

DEVELOPMENTAL ARTICLES

**CONVERGENCE BETWEEN THE INTERNATIONAL CONVENTION
ON THE RIGHTS OF PERSONS WITH DISABILITIES AND THE
BIWAKO MILLENNIUM FRAMEWORK FOR ACTION**

Aiko Akiyama*

ABSTRACT

The adoption of the International Convention on the Rights of Persons with Disabilities is a historic event for people in the disability sector from all over the world. In the Asian and Pacific Region, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) has promoted the full participation and equality of persons with disabilities for the last 15 years, through two successive initiatives of decade framework. This article describes the salient characteristics of the Convention and discusses the convergence between the Convention and the Biwako Millennium Framework for Action.

INTRODUCTION

At 1050 hours on 13th December 2006 in New York, H.E. Sheikha Haya Rashed Al Khalifa, president of the sixty-first session of the General Assembly of the United Nations, struck the hammer against the rostrum, and history was made. The “International Convention on the Rights of Persons with Disabilities” was adopted by consensus. In many parts of the world, members of civil society and of disabled people’s organisations, who had made significant contributions to the drafting process, witnessed the historic event.

Though the rights enshrined in the Universal Declaration of Human Rights (1948) and the seven “core” United Nations International Human Rights Treaties, cover in theory, all people, including persons with disabilities, in practice, their rights were not duly protected and promoted (1). Though there are disability-specific global instruments such as the World Programme of Action (1982) and the later Standard Rules on Equalisation of Opportunities for Persons with Disabilities (1993), which are based on the principles of full participation and equality, they are not legally-binding. Attempts both in 1987 and 1989 to introduce a disability-specific convention did not succeed due to the lack of consensus among countries (2).

Thus, the adoption of the Convention of the Rights of Persons with Disabilities in December 2006, is the culmination of nearly twenty years of efforts in the United Nations, unequivocally establishing disability as a definite part of human rights instruments.

In Asia and the Pacific, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) has promoted the full participation and equality of persons with disabilities for the last 15 years, through two successive initiatives of decade framework. From 2003, the second Asian and Pacific Decade of Disabled Persons started with the theme of “inclusive, barrier-free and rights-based society” along with the policy guidelines, the “Biwako Millennium Framework for Action towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific” (BMF).

From the onset of the second Decade of Disabled Persons, UNESCAP had promoted the work towards the Convention through many workshops and seminars. Most notably, in 2003, concerted efforts of participants from disabled people’s organisations, human rights institutions, legal professionals and governments produced the “Bangkok Draft,” a draft convention (3), which was used as one of the most useful references for the drafters of the Convention. Therefore, the adoption of the Convention is very significant for UNESCAP, both in terms of its relationship to the mandate of the Biwako Millennium Framework for Action, and in terms of acknowledging the UNESCAP contribution to the drafting process.

Against this background, this article has two aims: to describe the salient characteristics of the Convention and to discuss the convergence between the Convention and the Biwako Millennium Framework for Action.

SALIENT CHARACTERISTICS OF THE CONVENTION

The Convention is composed of 50 articles (4). It is comprehensive, encompassing civil, political, social, economic and cultural rights of persons with disabilities, covering such areas as equal recognition before the law, access to justice, education, health, work and employment, adequate standard of living and social protection and participation in cultural life, recreation, leisure and sport. The Convention not only prohibits discrimination but also calls for positive action and development activities to realise the rights of persons with disabilities. It is both reactive and proactive.

One of the salient characteristics of the Convention, is the inclusion of the concept that disability results from the interaction between individuals with impairments and attitudinal and environmental barriers. Though it is included in the Preamble and the Article 1 (Purpose) and not in the Article 2 (Definitions), the idea clearly negates the concept of disability as an individual pathology and draws attention to another dimension, in which the onus is on society (Governments and other stakeholders) to remove barriers for persons with disabilities.

Another distinctive characteristic is the inclusion of a concept, “reasonable accommodation.” Originally being a part of the civil rights law of the United States (1964) to respect practices of different religions at the work place (5), it refers to necessary and appropriate modification and adjustment needed to ensure the enjoyment of all rights by persons with disabilities on equal basis with others. It should be provided in response to individual needs. In practical terms, this can be the provision of sign language interpreters for hearing impaired persons, changing facilities or equipment to make them more accessible for visually impaired persons and physically disabled persons, or restructuring job scheduling for persons with psychosocial disabilities or persons with intellectual disabilities. In implementing this concept, “reasonableness” of the accommodation will have to be judged in an individual context with the consideration of not imposing too much burden on companies or government institutions. In this regard, having to deal with the complexities of these judgments and negotiations will be a challenge. Nonetheless, the significance of this concept lies in the fact that the Convention states that the failure to provide reasonable accommodations constitutes discrimination (Article 2). The Convention clearly states that actions should be taken in order not to discriminate against people with disabilities. In this respect, one might say that reasonable accommodation is a pre-emptive action and closely linked to the removal of barriers, which can cause disability and discrimination. Through this concept, pro-active nature of the Convention is strengthened.

The rights delineated in the Convention are not newly created rights: they are rights which already exist in the core human rights treaties, but are tailored and articulated in response to specific needs and circumstances of people with disabilities. Some of these rights are stated as independent articles, namely, Accessibility (Article 9), Living independently and being included in the community (Article 19), Personal Mobility (Article 20) Habilitation and rehabilitation (Article 26). An article on accessibility is unique in establishing the rights of people with disabilities to have access to not only the physical environment, transportation,

information and communications and other facilities, but also to services. Defining sign language as an example of language (Article 2) is also a significant step forward.

For many resource-deprived countries, the Convention might imply much greater expenditure and use of resources. However, the inclusion of the article on “International cooperation” (Article 32) responds to those concerns. Though each party fundamentally has to fulfil obligations under the Convention, the importance of partnership with international and regional organisations and civil society in the realisation of the rights of persons with disabilities is stressed in this article. In operational terms, the article calls for making general development activities more disability-inclusive, with emphasis on capacity-building, cooperation in research and technology transfer, and economic assistance as appropriate. The governments of the Philippines and Indonesia emphasised the importance of this article in their statement made immediately after the adoption of the Convention on 13 December 2006.

The Convention is a legally binding international instrument. Thus, it will have to go through the signature and ratification process. For this particular Convention, it will be open for the signature at the United Nations Headquarters from 30 March 2007, after which the ratification process starts. Once twenty countries ratify the Convention, it will take effect. In the ratification processes, in many countries such as Japan, domestic laws have to be aligned with the principles and contents of the Convention. Those laws which are discriminatory against persons with disabilities have to be either revised or nullified, and the laws which would proactively implement the Convention have to be developed. In some countries of the UNESCAP region, such as Japan, Republic of Korea and Thailand, leaders of the disability sector are already working on establishing an anti-discrimination law on disability for the effective implementation of the Convention. The alignment of domestic laws would be crucial in translating the spirit and the content of the Convention to the national context.

CONVERGENCE WITH THE BIWAKO MILLENNIUM FRAMEWORK FOR ACTION

The Biwako Millennium Framework for Action, the regional policy guidelines for the Asian and Pacific Decade of Disabled Persons, is not a legal document, and it is only effective until 2012. Thus, it does not have the same kind of legal power that the Convention has. Also,

there are differences in issues raised and concepts emphasised between the two instruments. However, the implementation of the BMF can reinforce the implementation of the Convention in the region and vice versa. They can be linked in a mutually beneficial way, and together used effectively in the Asian and Pacific region. The following description substantiates this claim.

First, both the Convention and the BMF are based on the concept of human rights. The BMF clearly states its primary vision of promoting a paradigm shift from a charity-based approach to a rights-based approach in disability issues, and it is reflected in the Decade's defining theme, "towards an inclusive, barrier-free and rights-based society" (6). It also contains an independent strategic section entitled "promotion of a rights-based approach to disability issues," in which it supports the disability-specific convention and development of domestic rights-based legislation. As the domestic rights-based legislation is an indispensable component of the Convention implementation, the BMF can reinforce the implementation. The concept of "reasonable accommodation" is not included in the BMF.

Though BMF's concept, "inclusive" is not delineated in the Convention, the idea is ingrained. In the BMF, "an inclusive society" is defined as "a society for all." This means that persons with disability or their perspectives and concerns should not be excluded from any activities of society, and that society should respect diversity and differences of people. This principle is included in the Convention in Article 3 on General Principles. "Barrier-free" is not a distinctive concept in the Convention, either. But the recognition of barriers is mentioned in the preamble and the article on the purpose.

Third, both the Convention and the BMF have development perspectives, but the latter fortifies the perspective. As discussed in the previous section, the Convention promotes development action for the realisations of rights, and that spirit is reflected in many articles such as the one on the international cooperation. The BMF does it by emphasising the development aspect in its definition of a rights-based society. It says that such society is "a society based on the concept of human rights, including the right to development." The BMF also incorporates two of the Millennium Development Goals (MDGs), universal primary education and eradication of extreme poverty and hunger, as applicable to the disability sector and expresses them as its policy and programme targets. This draws attentions to the need to include disability concerns in the attainment of the MDGs. In this regard, the BMF establishes itself

as a linkage between the global development mandate and the global disability-specific human rights instrument.

The BMF has more detailed description of issues, recommended policy and programme actions than the Convention. It provides 21 detailed time-bound policy and programme targets under the seven priority areas, namely 1) Self-help organizations of persons with disabilities and related family and parent associations; 2) Women with disabilities; 3) Early detection, early intervention and education; 4) Training and employment, including self-employment; 5) Access to built environments and public transport; 6) Access to information and communications, including information, communication and assistive technologies and 7) Poverty alleviation through capacity-building, social security and sustainable livelihood programmes. More than 100 actions are recommended under these. In addition, it has four strategic areas: (1) national plan of action on disability, 2) promotion of rights-based approach to disability issues, 3) disability statistics and common definitions of disability for planning and 4) strengthened community-based approaches to the prevention of causes of disability, rehabilitation and empowerment of persons with disabilities. It also has sub-regional, and interregional mechanisms for its implementation, under which 17 strategies are recommended. Each of these can be used as a useful point of reference in the implementation of the Convention. For example, in a strategy 15 under the section of “access to built environment and public transport,” the BMF recommends that the universal design concept be a part of loan/grant criteria of the funding agencies. This is clearly a strategy of disability-inclusive international cooperation that is in Article 32 (International cooperation) of the Convention.

Six of the BMF seven priority areas are covered in the Convention. These cover issues on accessibility. However, accessibility in the BMF does not mention access to services which is mentioned in the Convention. Though the one priority area, “Self-help organisations of persons with disabilities and related family and parent associations” is not included as an independent article in the Convention, the significance of the priority area, the participation of persons with disabilities in any-decision making processes, is included in the Convention. By comparison, the Convention covers more issue areas. It has independent articles on Children with disabilities, (Article 7), Awareness-raising (Article 8) and Article 10 to 18, which are conventionally described as civil and political rights.

For the disability statistics and data collection, the Convention calls for appropriate data collection, that is ethical and respects the privacy of persons with disabilities (Article 31). It also calls for dissemination of the statistics and data to be made accessible for persons with different disabilities. The BMF, on the other hand, provides a situation analysis in which the lack of data on disability prevalence, economic, social indicators of people with disabilities, and under-reporting of the prevalence were raised as issues. It encourages Governments to take more action on the data collection, applying the international standard. In this regard, the Convention can provide the ethical perspective in the operation of the BMF's recommendations.

CONCLUSION - TOWARDS THE SECOND HALF OF THE DECADE

The comparison between the Convention and the BMF in the previous section are not exhaustive, but it shows that two documents are complementary to each other.

2007 marks the mid-point of the current Asian and Pacific Decade of Disabled Persons, and in September, UNESCAP will organise a high-level intergovernmental meeting to complete the mid-point review of the BMF implementation and to agree on a document that would supplement the current BMF. The supplementary BMF would be developed in the light of current achievements and challenges emerging during the last five years. The document would be used as the guide for the second half of the Decade from 2008 to 2012.

The adoption of the Convention in 2006 is timely and the above-mentioned differences and similarities between the Convention and the BMF, would serve as a useful point for further examination of two documents and for creating a meaningful Biwako supplementary document.

At the same time, UNESCAP will promote the ratification and effective implementation of the Convention at the national level, including the development and implementation of anti-discrimination laws. This will go hand-in-hand with its efforts to promote further implementation of the Biwako Millennium Framework for Action.

UN Secretary-General Kofi Annan in his statement said that the adoption of the Convention "promises to be the dawn of a new era- an era in which disabled people will no longer have to endure the discriminatory practices and attitudes that have been permitted to prevail for all too long" (7). As the Asian and Pacific region ushers in the new era, the two formidable documents, the Convention on the Rights of Persons with Disabilities and the Biwako

Millennium Framework for Action would support the work on the region towards an inclusive, barrier-free and rights-based society.

*Project Expert on Disability
Emerging Social Issues Division (ESID)
UNESCAP
Rajdamnern Nok Avenue
Bangkok 10200 Thailand
e-mail: akiyama@un.org

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