



PACIFIC ISLANDS FORUM SECRETARIAT

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FORUM DISABILITY MINISTERS' MEETING

Rarotonga, Cook Islands
21-23 October 2009

SESSION FOUR

**INTERNATIONAL AND REGIONAL POLICY DOCUMENTS ADDRESSING
THE RIGHTS OF PERSONS WITH DISABILITIES**

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Purpose

To provide an update on the regional and global agreements and progress in the area of disability inclusive development.

Introduction

2. Pacific Island Countries are faced with the task of addressing many of the barriers faced by persons with disabilities; barriers that prevent them from obtaining equal access to education, to employment, to full participation in decision-making and to all their other rights. Moreover persons with disabilities often are excluded from mainstream society and in many instances do not have the opportunity to exercise their human rights. The effects of disability-based discrimination have been particularly severe in areas such as education, employment, housing, transport, cultural life and access to public places and services.

Progress on Disability Inclusive development

3. Despite some progress in terms of disability policy and legislation over the past decade in Pacific countries, barriers to the full exercise of human rights for persons with disabilities still exist. Most disability legislation and policies are based on the assumption that persons with disabilities simply are not able to exercise the same rights as non-disabled persons. Consequently the situation of persons with disabilities is typically addressed in terms of rehabilitation and social services. The global approach has moved from this approach of viewing persons with disabilities as "objects" of charity, medical treatment and social protection towards viewing persons with disabilities as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

4. There has been progress in recognising the need to address disability issues in the Pacific region, with initial developments in policy and legislation. Following the first Global Decade for Disabled Persons (1981-1992), the first Asia-Pacific Decade for Disabled Persons took place from 1993 to 2002. Analysis of the achievements of the

Asia-Pacific decade found that there was a need for further work on the priority areas¹ in the countries of that region. Consequently, member states and associate member states of United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) decided to extend the Asia-Pacific Decade for Disabled Persons for another decade, 2003-2012.

Biwako Millennium Framework

5. At the High-level Inter-governmental meeting to conclude the first Asia-Pacific Decade for Disabled Persons, held in Otsu, Japan in 2002, the Biwako Millennium Framework for Action towards an Inclusive, Barrier-free and Rights-based Society in Asia and the Pacific (BMF) was adopted as a definitive policy guideline. The BMF:

- emphasises the paradigm shift from a charity-based approach to a rights-based approach to the development of persons with disabilities;
- promotes a barrier-free, inclusive and rights-based society, which embraces the diversity of human beings;
- enables and advances the socio-economic contribution of its members; and
- ensures the realization of rights by persons with disabilities.

6. One of the most significant events in disability inclusive development in the Pacific was the endorsement of the BMF by the leaders of Pacific Island countries at the Pacific Islands Forum in 2003. In their Communiqué, Leaders agreed that immediate priorities for Pacific Islands Governments should be to address policy that would dismantle barriers and improve access for persons with disabilities. The Communiqué also encouraged regional and international organisations to continue coordinated research that would assist policy development and enhance awareness in Pacific countries on disability². A position was subsequently established at the Pacific Islands Forum Secretariat for the purpose of coordinating disability initiatives in member countries.

Pacific Plan

7. In 2004, Pacific Islands Forum leaders adopted a Vision which called for the development of the Pacific Plan. The overall objective of the Plan, which was adopted in 2005, was to strengthen regional cooperation and integration among the Pacific Island Countries. The Pacific Plan was developed as a means to achieve the Vision. Disability is included in section 12.5 of the Pacific plan where it notes the BMF as an important milestone. The Pacific Plan also urges members 'where appropriate, to ratify and implement international and regional human rights conventions, covenants and agreements.'

¹ National Coordination, Legislation, Information, Public Awareness, Accessibility and Communication, Education, Training and Employment, Prevention and causes of disability, Rehabilitation, Assistive devices, Self Help Organisation, Regional Cooperation.

² The review commissioned by the Forum Secretariat on policy and legislation was a result of these commitments.

Biwako Plus Five

8. The BMF is a policy document stating the aspirational goals of the Asia-Pacific countries. It has no legally binding obligations and implementation is voluntary for individual countries. ESCAP reviewed BMF implementation from 2003 to 2007, resulting in the **Biwako Plus Five** outcome document, approved by a High-level inter-governmental meeting in 2007. This outcome document took into consideration global developments, the emerging needs and challenges of the region in regard to disability and obstacles that remain to be overcome. It supplements the Biwako Millennium Framework for Action for the enhanced implementation of the Framework over the remaining five years of the Decade (2008-2012) by promoting an inclusive, barrier-free and rights-based society for all.

9. The Biwako Plus Five should be implemented on the basis of the same principles and policy directions delineated in the Biwako Millennium Framework for Action. The 2007 ESCAP High-level meeting urged that the following three guiding principles should be implemented:

- First, Governments shall, within the limit of their economic capacity and development, take appropriate measures to devise national strategies and action plans for the implementation of the Biwako Millennium Framework for Action and Biwako Plus Five. Governments should recognise the importance of international cooperation and partnership, in support of national efforts, including through the transfer of resources and technologies, as appropriate;
- Second, partnerships among different stakeholders, namely, governments, representatives of disabled people's organisations, international, regional and national non-governmental organisations, development organisations and agencies, and the private sector, as appropriate, should be promoted in all relevant activities, including research, data collection, needs assessment, policy development, implementation, monitoring and evaluation, capacity-building and awareness-raising;
- Third, the diversity of persons with disabilities should be respected not only because they are the targets of policies, programmes and projects but also because they are partners in the decision-making process concerning disability as well as implementers and evaluators of projects and policies.

Convention on the Rights of Persons with Disabilities (CRPD)

10. One of the most significant recent developments in the area of disability has been the adoption of the **Convention on the Rights of Persons with Disabilities (CRPD)** and its Optional Protocol on 13 December 2006. The coming into force of the CRPD marked the beginning of a new era in the global efforts for recognition that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas

where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced the promotion of disability-inclusive development and international cooperation.

11. Prior to the CRPD there were many regional and global declarations on disability³, but none were legally binding. The CRPD is the only universal, comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. The new convention will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

12. The General Assembly resolution 61/106 calls upon States to consider signing and ratifying the Convention and the Optional Protocol as a matter of priority. So far we have the following developments among Forum members:

Australia Signed: 30-3-2007- Ratified: 17-7-2008

Cook Islands Ratified: 8-5-2009 - Ratified Protocol: 8-5-2009

New Zealand Signed: 30-3-2007 - Ratified: 25-9-2008

Vanuatu Signed: 17-5-2007- Ratified: 23-10-2008

Solomon Islands Signed: 23-9-2008 -

Tonga Signed: 15-11-2007

13. The main purpose of the CRPD is 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. What is unique about the CRPD is that it is:

- *both* a development and a human rights instrument;
- a policy instrument which is cross-disability and cross-sectoral; and
- legally binding.

14. The CRPD and the Biwako plus Five are complementary, in that they both pursue the common goal of achieving a barrier-free, inclusive and rights-based society. While the Biwako is a regional policy document, the CRPD is a universal treaty that aims to ensure that persons with disabilities fully enjoy all human rights and fundamental freedoms. The effective implementation of the BMF plus Five will contribute significantly to achieving the objectives of the Convention, thus simplifying the steps necessary in preparation for ratification. The BMF is, therefore, an effective tool that can assist Pacific countries in the process towards reaching the international standards contained in the CRPD.

³ For example: Standard Rules on the Equalisation of Opportunities for Persons with Disabilities; World Programme of Action Concerning Disabled Persons; BMF, Salamanca Statement and Framework for Action on Special Needs Education (1994)

15. Even when an international human rights treaty (called conventional or treaty law because it is contained in a treaty, similar to codified law), such as the CRPD, is not binding on a state, because the state has not ratified the treaty, the standards contained in the treaty can be used as a source of guidance or best practice, and in some cases customary international law. Customary International law is binding law based on custom, similar to common law or case law. The norms and standards in a treaty result from the process of negotiation and agreement by governments in writing treaties and therefore result in a consensus of the international community.

16. Where a norm or standard is both widely recognised in practice and is considered obligatory, this is considered to be evidence of international customary law, as defined in the Statute of the International Court of Justice (article 38). For example, the prohibition of torture is widely recognised and is considered obligatory. While some countries still may practice torture, few governments would come out and publicly state that it is a legal practice. The adoption of the Convention Against Torture, and the definitions and requirements contained in that treaty are used by law-makers, lawyers, judges and others as a source of standards and practices for interpretation of what international minimum standards are, even if the country concerned has not ratified that treaty.

17. If a country has not ratified the CRPD, but is considering its national policy and legislation on the rights of persons with disabilities, it can be very useful to look to the CRPD to see what principles, standards and best practices have already been agreed on by the international community, and also any general comments or other reports of the expert Committee of the CRPD for further guidance.. In some instances, in particular in relation to discrimination, the standards in the CRPD are likely already at the stage of international customary law because they are so widely recognized and considered obligatory. Therefore, even countries that have not ratified the CRPD should look to that treaty for the international standards, some of which may be binding international customary law.

International Labour Organization Convention 159

18. The International Labour Organization Convention 159 on Vocational Rehabilitation and Employment (Disabled Persons) 1983 and the CRPD contain a common right on employment. Article 27 of the CRPD, on Work and Employment, states that States Parties should recognise the right of persons with disabilities to work, on an equal basis with others; which includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. Thus Article 27 of the CRPD is an important vehicle for promoting and safeguarding that right and supplements International Labour Organization (ILO) Convention 159 and other standards, as well as national legislation and policies on the right to decent work.

The Pacific Regional Disability Strategy

19. The implementation of international standards could be further supported and strengthened by regional action at the Pacific level. Although the Pacific region has seen

a steady improvement in the development of disability policy, the implementation of such policies has to be ensured and their impact measured. To address these issues, a Pacific Regional Strategy for Disability has been proposed. The purposes of the Pacific Regional Disability Strategy 2010 – 2015 are to:

- Support Pacific Island Forum member countries to protect and promote the rights of persons with disabilities;
- Provide a framework for the coordination of development partners, governments and civil society in building a disability inclusive Pacific; and
- Strengthen commitment of all stakeholders towards implementation of the Convention on the Rights of Persons with Disabilities and other human rights instruments which/that relate to disability.

20. Regional policy initiatives and recently established international standards on disability provide a sound basis for PICs to take a significant step forward by adopting a Pacific Regional Disability Strategy that can promote inclusive societies through regional cooperation and integration

Recommendations

21. Ministers are invited to:

- (a) **urge** Forum Island Countries that have not done so to sign and ratify the Convention on the Rights of Persons with Disabilities at the earliest practical opportunity;
- (b) **agree** that all Forum Island Countries should develop and implement national disability policy and legislation premised on the Convention on the Rights of Persons with Disabilities and support the use of the BMF as a policy guideline; and
- (c) **note** the importance of the International Labor Organization Convention 159 and urge members to develop inclusive employment policy and set clear standards and guidelines on the employment of persons with disabilities.

Pacific Islands Forum Secretariat
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