European Disability Forum is probably the most successful in this regard. It is noteworthy that a new Mekong Sub-Region of Inclusion International was formed in September 2016 bringing together self-advocates with intellectual disabilities from the five countries that share the Mekong.

Enhancing people-to-people exchanges is an exceptionally useful way of enabling the people most directly affected by policy to have a meaningful input to the process of change. The emphasis should be on imparting policy entrepreneurship skills - how to do things with knowledge. Indeed, civil society groups should be equipped to be become their own researchers - so that future research isn’t just ‘about’ them but is actually driven ‘by’ them. It is suggested that Europe and Asia reflect together on how people-to-people exchanges can be enhanced in the context of disability.

While it might take law and policy quite some time to catch up, our mutual university-based resources are well developed - but insufficiently connected. This is an important source of evidence, ideas and imagination to break free from legislative and other impasses. The point is that there is already an established as well as a rapidly emerging research capacity in both Europe and Asia. In order to help contribute to change (as well as train the next generation of disability policy entrepreneurs) it would be useful to consider ways of ensuring that existing student/staff exchange programmes can be used to share capacities. One could imagine projects to work on joint curriculum development (especially for post-graduate programmes) and to engage in more intensive thematic research endeavours.
(e.g., Europe-Asia perspectives on community living). This would not merely be an aid to mutual understanding but would measurable enhance the capacity of both sides to play a constructive role in the process of change - and to sustain it into the future. The Annual Yearbook on European Disability Law is now matched by an Annual Yearbook on African Disability Law. It is suggested that the time is now right for an Annual Yearbook on Asian/Pacific Disability Law.

Governments around the world are gradually acquiring a capacity to frame disability from a human rights/SDG perspective. Having a cogent case for change is not enough. Governments must develop the capacity to respond. Experience under Article 33 of the UN CRPD shows that much is happening in developing clear Focal Points and Coordination mechanisms within Governments. The sharing of peer-to-peer experiences in this regard is highly important. Indeed, it is suggested ways could be found to facilitate staff exchanges to enable civil servants learn from best practice - even though of course that has to be tailored to national conditions. Part of the ‘new politics’ of disability has to do with breaking away from old patterns of engagement (a command style of policy-setting that is relatively indifferent to civil society and that exists in isolation from research in universities) toward a new one that sees Government as part of a constructive partnership for change. Peer-to-peer exchanges can make a meaningful contribution in this regard.

Technological progress can bring real benefits to everyone, including persons with disabilities. Access to information and knowledge can be enhanced through digital media and new forms of assistive technologies and devices can promote independent living in the community. Expanding the use of big data and enhanced data analytics can render more accurate and inclusive the data and statistical system related to persons with disabilities, including disaggregation of the collected data. This will contribute to a responsive policy-making process. However, without efficient regulation the risks that new technologies pose will multiply and affect persons with disabilities more than others. While their opportunities for inclusion will be jeopardised from the lack of equal access, persons with disabilities are made disproportionately more vulnerable to various forms of online abuse, deception and fraud. As robotics and artificial intelligence are becoming more complex and human-like, their algorithms and functions will further disrupt existing economic and social environment.

In the field of labour, while automation may lift the barriers that prevents persons with disabilities to accede to better jobs, the substitution of manpower especially for repetitive tasks or ones that require precision with robots and AI may also result in the significant loss of real and opportunity for employment for persons with disabilities. The prerequisite is clear: in their pursuit of technological advancement, States and businesses must recognise the threats to persons with disabilities and must be holistic and innovative in raising awareness of everyone to their potential adverse impacts, ensure equal and equitable access for groups that can be made vulnerable and institute systematic regulation, supervision and education programmes that will safeguard and secure inclusion for persons with disabilities in the digital society.

Furthermore, as indicated earlier in this Working Paper, some sort of ‘reality check’ is needed to ensure that the reform process remains on the right track. This underlines the importance of the independent monitoring framework under Article 33. The UN CRPD Committee has emphasised the importance of this ‘reality check’ to the point of insisting that all elements of the framework be truly independent in their functioning. The European Network of National Human Rights Institutions is playing a key role in this regard both within their respective States as well as European level. They - their members - are actively involved in policy and legislative reform debates. Indeed, they collectively lodge amicus briefs before the European Courts. Likewise the Asia/Pacific Forum of National Human Rights Institutions has been traditionally very active on disability issues. They both work well together at a global level. It is suggested that means be now found to enable both groupings to engage much more intentionally and intensively on the role of monitoring frameworks (sharing best practices, etc).
Endnotes:


6 For a classic statement of ‘spoiled identity’ (that is, internalising the views others hold on one and thus perpetuating a vicious circle) see Goffman, Erving, Stigma: Notes on the Management of Spoiled Identity (Englewood Cliffs, NJ: Prentice-Hall, 1963).


9 Degener, “A Human Rights Model of Disability.” NB: At the time of writing Degener was the Vice-President. At the time of publishing she was the Chairperson of the Committee.

10 Ibid.

11 Ibid.

12 Ibid.

13 Ibid.

14 See e.g. “Righting the ADA.”


27 Ibid.
28 Ibid.
31 Ibid.
38 Ibid.
43 UN General Assembly, CRPD, Article 1.
45 Mark Priestley, ed., Disability and the Life Course: Global Perspectives, (Cambridge University Press, 2001); Eva Jeppson Grassman and Anna Whitaker, Ageing with Disability – A Life course

47 For a useful discussion of the usefulness of the UN CRPD in the context of a possible convention on the rights of older persons see Ralph Ruebner, Teresa Do, and Amy Taylor, eds., International and Comparative Law on the Rights of Older People, (Vandeplas Publishing, 2015).


51 See e.g. Case C-303/06 Coleman v. Attridge Law & Steve Law (2008) ECJ in which the European Court of Justice determined a mother of a disabled person was protected under the provisions of Directive 2000/78.


53 The Secretariat can be contacted at: Department of Economic and Social Affairs, Two United Nations Plaza, New York, NY, 10017, United States of America, Fax: +1-212-963-0111, E-mail: enable@un.org.

54 “World Report on Disability”.


56 This section of the 2030 Agenda was negotiated towards the end. The leaders of the organisations of persons with disabilities discussed whether they should advocate to alter vulnerable to at risk. However, considering the sensitive final stages of negotiations, decision was reached not to advocate in order to ensure rather more references to persons with disabilities than less.


58 Ibid.


60 At the time of the report in September 12th 2016, 19 out of the 22 volunteering countries had submitted both short and long reports. Out of the 19 countries with full reports, the following 17 referenced persons with disabilities directly. Egypt, Estonia, Finland, Georgia, Germany, Madagascar, Mexico, Montenegro, Norway, Philippines, Republic of Korea, Sierra Leone, Switzerland, Togo, Turkey, Uganda and the Bolivarian Republic of Venezuela.

61 Egypt, Finland, France, Madagascar, Morocco, Norway, Sierra Leone, and Samoa.

62 For more information on the Council of Europe see: https://www.coe.int/en/web/portal/home.

63 Council of Europe, “Recommendation (92) 6.”

64 2017-2023 version available at: https://rm.coe.int/16806fe7d4; see generally https://www.coe.int/en/web/disability.


67 For more information on the European Court of Human Rights please see http://www.echr.coe.int/Pages/home.aspx?p=home&c=.

71 For more information see the Council of Europe Fact Sheet http://www.coe.int/t/dghl/monitoring/socialcharter/Theme%20ofactsheets/FactsheetDisabled_en.pdf.
72 At the time of writing, the Commissioner was Nils Muižnieks (2012-2018).
79 Ibid, Article 2.
81 Available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM%3A2010%3A0636%3AFIN%3Aen%3APDF.
82 For more information on EU FRA see http://fra.europa.eu/en.
84 Ibid.
85 For more information on ENNHRI please see http://www.ennhri.org/.
86 For the full list of members, see http://www.unescap.org/about/member-states.
87 For further details: http://www.maketherightreal.net/incheon-strategy/introduction.
89 One of the recommendations of the Incheon Strategy was for every Working Group member to submit a structured and concise report on the implementation of the Strategy for the first two years; accordingly reporting formats were prepared for both governments and civil society. For details, see https://www.preventionweb.net/publications/view/34904.
91 The ASEAN Disability Forum comprises of multiple stakeholders, including the ASEAN member States, the ASEAN Secretariat, development agencies, civil society organisations, media, business sector, academic groups, Disabled People’s Organisations (DPOs) and disability-related organisations. For more information see http://aseandisabilityforum.org/digaleri/.
92 See http://aseandisabilityforum.org/digaleri/.


95 For more information see http://www.apcdfoundation.org/.


97 Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific available at https://www.unescap.org/resources/incheon-strategy-%E2%80%9Cmake-right-real%E2%80%9D-persons-disabilities-asia-and-pacific


99 Russia joined the GOF later.


103 “Cooperation in the field of statistics,” SAARC Secretariat, http://globalsummitryproject.com.s197331.gridserver.com/archive/saarc/saarc-sec.org/areaofcooperation/detail23d4.html?activity_id=41; In 2013, SAARC also launched an academic cooperation programme; titled the SAARC Regional Inter-professional Master’s Program in Rehabilitation Science, its aim is “To create a cadre of leaders capable of advancing education, research and practice in the field of disability and rehabilitation in Bangladesh and participating countries of the SAARC region”. More information can be found at http://www.sdfsec.org/?q=node/341.

104 Available at http://sadsf.asia/.


106 See for example the ASEM Labour and Employment Ministers’ meetings that have taken place in Viet Nam in 2012, and in Bulgaria in 2015; see also the ASEM summit documents, available at www.aseminfoboard.org.

107 For more information, see https://europa.eu/capacity4dev/file/27671/download?token=1Q9GdNG_…


109 As of May 2016 (the 10th anniversary of the CRPD), there were 175 state parties to the Convention.
CIVIL SOCIETY & GOVERNMENT ACTORS SHOULD WORK TOGETHER

Antonio A. MORALES, Ambassador, Embassy of the Philippines, Singapore

(Closing remarks at the 16th Human Rights Seminar)

Colleagues, friends, fellow participants, the 16th Informal ASEM Seminar on Human Rights, "Persons with Disabilities and Human Rights", is now coming to a close.

Allow me, first of all, to express on behalf of the Department of Foreign Affairs of the Philippines and our co-organizers - Asia-Europe Foundation, Raoul Wallenberg Institute, the French Ministry for Europe & Foreign Affairs, the Federal Department of Foreign Affairs of Switzerland and all the participants, our heartfelt gratitude to our gracious hosts, the Ministry of Foreign Affairs of the People's Republic of China, China Disabled Persons' Federation (CDPF) and the China University of Political Science and Law (CUPL), for the friendship, warm hospitality and excellent arrangements for this Seminar.

I also wish to thank a number of individuals who contributed to the success of this three-day event: the moderators who facilitated the working group discussions; the rapporteurs who made sure that all that have been discussed in the four (4) working groups are incorporated into the consolidated report of this Seminar; the hard-working people of ASEF headed by its Executive Director Ambassador Karsten WARNECKE and the women and men at the China Administrative Center for Sports of Persons with Disabilities who made sure that the participants have a memorable stay, good food to eat and suitable venues for the discussions.

May I also thank all the participants for your very active participation and valuable contribution to this Seminar. As a participant myself, I was very much impressed by the quality of participation, knowledge of the participants, who were eager to share and learn from each other.

I came here to China in three (3) different capacities - first, as the Philippines Ambassador to Singapore; second, I am also the Philippine Board Governor for ASEF; and third, as Technical Coordinator of the Philippines, which is a co-organiser of this Informal ASEM Seminar on Human Rights series.

This is the first Seminar that I have participated in – and on behalf of the Philippines – and the other co-organisers that I have already mentioned, it is my pleasure to have the opportunity to address you today.

The Philippines has been an active member of both ASEF and ASEM – and it has pleased me greatly to see us exchanging views on relevant issues here at this Seminar. I understand that these issues have been discussed in a number of forums, however, the topic of the rights of persons with disability has been taken up using a rights-based approach in the context of ASEM, for the first time.

The UN Convention on the Rights of Persons with Disabilities charts a new approach to thinking – and what social inclusion should really mean. Indeed, changes in attitude, policies and approach on the subject had been among the concepts that had animated our discussions.

It is important to share experiences and examples from across the member states – so that we learn from each other – and also learn together - and I am happy to see so many representatives from Asia and Europe sharing their experiences over the past few days. Indeed, national implementation and international cooperation can go hand-in-hand and mutually support each other.
The Philippines, which I represent, has, for a long time, attached great importance to the issue of persons with disabilities (PWDs). In the course of our efforts to promote and protect the rights of PWDs, we have accumulated a good amount of experience in terms of generating enabling laws - starting with the Magna Carta for Disabled Persons in 1992 - to advance the cause of PWDs.

The Magna Carta is a milestone legislation that provides for, among other things, opportunities for PWDs to realise their full potential and participate in all aspects of life in society.

Incidentally, the topic of the Seminar is very relevant as the Philippines assumes the chairmanship of ASEAN in 2017. Human Rights is one of the priorities of the Philippine chairmanship under the theme, "Partnering for Change, Engaging the World." In this regard, the Philippines is committed to the realization of a People-Oriented, People-Centered ASEAN Community.

It is our hope that we can push for stronger regional cooperation in our efforts to advance the cause of human rights under our chairmanship in ASEAN to complement the work of other mechanisms like ASEF.

As we conclude this Seminar, allow me to highlight some of the points that we have touched on:

- States need to make policy-making more inclusive; more participatory; more responsive.
- Multi-stakeholder cooperation is the only way forward; no one actor can do it alone; DPOs, civil society and government actors should work together, in consultation, cooperation and partnership.
- There are intersectionalities and cross-cutting issues of disability, such as aging, women and children. Just as we are conscious to mainstream these issues, we need to also encourage an understanding of what mainstreaming disability means.
- Just as much as we need to push for CRPD implementation at the national level, we also need to apply it at the regional levels. At the regional level, we look forward to the outcomes of AICHR consultations and the continuing active role of the ASEAN Disability Forum.
- My final takeaway is that we are now at the threshold of immense opportunity. The CRPD and the UN Sustainable Development Goals (SDGs) are both pushing for inclusive communities and better societies. We have the golden opportunity to make this happen in a positive, holistic way while ensuring that nobody is excluded or left behind.

I wish you have all learned from the discussions as I have. We look forward to the reports of the rapporteurs which we shall share with our colleagues.

Thank you and I wish you all safe travel back home!
<table>
<thead>
<tr>
<th>Acronym</th>
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<tbody>
<tr>
<td>AAPSC</td>
<td>ASEAN Political-Security Community</td>
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<td>ACWC</td>
<td>ASEAN Commission for the Promotion and Protection of the Rights of Women and Children</td>
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<td>ADA</td>
<td>Americans with Disabilities Act</td>
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<td>ADF</td>
<td>ASEAN Disability Forum</td>
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<td>AEC</td>
<td>ASEAN Economic Community</td>
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<td>AICHR</td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
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<td>APCD</td>
<td>Asia-Pacific Development Center on Disability</td>
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<td>APEC</td>
<td>Asia-Pacific Economic Cooperation</td>
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<td>APSC</td>
<td>ASEAN Political-Security Community</td>
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<td>ASCC</td>
<td>ASEAN Socio-Cultural Community</td>
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<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<td>ASEF</td>
<td>Asia-Europe Foundation</td>
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<td>ASEM</td>
<td>Asia-Europe Meeting</td>
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<tr>
<td>BRICS</td>
<td>Brazil, Russia, India, China, South Africa</td>
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<tr>
<td>CEDAW</td>
<td>The Convention on the Elimination of all Forms of Discrimination Against Women</td>
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<td>CERD</td>
<td>The Committee on the Elimination of Racial Discrimination</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>CSOs</td>
<td>Civil Society Organisations</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>DET</td>
<td>Disability Equality Training</td>
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<td>Disabled People Organisations</td>
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<td>DROs</td>
<td>Disability Rights Organisations</td>
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<td>European Disability Forum</td>
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<td>EU</td>
<td>European Union</td>
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<td>ESCAP</td>
<td>Economic and Social Commission for Asia and the Pacific</td>
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<td>FRA</td>
<td>EU Fundamental Rights Agency</td>
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<td>GOF</td>
<td>Group of Friends on Disability Issues</td>
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<td>GLAD</td>
<td>Global Action on Disability</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICF</td>
<td>International Classification of Functioning, Disability and Health (WHO)</td>
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<tr>
<td>ICIDH</td>
<td>International Classification of Impairments, Disabilities and Handicaps (WHO)</td>
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<td>IFES</td>
<td>International Foundation for Electoral Systems</td>
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<td>ILC</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>International Telecommunication Union</td>
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<td>Japan-ASEAN Integration Fund</td>
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<td>Millennium Development Goals</td>
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<td>Official Development Assistance</td>
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<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>PwDs</td>
<td>Persons with Disabilities</td>
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<td>PPPs</td>
<td>Public Private Partnerships</td>
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<td>SAARC</td>
<td>South Asian Association for Regional Cooperation</td>
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<td>SADF</td>
<td>South Asian Disability Forum</td>
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<td>SDGs</td>
<td>Sustainable Development Goals</td>
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<td>SRH</td>
<td>Sexual and Reproductive Healthcare</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UN CRPD</td>
<td>United Nations Convention on the Rights of Persons with Disabilities</td>
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<td>UN ESCAP</td>
<td>United Nations Economic and Social Commission for Asia and the Pacific</td>
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<td>UN SDGs</td>
<td>United Nations Sustainable Development Goals</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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<td>VNRs</td>
<td>Voluntary National Reviews</td>
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<td>WDO</td>
<td>World Disability Organisation</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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Day 1 – Tuesday, 8 November 2016

Venue: China Administrative Center of Sports for Persons with Disabilities

12:00 - 13:00  Lunch for participants

14:00 - 16:00  **Registration of participants**  14:00 - 15:30  **Rapporteurs and Moderators’ meeting**  
(Invitation only to rapporteurs and moderators)

Official Welcome
Venue: China Administrative Center of Sports for Persons with Disabilities

16:00 - 16:40  Chair: **Ambassador Karsten WARNECKE**, Executive Director, Asia-Europe Foundation (ASEF)

**Opening Speech on behalf of the Host**

**LI Baodong**, Vice Minister for Foreign Affairs (10 min)

**JIA Yong**, President of the China Disabled Persons Federation (10 min)

**HUANG Jin**, President of the China University of Political Science and Law (10 min)

**Opening Speech on Behalf of the Organisers**

**Göran MELANDER**, Professor Emeritus, Raoul Wallenberg Institute (10 min)

Plenary Session

16:40: 17:25  **Yannis YALLOUROS**, European Disability Forum (15 min)  
(UN CRPD and Article 4 obligations)

**Gerard QUINN**, Director of the Centre for Disability Law and Policy, NUI Galway (15 min)  
(Political Participation and Access to Justice)

**LI Xiaomei**, Deputy Director-General of the International Department of China Disabled Persons’ Federation (15 min)  
(International Cooperation and National Implementation)

17:25 - 18:00  **Open Plenary Discussion**

18:00 - 20:00  Welcome Reception
Day 2 – Wednesday, 9 November 2016

Venue: China Administrative Center of Sports for Persons with Disabilities

08:00 - 09:00  Registration of Participants (continued)

Simultaneous Working Groups

09:00 - 11:00  Working Group 1: Participation in Political and Cultural Life
Rapporteur: Gerard QUINN (Centre for Disability Law and Policy, NUI Galway)
Moderator: Rosemary KAYESS (Faculty of Law, UNSW)

Working Group 2: Social and Economic Inclusion
Rapporteur: Seree NONTHASOOT (Thai Representative to the ASEAN Inter-Governmental Commission of Human Rights)
Moderator: Arthur LIMBACH-REICH (Academic Network of European Disability)

Working Group 3: Legal Status, Justice and Remedy
Rapporteur: David RUEBAIN (Equality)
Moderator: Yoshikazu IKEHARA (Tokyo Advocacy Law Office)

Working Group 4: National Implementation and International Cooperation
Rapporteur: LI Xiaomei (China Disabled Persons’ Federation)
Moderator: Martina ORSANDER (MyRight- Empowers people with disabilities)

10:45 - 11:00  Coffee Break

11:15 - 12:00  Working Groups continued

12:00 - 13:00  Lunch

14:00 - 15:30  Working Groups continued

15:30 - 16:00  Coffee Break

16:00 - 18:00  Working Groups continued and Wrap-up

18:00 - 19:00  Working Group de-brief for Rapporteurs / Free Time for Participants

19:00 - 20:00  Seminar Dinner
**Day 3 – Thursday, 10 November 2016**

**Venue: China Administrative Center of Sports for Persons with Disabilities**

**Closing Plenary – Morning Session**

Venue: China Administrative Center of Sports for Persons with Disabilities

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<th>Time</th>
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| 09:30 - 10:30 | Chair: Rolf RING, Raoul Wallenberg Institute  
**Rapporteurs’ Summary on Each Working Group**  
Working Group 1: Participation in Political and Cultural Life  
Presentation – Gerard QUINN (15 min)  
Working Group 2: Social and Economic Inclusion  
Presentation – Seree NONTHASOOT (15 min)  
Working Group 3: Legal Status, Justice and Remedy  
Presentation – David RUEBAIN (15 min)  
Working Group 4: National Implementation and International Cooperation  
Presentation – LI Xiaomei (15 min) |
| 10:30 – 11:40 | Q&A Discussion |
| 12:00 - 13:00 | Lunch |

**Closing Plenary – Afternoon Session**

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| 13:00 - 15:00 | Panel: Mainstreaming Disabilities and Human rRghts: Sharing Best Practices from Asia and Europe  
Chair: Sandra LENDENMANN, Federal Department of Foreign Affairs of Switzerland  
- Paul GIBSON, New Zealand Disability Rights Commissioner (10 min)  
- Anne LAMMILA, Finland’s Ambassador-at-Large for Global Women’s Rights and Gender Equality (10 min)  
- Abdus Sattar DULAL, Bangladesh Protibandhi Kallyan Somity (10 min) |
| 15:00 - 15:30 | Concluding Remarks  
Ambassador Antonio MORALES, Philippines Ambassador to Singapore and Technical Coordinator to the Informal ASEM Seminar on Human Rights series |
| 18:30 – 20:30 | Dinner for participants |
| 17:30 – 18:30 | Steering Committee Meeting (by invitation only) |

**Day 4 – Friday, 11 November 2016**

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<th>Time</th>
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| 09:00 – 13:00 | Study Visit to Braille Press and Library by CDPF  
Lunch for Participants |
| 10:00 – 12:00 Noon | Steering Committee Meeting (by invitation only)  
Departure of Participants |
| 12:00 – 13:00 | Lunch for Participants |
ANNEX 3: CONCEPT NOTE

Introduction

The World Health Organization (WHO) estimates that about 1 billion people (15% of the world’s population) experience some form of disability, with about 80% of persons with disabilities living in developing countries.\(^1\) The 2011 World Report on Disability indicates that the female disability prevalence rate is 19.2 %, whereas it is 12% for men. In low and middle-income countries, this ratio becomes higher - women constitute 75% of all disabled people.\(^2\)

Perceptions of persons with disabilities vary across the world; persons with disabilities often face multiple discriminations at multiple levels which can affect the recognition and enjoyment of their rights – from socio-cultural and economic barriers to participation in mainstream society, to more distinct violations of their individual rights.\(^3\) Such discrimination can lead to exclusion and reduced standards of living – the World Bank estimates that 20% of the world’s poorest people are disabled, and are often regarded as being the most disadvantaged in their communities.\(^4\)

The Asia-Europe Meeting (ASEM) is an intergovernmental forum for dialogue and cooperation established in 1996 to deepen relations between Asia and Europe, which addresses political, economic and socio-cultural issues of common concern. Identifying disability discrimination as one of the major challenges for ASEM, leaders agreed on incorporating this issue into the ASEM cooperation framework at the 10\(^{th}\) ASEM Summit in 2015.\(^5\)

The 16\(^{th}\) Informal ASEM Seminar on Human Rights continues this focus on the promotion and protection of the rights of persons with disabilities, in 2016, from a human rights-based approach to this topic.

Background

International human rights instruments\(^6\) are meant to secure the rights of all persons and while they may not explicitly address disabilities, persons with disabilities are well included within their provisions. The UN Convention on the Rights of the Child was the first human rights treaty that explicitly prohibits discrimination on the basis of disability. Other human rights conventions that specifically cover disabilities include the European Social Charter, the ILO Convention concerning Vocational Rehabilitation and Employment; and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Disabilities.\(^7\)

The active inclusion of the rights of people with disabilities in the international human rights agenda dates back to the early 1980s when the United Nations declared 1981 as the International Year of Disabled Persons and in the following year adopted the World Programme of Action Concerning Disabled Persons. The World Programme, which was a global strategy to enhance the protection and participation of persons with disabilities, emphasised the need to apply a human rights perspective to disability issues. To encourage member States to implement the World Programme, the General Assembly proclaimed 1983-1992 the United Nations Decade of Disabled Persons.\(^8\)

In 2001, the UN General Assembly established an Ad Hoc Committee to consider proposals for a convention to promote and protect the rights and dignity of persons with disabilities\(^9\) – culminating in the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol.

While the Millennium Development Goals (2000-2015) omitted the need to involve persons with disabilities in every aspect of development, disability is referenced in the new Sustainable Development Goals (SDGs) which were adopted in 2015, specifically in those parts of the SDGs that relate to education, growth and employment, inequality, accessibility of human settlements, as well as data collection and monitoring.\(^10\)
Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD which entered into force on 3rd May 2008 is a first in many rights. In addition to being the fastest negotiated human rights treaty and having the highest number of signatories on the date it was opened for signature,\(^{11}\) it is also the first human rights convention open for signature by regional organisations. As of November 2015, the Convention had 160 State Parties.\(^{12}\) The CRPD does not establish new rights nor does it attempt to provide a definition of what ‘disability’ is. Instead it lays down the minimum standards that are required to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.\(^{13}\)

Recognising that disability is an evolving concept, Article 1 of the CRPD outlines that “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. The emphasis as noted in the Preamble is on the “interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”.\(^{14}\) This is seen as recognition that in different societal contexts, disability can be understood differently.\(^{15}\)

In 2014, the Human Rights Council by its resolution 26/20 created the Special Procedure of the Special Rapporteur on the Rights of Persons with Disabilities. In addition to conducting regular dialogue with States and other stakeholders on the identification and promotion of good practices, the Special Rapporteur has the mandate to receive and exchange information on violations of the rights of persons with disabilities, recommend on how to better promote and protect their rights, and to provide technical assistance to that purpose. The Special Rapporteur reports to the Human Rights Council, and cooperates with the Conference of State Parties to the CRPD and the Commission for Social Development.\(^{16}\)

Regional Developments

Asia

It is estimated that approximately 650 million persons have some form of disability in Asia and the Pacific.\(^{17}\) So far, 37 Governments in Asia-Pacific have ratified the CRPD.\(^{18}\)

At the wider Asia-Pacific level, the UN ESCAP member states\(^{19}\) adopted in 2012 the Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific. Based on the principles of the CRPD, the Incheon Strategy comprises 10 specific time-bound disability-inclusive development goals, 27 targets and 62 indicators similar in structure to the Millennium Development Goals. It is the first set of regionally agreed disability-inclusive development goals.\(^{20}\) The Incheon Strategy builds on the CRPD and the 2004 Biwako Millennium Framework for Action whose goal was to promote an inclusive, barrier-free and rights-based society for persons with disabilities in the Asia-Pacific.\(^{21}\) In 2015, 12 governments reported on the implementation of the Incheon Strategy – all 12 reported that they had established national focal points to coordinate its implementation.\(^{22}\)

At the sub-regional level, ASEAN proclaimed 2011-2020 as the ASEAN Decade of Persons with Disabilities, dedicated towards ensuring the effective participation, and mainstreaming the perspectives, of persons with disabilities in ASEAN policies and programmes.\(^{23}\) In 2011, ASEAN adopted the Bali Declaration on the Enhancement of the Role and Participation of Persons with Disabilities in the ASEAN Community, establishing with it the ASEAN Disability Forum.\(^{24}\)
Europe

It is estimated that about 80 million people experience some form of disability in the EU.25 In the wider context of the Council of Europe (CoE), this figure is between 80 and 120 million people.26

The CoE’s Disability Action Plan 2006-2015 draws attention to 15 ‘action lines’ including participation in political and cultural life, accessibility and the needs of particularly vulnerable groups such as women and children.27 In 2015, the CoE held a conference to take stock of the implementation of its Disability Action Plan and to set out the priorities for the future CoE Disability Strategy (post-2015 four-year disability framework) which will focus on improving the implementation of the CRPD.28

The EU signed the CRPD in 2007 and has been a party to the Convention since 2011. In relation to EU policy, the European Disability Strategy 2010 – 2020 is considered to be the main reference document. Adopted by the European Commission in 2010, it sets the Commission’s agenda for the implementation in the EU of the UN CRPD. It contains eight main thematic areas: accessibility, participation, equality, employment, education and training, social protection, health and external action. It is underpinned by concrete actions which are ongoing at EU level as well as to support and complement national activities, thus seeking to create consistency in national efforts with a wider European disability framework.29 The overall aim of the Strategy is to empower people with disabilities so that they can fully enjoy their rights and participate in society and in the economy on an equal basis with others.30

In 2013, the EU operationalised its Framework for the UN Convention on the Rights of Persons with Disabilities which promotes, protects and monitors the implementation of the CRPD in EU countries.31 The Framework comprises of five members – the European Parliament, the European Ombudsman, the European Commission, the European Disability Forum (EDF) and the EU Agency for Fundamental Rights (FRA).

A Rights-based Approach to Disabilities

By highlighting the significance of societal barriers to the full enjoyment of human rights by persons with disabilities, the 2006 Convention marks a definite shift from the previous ‘welfare’ approach to a ‘rights’ based approach - people with disabilities are not ‘minority interest groups’ or ‘welfare beneficiaries’ but are ‘holders’ of rights.32 It identifies which policy gaps need addressing and which areas require reinforcement in protecting rights.33

The violence and discrimination that persons with disabilities face in their daily lives has been well documented.34 Persons with disabilities can face discrimination in multiple fields such as education, employment, housing, access to public services and spaces and political participation.35 A report by the European Union Agency for Fundamental Rights (FRA) on the political participation of persons with disabilities found that even in instances where reforms have been made to grant full voting rights to persons with disabilities, they may not apply to all kinds of elections since in many member States, different laws apply to different types of elections.36 Significantly, the report noted that barriers to political participation do not affect all persons with disabilities equally – those with a high level of impairment, or with particular types of impairment, such as intellectual disabilities, face considerably greater discrimination.37

The ILO estimates that of the total world population of persons with disabilities, 785 million are of working age.38 In many countries, legislation to prevent discrimination against persons with disabilities seeking employment exists – from employment quotas to mandatory inclusion in job centres.39 Studies have been done to document company practices on disability inclusion,40 however as an International Disability Alliance report points out, “the concept of reasonable accommodation is however still largely unknown and it is important that States provide additional information to employers, trade unions, and persons with disabilities on the concepts of reasonable accommodation and undue hardship”.43
While all ILO standards apply to persons with disabilities, the primary ILO standard is the *ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, the *ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)* and its accompanying *Recommendation (No. 168)*. The ILO has also launched a Global Business and Disability Network of multinational enterprises, employers’ organisations and business networks and disability rights organisations (DROs) to improve disability inclusion in the private sector. Even with the existence of such measures, persons with disabilities suffer higher unemployment rates and lower labour market participation rates.

Similarly, the literacy rates for persons with disabilities remains lower compared to the rest of the population. Article 24 of the CRPD focuses on the importance of an inclusive education for all; UNICEF and UNESCO have set up the Education Task Force of the Global Partnership for Children with Disabilities to assist States in implementing Article 24. DROs point out that much of the focus has remained on ‘school based’ education for children; adult education and non-formal education don’t receive as much attention.

Both Article 27 of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide the right of participation in the cultural life of the community to all persons. Article 30 of the CRPD calls on States to take appropriate measures to ensure that persons with disabilities can participate in cultural life on an equal basis, that their specific cultural and linguistic identity be recognised and supported, and to ensure that they have the opportunity to “develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society”. This is also reflected in the Council of Europe’s Disability Plan which stresses the importance of taking into account the situation and rights of persons with disability when formulating cultural policies.

Poverty and Disability can be both a cause and a consequence since each condition can exacerbate the other. Studies and reports from across the world indicate poverty rates for persons with disabilities are consistently higher than for those without disabilities. The World Social Protection Report 2014-2015 highlights the fact that persons with disabilities are insufficiently covered in national social protection programmes in many countries – from lack of access to adequate public housing, transport and healthcare, to insufficient disability-related assistance such as benefits programmes.

Several disability advocates point out how the imagery often used to depict people with disabilities can perpetuate stereotypes; disabilities should not be seen as being “negative”. Yet the stigma and prejudice which causes disability discrimination becomes compounded when people are disadvantaged not only due to their impairments, but also their age, sex, ethnicity, origin, sexual orientation etc. A 2012 systematic review on violence against adults with disabilities found that persons with disabilities are 1.5 times more likely to be a victim of violence than those without a disability; those with mental disabilities are at nearly 4 times the risk.

Research demonstrates that the incidence of maltreatment and violence against women with disabilities far exceeds that of women without disabilities, and more so than men with disabilities. Women and girls with disabilities “face the same spectrum of human rights abuses that non-disabled women face, but their social isolation and dependence magnifies these abuses and their consequences...because women with disabilities are more isolated than most underrepresented groups, their plight typically has not been addressed”. Similarly, children with disabilities are almost 4 times more likely to experience violence than non-disabled children.

Although there are no global statistics regarding indigenous persons with disabilities, available data show that indigenous persons are often disproportionately likely to experience disability in comparison to the general population. Given their indigenous identity and disability status, they are also vulnerable to multiple forms of discrimination. Facing a complex set of discrimination, indigenous women and girls with disabilities are at higher risk of violence than girls and women without disabilities; they are often disproportionate victims of sexual violence.
**Refugees and Displaced Persons with Disabilities** are yet another invisible group whose needs are often overlooked, especially in the early phases of humanitarian emergencies. Article 11 of the CRPD seeks to ensure the protection and safety of persons with disabilities in situations of conflict, emergency and disaster. The mainstreaming of disabilities into Disaster Risk Reduction (DRR) has also received attention in recent years.\(^{62}\)

### Access to Remedy

Access to remedies is important to safeguard the rights of persons with disabilities. However, this in itself may require some accommodation – from physical access to police stations and courts, to adequate provisions for interpretation\(^ {63}\) and accessible formats for information and legal materials. Special victim support and shelter along with specialist assistance may also be required to support reporting. Article 13 of the CRPD highlights the requirement for States to provide effective access to justice to persons with disabilities and to facilitate their ability to take part in all legal proceedings as indirect and direct participants.\(^ {64}\)

The CRPD recognises that all persons, including those with disabilities, are equal before the law and entitled, without any discrimination, to equal protection under the law.\(^ {65}\) However, in several jurisdictions, persons with disabilities may not have their legal capacity recognised and they may be placed under legal guardianship, which can have adverse effects on their legal rights.\(^ {66}\) Barriers to access to justice has been pointed out as a particular concern for women with disabilities.\(^ {67}\)

Article 12 of the CRPD addresses legal capacity; it reiterates the right of persons with disabilities to recognition everywhere as persons before the law; they enjoy legal capacity on an equal basis with others and that States Parties are required to take measures to support persons with disabilities in exercising their legal capacity – including their rights to own or inherit property and manage their own financial affairs (including access to bank loans and financial credit).

The Optional Protocol accompanying the CRPD is an international treaty which establishes two procedures aimed at strengthening the implementation and monitoring of the Convention. The first is an individual communications procedure which allows the Committee of Experts to receive petitions from individuals and groups of individuals;\(^ {68}\) the second is an inquiry procedure which gives the Committee authority to undertake inquiries of grave or systematic violations of the Convention.\(^ {69}\) The Optional Protocol, which entered into force at the same time as the CRPD, has seen slower uptake – as of 2015, it has 92 signatories and 88 parties.\(^ {70}\)

### Mainstreaming disabilities

Article 32 of the CRPD emphasises the importance of international cooperation, requiring States to work “in partnership with relevant international and regional organisations and civil society, in particular organisations of persons with disabilities”. It has been noted that organisations representing persons with disabilities (DPOs) are not engaged in the UN Universal Periodic Review (UPR) where there is little to no coverage of disability rights in State Party UPR reports. Engagement by DPOs in the UPR process creates visibility and supports DPO engagement with national governments and international organisations.\(^ {71}\) National Human Rights Institutions (NHRIs) and ombudsman offices play an important role in monitoring and implementing the CRPD.\(^ {72}\)

The CRPD also requires that development programmes be inclusive and accessible to persons with disabilities. Redressing discrimination and enhancing the protection of the rights of persons with disabilities requires the mainstreaming of disability which can be understood as “a process in which development policy and programmes designed to benefit everyone in a specific geographical area explicitly include people with disabilities in their design, taking into account their specific needs at all relevant levels. The underlying philosophy is the human rights approach, as it seeks to ensure that the same rights and opportunities accorded to others should be available to people with disabilities, making any necessary accommodation”.\(^ {73}\)
As part of ensuring greater access in public life, the International Telecommunication Union (ITU) has called for internet communication technologies (ICTs) to be an integral part of a disability-inclusive development agenda, “ensuring accessible ICTs for persons with disabilities and expanding access to these technologies, as well as to assistive technologies, should become a key element of global, regional and national strategies to remove the remaining barriers faced by persons with disabilities”. A 2013 ITU report points out that only 36% of countries have a definition of accessibility which includes ICT or electronic media in their laws of regulations compliant with the definition of accessibility in UNCRPD Article 9.

The lack of data and information on disability contributes to the invisibility of persons with disabilities in official statistics, preventing the planning and implementation of policies and programmes that are inclusive of persons with disabilities. Goal 17 of the SDGs stresses that the collection of data and monitoring and accountability of the SDGs are crucial to strengthen the means of implementation; data should be disaggregated by disability. Separate from the SDGs, the UN General Assembly has also on several occasions stressed the importance of improving disability statistics, in accordance with international standards, such as those developed by the Washington Group on Disability Statistics. The outcome document of the General Assembly’s High-level Meeting on Disability and Development included a call for all development policies and their decision-making processes to take into account the needs of, and to benefit, all persons with disabilities, including those of indigenous peoples.

16th Informal ASEM Seminar on Human Rights

The Informal ASEM Seminar on Human Rights series was launched in 1997 to deepen relations between civil society actors and governments in Asia and Europe on human rights issues. The Seminar series is co-organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe & Foreign Affairs, the Philippine Department of Foreign Affairs and the Swiss Federal Department of Foreign Affairs. The 16th Informal ASEM Seminar on Human Rights is hosted by the Ministry of Foreign Affairs of the People’s Republic of China and the China Disabled Persons’ Federation.

Participation in the 16th Informal ASEM Seminar on Human Rights will take place in four simultaneous working group discussions (on Day 2), on the following topics:

I. Participation in Political & Cultural Life

II. Social & Economic Inclusion

III. Legal Status, Justice & Remedy

IV. National Implementation & International Cooperation

In addition to the guiding questions specific to each working group, there are cross-cutting questions which are valid across all the four working groups. The cross-cutting questions and the working group questions can be found below:

I. Participation in Political & Cultural Life

1) What are the gaps in efforts undertaken so far for improving political participation of persons of disabilities? Examples of any successful measures?

2) The effects of depriving a person of their legal capacity can be far-reaching. What measures are required to support persons with disabilities in exercising their legal capacity – including their rights to political participation, to own or inherit property and manage their own financial and legal affairs?
3) Reducing discrimination requires multiple and consistent efforts to engage the wider public. What are the more successful campaigns that have been undertaken in this regard?

4) As efforts to remove the barriers to political participation require multidisciplinary cooperation and coordination among relevant stakeholders, what is the best way to avoid unnecessary duplication of efforts and to make them sustainable in the long-term?

5) Mainstreaming the CRPD in national policies and programmes to improve the participation of persons with disabilities is important. Have any assessments been conducted of how successfully the Convention has been implemented? (Examples of good practices?)

6) The Optional Protocol, which entered into force at the same time as the CRPD, has seen slower response – how does one improve uptake of the principles of the optional protocol?

7) Access to, and participation in, cultural and sporting life is an important right. In this regard, what are the existing best practices in designing inclusive cultural policies? How to improve the engagement of national and local authorities with disability rights organisations in this regard?

II. Social & Economic Inclusion

1) In terms of accessing social protection (including housing, financial assistance, social services, pension benefits), what gains have been made in making this more inclusive for persons with disabilities? Especially for vulnerable groups such as women with disabilities and older persons with disabilities?

2) Are there codes/frameworks of good practice that service providers need to follow – especially when States contract private firms for public services (housing, insurance etc)?

3) To what extent have local community-based interventions (interventions that target not just persons with disabilities but also the larger society) been successfully utilised in poverty-reduction and social inclusion strategies? What are the factors determining success? How to strengthen such programmes?

4) Effective access to services hinges on effective access to information. What efforts have been made to improve access to information, including the internet? What are the resources available to service providers to ensure wider access?

5) How does one improve labour market participation when, in spite of legislation and policy measures, the employment needs of many persons with disabilities remain unmet? To what extent have other stakeholders (eg, employers and the private sector) been involved? (Instances of existing initiatives to assist private employers in implementing CRPD requirements and improving access to jobs; efforts of institutions like the Global Compact.)

6) What appropriate measures have been undertaken to make healthcare more inclusive of the needs of persons with disabilities, including the provision of sexual and reproductive health services (issues of consent, guardianship and cultural practices)?

7) With regard to education, what are the barriers to access to educational opportunities, especially when it comes to adult and non-formal education? How can they be addressed?
III. Legal Status, Justice & Remedy

1) For persons with disabilities who have been placed under legal guardianship, what guarantees need to be in place to ensure there is no breach of trust in that position?

2) What efforts have been undertaken (and are further required) to reduce the legal and physical barriers to access remedy? What special considerations are needed for vulnerable groups to facilitate their ability to participate in legal proceedings?

3) How can law enforcement agencies and civil society organisations provide specialist assistance to persons with disabilities in reporting crime and to seek appropriate remedy?

4) What have been the experiences (successes and challenges faced) of NHRIs and ombudsman offices in ASEM countries in conducting inquiries and receiving complaints?

5) What training does the judiciary need in order to be sensitive to a human-rights based approach to disability? Also for law enforcement bodies and other agencies?

6) What has been the experience of DPOs (organisations representing persons with disabilities) in approaching the Courts on behalf of individuals? What cooperation efforts exist?

7) In the context of implementing the CRPD at the judicial level, are specific laws required to protect persons with disabilities or is it just a matter of mainstreaming the Convention into existing human rights protection laws?

IV. National Implementation & International Cooperation

1) Article 33 of the CRPD emphasises the importance of international cooperation. How has this translated into practice? And what are the inadequacies in the current level of cooperation?

2) At the international level, what mechanisms or structures must be in place to improve the coordination and guidance on the implementation of the CRPD?

3) What role do regional organisations such as the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the European Union Agency for Fundamental Rights (FRA) play in improving capacity of member States?

4) The inclusion of disability in the Sustainable Development Goals (SDGs) is a positive development but what are the next steps forward?

5) Goal 17 of the SDGs stresses that the collection of data and monitoring and accountability of the SDGs. To what extent does the lack of reliable methodology that can provide accurate information and data affect efforts to include persons with disabilities in development indicators? How can the situation be improved?

6) What are the avenues for reporting on the progress made or challenges faced in the implementation of the CRPD? How to ensure the participation of disability rights organisations in reporting on disability at the international level (eg, Universal Periodic Review)?

7) International cooperation also needs to be inclusive. In this regard, what are the existing efforts to involve persons with disabilities in international and regional policy decisions? What are the obligations of States to ensure that the voices of DPOs are heard and respected?
Cross-cutting Questions

1) Disability is an evolving concept and cannot be definitively defined. Yet, does the lack of an international definition have implications for policy coherence (both vertical and horizontal; at international, regional and national levels) when in many countries disability definitions do exist for policy-making?

2) How are aid agencies responding to the needs of persons with disabilities in humanitarian and disaster emergency situations? What are the special protections required for refugees with disabilities?

3) What special concerns/considerations need to be made for vulnerable populations such as women, children, indigenous peoples and other groups, in all aspects of the debate on human rights and disability? How successful have efforts been in mainstreaming disability into gender violence programmes?

4) What are the implications for disabilities in an aging society? Especially in the absence of social safety nets in many countries?

5) What support is provided to the care-givers and families of persons with disabilities? Are their needs included in stakeholder surveys and engagement? (Examples if any.) Furthermore, how do we improve DPOs (organisations representing persons with disabilities) engagement in the policy design and provision of services?

6) What has been the impact of ICTs in furthering disability-inclusive development?
**Endnotes:**


4. In 2015, China hosted ASEM’s first high-level meeting on disability. Titled “Breaking Barriers for Inclusive Development”, the meeting focused on how ‘disability collaborations within the ASEM framework would be a good example of how inclusion of persons with disabilities could be translated from broad statements at the international level into specific action that makes difference to the lives of persons with disabilities’, 29-30 October 2015, China, [http://www. aseminfoboard.org/events/asem-cooperation-disability](http://www. aseminfoboard.org/events/asem-cooperation-disability)

5. For example, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

6. In addition several non-binding international instruments have been adopted at the international level on disabilities such as the 1971 Declaration of the Rights of Mentally-Retarded Persons; the 1975 Declaration on the Rights of Disabled Persons; the 1983 ILO Recommendation concerning Vocational Rehabilitation of the Disabled; the 1989 Tallinn Guidelines for Action on Human Resources Development in the Field of Disability; the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities; the 1991 general recommendation no. 18 on disabled women by the Committee on the Elimination of Discrimination Against Women; and the 1994 general comment on persons with disabilities by the Committee on Economic, Social and Cultural Rights. At the regional level, the 1999 Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities has been an important turning point.


8. Calls for drafting a convention on the human rights of persons with disabilities date back to 1987 when the first international review of the WPA implementation was held in Sweden. Proposals had subsequently been made by Italy and Sweden but no consensus could be reached at the time. Ibid.


11. All of the 51 ASEM member countries are signatories to the CRPD, 46 ASEM member countries are parties. The European Union is also a party to the CRPD OHCHR indicators of treaties: [http://www.ohchr.org/EN/HRBodies/CRPD/Pages/QuestionsAnswers.aspx](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/QuestionsAnswers.aspx)


18 Kazakhstan is the most recent ESCAP member State to join in ratifying the CRPD. http://www.maketherightreal.net/how-many-countries-have-ratified-crpda-asia-and-pacific
19 For the full list of members, see http://www.unescap.org/about/member-states
20 For further details: http://www.maketherightreal.net/incheon-strategy/introduction
21 The Biwako Millennium Framework was followed by the 2007 Biwako Plus Five. See more at: http://www.asksource.info/resources/biwako-millennium-framework-action-towards-inclusive-barrier-free-and-rights-based-socie-0#sthash.2p8eYt0z.dpuf
22 One of the recommendations of the Incheon Strategy was for every Working Group member to submit a structured and concise report on the implementation of the Strategy for the first two years; accordingly reporting formats were prepared for both governments and civil society. For details, see http://www.unescapsdd.org/files/documents/PUB_Incheon-Strategy_EN.pdf
24 The ASEAN Disability Forum comprises of multiple stakeholders, including the ASEAN member States, the ASEAN Secretariat, development agencies, civil society organisations, media, business sector, academic groups, Disabled People’s Organisations (DPOs) and disability-related organisations. http://aseandisabilityforum.org/digaler
27 http://www.coe.int/en/web/portal/people-with-disabilities
29 The following documents should be noted in the general policy framework on disability – the EC’s 2003 Guidance Note on Disability and Development; the European Parliament’s 2006 Resolution on Disability and Development. Furthermore, the European Instrument for Democracy and Human Rights (EIDHR) promotes the mainstreaming of the rights of people with disabilities throughout its strategy and projects. See more at: http://www.easpd.eu/en/content/european-disability-strategy-2010-2020#sthash.R9vkWrBT.dpuf
30 The current list of actions of the Strategy end in 2015. A progress report is planned to be published mid-2016. The preparatory process includes a public consultation, including a targeted consultation of persons with intellectual disabilities.
31 For more information how EU framework members contribute towards promoting, protecting and monitoring respectively, see Commission’s 2015 reply to the UN on implementation of UN CRPD: http://ec.europa.eu/social/main.jsp?langId=en&catId=1137&newsId=2242&furtherNews=yes
32 Disability Treaty Closes a Gap in Protecting Human Rights, United nations enabler, backgrounder, 2008)
33 http://www.ohchr.org/EN/HRBodies/CRPD/Pages/QuestionsAnswers.aspx
35 Barriers to political participation are a common occurrence in many countries and can vary from legal restrictions on the right to vote for some persons with disabilities to more administrative barriers such as inaccessible voting information or inaccessible polling stations which can serve to effectively disenfranchise persons with disabilities For more information see http://www.internationaldisabilityalliance.org/sites/disalliance.e-presentaciones.net/files/public/files/IDA_Index_Online%20page_final.pdf
36 FRA and ANED (2014), The right to political participation for persons with disabilities: human rights indicators.
37 Ibid.
39 Examples include Germany, Japan and India. See http://aif.org/wp-content/uploads/2015/03/DisabilityManual_3-2015.pdf 40 For example, see Singapore’s employment services for persons with disabilities https://www.sgenable.sg/pages/content.aspx?path=employment/


42 Article 2 of the CRPD defines "reasonable accommodation" as necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.


44 In addition, the ILO adopted the ILO Code of Practice on Managing Disability in the Workplace, 2002. Non-binding in nature and aimed primarily at employers, the Code reflects the significant changes that have taken place in the understanding of disability, and in legislation, policies and services concerning people with disabilities since 1983.


46 ILO (2015), Disability Inclusion Strategy and Action Plan 2014-17. As part of its Disability Inclusion Strategy and Action Plan 2014-2017, the ILO will follow a “twin-track approach to disability inclusion. One track allows for disability-specific programmes or initiatives aimed at overcoming particular disadvantage barriers or barriers, while the other track seeks to ensure the inclusion of disabled persons in mainstream services and activities, such as skills training, employment promotion, social protection schemes and poverty reduction strategies”. See http://www.iolo.org/skills/pubs/WCMS_370772/lang--en/index.htm

47 A 1998 UNDP survey estimated that literacy rates for adults with disabilities in developing countries was possibly as low as 3%, and 1% for women with disabilities. These statistics led to the 1994 Salamanca Statement and Framework for Action on Special Needs Education.


51 Also see CoE’s Recommendation No. R(86)18 on the European Charter on Sport for All: Disabled Persons. The recommendation stresses the significance of sports and recreation for the well-being of persons with disabilities and calls on governments to take steps to make sports facilities accessible and to foster cooperation between the various stakeholders.

54 With regard to age, it should be noted that while children are a vulnerable group, disability also becomes a cross-cutting issue with the rights of older persons. This latter group, according to the WHO, is only set to increase.
55 Article 6 of the CRPD notes the multiple discriminations that women and girls with disabilities are subject to; Article 7 pays attention to children with disabilities.
58 See http://www.stopvaw.org/women_with_disabilities
59 Jones L, Bellis MA, Wood S, Hughes K, McCoy E, Eckley L, Bates G, Mikton C, Shakespeare T, Officer A. Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies. Lancet 2012 Sep 8;380(9845):899-907. doi:10.1016/S0140-6736(12)60692-8. Epub 2012 Jul 12. The review indicated that children with disabilities are 3.7 times more likely than non-disabled children to be victims of any sort of violence, 3.6 times more likely to be victims of physical violence, and 2.9 times more likely to be victims of sexual violence. Children with mental or intellectual impairments appear to be among the most vulnerable, with 4.6 times the risk of sexual violence than their non-disabled peers.
60 Factors that make indigenous peoples more likely to experience disability include: high level of poverty, increased exposure to environmental degradation, the impact of large projects such as dams or mining activities and the higher risk of being victims of violence. UN Inter-Agency Support Group (IASG) on Indigenous Issues (2014), Rights of Indigenous Peoples/Persons with Disabilities, http://www.un.org/en/ga/president/68/pdf/wcip/IASG%20Thematic%20Paper_Disabilities.pdf
62 See Goal 7 of the Incheon Strategy; Article 16 of the ASEAN Bali Declaration on the Enhancement of the Role and Participation of Persons with Disabilities in the ASEAN Community, 2011. The need and importance of disability-inclusive DRR was also included in the Sendai Statement to Promote Disability-Inclusive Disaster Risk Reduction for Resilient, Inclusive and Equitable Societies in Asia and the Pacific, 2014.
63 This is closely tied to Article 6 of the European Convention on Human Rights (the right to a fair trial) which makes it clear that defendants have the right to an interpreter, if court proceedings are in a language they are not familiar with.
64 Furthermore, Article 13(2), specifies that in order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.
65 Article 5, Convention on the Rights of People with Disabilities
66 Although the European Convention on Human Rights does not directly refer to legal capacity, the deprivation of an individual’s legal capacity can interfere with the individual’s right to respect for private life (Article 8). For more details see Council of Europe (2012), Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities. Similarly, Byrnes (2011), Disability discrimination law and the Asian and Pacific provides several examples of rights-based litigation about disability discrimination in this region.
67 International Disability Alliance (2013), Submission to the CEDAW Committee’s General Discussion on access to justice 54h session, 18 February 2013
Complaints to the Committee may be made only after all domestic remedies have been exhausted, and only in relation to events occurring after the Optional Protocol enters into force for that country (Article 2).

The findings and recommendations of the Committee are not legally binding on any country—the country concerned may either accept or reject recommendations.


The European Network of Ombudsmen consists of over 95 offices in more than 30 European countries. Some of its members act as monitoring bodies for the CRPD


Mainstreaming disability also include community based rehabilitation (CBR) which has been defined by the ILO, UNESCO and WHO as “a strategy within general community development for the rehabilitation, equalization of opportunities, poverty reduction and social inclusion of all people with disabilities. CBR is implemented through the combined efforts of people with disabilities themselves, their families, organisations and communities, and the relevant governmental and non-governmental health, education, vocational, social and other services.”


See General Assembly Resolution A/RES/64/131; ECOSOC resolution “2020 World Population and Housing Census Programme” E/CN.3/2015/6

The Washington Group on Disability Statistics has developed an internationally comparable set of six questions for census and surveys. It has been recognised by the UN Statistics Commission for its accomplishments on disability data.

UNGA High-level Meeting on Disability and Development, 23 September 2013
ANNEX 4: READING LIST

KEY DOCUMENTS AND REPORTS


Transforming our World: The 2030 Agenda for Sustainable Development, United Nations, 2015
https://www.unfpa.org/resources/transforming-our-world-2030-agenda-sustainable-development

https://www.unicef.org/publications/index_69379.html

Bali Declaration on The Enhancement of The Role and Participation of The Persons with Disabilities in ASEAN Community and Mobilisation Framework of the ASEAN Decade of Person with Disabilities (2011 – 2020), ASEAN, 2013

Incheon Strategy to ‘Make the Right Real for Persons with Disabilities in Asia and the Pacific, ESCAP, 2012

European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier Free Europe, European Commission, 2010
https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM%3A2010%3A0636%3AFIN%3AE-N%3APDF


Human Rights and Disability: Equal Rights for All, Council of Europe, 2008
https://rm.coe.int/16806dabe6

https://rm.coe.int/16806da5c0

The Right of People with Disabilities to Live Independently and be Included in the Community, Commissioner for Human Rights, Council of Europe, 2012

The Right to Political Participation for Persons with Disabilities: Human Rights Indicators, European
Union Agency for Fundamental Rights (FRA), 2014

Guidance Note on Disability-Inclusive Development Cooperation, EuropeAid, 2012

The ICT Opportunity for a Disability-inclusive Development framework, International Telecommunication Union (ITU), 2013

International Classification of Functioning, Disability and Health, World Health Organisation, 2001
https://www.who.int/classifications/icf/en/

DISABILITY AND THE WORKPLACE


BOOKS


Understanding Disability: From Theory to Practice, Michael Oliver, Palgrave, Second edition, 2009


JOURNALS

Journal of Disability Policy Studies
https://journals.sagepub.com/home/dps

African Disability Rights Yearbook
http://www.adry.up.ac.za/

International Journal of Integrated Care
https://www.ijic.org/

Equal Rights Review
https://www.equalrightstrust.org/content/equal-rights-review
ANNEX 5: ABOUT THE CO-ORGANISERS

The **Asia-Europe Foundation (ASEF)** promotes understanding, strengthens relationships and facilitates cooperation among the people, institutions and organisations of Asia and Europe. ASEF enhances dialogue, enables exchanges and encourages collaboration across thematic areas of culture, education, governance, economy, sustainable development, public health and media.

ASEF is an intergovernmental not-for-profit organisation located in Singapore. Founded in 1997, it is the only institution of the Asia-Europe Meeting (ASEM).

ASEF runs more than 25 projects a year, consisting of around 100 activities, mainly conferences, seminars, workshops, lectures, publications and online platforms, together with about 150 partner organisations. Each year over 3,000 Asians and Europeans participate in ASEF’s activities, and much wider audiences are reached through its various events, networks and web portals.

For more information, please visit www.ASEF.org

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The **Raoul Wallenberg Institute** of Human Rights and Humanitarian Law is an independent academic institution dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the Institute is currently involved in organising in Lund two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide.

For more information, please visit www.rwi.lu.se

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The **Ministry for Europe and Foreign Affairs** of France, as a founding member of ASEM, is pleased to have supported the ASEM human rights dialogue since its inception in 1997. For more information, please visit www.diplomatie.gouv.fr/en

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The **Department of Foreign Affairs of the Philippines** is the prime agency of the Philippine government responsible for the pursuit of the State’s foreign policy. It is also responsible for the coordination and execution of the foreign policies of the country and the conduct of its foreign relations.

For more information, please visit www.dfa.gov.ph

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The **Federal Department of Foreign Affairs of Switzerland** (FDFA) forms and coordinates Swiss foreign policy on behalf of the Federal Council, pursues foreign policy objectives, safeguards the interests of Switzerland and promotes Swiss values.

For more information, please visit www.eda.admin.ch
ANNEX 6: ABOUT THE HOST

The Ministry of Foreign Affairs of the People’s Republic of China was the proud host of ASEMHR16.

For more information, please visit https://www.fmprc.gov.cn
ANNEX 7: ABOUT THE ASIA-EUROPE MEETING (ASEM)

The Asia-Europe Meeting (ASEM) is an intergovernmental process established in 1996 to foster dialogue and cooperation between Asia and Europe.

The 53 ASEM Partners are Australia, Austria, Bangladesh, Belgium, Brunei Darussalam, Bulgaria, Cambodia, China, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Korea, The Lao PDR, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mongolia, Myanmar, the Netherlands, New Zealand, Norway, Pakistan, the Philippines, Poland, Portugal, Romania, the Russian Federation, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, the United Kingdom, Viet Nam, the European Union and the ASEAN Secretariat.

For more information, please visit www.aseminfoboard.org
The aim of the Informal ASEM Seminar on Human Rights is to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

Previous seminar topics include:

- Access to Justice; Regional & National Particularities in the Administration of Justice; Monitoring the Administration of Justice (1997, Lund, Sweden)
- Differences in Asian & European Values; Rights to Education; Rights of Minorities (1999, Beijing, China)
- Economic Relations; Rights of Multinational Companies & Foreign Direct Investments (2003, Lund, Sweden)
- International Migrations; Protection of Migrants, Migration Control & Management (2004, Suzhou, China)
- Human Rights & Gender Equality (2010, Manila, Philippines)
- National & Regional Human Rights Mechanisms (2011, Prague, Czech Republic)
- Human Rights and Information and Communication Technologies (2012, Seoul, Korea)
- Human Rights & the Environment (2013, Copenhagen, Denmark)
- Human Rights & Businesses (2014, Hanoi, Viet Nam)
- Human Rights & Trafficking in Persons (2015, Montreux, Switzerland)
- Persons & Disabilities and Human Rights (2016, Beijing, China)

The Seminar series is co-organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe & Foreign Affairs, the Philippine Department of Foreign Affairs and the Federal Department of Foreign Affairs of Switzerland. ASEF has acted as the Secretariat of the Seminar since 2000.

Supervision of the seminar is entrusted to a Steering Committee, composed of the Seminar’s 5 co-organisers as well as representatives of the Ministries of Foreign Affairs of China and Indonesia & the European Union.
The 16th Informal ASEM Seminar on Human Rights (ASEMHRS16) is co-organised by:

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