

Speech to RI and DPA seminar, Auckland, 15 April 2014

“The Promised Land – what has been the outcome?”

Before embarking on this topic, let me acknowledge – as I have previously – the important role played by RI in the development of the Convention on the Rights of Persons with Disabilities. RI was always there as a source of wisdom and good advice to me as Chair as we proceeded through the negotiations, and was unburdened by any particular agenda apart from getting a good Convention. It is nice to see Michael Fox here – he and I spent many hours together in the conference rooms at the United Nations.

I should also acknowledge the role played by DPA, through their participation in the New Zealand delegation and more generally. They were also a great source of information and guidance for generalist diplomats such as me who were rapidly trying to get up to speed on disabilities matters as we embarked upon our negotiations.

It is a great pleasure to be here again with colleagues from the international, and New Zealand, disabilities communities.

Did the Convention that we negotiated represent the Promised Land? I would not be so presumptuous as to suggest it did. As the outcome of international negotiations it contained many compromises, and was not perfect. It had gaps. But I am confident that it was a very good outcome, and the best outcome that could be negotiated at the time. It was the consequence of highly energetic and focussed efforts by international disabilities organisations, and compliant governments that wanted a good result, and was much better than many of us had dared hope for in the early days of the negotiation. I doubt that we could get such a good result in the more straitened circumstances of today's world.

For some people the adoption of the Convention may have been seen as an end in itself. Certainly, a lot of effort had gone into getting it there. And as soon as governments became party to it, as most did, it had immediate legal effect. Governments were obliged immediately to stop discriminating against persons with disabilities. Some of this discrimination that we had heard of was overt and egregious, including for example the inability of persons with disabilities to get passports, or even birth certificates, in some countries. This is one of the many things specifically covered in the Convention. It is also an example of why the Convention is so detailed. As well as dealing with more general issues of human rights, it is designed to prevent some of the more specific and egregious circumstances of which we were aware.

The Convention is a code – and often a detailed code – for the implementation of human rights of persons with disabilities. This code was needed because governments had failed to fully implement the human rights of persons with disabilities, even though they were in theory entitled to just the same human rights as everyone else in the community.

Sometimes this was wilful and intentional, as in the instance I have just referred to, but often it was not, and was rather the result of governments' failure to ensure things such as accessibility and reasonable accommodation.

For most people the Convention was not the Promised Land, because it was not an end in itself, but it was certainly an important landmark on the journey along the way. As well as the detailed requirements that it imposes on governments, it represented a significant shift in the way of thinking about disabilities. This is often referred to as the "paradigm shift", in regarding persons with disabilities as subjects of the law with the same rights as everyone else, rather than as objects of the law. This is a human rights convention, not a social welfare convention, and governments are not "giving" anything away – persons with disabilities have just the same human rights as everyone else.

Getting society to view the rights of persons with disabilities in accordance with the paradigm shift – as human rights rather than social welfare, and the attitudinal changes that involves – would in my view bring us much closer to the Promised Land. But we are well short of that I fear. Attitudes are hard to change, but we must keep on trying.

Even in my own organisation during the negotiations, it was an uphill battle trying to persuade people that this was a human rights issue and not a social welfare issue, and that it was therefore appropriate to apply New Zealand resources from the Ministry of Foreign Affairs. Certainly the resources that New Zealand put into getting the Convention were significant, starting from our early days of coordinating – or chairing – the experts Working Group that drew up the first text of a Convention – through to coordinating and later chairing the full negotiations. Many articles in the Convention had their genesis in hard negotiations late at night in the New Zealand offices across the road from the United Nations in New York, involving New Zealand and other governments and also civil society including RI and DPA (and open to all). The chair's reports and various texts that were used to move the process forward all represented huge input behind the scenes from the New Zealand team, both Wellington (MSD and MFAT) and New York based, with the single goal of getting a good and comprehensive Convention.

All of these negotiations, and the texts that were negotiated, were crucially informed by the experience and input of disabilities groups. That is why we have the detailed code that we do, and why such specific obligations are placed on governments.

How then are we progressing with those specific obligations, and the promise held out in the Convention?

There are several good sources of information on how we are doing. One very good source of information is the thematic studies that the Office of the United Nations High Commissioner for Human Rights publishes from time to time. These tend to be quite general in nature, as befits their thematic approach looking at implementation across the international community as a whole.

Some recent studies are particularly pertinent to the discussion panel topics at the seminars in Auckland today and in Wellington tomorrow.

Another very good source of information is the Reports that are provided as part of the regular reporting process by Governments to the United Nations Committee on the Rights of Persons with Disabilities, as required by the Convention. The reports by Governments set out their assessment of their progress in implementing the Convention. But even more revealing in many ways are the parallel reports provided to the United Nations Committee by Disabled Persons Organisations in the countries concerned. These parallel reports are the assessment by the persons whose rights are covered by the Convention, on how well their governments are doing in implementing those rights. Not surprisingly there are often quite different perspectives between the two – and that is exactly how the process is supposed to work.

Let me briefly mention two issues, education (article 24) and work and employment (article 27).

The most recent thematic study by the UN High Commissioner for Human Rights, in December last year, was on the right of persons with disabilities to education.

Although this study is perhaps less hard-hitting than some of the earlier ones, it sets out in some detail the various forms of discrimination faced by persons with disabilities in educational settings. Although there have been significant advances over recent years since the adoption of the Convention, the study says that across the international community students with disabilities are still stigmatized as people who cannot be educated in regular schools, or at all. This results in education systems in which persons with disabilities are denied the right to education as enshrined in article 24 of the Convention.

Even countries with very advanced economies can be a long way from inclusive school education. A recent Alternative Report from German DPOs indicates that the integration of children with disabilities amounts to 62% in preschools and kindergartens, 34% in primary schools and only 15% in high schools. Korean DPOs report that only 18.4% of children with disabilities overall are receiving inclusive education, with a lower rate at secondary or high school level.

These are just a couple of examples. But even that doesn't tell the full story. It is one thing to include disabled children and youth physically within the school system, in accordance with the requirements of the Convention, but "inclusion" involves more than just physical placement.

The recent New Zealand DPOs submission to the UN Committee says that disabled youth have reported experiencing isolation and exclusion within the school system, and have also reported experiencing intimidation and bullying in schools and beyond. This brings us right back to the fundamental challenge – part of the paradigm shift – and that is the need to change attitudes, and it is fair to say that most countries have not been very good at that.

Let me turn to another recent study by the United Nations Human Rights Commissioner – just over a year ago – which was on the work and employment of persons with disabilities. The right to work is a fundamental human right, going back to the Universal Declaration on Human Rights. The Convention on the Rights of Persons with Disabilities contains the most recent and detailed standards for the implementation of this right.

According to global estimates, persons with disabilities constitute some 15 per cent of the world's population. Between 785 million and 975 million of them are of working age (15 years or older), and most live in developing countries. The labour force participation rate of persons with disabilities is low in most countries. Recent figures for members of the OECD – developed countries – indicate that slightly less than half of working age persons with disabilities were economically inactive compared with one in five persons without disabilities of working age. While it is difficult to draw comparisons between countries on rates of unemployment due to national differences in definitions on disability and statistical methodology, it is clear that an employment gap exists across countries and regions. In many instances this is significant.

The study concludes that while the reasons for low labour force participation by persons with disabilities are multifaceted, it is evident that one of the core challenges lies in negative attitudes, stigma and stereotypes of persons with disabilities as being in some way “unsuitable” to participation in working life, on an equal basis with others. Again we come against attitudes. This translates into continued marginalisation and discrimination of persons with disabilities in the area of work and employment, and for many persons with disabilities around the world, denial of their right to work.

The figures do vary from country to country. The New Zealand Alternative Report, for example, indicates that 43.6% of disabled people participate in the workforce, compared with 70% of non-disabled people, which is reasonably high compared with some countries.

But as well as the absolute figures, it is important to know the trends. For example, a recent Swedish Alternative Report indicates an increase in the gap between the employment rates of persons with disabilities and persons without disabilities. Comparing early 2014 with early 2013, the number of unemployed persons with disabilities increased by 7.3% whereas unemployed persons without disabilities decreased by 3.5%.

This leads me on to another constant issue that one encounters in the thematic studies, and in the various reports, and that is the lack of adequate data to measure implementation. As the Swedish Alternative Report shows, trends can be more revealing than absolute figures. The obligation is on Governments to do better, to improve; doing worse is not an option.

But as well as information on trends, it would be useful to have analysis or breakdown of type of disability in relation to inclusive education, or in relation to employment and unemployment.

Where that analysis has been done, it has shown quite marked differences between types of disability and employment and unemployment, for example. This sort of analysis can assist governments in responding, and in targeting their responses, for example with regard to reasonable accommodation.

This is precisely why we included, in the Convention, a quite novel article for a human rights treaty – Article 31 – which requires States to collect information, including statistical and research data, as a basis for formulating and implementing policies on disability rights. Once data is collected, more appropriate laws, policies and programmes can be formulated to protect persons with disabilities against discrimination and to promote their rights.

In conclusion, then, the Convention was never intended to be the Promised Land. But it was an important part of the journey. Because we are dealing with human rights I doubt that we will ever be able to say that we have completed that journey and reached the Promised Land as such. Like other human rights treaties there is unlikely to be an absolute end point, where we can say that everything has been fully implemented and everyone has full enjoyment of their human rights. Partly this is because standards and expectations are constantly changing, and constantly improving.

As we can see from the UN studies, and from reports by Governments and Parallel Reports by DPOs to the Committee on the Rights of Persons with Disabilities, we still have a long way to go in implementing the Convention. I had selected just two studies, but reports on the situation of women and girls with disabilities, and children with disabilities, are much more egregious.

What the Convention does do, is provide a mechanism for Governments to be held to account for the way in which they are implementing their obligations. It is essential that Governments strive to improve, and that we continually move forward. That is another area where Disabled Persons Organisations – organisations such as RI and DPA – have such an important role to play. As an alternative voice, and in keeping Governments striving for that Promised Land.

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CRPD Chair
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The Convention on the Rights of Persons with Disabilities was drafted by an Ad Hoc Committee, established by the General Assembly by its resolution 56/168 of 19 December 2001, which was mandated to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination.

The Convention, and its Optional Protocol, was adopted by the General Assembly by its resolution 61/106 of 13 December 2006. The Convention entered into force on 3 May 2008, on the thirtieth day after the date of the deposit of its twentieth instrument of ratification or accession, in accordance with its article 45, paragraph 1.

By the Convention on the Rights of Persons with Disabilities, States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. The Convention outlines specific steps to be taken by States Parties, including the implementation of laws and administrative measures, to ensure the enjoyment of these rights and to promote awareness of the capabilities and contributions of persons with disabilities.

The Optional Protocol to the Convention, which recognizes the competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention, also entered into force on 3 May 2008.
