

COUNCIL MONITOR

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Overview	1
Item 3 – Interactive panel debate on the rights of persons with disabilities	1
Panel presentations.....	2
Interactive dialogue	3
Further information.....	Error! Bookmark not defined.

Overview

This first interactive panel debate on the rights of persons with disabilities took place on 6 March 2009. Chaired by Mr. Marius Grinius, the dialogue was based on a study undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) that detailed key challenges for implementation of the *Convention on the Rights of Persons with Disabilities (CRPD)*. The panel also drew attention on the main challenges that States face, including present discrimination and exclusion of persons with disabilities, the negative perception of incompetence of persons with disabilities, the need to shift from the medical model to the social model perspective, the need to review domestic law by removing discriminatory provisions, and establishing new legislative measures that accommodate persons with disabilities. States, NGOs and national human rights institutions then took part in the interactive dialogue, raising amongst other issues, the problem of translating new legislative terms into the State's national language, including civil society in the implementation process, the need for further guidelines and good practices for effective implementation, and the possibility of establishing a new fund to promote implementation.

Item 3 – Interactive panel debate on the rights of persons with disabilities

In accordance with the United Nations (UN) *Resolution 7/9*, the first annual debate on the *Convention on the Rights of Persons with Disabilities* took place on 6 March 2009. Adopted by the UN General Assembly on 13 December 2006, the CRPD entered into force on 3 May 2008 with 50 State parties and 139 signatories. Its Optional Protocol of the CRPD has presently been ratified by 29 States and 82 States are signatories.

The dialogue focused on key legal measures that are necessary to implement the CRPD correctly. The Office of the United Nations High Commissioner for Human rights (OHCHR) prepared a study for this dialogue explaining

the CRPD's functioning and the different legal measures that have to be taken at a national level.¹ The panel was composed of four experts on disability: Ms Amita Dhanda, representing the International Disability Alliance-CRPD Forum; Ms Barbara Murray, Disability Specialist at the International Labour Organization (ILO); and Mr Györg Könczei and Ms Eda Maina, members of the Committee on the Rights of Persons with Disabilities (the 'Committee'). The dialogue consisted of 45 minutes of presentations, followed by questions and comments by States, national human rights institutions, non-governmental organisations (NGOs), and finally concluding comments and responses by the panellists.

The dialogue started with a brief introduction by the UN High Commissioner for Human Rights, Ms Navanethem Pillay. Opening with the assertion that the CRPD is filling a major legal gap, she expressed satisfaction with the speed of ratifications but stressed that the Council nevertheless was expected to advance the Convention's goals amongst States and within the UN system. Ms Pillay stressed the need to 'move away from a charity-based or medical-based approach of disability to a new perspective stemming from and firmly grounded in human rights'. She emphasized that the traditional approach perceived persons with disabilities either as 'passive recipients of good will or deeds, or as problems to be fixed, or both'. The CRPD is innovative in perceiving disability as the outcome of the interaction between the impairment of a person and outside barriers. According to Ms Pillay, the CRPD represents a 'watershed in thinking' as it identifies State policy and legislation as the roots of discrimination against people with disabilities. She gave an example of inaccessibility to buildings, which would constitute a failure of the State's policy to take into account the special needs of persons with disabilities, rather than a consequence of disability itself.

She recommended that States and civil society consider the necessary elements to give full effect at the national level to the CPRD. She drew attention to the fact that every State has persons with disabilities who suffer from severe violations of their human rights and the CRPD contributes in the development of a 'roadmap' to improve this intolerable situation. Ms Pillay concluded that she understood the importance of including persons with disabilities throughout, and that it 'inspired and energized the negotiations leading to the adoption of the Convention'. Finally, she reminded States that OHCHR was ready to assist countries in implementing the Convention.

Panel presentations

The panellists discussed a broad range of issues. Ms Dhanda drew attention to the fact that the CRPD is not just an agreement between States parties but also includes civil society. The concern of the charity-based approach was emphasized by Mr Györg Könczei. Referencing the medical versus the social model, he stated that whereas the medical model perceives persons with disabilities 'as persons where something has gone wrong with them', the social model recognizes that 'there is something wrong in the society if it is unable to integrate persons with disabilities'. It is therefore the society which needs to adjust if it is unable to integrate persons with disabilities. He emphasized that the CRPD is based on the 'social model'.

The most discussed articles of the CRPD were Article 12 (equal recognition before the law), Article 13 (access to justice) and Article 33 (national implementation and monitoring). Article 12 was recognized as a core article of the CRPD because it reaffirms that 'persons with disabilities have the right to recognition everywhere as persons before law' and it is particularly linked to the purpose of the CRPD, as outlined in Article 1 of the Convention.² Article 12(2) establishes that persons with disabilities 'enjoy legal capacity on an equal basis' and Article 12(3) obliges States 'to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity'. Mr Könczei considered that reservations to Article 12 contravene the

¹ Thematic study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with disabilities, A/HRC/10/48, 26 January 2009.

² Article 1: 'The purpose of the present Convention 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. (...)'

object and purpose of the Convention.³ Ms Dhanda also pointed out that there is little understanding amongst States on the need to change legislation at the national level to adequately implement Article 12. Furthermore, although some provisions for the full implementation of this Article 12 might take some time, there is no reason for States to continue with practices that are not in order with the CRPD.

Regarding Article 13, Ms Dhanda commented that there are two important steps that have to be taken at a national level. Firstly, laws that limit the legal capacity of persons with disabilities need to be repealed. In this instance she gave the example of persons with disabilities being able to serve as a witness. Secondly, ‘laws need to be enacted which accommodate for the needs of persons with disabilities, and which facilitate full communications by a witness with disabilities.’

Ms Dhanda noted that Article 33 concerning the national implementation and monitoring of the CRPD represents a special challenge for States. She requested that the Office undertakes a study to show how a State can best comply with Article 33.

At the end of the dialogue, Ms Murray referred to the right of persons with disabilities to work and the right to free chosen employment. States have to review their national law on training of persons with disabilities to ensure that it is in line with the CRPD and excludes barriers against persons with disabilities. Consultations have to take place with key stakeholders, such as employers and disabled persons, if amendments to legislation are necessary at the national level.

Ms Murray recommended that States take action to ensure public transport, access to buildings, and make sure that other services are accessible to people with disabilities. She added that the ILO is supporting the process of prohibition of discrimination in all forms of employment in several developing countries, linked to ILO *Convention No. 149*.

Interactive dialogue

A number of States took the floor to stress that the international community has to recognise the existing differences between developed and non-developed countries.⁴ Cuba (on behalf of the Non-Aligned Movement) stated that it is imperative to recognize and take into account the existing differences between developed and developing countries when addressing the problem, particularly as a result of the current economic crisis. IT claimed that international cooperation, as stated in Article 32 of CRPD, should be enhanced to assist national efforts of developing countries in the full implementation of its provisions ‘as a prerequisite to establish comprehensive and sustainable solutions to special needs of persons with disabilities’.

Pakistan (on behalf of the Organization of the Islamic Conference) suggested that OHCHR should study the technical and resource constraints of developing countries. Such a study would contribute to a universal adherence of the CRPD. Slovenia asked whether there will be the establishment of a fund to promote the full implementation of the CRPD at the national and international level. Ms Murray answered that for the moment there are no such funds available. However, she added that the ILO is carrying out a review of the overseas development policies of donor countries and they are trying to include a disability component in all funds.

The Czech Republic (on behalf of the European Union) asked for a good example of implementation of the social model in the rights of persons with disabilities at a national level, as well as a model example of civil society cooperation in the implementation of the CRPD. It also noted the problem of interpretation while trying to define terms that do not exist in some States. Mr Györg Könczei replied that there are no best practices in introducing this concept of disability in national legislation as there are a lot of differences between States. According to him ‘a way leading there would be a comparison of terms, for instance comparing what disability means in US legislation

³ As addressed by Article 46, which states that ‘reservations incompatible with the object and purpose of the present Convention shall not be permitted’.

⁴ Cuba on behalf of the Non-aligned movement (NAM), Pakistan, Algeria, Philippines, Malaysia and Kenya.

and how it's used in EU legislation and then you can build up your own understanding'. Ms. Murray suggested taking a look at the countries that have very strong anti-discrimination legislation for persons with disabilities for example the *Disability Act* in the US, the Canadian *Employment Equity Act*, the *Employment Equity Act* in South Africa, and 'the anti-discrimination legislation in Australia or the UK'. She added that the ILO was trying to gather good practices that they will publish in the future. Concerning the question of translating concepts into different languages, Mr Kőnczei noted that 'once the Committee gets a bit closer to the meaning of terms; we will be able to embed better terms into our legal system.' Moreover, the CRPD will in the future publish guidelines and general comments on several articles of the CRPD, which will hopefully help member States in the implementation of the CRPD.

Interestingly, the United States of America stated that they are in an early process of reviewing a number of treaties to which it is not currently party and the reasons for their non-ratification. It is also reviewing domestic law to see to what extent treaty obligations can be implemented under existing law.

Among other observations, Mexico, New Zealand and Turkey noted that the United Nations buildings should have better facilities for persons with disabilities. Other issues raised in the dialogue included: States' resource problems in establishing a new report procedure for the CRPD⁵ and varying costs for different countries;⁶ the need to translate the Convention in the State's national language and publish it in the media;⁷ the different measures taken by some States to the right of persons with disabilities to free chosen employment;⁸ difficulties in eliminating prejudices in the society⁹

The European Disability Forum, representing also the International Disability Alliance, stated that States should refrain from using the word 'prevention' in their national disability campaigns, since 'prevention' is a negative concept. If the international community wished to achieve the paradigm shift 'we should stop speaking about preventing impairment when we speak of the right of persons with disabilities'. He added that States should be more consistent not only at the national level but also at the international level by not using the *1982 World Program of Action concerning disabled persons* as a reference document alongside the CRPD.

The panellists' presentations facilitated the understanding of key legal measures that have to be implemented at the national level. According to Ms Dhanda, the dialogue emphasised the indivisibility of human rights and confirmed that the making of laws is not a State-centric exercise, but that people themselves should to be an integral part. This is why the main slogan of this CRPD is 'Nothing about us without us'.

⁵ Kenya, Nigeria.

⁶ Chile (on behalf of GRULAC).

⁷ Slovenia.

⁸ Australia, Italy, China.

⁹ Turkey.

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