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### **IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

#### **Report of the United Nations High Commissioner for Human Rights on progress in the implementation of the recommendations contained in the study on the human rights of persons with disabilities**

##### **Summary**

The present report sets out progress on the implementation of the recommendations contained in the study on human rights and disability and the achievements of the objectives set forth in the programme of work of the Office of the High Commissioner for Human Rights in relation to the human rights of persons with disabilities. The report briefly lists activities of the Office over 2006 in the area. The main achievement over 2006 has been the adoption, in December, by the General Assembly of the International Convention on the Rights of Persons with Disabilities, the eighth core international human rights instrument. Consequently, the report provides a presentation of some of the principal elements of the Convention. The report recommends that the Human Rights Council maintain the issue of human rights and disability under consideration and suggests that the Council might wish to consider requesting the High Commissioner to submit annual analytical thematic reports on human rights and disability.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 4	3
I. ACTIVITIES ON HUMAN RIGHTS AND DISABILITIES OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS .....	5 - 17	4
II. INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND ITS OPTIONAL PROTOCOL .....	18 - 54	6
III. CONCLUSIONS AND RECOMMENDATIONS .....	55	16

## Introduction

1. By its resolution 2005/65, the Commission on Human Rights requested the Office of the High Commissioner for Human Rights (OHCHR) to report to the Commission at its sixty-second session on progress in the implementation of the recommendations contained in the study on human rights and disability and on the achievement of the objectives set forth in the programme of work of the Office in relation to the human rights of persons with disabilities. In its decision 2/102, the Human Rights Council decided to request the Secretary-General of the United Nations and the High Commissioner to continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies. The present report is submitted in response to these requests.

2. The 2002 OHCHR study on “Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability” (the study), focused on the work carried out by the (then) six core United Nations human rights treaty bodies to advance the equal effective enjoyment of human rights and fundamental freedoms by persons with disabilities. The study concluded that, despite their considerable potential, the United Nations human rights treaties had not been fully used in the context of disability. In order to enhance the future use of the existing human rights treaties and mechanisms, the study addressed a wide range of recommendations to States parties, treaty bodies, the Office of the High Commissioner for Human Rights, the Commission on Human Rights, national human rights institutions and civil society.<sup>1</sup>

3. In the context of its recommendations, the study considered the possible drafting of a new convention on human rights and disability. The study concluded by noting that such a convention “would mark a huge step forward and should not undermine but underpin the protections provided in the existing six human rights treaties”. In 2001, the General Assembly established an Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disability (the Ad Hoc Committee) which met for eight sessions and submitted a draft text to the General Assembly for action. On 13 December 2006, the General Assembly adopted the International Convention on the Rights of Persons with Disabilities (“the Convention”) and its Optional Protocol, as contained in its resolution 61/106 (see A/61/611, annex).

4. Given the importance of this new development, including in relation to the implementation of the recommendations of the study, the present report seeks to provide information to the Human Rights Council on the new Convention. Consequently, the report is divided into three sections. The first section provides an update on OHCHR activities during 2006 in relation to human rights and disabilities. The second section provides a detailed

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<sup>1</sup> G. Quinn and T. Degener, “Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability”, HR/PUB/02/1, United Nations, New York and Geneva, 2002.

outline of the purpose, content, obligations and monitoring mechanisms contained in the new Convention. The third section draws some conclusions and indicates some recommendations for possible action by the Council.

## **I. ACTIVITIES ON HUMAN RIGHTS AND DISABILITIES OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

5. Over 2006, OHCHR has continued to increase its work on human rights and disabilities. In keeping with the five action points outlined in the High Commissioner's Plan of Action, those activities have sought to promote: more synergy in the relationship between OHCHR and the various United Nations human rights bodies; an enhanced leadership role for the High Commissioner; greater country engagement; closer partnerships with civil society and the United Nations agencies; and, strengthened management and planning for OHCHR.

### **More synergy in the relationship between the Office of the High Commissioner and the various United Nations human rights bodies**

6. Much of the work of the Office over the reporting period has focused in assisting the Ad Hoc Committee of the General Assembly that drafted the International Convention on the Rights of Persons with Disabilities and its Optional Protocol. To that end, the Office participated in the seventh and eighth sessions of the Ad Hoc Committee from 16 January to 3 February and from 14 to 25 August 2006 and 5 December 2006, respectively. At the seventh session, the Office organized a briefing and lunchtime panel on treaty body reform and provided a background paper on international monitoring. In September and October 2006, the Office participated in the Drafting Group established by the Ad Hoc Committee to ensure that the six language versions of the new Convention were technically consistent and coherent. The Office also participated in the process of adoption both at the resumed eighth session of the Ad Hoc Committee on 5 December as well as at the final adoption by the General Assembly at its sixty-first session, on 13 December 2006.

7. The Office has begun working with special procedures of the Human Rights Council to promote the rights of persons with disabilities within the context of their mandates. On 23 and 24 November, the Office hosted an expert seminar on "The right to education of persons with disabilities" to assist the Special Rapporteur on the Right to Education in the preparation of his thematic report to be submitted to the Council at its fourth session (A/HRC/4/29). Similar activities are planned for 2007.

### **An enhanced leadership role for the High Commissioner**

8. The Plan of Action highlighted an enhanced leadership role for the High Commissioner through, amongst other things, greater interaction with relevant United Nations bodies. On 27 January 2006 as well as 5 December 2006, the High Commissioner addressed the Ad Hoc Committee. In her January statement, the High Commissioner encouraged the Ad Hoc Committee in its work, acknowledging that future implementation of the Convention would require resources while underlining the fact that resource constraints should not obscure the need to combat deeply rooted discrimination. In her December statement, the High Commissioner welcomed the adoption of the Convention, highlighting the way in which the negotiation process had already provided a catalyst for change within the United Nations, in

particular given the strong involvement of civil society organizations and national human rights institutions in the negotiations as well as the increased efforts to ensure physical and technological accessibility at the United Nations offices.

9. During the second session of the Human Rights Council, the High Commissioner and the President of the Council, Mr. Luis Alfonso de Alba (Mexico), hosted a lunchtime briefing on the Convention for States representatives and observers to the Council. The High Commissioner highlighted a selection of provisions in the Convention such as the prohibition on torture and the right to education and their relevance to persons with disabilities.

### **Greater country engagement**

10. The Office has also participated in national level meetings aimed at disseminating information on the Convention. On 30 and 31 October, the Office participated in an international seminar on the Convention organized in Mexico by the Department of Foreign Affairs. On 20 November, a representative of the Office in Uganda participated in a meeting organized by the Government. On 30 November, the Office participated in a meeting hosted by the Department of Public Information in Moscow. On 1 December, the Office participated in a conference organized by Disabled Persons South Africa in Durban, South Africa, where the Office made a presentation on the Convention. On 20 December, the Office participated in a Conference on the Convention in Madrid organized by the Ministry of Labour and Social Affairs of Spain. In terms of technical cooperation, the Human Rights Unit of the United Nations Assistance Mission in Afghanistan is co-funding a project with the United Nations Development Programme concerning a radio programme designed to promote greater awareness and understanding of the situation of persons with disabilities.

11. In 2006, the Office, together with the Inter-Parliamentary Union and the Department of Economic and Social Affairs (DESA) agreed to co-publish a "Handbook for Parliamentarians on the International Convention on the Rights of Persons with Disabilities". The Handbook will be available in the second half of 2007 and is intended to enhance understanding of the Convention amongst parliamentarians and other actors at the country level.

### **Closer partnerships with civil society and the United Nations agencies**

12. The Office has also participated in inter-agency meetings on the Convention. In June 2006, the Office convened a meeting of Geneva based intergovernmental organizations and civil society organizations working on human rights and disability with a view to disseminating information to relevant partners on the negotiation process. The Office participated in an Inter-Agency Meeting from 10 to 11 August hosted in New York by DESA to coordinate agencies' work related to the Convention. On 30 November, the Office also participated in the Inter-Agency Coordination Group on Mine Action Sub-Group in Geneva, in order to disseminate information on the Convention as it relates to assistance to victims of landmines.

13. The Office continued assisting national human rights institutions (NHRI) to participate in the negotiation process of the Convention. The Office sponsored the participation of the representative of the International Coordinating Committee of NHRIs to the January and August sessions of the Ad Hoc Committee. In April 2006, the Office also provided a briefing on the negotiation process to the International Coordinating Committee of NHRIs in Geneva.

14. Over 2006, the Office participated in several expert group meetings related to the negotiation and adoption of the Convention. In March, the Office participated in a consultative meeting organized by DESA for non-European Union (EU) Eastern European States. The meeting involved both member States and disabled persons organizations (DPOs) and aimed at contributing to the work of the Ad Hoc Committee.

15. From 20 to 21 November, the Office participated in a two-day Conference, organized by CBM (International) and light for the world (Austria), which was part of the International Disability and Development Consortium (IDDC) project "Breaking the cycle of poverty and disability in Development Cooperation" Disability Mainstreaming in Development Cooperation, supported by the Directorate General Employment and Social Affairs of the European Commission, in partnership with several non-governmental organizations. The objective of this first European gathering was to formulate a strategy to promote the Convention and its role in advancing development policies inclusive of disability.

### **Strengthened management and planning for OHCHR**

16. In April 2006, the Office filled the post of Advisor on Human Rights and Disability ensuring dedicated full-time attention to the mandate at an appropriate level.

17. In keeping with the theme of the International Day of Disabled Persons 2006 (3 December) which was "e-accessibility", the Office accomplished the first stage of its revision of its homepage, making the page on disabilities accessible. The upgrading of the rest of the website is in progress.

## **II. INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND ITS OPTIONAL PROTOCOL**

18. On 13 December 2006, the General Assembly adopted the International Convention on the Rights of Persons with Disabilities and its optional protocol, as contained in resolution 61/106 (see A/61/611, annex), making it the eighth core human rights treaty. The Convention will be open for signature on 30 March 2007 in New York. The following section outlines some of the main articles and issues raised in the new Convention. The section is intended as an introduction to the Convention; however, given space limitations, the report does not attempt to give a comprehensive overview of each of its provisions.

### **General overview**

19. The Convention consists of 50 articles on purpose, general principles, general obligations, specific rights, and actions to be adopted by States to ensure an enabling environment for the fullest enjoyment, without discrimination, of the rights of persons with disabilities, to foster international cooperation and to establish international and national monitoring. The Convention does not create any new rights; rather it clarifies the obligations of States in relation to existing civil, cultural, economic, political and social rights. In order to ensure an environment conducive to the fulfilment of the rights of persons with disabilities, the Convention includes articles on awareness-raising, accessibility, situations of risk and humanitarian emergencies, access to justice, personal mobility, habilitation and rehabilitation, as well as statistics and data collection. The Convention establishes a Conference of States parties

to meet regularly to consider any matter with regard to implementation of the Convention and to be convened by the Secretary-General of the United Nations no later than six months after the entry into force of the Convention. The Convention also establishes the Committee on the Rights of Persons with Disabilities with authority to receive and review periodic reports submitted by States parties to the Convention.

20. Under the Optional Protocol to the Convention, individuals and groups of individuals may submit allegations of breaches of any of the provisions of the Convention to the Committee. The Optional Protocol also permits the Committee to undertake in-country inquiries where there has been reliable evidence of grave or systematic violations of the rights of persons with disabilities.

21. It is often stated that the Convention represents a paradigm shift in attitudes that moves from a perception of persons with disabilities as objects of charity, medical treatment and social protection to subjects of rights, able to claim those rights as active members of society. The Convention achieves this paradigm shift by affirming that persons with disabilities hold civil, cultural, economic, political and social rights, are entitled to full protection against discrimination and by establishing monitoring mechanisms at the national and international levels to ensure that persons with disabilities are able to enforce those rights.

### **Purpose and definitions**

22. Article 1 of the Convention identifies its purpose “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”.

23. The Convention does not include a definition of “disability” or “persons with disabilities” as such. However, elements of the preamble and article 1 provide guidance to clarify the application of the Convention. First, the preamble recognizes that “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”. Article 1 states that “(p)ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

24. Several elements of these provisions are relevant to highlight. First, there is recognition that “disability” is an evolving concept resulting from attitudinal and environmental barriers hindering the participation of persons with disabilities in society. Consequently, the notion of “disability” is not fixed and can alter, depending on the prevailing environment from society to society. Second, disability is not considered as a medical condition as such, but rather as a result of the interaction between negative attitudes or an unwelcoming environment with the condition of particular persons. By dismantling attitudinal and environmental barriers - as opposed to treating persons with disabilities as problems to be fixed - those persons can participate as active members of society and enjoy the full range of their rights. Third, the Convention does not restrict coverage to particular persons; rather, the Convention identifies persons with long-term physical, mental, intellectual and sensory disabilities as beneficiaries under the Convention. The

reference to “includes” assures that this need not restrict the application of the Convention and States parties could also ensure protection to others, for example, persons with short-term disabilities or who are perceived to be part of such groups.

## Principles

25. Article 3 sets out the general principles of the Convention. The General Principles can be grouped as follows: respect for inherent dignity, individual autonomy and independence of persons; non-discrimination, equality of opportunity and equality between men and women; participation and inclusion; respect for difference and acceptance of human diversity; accessibility; and, respect for the evolving capacities of children with disabilities and respect for their right to preserve their identities.

26. While all the general principles are of equal importance, the present section illustrates the relevance of three of these, namely: the principle of non-discrimination; the principle of accessibility; and the principle of participation and inclusion. First, the principle of non-discrimination is one of the basic principles of international human rights law. “Discrimination on the basis of disability” is defined in similar, although not exact, terms as definitions of discrimination found in other human rights treaties<sup>2</sup> as follows: “Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation” (art. 2).

27. The inclusion of the denial of reasonable accommodation as a form of discrimination is significant. Reasonable accommodation is defined as follows: “‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms” (art. 2).

28. Consequently, individuals with disabilities are able to claim that the State, and through the State, other actors such as the private sector, have obligations to take steps to accommodate his or her particular situation, so long as those steps do not impose an overly harsh burden. For example, if an employee has an accident resulting in a physical disability, whether at or outside the workplace, which requires the employee to use a wheelchair in the future, the employer now has a responsibility to provide, for example, ramps, clear corridors, ensure wheelchair accessible toilets and make other adjustments and modifications so that the persons can continue to work as an active employee. A failure to make such accommodations would give rise to a cause of action so that the individual employee could bring a claim to an appropriate judicial or

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<sup>2</sup> See e.g., International Convention on the Elimination of All Forms of Racial Discrimination, article 1; Convention on the Elimination of All Forms of Discrimination against Women, article 1.



quasi-judicial body on the ground of discrimination. However, the accommodations that the employer must undertake are not unlimited; they must only be “reasonable” such that, for example, a disproportionately expensive accommodation would not be mandatory.

29. Second, the principle of accessibility is a crucial element in dismantling the barriers that hinder the effective enjoyment of rights by persons with disabilities. Physical, technological, information, communication, economic and social accessibility is important to the full participation of anyone in society. For persons with disabilities, accessibility is particularly significant, given the many barriers blocking full access. The provision of ramps, sufficiently large and unblocked corridors and doors, the placement of door handles, the availability of information in Braille and easy to read formats, the use of sign interpretation/interpreters, the availability of assistance and support can ensure access to a person with a disability to the workplace, a place of entertainment, a voting booth, to transport, to a courtroom and so on. Without accessibility, not only is movement of persons with disabilities restricted, the enjoyment of other rights is also restricted. Consequently, not only is accessibility a general principle of the Convention, it is also a stand-alone provision. Article 9 requires States parties to take appropriate measures to “enable persons with disabilities to live independently and to participate fully in all aspects of life” by taking appropriate measures to ensure access to the physical environment, to transportation, to information and communications and to other facilities and services open or provided to the public in both urban and rural areas.

30. Third, the principle of participation and inclusion runs throughout the Convention. Significantly, article 1 of the Convention recognizes that full and effective participation in society by persons with disabilities is hindered by various barriers in society. Participation in political and public life is expressly recognized in a dedicated article (art. 29) which guarantees “to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others”. This includes the right to participate directly or through freely chosen representatives and the encouragement of the formation and participation of persons with disabilities in non-governmental organizations and associations at the international, national, regional and local levels. Similarly, the Convention specifically recognizes participation in cultural life, recreation, leisure and sport in a separate article (art. 30). Participation and inclusion is also expressly referred to in relation to living independently and being included in the community (art. 19), inclusive education as an element of the right to education (art. 24) as well as full inclusion and participation in all aspects of life as the objective of habilitation and rehabilitation (art. 26). Further, the Convention acknowledges the importance of participation in processes it establishes, with the requirement that States give due consideration to the participation of experts with disabilities in the future Committee on the Rights of Persons with Disabilities that will monitor implementation. The significance of participation and inclusion to the Convention is summed up by the motto used by civil society organizations during the negotiations: “nothing about us without us”.

### **General obligations on States parties**

31. Article 4 of the Convention sets out the General Obligations on States parties with regard to the rights of persons with disabilities. Specifically, States parties “undertake to ensure and promote the full realization of all rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability”. In meeting this general obligation, the Convention sets out a series of specific actions that States parties must undertake.

Human rights obligations are sometimes categorized as obligations to respect, protect and fulfil human rights.<sup>3</sup> The following groups the obligations identified under article 4 according to these three general categories:

(a) *The obligation to respect* - States parties must: refrain from engaging in any act or practice that is inconsistent with the Convention; modify or abolish existing discriminatory laws, customs and practices; closely consult with and actively involve persons with disabilities in the development and implementation of legislation and policies to implement the Convention;

(b) *The obligation to protect* - States parties must take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(c) *The obligation to fulfil* - Many of the specific obligations on States fall within this category. For example, States must adopt legislative, administrative, policy, programmatic and other measures to implement the rights of persons with disabilities; undertake or promote research and development into relevant goods and services, provide accessible information to persons with disabilities on relevant technology and other assistance, services and facilities; promote training of professionals and staff working with persons with disabilities.

32. Article 4 also makes specific reference to the obligations on States parties in relation to the economic, social and cultural rights of persons with disabilities. The article acknowledges that some aspects of these rights are immediately realizable while other aspects are subject to progressive realization.<sup>4</sup> In other words, while some aspects of these rights - such as the prohibition on discrimination, the prohibition on acts that infringe rights and so on - are subject to immediate implementation, other aspects of these rights require the dedication of resources over time. As noted by the Committee on Economic, Social and Cultural Rights, the acknowledgement of the progressive nature of some obligations concerning economic, social and cultural rights reflects the realities of the real world and the difficulties of any country in ensuring full realization of these rights, particularly in light of resource constraints. However, the Committee also notes the progressive realization of economic, social and cultural rights

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<sup>3</sup> The Committee on Economic, Social and Cultural Rights now regularly refers to the typology of obligations (respect, protect and fulfil) in relation to economic, social and cultural rights in its recent general comments. The Human Rights Committee has also used the typology, although less systematically: see e.g., Human Rights Committee, general comment No. 31 (2004) on “The Nature of the General Legal Obligation Imposed on States parties to the Covenant”.

<sup>4</sup> Article 4 (2) states: “With regard to economic, social and cultural rights, each State party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.”

nevertheless imposes clear obligations on States parties to undertake deliberate, concrete and targeted steps towards achieving these rights within a reasonably short time of the treaty's entry into force for the State concerned.<sup>5</sup>

### **Rights contained in the Convention**

33. The Convention sets out the obligations on States parties to the Convention in relation to civil, cultural, economic, political and social rights. While the Convention does not recognize any new rights, the Convention does define with greater clarity the application of existing rights to the specific situation of persons with disabilities. It is not possible to cover all of the articles comprehensively. The following examples illustrate how a limited selection of the rights recognized in the Convention has practical application to the lives of persons with disabilities.

34. **Equal recognition before the law:** The Convention reaffirms that persons with disabilities have the right to recognition everywhere as persons before the law and that they enjoy legal capacity on an equal basis with others. At its most basic level, the Convention ensures that the practice of not registering children with disabilities at birth is clearly a human rights violation. Further, the recognition of the legal capacity of persons with disabilities acknowledges that persons with disabilities can make decisions affecting their lives. Where necessary, States parties have to take appropriate measures to provide access to support for persons with disabilities so that they are able to take decisions on their own behalf. States must ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse, in accordance with international human rights law.

35. **The right to vote:** The Convention guarantees political rights of persons with disabilities and States parties must ensure the right and opportunity for persons with disabilities to vote and be elected, including by ensuring voting procedures, facilities and materials are appropriate, accessible and easy to understand and use. To give an example, for a blind person to enjoy the right to vote on an equal basis with others, that person might require voting material in Braille and might require a trusted assistant in the voting booth to help fill out the voting form. The Convention therefore guarantees these or similar additional accommodations so that persons with disabilities can enjoy the right to vote on an equal basis with others.

36. **The right to education:** The Convention recognizes the right of persons with disabilities to education. To this end, States parties must ensure an inclusive education system at all levels and life-long learning. Learners with disabilities therefore have a right not to be excluded from the general education system on the basis of disability and to reasonable accommodation for the individual learner's needs. This not only means that learners have a right to attend mainstream schools and not be relegated to segregated schools, it also means that the special education needs of persons with disabilities must be taken into account in the general education system. This goes beyond grouping all learners together in one classroom to ensuring the provision of effective individualized support that maximizes academic and social development.

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<sup>5</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on "The nature of States party's obligations", paras. 3 and 9.

## The Convention and social development

37. A distinctive aspect of the Convention is its social development dimension. When the General Assembly decided to move forward on a new convention on human rights and disability, it decided, in its resolution 56/168 to establish an Ad Hoc Committee “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 ...”. Accordingly, the Convention refers to social development in the context of the promotion and protection of the rights of persons with disabilities in the preamble and in several provisions. For example, the preamble, at paragraph (t) highlights the fact that the majority of persons with disabilities live in conditions of poverty and recognizes the critical need to address the negative impact of poverty on persons with disabilities. Many articles also refer to social development.<sup>6</sup>

38. The relationship between social development, human rights and non-discrimination is established in several ways throughout the Convention. The present report shall focus on three of those.

39. First, as with previous human rights treaties, although in greater detail, the Convention provides guidance on the steps and measures that States parties have to take in order to guarantee the enjoyment of the rights of persons with disabilities. In some cases, these steps and measures appear in dedicated articles such as: awareness-raising (art. 7), accessibility (art. 9), access to justice (art. 13), personal mobility (art. 20), habilitation and rehabilitation (art. 26), statistics and data collection (art. 31), international cooperation (art. 32). The enjoyment of the specific rights recognized in the Convention relies in large part on States parties meeting their obligations in relation to these developmental aspects. Thus, for example, the right to work of persons with disabilities requires an accessible work place, equal protection before the law for persons with disabilities relies on access to justice, while the compilation and analysis of statistics and data will be a crucial element in effective national and international monitoring.

40. Second, the Convention seeks to change the way that development is undertaken in the field of disability. Not only should States and other development actors take steps to initiate development programmes relevant to disability, those steps must also respect a process based on the human rights principles and obligations established under the Convention and human rights law more generally. Consequently, in taking social development measures, the State should

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<sup>6</sup> Other articles also refer to development, for example: States have to undertake or promote research and development of universally designed goods and services (art. 4), ensure the full development, advancement and empowerment of women (art. 6), promote the development of accessible information and communications technologies (art. 9), ensure effective individualized support measures are provided in environments that maximize academic and social development and enable persons with disabilities to learn life and social development skills to facilitate participation in the community (art. 24), promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services (art. 26), and promote opportunities for entrepreneurship and the development of cooperatives in the sphere of work (art. 27).

ensure, to the fullest extent possible, the participation of persons with disabilities and their representative organizations in decision-making, in particular through consultation. Similarly, development programmes should be non-discriminatory and should promote equality between men and women. Further, development programmes should be subject to monitoring and evaluation, including through the mechanisms established under the Convention, so that persons with disabilities have recourse to arbitration where a development programme risks breaching a right recognized in the Convention. Finally, and significantly, the Convention seeks to mainstream human rights and disability within existing development programming. For example, the preamble, in paragraph (g) recognizes the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development. Thus, while the introduction of specific rights-based development programming related to disability will be important to promote implementation of the Convention, it will also be crucial to start mainstreaming human rights and disability into broader development programming which has, in the past, sometimes tended to neglect disability.

41. Third, the Convention recognizes the importance of international cooperation and its promotion to support national efforts on implementation of the Convention. The Convention promotes international cooperation measures such as: the inclusion of persons with disabilities in international development programmes; supporting capacity-building and exchange of information; facilitating research and access to knowledge; and, providing technical and economic assistance. The Convention establishes a Conference of States parties and the Committee on the Rights of Persons with Disabilities. Importantly, article 32 on international cooperation encourages international development programmes to be “inclusive of and accessible to persons with disabilities”. Thus, for example, a development programme not specifically related to persons with disabilities - the construction of a school, the improvement of public transportation, the enhancement of sanitation services - should also consider the rights of persons with disabilities in its design and implementation so that the results of the development programme are accessible to persons with disabilities.

### **Some cross-cutting issues**

42. It is also relevant to highlight some of the cross-cutting issues relevant to the enjoyment of the rights of persons with disabilities through the Convention.

43. Women with disabilities: The Convention recognizes the fact that women with disabilities often face multiple forms of discrimination and a specific article is devoted to “Women with disabilities” (art. 6). The article recognizes that women and girls with disabilities are subject to multiple forms of discrimination and requires States parties to take measures to ensure full development, advancement and empowerment of women for the purpose of guaranteeing the exercise and enjoyment of their rights. This recognition also appears in the preamble, paragraph (q) which recognizes that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury, or abuse, neglect or negligent treatment, maltreatment or exploitation. To this end, preambular paragraph (s) emphasizes the need to incorporate a gender perspective in all efforts to promote the enjoyment of the rights of persons with disabilities.

44. Children with disabilities: In a similar vein, the Convention recognizes the particularly vulnerable position that children with disabilities often face. The Convention therefore obliges States to take all necessary measures to ensure the full enjoyment by children of their rights on an equal basis with others. The reference recalls the only other express reference to “disabilities” in any of the core human rights instruments, which appears in the Convention on the Rights of the Child (CRC). The CRC recognizes “disability” as a category of discrimination (art. 2) and that children with disabilities should enjoy a full and decent life (art. 23). The present Convention therefore builds on the CRC through the identification of comprehensive obligations on States to protect the rights of children with disabilities.

45. Responsibilities of the private sector: While the obligations under the Convention rest on the future States parties, the private sector has an important role to play in combating discrimination and in providing opportunities for persons with disabilities to participate actively in the public sphere. In this regard, the role of the private sector is expressly recognized in several instances in the Convention. Importantly, States parties have an obligation to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise (art. 4). Further, States parties will have to ensure that private entities that offer facilities and services open to the public take into account all aspects of accessibility for persons with disabilities (art. 9). In protecting the freedom of expression of persons with disabilities, States parties have to urge private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats (art. 21). States must also raise awareness of the human rights of persons with disabilities including through the promulgation of ethical standards for public and private health care (art. 25). Finally, States shall safeguard the right to work, including by promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes (art. 27).

46. In addition to issues explicitly addressed by its provisions, the Convention will be of particular relevance to a number of specific issues or groups facing particular human rights challenges. For example, the Convention may be particularly relevant when addressing the rights of victims of landmines. Disability can occur as a result of conflict, particularly due to unexploded ordnance. The Convention requires States parties to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict and humanitarian emergencies. Moreover, a range of provisions of the Convention are relevant to assisting the victims of conflict who have become disabled as a result. For example, while victims of landmines are not explicitly mentioned, the promotion of emergency and continuing health care, the provision of habilitation and rehabilitation services, economic reintegration through the right to work and the requirement to introduce legislative and policy frameworks to combat discrimination on the basis of disability are all relevant to assisting the victims of landmines. In this way, the Convention can be considered to complement other international instruments such as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; Ottawa Convention on Landmines which promotes victim assistance in its article 6.

### **Monitoring mechanisms at the national level**

47. The Convention requires States parties to establish monitoring mechanisms at both the national and international levels. In this regard, the Convention continues a recent development in human rights law requiring States parties to human rights instruments to establish national monitoring mechanisms.<sup>7</sup>

48. First, the Convention, in article 33, requires States parties to designate one or more focal points within government for matters relating to implementation. Second, States parties must give due consideration to the establishment or designation of a coordination mechanism within the Government to facilitate related action in different sectors and at different levels. Given the comprehensive nature of the rights and obligations established under the Convention, focal points and coordination mechanisms within the Government will be important in ensuring comprehensive and coordinated reform and cohesive strategies across different ministries and different levels of government - central, provincial and local.

49. The third national mechanism provided for by the Convention concerns the establishment, designation and/or strengthening of an independent monitoring mechanism that takes into account the Paris Principles.<sup>8</sup> By the terms of the Convention, a State party has the option of assigning national monitoring to an existing human rights institution or of establishing a new institution. This reflects the reality that a considerable number of States already have independent human rights institutions, many of which have a mandate in relation to the promotion and protection of the rights of persons with disabilities. What is significant is that the Convention requires States parties to ensure that an independent national institution will have authority to monitor implementation of the Convention.

### **Monitoring mechanisms at the international level**

50. As with other United Nations human rights instruments, the Convention establishes a Conference of States parties and an independent monitoring body known as the Committee on the Rights of Persons with Disabilities. The Conference of States parties will meet regularly - at least biennially - to consider any matter with regard to the implementation of the Convention. The Committee, to be established when the Convention comes into force, will consist of 12 independent experts, rising to 18 experts after an additional 60 ratifications or accessions to the Convention. States parties will elect experts by secret ballot for a term of four years, eligible for re-election once. In electing the members, States parties have to give due consideration to geographical distribution, representation of different forms of civilization and of the principal

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<sup>7</sup> See for example the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>8</sup> Principles relating to the status and functioning of national institutions for protection and promotion of human rights, General Assembly resolution 48/134.

legal systems, balanced gender representation and participation of experts with disabilities. Members will serve in their personal capacity and shall be of high moral standing and have recognized competence and experience in the field of human rights and disability.

51. The primary function of the Committee will be to consider reports of States parties on the measures taken to give effect to the obligations under the Convention and on the progress made in that regard. States parties must submit the first comprehensive report within two years after the entry into force of the Convention for the State party concerned and then the State will have to submit further reports every four years or whenever the Committee so requests. Subsequent reports need not repeat information provided in the first report. States are invited to consider preparing the reports through an open and transparent process, giving due consideration to close consultation with persons with disabilities and their representative organizations. The Committee will consider the reports and make suggestions and general recommendations on the report as appropriate.

52. An optional protocol to the Convention establishes two additional procedures - an individual communications procedure and an inquiry procedure. According to the individual communications procedure, a State party to the protocol recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction claiming a violation by that State of any of the provisions in the Convention. The Committee must assess whether the communication is admissible, including whether the petitioner has exhausted domestic remedies prior to considering the merits of the communication. The Committee, after examination of the admissibility and merits of the communication, may transmit its suggestions and recommendations to the State party and the petitioner.

53. The protocol establishes a second optional procedure whereby the Committee may, on the receipt of reliable information indicating grave or systematic violations by a State party of the rights in the Convention, invite the State party to cooperate in the examination of the information. Upon the basis of this examination, the Committee may designate one or more of its members to undertake an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State, this inquiry may include a visit to the country concerned.

54. Finally, the Convention requires the Committee to report every two years to the General Assembly and to the Economic and Social Council on its activities. In those reports, the Committee may make suggestions and general recommendations based on reports and information from States parties.

### III. CONCLUSIONS AND RECOMMENDATIONS

**55. The present reporting year has been a landmark for human rights and disabilities with the adoption of the International Convention on the Rights of Persons with Disabilities. The Office, together with States, United Nations partners, national human rights institutions and civil society organizations, has continued increasing its capacity and activities on human rights and disabilities, and it is intended to maintain and strengthen this trend over the coming years. In this regard, the High Commissioner underscores the**



**importance of the issue of human rights and disabilities to the Human Rights Council and recommends that the Council devote dedicated and focused attention to the issue in its future programme of work. To that end, the High Commissioner identifies the need for focused thematic analysis of the various issues facing the enjoyment of the rights of persons with disabilities and recommends that the Council consider requesting the High Commissioner to submit annual analytical thematic reports on human rights and disability.**

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