

Reviews

International convention on the rights of persons with disability: disability inclusive development and international development cooperation

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The adoption of the International Convention on the Rights of Persons with Disabilities is a historical momentum for disabled persons and their associates, as well as ODA workers in the development cooperation field all over the world.

For the last two decades, persons with disabilities, their associates and professionals working in this field have promoted their human rights, equality, nondiscrimination and full participation. This Convention is beyond the concept of non-discrimination, and it is very comprehensive in its structure, scope and coverage, promoting developmental activities too in order to realize disabled people's socio-economic rights. Furthermore it calls for international and regional development cooperation. Prior to its adoption, in September 2000 at the Millennium Summit the Member States of the United Nations issued the Millennium Declaration, committing themselves to a series of development targets, most of which are to be achieved by 2015. Known as the Millennium Development Goals (MDGs), they represent a framework for achieving sustainable and "just" human development through broadening the benefits of development for all categories individuals, women and men, the poor and the rich, the disabled and the non-disabled. The very first goal of the MDG is the eradication of extreme poverty and hunger. Poverty is both a cause and consequence of disability. Poverty and disability reinforce one another. Thus, it is necessary to ensure that persons with disabilities be an integral part of efforts to achieve MDGs, particularly in the areas of poverty alleviation, primary education, gender, employment and international development cooperation. In the Asian and Pacific region, the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) has proclaimed two decades of disabled persons 1993-2002, and 2003-2013 (to which Iran became a signatory in 1994), and promoted the inclusive, barrier-free and rights-based society for persons with disabilities, together with a regional guidelines composed of several priorities and implementation mechanisms (including poverty alleviation of persons with disabilities, and regional and inter-regional cooperation). This article describes, from development cooperation perspective, the developmental characteristics of the Convention and highlights the convergence among the Convention, MDGs and the ESCAP decade's goals contained in the Biwako Millennium Framework for Action (BMF).

Keywords: Disability, human rights, Monterrey Consensus

Introduction:

On 13 December 2006 in New York, at the 61st session of the General Assembly of the United Nations, the "International Convention on the Rights of Persons with Disabilities" and its "Optional Protocol" were adopted by consensus. All over the world, governments, members of civil society, disabled people's organizations and self-help groups, human rights lawyers, and academicians who had made

significant contributions to the drafting process, witnessed and celebrated this historical moment.

Though the fundamental rights stipulated in the Universal Declaration of Human Rights (1948) and seven core United Nations International Human Rights Treaties, shall cover, at least in paper, all people including disabled people, in practice those rights were not fully enjoyed by persons with disabilities.

Their socio-economic and civil-political rights are

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being violated daily in many parts of the world. At the same time, there are disability-specific global instruments such as the Standard Rules of Equalization of Opportunities for Persons with Disability (1993), and the Salamanca Statement and Framework for Action in Special Needs Education, which are also based on the rights and full participation and equality of persons with disabilities; however, those are not international treaties, and not legal-binding documents. They are useful guidelines and the norms for actions without enforcement mechanism. As of today (April 2007), 87 countries have signed the Convention, 47 countries signed its Optional Protocol and one country (the first one, Jamaica) has ratified it. For the Convention to enter into force, the minimum of 20 ratifications will be required.

Therefore, the adoption of this Convention for persons with disabilities in December 2006 is the culmination of twenty-year struggle of committed advocates and the work of the United Nations, marking disability as a definite part of human rights and rights to development. The Convention process was initiated by the Government of Mexico, and this is the reason why this Convention is comprehensive in its nature, and so closely linked to development goals reflected by MDGs and other internationally agreed development goals. At the General Assembly in 2001, with the resolution 56/168, Mr. Vincente Fox Quesada, the President of Mexico, presented a proposal to initiate a new comprehensive Convention on the rights of persons with disabilities. The Mexico, which hosted the International Conference on Financing for Development, 18-22 March 2002, in Monterrey Mexico, with the outcome document entitled "Monterrey Consensus on Financing for Development", has its strong national commitment to combating poverty and promoting international financial and technical cooperation for development. Thus the original Mexico proposal was very developmental, focusing on the developmental rights of persons with disabilities. Also, throughout the negotiation process of the Convention, the Government of Mexico had been a guardian the international development cooperation (to be highlighted in the text), thus having being able to include a separate article, the article 32, entitled "international cooperation" in the Convention text, which is unprecedented in any other previous international human rights treaties. The strong emphasis of the development aspect in this Convention is not a mere

coincidence; Mexico was a link for it. The original Mexico draft called for the international community to combat poverty and social exclusion of people with disabilities. In the process of negotiations, China too had supported the comprehensive and holistic nature of this Convention, beyond the mere concept of non-discrimination and equality.

There is a regional player, too. For the last 15 years, a UN regional commission, ESCAP has promoted the full participation, equality and construction of a rights-based inclusive society for persons with disabilities, and hosted two consecutive Decades of Disabled Persons. From 2003, the second Asian and Pacific Decade of Disabled started with the theme of "inclusive, barrier-free and rights based society", accompanied by its regional policy guideline, entitled 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)". Concurrently, in 2003, the ESCAP and its Member States and civil society partners had produced a full draft text of the Convention, the "Bangkok Draft", which became later a useful reference, perhaps, among the most frequently cited references during the process of negotiations. Thus, the ESCAP regional contribution (Iran is a member) is to be properly documented and acknowledged. The adoption of the Convention is timely as the year 2007 is the mid point of the Asia-Pacific Decade, and the fundamental principles of this Convention can be easily converged with internationally agreed development goals and this regional disability – specific mandate (the BMF) --- which had been already endorsed by Iran, thorough the signing of the proclamation of the first ESCAP Decade.

Under this circumstance, this article has two main objectives: to describe the key characteristics and challenges of the Convention and to discuss the convergence among the Convention, the MDGs, and the BMF, from the perspective of "disability mainstreaming" and development cooperation.

Key characteristics and Challenges of the Convention:

One major characteristic of the Convention is the adoption of the dynamic concept that "disability is not a mere impairment". In the Convention, disability is defined as the mutual interaction between impaired individuals and the surrounding society (e.g. attitudinal, institutional and physical barriers). This is

included in the preamble and the article 1 (purpose) and 2 (definitions), with the idea of negating the traditional concept of seeing disability as individual pathology (medical model of disability), thus encouraging the State Parties and other rights bearers to remove all kinds of barriers, be attitudinal, institutional, legal and/or physical to create an inclusive, barrier-free society. This concept is pretty much similar to the WHO definition of the new International Classification of Functioning, Disability and Health (WHO-ICF).

Another characteristic is the introduction of a relatively new concept of "reasonable accommodation". This was originated as a part of the civil rights laws under the Anglo-American system, to respond to practices of different religions and to accommodate different ethnic backgrounds at the work place, and in this Convention it is defined as "appropriate adjustments" required to ensure the enjoyment of equal rights by disabled persons at work-place and at school, as well as in provision of services. In author's personal interpretation, the operationalization of reasonable accommodation is similar to the provision of other positive and accommodating measures. Reasonable accommodation must be provided flexibly in response to each individual's particular needs. It can take many forms such as the provision of a sign language interpreter, changing work place and facilities to be accessible, adjusting school curriculum (in electronic format, Braille, etc.), introducing flexible job scheduling and so on. In practicing this concept, "reasonableness" of accommodation must be judged in an individual context and with regards to another parallel concept, which is the "excessive hardship or excessive burden". For instance, if provision of any of the above accommodations is proved to be an "excessive burden" to a private company or a government institution, the legal enforcement measure of reasonable accommodation is not applicable to this case. In a simpler language, each case must decide "what is reasonable and what is not reasonable", depending on the cost involved, the scale of the enterprise, and the impact of such accommodation to other people. For instance, in a school setting, if integrating a psycho-social student is very disturbing to others, it is considered to be "not reasonable".

This is a new concept to many Asian countries, except, few, such as Hong Kong China, which has introduced in 1995 an anti-discrimination law, entitled "Disability Discrimination Ordinance (DDO)". The concept of

reasonable accommodation is process-oriented and that of positive measures is result-oriented. Thus, the actual code of practices may be established gradually, based on the legal precedence and the cases piled up in the court. However, in many Asian countries without anti-discrimination law and where the conformity of society is culturally appreciated, such a legal dispute is not commonly practiced and this process may not be so easy. Having to deal with this new concept is challenging for many non-Western, Asian countries, with the model of social welfare law or comprehensive law, such as Iran, Japan, the Republic of Korea and Thailand. Nevertheless, the impact of this Convention is accompanied by another statement, "the failure of providing reasonable accommodation constitutes discrimination" (article 2). This can be used as a means of enforcing non-discrimination and guaranteeing the legal access of those whose rights to reasonable accommodation were already violated. For instance, if a customer in wheel-chair is denied the regular food service at a non-accessible restaurant, and if any reasonable accommodation (e.g. physical modification of the premises, or taking up the order to downstairs especially for him/her) is not provided, he/she is entitled to sue the shop owner. However, also the Convention permits any "positive discrimination or positive measures (affirmative actions)" which are designed for achieving the "results of non-discrimination", and it is not considered to be "discriminatory against the non-disabled". Any provisions such as Iran's employment quote of 3 per cent or reserved jobs (e.g. switchboard operator jobs reserved for blind persons) are permitted as a transitional means until the actual equality is fully achieved, one day, in a given society. The author is in the view that a set of affirmative actions represented by the employment quota scheme may be very useful, in many developing countries, only if it is supported by reinforcement measures (such as levy for non-compliance, subsidy for rewards, etc.). It can be effective not only for achieving the result but also for boosting public awareness. Thus, one may be able to say that reasonable accommodation allows a pre-emptive and affirmative action, closely linked to the removal of barriers, which may cause discrimination otherwise. In author's view, the changing negative attitudes towards persons with disabilities require in any society both reactive measures such as anti-discrimination law and proactive measures such as raising public awareness.

Another significance of this Convention may be the fact that it did not differentiate the standard package of socio-economic rights (second generation rights) from civil-political rights (first generation rights). Normally, the State Parties are allowed to implement socio-economic rights gradually, in accordance with the level of socio-economic development and subject to availability of resources. On the contrary, civil and political rights must be protected immediately, regardless of the socio-economic conditions. The rights delineated in the Convention are not newly created ones, as the human rights are universal and in-divisible, and most of the rights already exist in the core human rights treaties, but are tailored and articulated in specific needs of persons with disabilities. However, some of the rights are tailored more for specific needs of persons with disabilities, such as Accessibility (article 9), Living independently and being included in the community (article 19), Personal mobility (article 20), Habilitation and rehabilitation (article 26). Accessibility is unique as it refers to the rights of disabled people's access to physical environment, transportation and information, as well as to services. This article might monitor the behavior of private enterprises, such as theaters, shopping centers and other entertainment places. Anyway, many of those disability tailored rights can fit either in the traditional category of civil-political rights or the category of socio-economic rights. Thus, one can say that by avoiding the clear cut between the first generation rights and the second generation rights, the status of "socio-economic rights" (developmental rights) was upgraded in this Convention, up to a par to civil-political rights.

Convergence of the Convention, the MDGs and the BMF: towards disability inclusive development and development cooperation

Having said the above, for many resource poor countries, the immediate implementation of the Convention may pose the problem of high expenditure and the need for extra capitals, including financial, human and social capitals. As previously stated, the Government of Mexico was a proponent for reserving the text of international (development) cooperation (article 32), to meet the needs of developing countries. As we know it well, poverty is closely linked to impairment, and impairment to social exclusion. Another perspective about the relationship between poverty and disability concerns the fact that deprived

disabled people are more likely to experience financial difficulties, as well as social and economic discrimination, especially in developing countries. For instance, in Sri Lanka, 98% of deaf people who are employed earn less than US\$ 2 a day and 81 % earn less than US\$ 1 a day.

As indicated by the table 1 below, the Convention and the BMF have strong development concerns. The BMF recognize the rights to development of persons with disabilities. Indeed, the term, "Biwako Millennium Framework", itself (the framework) and its structure were taken from the model of MDGs, in order to mainstream disability dimensions into the MDGs as disability was not referred in the MDGs. Among the BMF 7 priority thematic goals, poverty alleviation of persons with disabilities and education of persons with disabilities are the utmost important. Empowerment of disabled women is another priority issue which is duplicated in all of those instruments. As its implementation strategies, the BMF promotes regional cooperation, such as south-south dialogue and sub-regional cooperation, as well as international cooperation. It also says, "Anticipate that BMF will contribute to attaining the MDGs and targets as the issues relating to persons with disabilities are vital concerns to be addressed in realizing the relevant MDG goals and targets" (chapter II). On the other hand, the article 32 of the Convention includes various forms of international (development) cooperation, including exchange and sharing of information and technologies, cooperation in research, supporting capacity-building, and disability inclusive development cooperation. Among the 9 Millennium Development goals, the goal 1 (eradicating poverty) and 2 (universal primary education) are of particular importance, but also the goal 9 (global partnership for development) is critical to foster disability inclusive development cooperation and the so-called "twin-track approach" of disability mainstreaming and empowerment of persons with disabilities (see table 1). The comparison among those international instruments is not exhaustive, but it shows rather that all of those documents are complementary and supplementary to each other, and the common denominators include, right-based, disability, poverty and development, international cooperation, particularly south-south cooperation.

The Convention became open for signature from 30 March 2007, and many countries of the world will be working very hard to formulate swiftly a set of strategies towards signing, ratification and

implementation, by reviewing the existing national disability-related legislation and policies. In some countries, domestic laws must be aligned with the principles of the Convention. Those outdated laws which are directly or indirectly discriminatory against persons with disabilities must be amended, and the laws which would proactively implement the Convention should be enacted. In some countries of the Asian region, such as Japan, Republic of Korea, and Thailand, activists, lawyers and disabled leaders are already working on establishing an anti-discrimination law. Furthermore, the establishment of the effective monitoring mechanisms at the national, regional and international levels is a key to success. The benefit of the Convention will be shared by grassroots disabled persons only if the Government is seriously following up and implementing it, by reflecting its principles in domestic legislation.

Conclusion:

Recently international development agencies and the United Nations development group (e.g. UNDP), bilateral agencies, and the World Bank started integrating disability concerns into the mainstream of their development work and policy by adopting a well-balanced, comprehensive social model approach (or rights-based approach) to disability, which is well reflected by WHO-ICF. To achieve this end, the twin track approach advocated by some international development agencies such as JICA (along the line similar to gender issues) should be replicated. To operationalize the concept of human rights, sustainable and result-based international or regional development cooperation is very important for many resource-poor developing countries. Iran (a middle-income country with the relatively high level of human resources and technical expertise) is among few Islamic countries in the Western Asian sub-region, which have comprehensive disability legislation and are willing to promote South-South Cooperation. If Iran decides to ratify it, it may be able to play a key role to promote awareness of other neighboring countries, of the Convention, through active participation in South-South Cooperation, using any of the modalities listed in various instruments (see table 1), such as the sharing good practices of Iran's progressive social services and contributing to the capacity building, as well as Iran's learning successful lessons from other developing countries. In Author's view, the modality of international cooperation today is very dynamic,

ranging from "North-South" and "South-South" to "South-North". Iran shall feel the ownership and find its role of choice in the international development cooperation community, perhaps for achieving this noble cause too.

For the United Nations, this is an excellent opportunity to try to meet its new mandate, the linking of the United Nations normative debates to its operational activities. Disability provides a golden occasion for the UN agencies (the UN system) to aim at pooling and mobilizing their human and financial resources, as disability is a truly multi-sectoral issue, which can be resolved only with the balanced technical expertise (e.g. medical staff, rehabilitation staff, human rights experts, prosthetic engineers, architects, social workers, economists, community-and CBR workers, micro-finance experts, and specialists in transition from relief to development).

Iran is ahead of many other countries, in promoting the rights of persons with disabilities and Iran is proactive. The University of Teheran (Faculty of Law and Political Science) in collaboration with the UNDP Teheran organized, prior to the inception of the Convention process, as early as in 2000 November, 2 day training workshop on the rights of the disabled, inviting a group of persons with disabilities, researchers, experts from government and NGOs, and the second phase of this training workshop was organized in Urumiyeh, Western Azerbaijan province, as Iran's South-South Cooperation to Azerbaijan. This project is an excellent example of South-South cooperation, as well as the United Nations' working closely with the recipient country, and delivering as one.

In author's view, thus we are now facing an interesting challenge to experiment "whether the United Nation can achieve its new vision of the "One UN" at the country level, and "delivering as one". Similarly, for disabled people and the specialists all over the world, this will provide a true challenge to prove that they (specialists and persons with disabilities) can deliver as one.

Acknowledgement:

The author is currently a senior economic affairs officer in charge of generic development cooperation policy of the United Nations. Prior to her current position at the UN HQ, the author served as a focal point for disability matters, from 1988 to 2002, at United Nations Economic and Social Commission for Western

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Convention and familiar with both disability and development issues. However, the views expressed in this article are those of the author and do not necessarily reflect the views of the United Nations or its regional commissions. ■

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