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## Sub-regional Meeting on Disability Legislation: Decent Work for Persons with Disabilities in Asia, UN Conference Centre, Bangkok, Thailand, 23-24 June 2008

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# Sub-regional Meeting on Disability Legislation: Decent Work for Persons with Disabilities in Asia, UN Conference Centre, Bangkok, Thailand, 23-24 June 2008

## **Abstract**

The Sub-regional Meeting on Disability Legislation, jointly organized by the ILO and the Office of the High Commissioner for Human Rights (OHCHR), took place in the framework of a technical cooperation project, “Promoting the Employability and Employment of Persons with Disabilities through Effective Legislation (PEPDEL)”, funded by the Government of Ireland.

The meeting aimed to provide participants with an appropriate platform for discussion regarding the main legal issues in the field of employment discrimination law relating to disability and to sensitize them to key concepts in disability discrimination law and specifically the CRPD. Participants examined good practices in implementing disability discrimination legislation, with a view to facilitating the implementation of the CRPD in the Asian region. The meeting also provided participants with an opportunity for networking with legal and other experts in Asia and beyond.

## **Keywords**

Asia, conference, legislation, non-discrimination law, human rights, disability, disabled, impairment, employment



International Labour Organization

**Sub-regional Meeting on Disability Legislation:  
Decent Work for Persons with Disabilities in Asia**

**UN Conference Centre, Bangkok, Thailand  
23 to 24 June 2008**

*Organized by the ILO and OHCHR  
Funded by the Government of Ireland*





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## List of Abbreviations

ADA	Americans with Disabilities Act
CAPE	Confederation of Asia-Pacific Employers
CEC	China Enterprise Confederation
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CRC	United Nations Convention of the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
DAC	Disability Action Council of Cambodia
DESA	Department of Economic and Social Affairs
DPIP	Disabled Peoples' International Pakistan
DPOs	Disabled Persons' Organizations
DWCP	Decent Work Country Programme
EFC	Employers' Federation of Ceylon
EFPP	Employers' Federation of Pakistan
FICCI	Federation of Indian Chambers of Commerce and Industry
ILO	International Labour Organization (also International Labour Office)
IOE	International Organization of Employers
LDWDC	Lao Disabled Women Development Center
MDGs	Millennium Development Goals
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation (Cambodia)
NCCD	National Coordinating Committee on Disability of Viet Nam
NCRD	National Council for the Rehabilitation of Disabled Persons of Pakistan
NGOs	Non-Governmental Organizations
OHCHR	Office of the High Commissioner for Human Rights
PCRC	Provincial Council for the Rehabilitation of Disabled Persons of Pakistan
PEPDEL	Promoting the Employability and Employment of Persons with Disabilities through Effective Legislation (an ILO/Irish Aid-funded project)
PWD	Persons with disabilities
SVTC	Strengthening of Vocational Training Centers in Viet Nam (a Swiss-funded project)
VGCL	Viet Nam General Confederation of Labour
VTC	Vocational Training Centres
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNSW	University of New South Wales



## 1. Introduction

Nearly 470 million people with disabilities are of working age in the world today.<sup>1</sup> While many have obtained employment and are fully integrated into society, untold millions of others face serious challenges in the world of work and in taking part in their communities and societies.

Changes in laws and policies, especially those focused on employment and work, play a significant role in creating opportunities for persons with disabilities. There are major international legal instruments and standards to achieve this, including several International Labour Organization (ILO) Conventions and in particular the ILO Convention concerning the Vocational Rehabilitation and Employment (Disabled Persons), 1983 (No. 159). The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD), adopted by the UN General Assembly in December 2006 and in force since 3 May 2008, is one of the newest instruments aiming for inclusive development. It is one of the core human rights laws which has been negotiated with the highest participation of civil society and has attained widespread acceptance by UN Member States. Providing a framework to enable all stakeholders to move forward together towards ensuring that persons with disabilities enjoy the same human rights as others, the Convention reinforces and supports principles enshrined in key ILO standards including non-discrimination, equality of opportunity and equality between men and women, as well as other principles. The CRPD requires that anti-discrimination laws are adopted and nationally enforced and that a national enforcement and monitoring mechanism is established by all Member States. This new monitoring mechanism will supplement the future Disability Rights Committee which will be entrusted with the international monitoring of the treaty.

As of now, many Asian countries have adopted or are planning to adopt anti-discrimination and/or human rights laws that apply to persons with disabilities. Most of these laws pertain to employment discrimination and consist of various enforcement mechanisms. While equality law in general is a developing legal subject worldwide, disability-based discrimination law has been rather underdeveloped. The CRPD will greatly enhance the importance of this subject and other human rights issues.

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<sup>1</sup> Disability figures based on the World Health Organization's estimate that 10 per cent of the world's population have a disability, and United Nations Department of Economic and Social Affairs, Population Division: *World Population Prospects: The 2004 Revision*, Population Database, at [esa.un.org/unpp](http://esa.un.org/unpp).

## 2. Overview

The Sub-regional Meeting on Disability Legislation, jointly organized by the ILO and the Office of the High Commissioner for Human Rights (OHCHR), took place in the framework of a technical cooperation project, “*Promoting the Employability and Employment of Persons with Disabilities through Effective Legislation (PEPDEL)*”, funded by the Government of Ireland.

The meeting aimed to provide participants with an appropriate platform for discussion regarding the main legal issues in the field of employment discrimination law relating to disability and to sensitize them to key concepts in disability discrimination law and specifically the CRPD. Participants examined good practices in implementing disability discrimination legislation, with a view to facilitating the implementation of the CRPD in the Asian region. The meeting also provided participants with an opportunity for networking with legal and other experts in Asia and beyond.

### 2.1 Methodology

The meeting’s methodology was participatory in nature, with a total of seven convened sessions during two days through a combination of formal presentations, panel discussions and working group sessions.

The following presentations were given at the beginning of the meeting:

- Provisions of the UN Convention on the Rights of Persons with Disabilities (CRPD)
- The CRPD - A Paradigm Shift

Other panel discussion presentations were organized thematically on the following topics:

Making the Required Paradigm Shift: Challenges for Governments, National Human Rights Institutions, Social Partners, Civil Society

Non-Discrimination Law and the Context of Disability

- Employment discrimination as a human right violation –Overview of current European disability discrimination legislation
- Asian Disability Non-Discrimination Law

Current Key Concepts in Disability Discrimination Legislation

- Reasonable Accommodation
- Affirmative Action
- Accessibility

Improving Training and Employment Opportunities – What Works in Practice?

- Approaches used to encourage implementation of non-discrimination legislation – Employment and Training

### Ensuring Compliance

- Enforcing Disability Discrimination Legislation in Employment/Training - What mechanisms are in use?

### Litigating Equality

Enforcing the CRPD at the national level, linked to the future Disability Rights Treaty Body

During the meeting, two working group sessions were organized. Groups were organized by country, including representatives of governments, employers' and workers' organizations, Disabled Persons' Organizations (DPOs), and legal experts. In both sessions, the working groups appointed a chairperson to facilitate the group discussion and a reporter, to take notes on the discussion. Representatives of each working group reported on the group's conclusions to the plenary.

The two Working Group sessions discussed the following issues:

First Working Group Session:

- **Making a difference with reasonable accommodation**
- **Affirmative action measures – What impact?**
- **What works in improving accessibility?**

Second Working Group Session:

- **How do different implementation mechanisms work in practice?**
- **What needs to be done to improve effectiveness?**

## 2.2 Participants

The meeting was attended by 48 participants (30 men and 17 women), including 16 government agency representatives, nine employers' organization representatives, 5 workers' organization representatives, and 9 DPO representatives from 8 countries in Asia: Cambodia, China, India, Lao PDR, Pakistan, Sri Lanka, Thailand and Viet Nam. In addition, there were nine observers or panelists from academic institutions and other organizations.

The meeting was organized and conducted by ILO and OHCHR officials:

- Ms. Barbara Murray, Senior Disability Specialist Skills and Employability Development (EMP/SKILLS), ILO Geneva
- Mr. Homayoun Alizadeh, Regional Representative, OHCHR Bangkok
- Mr. Pablo Espiniella, Human Rights Coordinator, OHCHR Bangkok
- Mr. Francesco Notti, Human Rights Officer, OHCHR Bangkok
- Ms. Naruedee Janthasing, Consultant, OHCHR Bangkok
- Ms. Laura Upans, Intern, OHCHR Bangkok
- Mr. Nguyen Dung Tien, Intern, OHCHR Bangkok.

## 2.3 Resource persons

Resource persons from the ILO, OHCHR, academic institutions and other relevant organizations gave presentations during the meeting:

- Ms. Barbara Murray, ILO Geneva
- Mr. Pablo Espiniella, OHCHR Bangkok
- Mr. James Turpin, OHCHR Cambodia
- Mr. Eric Zhang, China Disabled Persons' Federation, China
- Dr. Amita Dhanda, Nalsar University of Law, India
- Ms. Shivaun Quinlivan, National University of Ireland, Ireland
- Mr. Andrew Byrnes, University of New South Wales, Australia
- Prof. Ye Jingyi, Peking University, School of Law, China
- Ms. Aiko Akiyama, Emerging Social Issues Division, UNESCAP Thailand
- Ms. Meghamali Aluvihare, Employers' Federation of Ceylon, Sri Lanka
- Mr. Tran Van Tu, Viet Nam General Confederation of Labour, Viet Nam
- Mr. Sagheer Ahmed, Employers' Federation of Pakistan
- Ms. Ngo Thi Thuy, Swisscontact, Viet Nam
- Mr. Pecharat Techavachara, Foundation for the Employment Promotion of the Blind, Thailand.

## 2.4 Resource materials

The following conference materials were distributed electronically:

- Degener T. 2005. "Disability discrimination law: A global comparative approach" in Lawson, A.; Gooding, C. (eds.): *Disability rights in Europe: From theory to practice* (Oxford and Portland, Hart Publishing), S. 87–106.
- ILO. 2004. *Achieving equal employment opportunities for people with disabilities through legislation. Guidelines* (Geneva).
- O'Reilly, A. 2007. *The right to decent work of persons with disabilities* (Geneva, ILO).
- Quinn, G.; Degener, T. 2002. *Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability* (Geneva, Office of the High Commissioner for Human Rights (OHCHR), UN Sales No. E.02.XIV.6.
- Schiek, D.; Waddington, L.; Bell, M. (eds.). 2007. *Non-discrimination law* (Oxford, Hart Publishing), Aug.
- UNDESA; OHCHR; IPU (United Nations Department for Economic and Social Affairs; Office of the High Commissioner for Human Rights; Inter-Parliamentary Union). 2007. *From exclusion to equality: Realizing the rights of persons with disabilities. A handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol* (Geneva, United Nations), No. 14-2007

### 3. Official Opening

Opening speeches for the meeting were officially made by:

- Ms. Sachiko Yamamoto, ILO Regional Director for Asia and the Pacific
- Mr. Homayoun Alizadeh, OHCHR Regional Representative for South-East Asia

**Ms. Sachiko Yamamoto, ILO Regional Director for Asia and the Pacific**, welcomed the participants to the meeting on behalf of the ILO Regional Office for Asia and the Pacific, and the ILO Sub-regional Office for East Asia (ILO SRO), and expressed her gratitude to OHCHR for their collaborative effort.

Ms. Sachiko said that the meeting would provide a platform for discussing the main legal issues concerning employment discrimination law as it relates to disability, with the particular focus on implementation. The meeting is especially relevant and timely considering the entry into force of the CRPD on 3 May 2008, as countries consider ratification and move towards a comprehensive coordinated approach to promoting the inclusion of men, women, youths and children with disabilities across all sectors of society. To date, 27 countries have ratified the Convention. She noted that this meeting is taking place at the time when decent work for all women and men has become central to the global agenda.

The overall goal of ILO is to promote decent work for all women and men in all countries based on equality and dignity for everyone. People with disabilities must not be hindered in their search for employment. Yet existing estimates indicate that there are high levels of unemployment and inactivity among disabled persons of working age, estimated at 470 million people, the majority of whom are living in the Asian and Pacific Region. This indicates that the world of work is not yet fully open, without discrimination to these millions of disabled persons, negating a basic ILO principle and wasting the enormous potential that they represent.

The ILO welcomes the recognition of their right to work on an equal basis with others and the prohibition of discrimination on the basis of disability in all forms of employment, which is a key part of the Convention. The emphasis on making opportunities in the general labour force accessible to job seekers with disabilities in mainstream workplaces is a major contrast to past practice, in which large numbers of disabled persons worked in sheltered workshops, in conditions not covered by employment or minimum wage laws. Now, States will be required to ensure equal remuneration for work of equal value, safe and healthy working conditions, protection from harassment and opportunities for redress of grievances.

To facilitate this shift, the Convention promotes the access of the disabled persons to freely chosen work, general technical and vocational guidance programmes, placement services and vocational and continuing training. It will help disabled people find and keep jobs by promoting improved accessibility of workplaces, calling for improved transportation and access to information in written and electronic form. Additionally, in line with the ILO's core standard on freedom of association, disabled workers will have the right to exercise their labour trade union rights on an equal basis with others. Another important element of the Convention is the protection that requires the state to provide for workers who become disabled while in employment. Their jobs will be protected through job retention measures and provisions will be made for vocational and professional rehabilitation.

For developing countries where formal jobs are scarce, the emphasis on promoting opportunities for self employment, entrepreneurship, the development of cooperatives and starting businesses will enable more persons with disabilities to improve their standard of living and rise out of the poverty in which many find themselves. States are called on to ensure that people with disabilities are not held in slavery or servitude and are protected on an equal basis with others from forced compulsory labour, a further area in which the ILO has been active. The Convention will not only improve prospects for disabled persons in employment who are often passed over when it comes to promotion or in-service training, but will also assist in unlocking the productive potential of many persons with disabilities who are currently at the margin of the labour force and of society, often living in poverty. In so doing, it will contribute to the achievement of the Millennium Development Goal (MDG) on the reduction of poverty

The provision of the Convention on work and employment are in line with ILO standards, particularly ILO Convention concerning Vocational Rehabilitation, and Employment of Disabled Persons (No. 159) of 1983, adopted 25 years ago, and the ILO Code of Practice on Managing Disability in the Workplace (2001), which provides guidance to employers in particular regarding the employment of disabled persons. The ILO will work with governments, employers and worker organizations, as well as disabled person organizations world wide, to promote its implementation for the benefit of workers and job seekers with disabilities everywhere. Ms. Sachiko ended her remarks by thanking the Government of Ireland which funded the meeting, and by wishing all the participants a successful and fruitful meeting and a productive follow up when they return to their country.

**Mr. Homayoun Alizadeh, Regional Representative of OHCHR Regional Office for South-East Asia**, welcomed the participants and thanked his colleagues in OHCHR, and ILO, especially Ms. Barbara Murray and Ms. Sachiko Yamamoto, for making the meeting possible.

In his statement, Mr. Alizadeh emphasized the importance of the issue of the Decent Work for Persons with Disabilities. He noted that there are over 650 million people with disabilities, which statistically is 10 per cent of the global population, and that many persons with disabilities are not integrated into society and accordingly face significant difficulties. Mr. Alizadeh then focused on the results he expected from the meeting. First, this meeting intends to promote coordination between civil society organizations (especially those working directly with disabled people and communities), government institutions, UN agencies and other international organizations dealing with this issue. Second, the meeting aims to discuss ways to implement relevant legislation. Member states are encouraged to ratify and implement international human rights standards. However, in a number of regions including Asia and Africa, implementation rates are often very low. Third, this meeting will discuss measures to fight against discrimination of persons with disabilities.

There are a significant number of disabled persons living throughout Asia, in part due to the legacies of the region's recent armed conflicts. Accordingly, a number of States are seeking advice from the UN on how to develop and implement appropriate legislation. With resources being quite scarce and populations quite large, it is often difficult for these developing countries to make facilities and buildings accessible to disabled persons. Even in wealthier developed countries where there has been significant progress made in terms of legislation, there are still large-scale and complex problems in providing facilities for persons with disabilities and eliminating discrimination, especially in the field of employment. It is in the interest of States to ensure the rights of disabled people in employment since they are also

very important to the economy. Mr. Alizadeh ended his remarks by expressing his gratitude to the ILO and the delegates for their active participation in the meeting.

## **4. Presentations**

### **4.1 The Convention on the Rights of Persons with Disabilities**

#### **4.1.1 Provisions of the Convention**

*Mr. Pablo Espiniella, Human Rights Coordinator of OHCHR Regional Office for South-East Asia*

Mr. Espiniella started his intervention by stressing that the joint organization with ILO of the Sub-regional Meeting on Disability Legislation has been a positive learning experience and evidences what can be achieved when one or more UN entities join forces to achieve a common goal. Such goal focused this time in providing an appropriate platform for experts and Government representatives to discuss and share experiences regarding main challenges in the field of employment for persons with disabilities and the relevant opportunities and protection frameworks provided for in the Convention on the Rights of Persons with Disabilities (CRPD).

In relation to the CRPD, he stated that the Convention, the first comprehensive human rights instrument of the 21<sup>st</sup> Century setting up a framework for the rights of persons with disabilities, marks a paradigm shift in attitudes and approaches to the situation of persons with disabilities. The estimated more than 600 million persons with a disability worldwide are no longer objects of charity and social protection, but they are subjects of rights. This approach is a key in the path of moving towards the realization of human rights, not only for persons with disabilities but for everyone, everywhere.

The Convention and its Optional Protocol were adopted by the General Assembly on 13 December 2006 and opened for signature on 30 March 2007. It had the highest number of signatories (82 signatories to the Convention and 44 signatories to the Optional Protocol) to a UN Convention on its opening day. The ratification process took a little over a year and the Convention entered into force on 3 May 2008.

The CRPD provides a framework to protect the rights of persons with disabilities based on the principle that all members of society have the same human rights. It is intended as a human rights instrument with an explicit social development dimension. Before the adoption of the CRPD, the basis for the protection of the rights of persons with disabilities needed to be found scattered in different treaties.

There is a Preamble which gives a general context of the convention, which talks about the purpose of the convention. In terms of definitions, the convention doesn't establish a specific definition of disability. According to Article 1 of the CRPD, "Persons 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". In other words, disability is not something that resides in the individual as the result of some impairment, but it should be seen as the result of the interaction between a person and his or her environment. Within this framework, the convention provides for a number of specific rights, civil, cultural, economic, social and political, for persons with disabilities and affirms that they hold all these rights on an equal

basis with others. It also talks about international cooperation and the necessary steps for the implementation of the Convention.

More specifically, the general principles (Article 3) of the CRPD are: respect for inherent dignity, and individual autonomy including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities. The Convention reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. They are all entitled to equality before the law without discrimination (Article 5); right to life (Article 10), liberty and security of the person (Article 14); freedom from torture (Article 15); freedom from violence and abuse (Article 16); right to respect physical and mental integrity (Article 17); freedom of movement (Article 18); right to live in community (Article 19); freedom of expression and opinion (Article 21); respect for privacy (Article 22); respect for home and family (Article 23); the right to education (Article 24); the right to health (Article 25); the right to work (Article 27); the right to an adequate standard of living (Article 28); and the right to participate in political and public life (Article 29). These are rights that are covered in several treaties; however persons with disabilities face significant barriers in terms of discrimination and stigma. In this regard the Convention is particularly important as it sets up the basis to dismantle the stigmas that have been established over so many years.

The CRPD is an international treaty and, as such, its implementation will follow an established process. This means that a Committee on the Rights of Persons with Disabilities will be created to monitor its implementation. There is the difference between legally binding and non-legally binding instruments. Until now, we have had a number of declarations on the rights of persons with disabilities that have set up the good intentions of the States. But now, the Convention is a legally binding instrument for all the States that have ratified it. Since its entry into force on 3 May, the rights that are contained in these instruments are much more tangible in reality. The Convention sets out the obligations on States to respect, protect and fulfil the rights of persons with disabilities. While recognizing the limitations on resources, this cannot be used as an excuse to delay implementation. Limited resources have to be prioritized according to reasonable and objective criteria and funding must be proportional. Regardless of the progressive realization of some of the rights, States have immediate obligations.

Its Optional Protocol establishes a two prong mechanism. First, there is the individual complaint mechanism which can be used when people believe that their rights, as established in the Convention, have been violated. This mechanism is to be used after all national domestic remedies have been exhausted. The second mechanism, an inquiry procedure, is actually quite innovative (already in CEDAW). Basically, if the Committee receives a number of general inquiries about alleged violations of rights of persons with disabilities, they can go back to the country and conduct an inquiry.

He ended his presentation by noting that international monitoring of the Convention, is carried out by the CRPD committee serviced by OHCHR, like in all other human rights treaties. In addition to this, there is another international mechanism - the conference of States parties- serviced by DESA in New York, that will consider any matter with regards to the implementation of the Convention as set for in art. 40. As such, the UN DESA will arrange for the Conferences of the States while the OHCHR in Geneva will provide services to the

future Committee on the Rights of Persons with Disabilities. This together with the work of the inter-agency support group for the CRPD will facilitate different departments in the UN in working together and will make it easier to track what is actually taking place. It is important to note as innovative the provisions in Article 33 of the Convention which following the recent patterns in human rights law (OPCAT) establishes national mechanisms to implement (focal point(s) and coordination mechanism) and to monitor, promote and protect the Convention (independent framework – National Human Rights Institutions).

The framework for an effective promotion and protection of the rights of persons with disabilities is already there and is the result of the efforts of numerous experts including persons with disabilities, an effective response to the motto “nothing for us without us”, and contains innovative and specific mechanisms to ensure adequate implementation. Let’s move towards effective implementation, he added.

#### **4.1.2 The CRPD, a paradigm shift**

*Ms. Barbara Murray, ILO*

Ms. Murray said that the UN CRPD heralds a new era in life not only for persons with disabilities, but also for everybody else in society. There has been an emphasis on how it will affect disabled persons but in fact, everybody will have to change their ways of thinking and behaving in order to make this revolution on paper also a revolution in practice. The CRPD constitutes a shift from the predominant focus on rehabilitating persons with disabilities to a much greater focus on changing or rehabilitating society; a change from expecting people with disabilities to adjust to a socially-defined norm, to an acceptance of diversity as normal, and of differences as being part of the human condition; from the exclusion of disabled persons who have long been on the margins of society, to their inclusion, full participation and citizenship.

A link to these shifts is the movement from little to no consultation of disabled people about key decisions in their lives, to placing them in a central position in the process of deciding what is to be done, on policies and laws. That is reflected in the slogan of the international disability movement, “Nothing about Us without Us”. So what does this mean when it comes to the right to work?

Ms. Murray noted that there is not a single mention of the word “special” in the Convention, although the word “special” has been traditionally attached to many things associated with disabled persons - special education, special needs, special training, and special sheltered employment. It was at the insistence of the disability caucus representatives during the negotiation of the CRPD that there was no mention what so ever of the word “special” in the CRPD provisions. Instead, there is an acknowledgement of specific needs that need to be accommodated. This is a real and dramatic shift for everybody as it implies that in all countries which ratify the CRPD, a change will have to take place in the way people talk and think about providing for people with disabilities.

This meeting is focusing on the ILO’s mandate on work and employment and on how the Convention will contribute to this mandate for people with disabilities. Article 27 of the Convention requires States that have ratified the Convention to recognize the rights of persons with disabilities to work on an equal basis with others, including their right to gain a living by work freely chosen or accepted, in a labour market that is open, inclusive and acceptable. This is a right which is guaranteed in Article 23 of the UN Declaration of Human Rights (UDHR)

on the right of people to work, but is also a right that is easily stated but not so easy to implement in the case of disabled persons.

A central requirement for labour market inclusion according to the CRPD is non-discrimination against people with disabilities in their search for work and employment. The CRPD emphasizes that the right to work applies to “all forms of employment”. Thus, the provisions of Article 27 also apply to sheltered workshops, which are common in many developing countries. This is a major change, as previously, sheltered workshops were not covered by employment legislation. Equality of opportunity and equality between men and women with disabilities are principles that are also present in ILO’s Convention No. 159 concerning the Vocational Rehabilitation and Employment of Disabled Persons, 1983.

The concept of ‘reasonable accommodation’ is a key provision that is also referred to throughout the CRPD - in Article 2, Article 5, Article 14, Article 24 concerning education and Article 27 concerning work and employment. It is now a requirement that employers have to take steps to ensure that work environments are accessible and that information is available in accessible formats in the workplace. Denial of reasonable accommodation is considered discrimination in the CRPD and is thus illegal.

Ms. Murray mentioned two other requirements for labour market inclusion provided for in the CRPD which could pose some of the greatest challenges to the international community. One is the accessibility of the built environment, transport and information. This is both a general principle of the Convention and the subject of a specific article (Article 9). Accessibility has been discussed for many years, but yet disabled persons still have difficulty getting in and out of buildings and people who are blind or visually impaired often have difficulty accessing information. Thus, there is and must be an ongoing movement to ensure greater accessibility of the environment to promote inclusion for all. The second requirement for labour market inclusion is awareness of the capacity and rights of persons with disabilities. States are required to immediately take steps to promote a fundamental change in societal attitudes by fostering respect for the rights of people with disabilities and by combating stereotypes and prejudice.

Article 27 of the CRPD concerning work and employment involves prohibition of discrimination in all forms of employment. It includes the right to just and fair employment on equal basis with others, and requires allowing people with disabilities to join trade unions and exercise their trade union rights on an equal basis with others, rights which have been denied to many workers with disabilities in the past. States that have ratified the CRPD are required to promote employment opportunities and opportunities for career advancement in the open labour market, and to provide assistance to people in finding, maintaining and returning to employment. In this regard, employment of persons in both the private and public sectors needs to be promoted. Some countries have only focused on one sector or another but the CRPD requires a focus on both sectors and governments are required to make steps to make this possible.

Reasonable accommodation in the work place, job retention and return to work programmes, training for those who have never had the opportunity to have a job in the past, the obligation on States to promote opportunities for self employment and entrepreneurship development are most important. There is a prohibition on people with disabilities being put into slavery or enforced servitude and a provision that they should be protected from forced or compulsory labour.

To make it possible for people with disabilities to benefit from Article 27, there is need to dedicate attention to vocational training. In the CRPD, this is referred to in Article 24 on education and in Article 27 on the right to work and employment.

In addition, it is important to highlight that in Article 26 (1) on habilitation and rehabilitation, States are obliged to enable persons to attain and maintain a maximum independence; full physical, mental and social ability; and full inclusion in all aspects of life. Comprehensive habilitation and rehabilitation services and programmes should be organized and should begin at the earliest opportunity; multidisciplinary studies and full inclusion in all aspects of society for both urban and rural populations should be ensured.

#### **4.1.3 Panel Session: “Making the required paradigm shift: Challenges for Governments, National Human Rights Institutions, Social Partners, Civil Society”**

*Mr. Eric Guozhong Zhang, Director of China Disabled Persons Federation*

Mr. Eric Guozhong Zhang noted that the right to work is important for the equality and full inclusion of persons with disabilities, who individually and collectively have historically experienced discrimination. As the UN Committee on Economic, Social and Cultural Rights (CESCR) General Comments No. 5 indicates, persons with disabilities have mostly been discriminated against in terms of employment. The state and all stakeholders bear obligations to take actions to combat disability discrimination to ensure full realization of rights and opportunities for persons with disabilities in the workplace.

These are some key messages sent out by the CRPD, which was adopted on 13 December 2006 at the 62nd session of General Assembly of the United Nations and which entered into force on 3 May 2008. The CRPD was hailed as a “rights-based paradigm shift” and a “historical achievement” for some 650 millions of persons with disabilities in the world and. Article 27 of the CRPD attempts to provide comprehensive protection of the right to work for persons with disabilities. It calls on a paradigm shift in dealing with disability issues and it recognizes the full rights of persons with disabilities and highlights the obligations of states and other stakeholders. On the basis of respect for rights and dignity of persons with disabilities, the CRPD requires the betterment of services and practices, and in some cases, may challenge traditional practices of serving persons with disabilities.

The CRPD contains a Preamble and 50 Articles. Besides a specific Article 27, Article 24 (Education), Article 26 (Habilitation and Rehabilitation) and Article 28 (Adequate standard of living and social protection) are also relevant and important to this topic. The CRPD is not intended to create new human rights for persons with disabilities, but rather to ensure equal rights for persons with disabilities. More attention has been paid to how to make this happen. The articles highlight equal opportunity for all persons with disabilities to participate in a meaningful manner, recognizing that stakeholders in a society have obligations to ban discrimination, remove all barriers and provide reasonable accommodation for all persons, including persons with disabilities. Additionally, governments need to take appropriate positive measures to promote the realization of rights for persons with disabilities. Within this framework, although the right to work has a resource implication and needs to be realized progressively, it is imperative for the State to take actions in light of CRPD spirit and principles.

Persons with disabilities experience historic discrimination and encounter special difficulties. Outstanding barriers for participation, lower expectations about employability, and potential

retribution concerns are issues that persons with disabilities have encountered everywhere in the world. Disability employment is a rather complex issue. Its solution depends on many factors, including: the overall supply-demand situation in a specific domestic labour market; social security arrangements applied to the general public and disability groups as a whole; legislation, policy and measures concerning persons with disabilities; market regulation by the state; employability of job-seekers with disabilities compared to other groups; and the attitudes towards persons with disabilities and their rights in the employment area.

With the adoption of the CRPD as a general backdrop, it is imperative to further raise awareness about the equal rights of persons with disabilities among all stakeholders in society, to forbid all kinds of discrimination, and to ensure equal rights and opportunities for persons with disabilities. For this to happen, positive measures and actions are needed. As such, governments have a critical role to take a lead in making this happen.

In terms of legislation, firstly, it is important to further raise the awareness of all stakeholders about the right to work of persons with disabilities and its importance to the advancement of other rights of persons with disabilities. Also, it is important to further recognize the duty of the State in protecting and promoting the right to work for persons with disabilities. In the past, the right to work did not attract equal attention as it falls into the category of social rights, not political and civil rights. The right to work was not seen as a justifiable right that individuals could claim. In practice, legislative, executive and judicial bodies did not give enough support to persons with disabilities' claims in the employment arena. This lack of support facilitated, rather than alleviating the historical disadvantages faced by persons with disabilities in terms of employment. Previously, the right to work being stated as a basic human right was only found in a non-binding Recommendation (No. 169 on Employment Policy).

This necessary awareness raising is an outstanding and pressing issue in China. It is not enough to resolve the social issue of employment for disabled persons; rather, this problem needs to be tackled from a right-based approach and the implementation of the right to work claimed by persons with disabilities needs to be addressed.

Secondly, more importance shall be attached to non-discrimination legislation. Changes are increasingly being witnessed in this respect. For instance, in China, the 1994 Labour Law stipulated only non-discrimination on ground of race, nationality, gender or religion. Prohibition of discrimination in terms of disability was not specified. However, more recent developments in Chinese legislation contain rather encouraging signals consistent with the development of the CRPD. For example, the Law on Employment Promotion (2007) and the revised Law on Protection of Disabled Persons (2008) both contain anti-discrimination principles and provisions addressing persons with disabilities. Symbolically, this is significant progress but there are still many areas where work needs to be done, such as further defining what discrimination is and how acts or non-acts of a discriminatory nature are to be punished or compensated for.

Thirdly, the design and implementation of disability employment legislation must set a final goal which is beyond non-discrimination, so as to reverse historical inequalities and to promote the full inclusion of persons with disabilities into society. The experience of some non-discriminatory legislations, such as the United States' Americans with Disabilities Act (ADA), show that if they are limited to prohibiting discrimination, they may not be able to meet the actual mission of equality intended by its drafters. To win a war against discrimination in the area of employment, legislation must go beyond non-discrimination; it

must work to narrow the gap between disabled persons and their peers and promote the realization of de facto equality for them.

With regards to China, some laws, policies and practices exist that promote employment of persons with disabilities. For instance, the Law on Protection of Disabled Persons and Regulations on Employment of Persons with Disabilities, promotes pro-disability employment quota and levy systems, arrangements and services providing micro-credit opportunities for persons with disabilities, tax preferential treatments for self employers and for shelter factories and farms, and free of charge vocational training and consulting services for persons with disabilities. Moreover, recently, the central government issued a new policy calling on governmental and public sectors to play a model role in recruiting persons with disabilities.

Mr. Zhang finally noted that full implementation of these laws and policies still present questions and significant practical challenges. For instance, there are questions as to who should be responsible and held financially accountable for implementing quota schemes and rehabilitation of the environment. Additionally, with increasing economic globalization and market-orientation transitions, questions about how positive social policies play out and about what the roles of the government, civil society and the private sector should be, are by no means easy to answer, in China or in other countries.

***Dr. Amita Dhanda, Nalsar University of Law, India***

Dr. Dhanda started her presentation by saying that countries must have an understanding of the paradigm shifts in terms of the new roles the CRPD calls for. Accordingly, it may be worthwhile to look at some of the perspectives regarding work and people with disabilities before the Convention. In this regard, the case of India serves as a reference example.

Prior to the Convention, India's focus on persons with disabilities was primarily on the public sector. Historically, India has used systems of reservations and quotas, as well as policies and orders, to promote the right to work for persons with disabilities. This was done through various mechanisms, but the common theme was the necessity of the reservation. In India, reservations have been seen in terms of caste, religion, as well as disabilities etc. Prior to the Convention references to persons with disabilities were always conceived of as the exception to the norm. Private employment was also involved, but most often in terms of charity and philanthropy. For example, where there were kiosks, there would be a small kiosk that would be dedicated to a disabled person. Historically, the focus was primarily on entry into work. After entry there were few opportunities for assistance. If people left after having been "assisted" to get into the labour market, or did not stay at their job for whatever reason, it was inherently presumed that the person with disabilities could not manage, or cope, because of their disability.

Historically, there has also been a division in assistance availability between persons with physical and mental disabilities. If there was any investment in assisting people with mental and/or psychosocial disabilities it really was not in terms of true work, but it was understood more as ways to keep someone occupied. This predominant mentality prior to the Convention was conceived solely in terms of physical access, such as access of ramps and modified workstations etc. Discussion did not pertain to normative access. Accordingly, the perception was that while the physical world needed to be adjusted for persons with disabilities, the normative world did not need to be touched. Additionally, because of the non-focus on

persons with mental and/or psychosocial disabilities, there was a whole arena of active disqualifications- legal exclusion in fact. The entire regime was constructed in this manner. This is the paradigm prior to the CRPD and it is the framework that must be dismantled.

Article 27 (Work and Employment) of the CRPD is talking about capability development, the right to acquire and maintain work in all sectors, and the way all persons contribute to work. The other crucial issues included in the Convention are the conditions of work- prohibition of discrimination, etc. According to Dr. Dhanda, there has purposely been a silence regarding sheltered workshops in the CRPD. It is extremely important to appreciate that this Convention used silence. This means that if there is an issue where people can't possibly say, "this must be ended from here onwards", they can use silence. People have not taken a stand for or against sheltered workshops, and in doing so people have created a host of other options. This is also related to legal capacity, Article 12. For the transition phase of the Convention, this silence is positive and has created opportunities. It is accordingly just as important to look at what the Convention says, in addition to what the Convention has gone silent on. Additionally, the interplay between the silence and the actual text can be looked at to see what opportunities have been created.

The discussion following Dr. Dhanda's presentation highlighted the fact that the CRPD is not the sole source of disabled person's rights, but instead builds on the rights of all persons, as expressed by other international human rights treaties. It does not grant new rights to persons with disabilities but instead, guarantees persons with disabilities access to the rights that have always existed for them. It was also noted that there can be a danger with regard to the rush to ratify this Convention in that if the other Conventions are not ratified, the limited nature of the CRPD's text can actually limit people's rights. That said, the fact that the Convention exists has brought a new light to the issues of persons with disabilities and accordingly presents enormous opportunities, as well as underscoring the universal human rights mechanisms in place.

The discussion focused on: (1) the shift from a charity approach to a rights-based approach with the enforcement of the Convention; and (2) the employment integration methodologies attempted thus far. In terms of the shift between "charity" and "rights", participants discussed whether "charity" can be integrated into the new paradigm or must instead be abandoned. It was also discussed that previous international mechanisms that provided for persons with disabilities have traditionally been understood in terms of social and economic rights. The Convention, by bringing political and civil rights in full measure, has changed this. People cannot give to persons with disabilities what people think they need, people must do this in consultation with them. The moment people do that, a culture of respect is created. The term "holistic approach" as opposed to a rights-based approach was also discussed because there is not yet a universally accepted definition of the rights-based approach.

Dr. Dhanda noted that in reference to employment integration methodologies that have previously been adopted, tax based revenue rebates have been provided to private employers who have hired persons with disabilities. Additionally, specific legislation provisions in the Persons with Disability Act established incentive schemes for employers to take on persons with disabilities.

## **4.2 Non-Discrimination Law and the Context of Disability**

### **4.2.1 Employment discrimination as a human right violation – Overview of current European disability discrimination legislation**

*Ms. Shivaun Quinlivan, National University of Ireland, Galway*

Ms. Quinlivan introduced European provisions by firstly mentioning that in any population it is presumed statistically that 10 per cent of that population has a disability. The very nature of the size of this group means that persons with disabilities cannot be ignored. However, change must include what has been described today as a paradigm shift. This shift is how we view disability. This change in language and terminology has resulted in significant legal change throughout the world. In other areas, this legal change has happened, for instance in relation to gender or racial discrimination. It has just taken a bit of time to realize that the arguments that apply to gender and racial discrimination also apply to disability discrimination.

The rationale of change is that people with disabilities are not problems. Therefore, the issue of rights is more than a matter of justice and ethics, and is part of a broader movement towards the development of an inclusive society. Traditionally, people with disabilities have been treated in many different illegal ways. They've been criminalized, medicalized, excluded and removed from society. The charity approach that has been discussed also failed to see persons with disabilities as human beings. Therefore, this paradigm shift is the move from a charity approach to a rights-based approach and is based on a belief that all people are borne equal with undeniable human rights.

A truly inclusive society would appreciate differences between different people. There is a move from a medical model to a social model of disability. For example, in the medical model, the dominant view is that persons with disability cannot take part in the society because of their impairment. It looks at the persons with disabilities in terms of trying to see what is wrong with them. The social model, on the other hand, perceives disability in terms of a social construction. Societal relations have to be looked at because the society creates barriers, which can be physical, attitudinal, structural and environmental.

The human rights based approach sends a very powerful message to the general public, as well as employers, education providers and service providers. It is based on the assumption that persons with disabilities are rights holders and therefore locates the root of discriminatory mentalities within society and within other people attitudes.

There have been many reasons for these changes in perception. In terms of employment issues, at an international level there has been a progressive move towards a rights-based approach. A very early intervention in the area of non-discrimination and employment was the ILO convention. Although it didn't specifically mention disability discrimination per se, it recognized the necessity for non-discrimination in the context of employment. However, perhaps the most important law was the Americans with Disabilities Act (ADA) because it codified for the first time a legal approach to disability discrimination. Another major input was the US Standard Rules for the Equalization of Opportunities of Persons with Disabilities.

In the 1990s, the European Union (EU) attempted to create a unit dedicated to disability issues. However, it was only with the 1992 introduction of Article 13 that the EU was legally empowered to deal with disability discrimination. The European directive covers four grounds: disability, age, religion and sexual orientation and relates to employment in both the public and private sector context. Of importance is the use of the term "worker", which

intends to provide legal coverage for all workers. However, in the EU directive “workers” have been defined as persons who work in an effective economic activity. Therefore, although in Ireland all workers in sheltered employment are covered by the Irish equality legislation, from the EU perspective not all workers are covered unless there is “an effective economic activity”.

It is also important to note that what constitutes a disability is not defined. The reason is that there is no agreement on the definition. In this context, it is the European Court of Justice that has the final decision. There is a Spanish case on this point. There was woman whose work for a Spanish firm resulted in her sickness. As a result of her sickness, she was dismissed from work. She challenged the provision and said that this was direct discrimination. The question therefore is “Does the definition of disability include illness?” The European Court of Justice defined disability as a limitation: physical, mental, psychological impairments that would change the participation of the person concerned in professional life. Accordingly, a disability is different from a sickness. Disability must be a limitation that is long-term. The importance of this definition is that the 27 EU member states must ensure that should they define disability, it must incorporate this decision. There is another case also regarding the definition of disability, with the question put to the court being, “Does the Directive protect employees treated less favourably or harassed on the grounds of their association with persons with disability?”

The directive prohibits five things: direct discrimination, indirect discrimination, harassment, victimization, as well as incitement to do anything. It requires that employers must provide reasonable accommodation and that States must provide effective and proportionate enforcement mechanisms. This Directive applies to and is legally binding for 27 countries.

One difficulty is that the 27 different countries have different legal approaches and the Directive requires a basic minimum approach. Some of the approaches include: the criminal approach, the constitutional approach, and the civil approach. An example is that some of the countries have criminalized disability discrimination - for instance by punishing disability discrimination offenders with a 2-3 years prison sentence. Some of the civil law statutes provide for criminalization of disability discrimination, but only in limited circumstances. There are difficulties with this method. Firstly, discrimination does not always occur because of hostility, aggression or mal-intent. Discrimination could occur because of lack of education or awareness. Therefore it may not be the best approach to deal with disability discrimination. Secondly, the burden of proof is extremely high, making prosecutions quite difficult. Additionally, there are enforcement difficulties. The actual evidence of past cases indicates that prosecution has been minimal showing that criminalization laws may not be working. As such, this is one of the approaches that most of the countries have been moving away from. Another approach is to deal with disability discrimination at the constitutional level. There are strengths and weaknesses to a constitutional approach because the legal terms are vague. As they do not define disability or the means by which discrimination is constituted, they leave significant power to the courts. In application, proving one’s case tends to be problematic.

An additional approach, which happens to be the approach taken by the majority of member States, including Belgium, Hungary, the United Kingdom, Ireland and the Netherlands, is the use of civil and discrimination legislation. The United Kingdom discrimination legislation applies to employment, services, education, public transport and facilities. It has a very broad scope and non-discrimination principles apply to most spheres of daily life. The Irish, on the other hand, prohibit discrimination in respect to the provision of goods and services, education, housing and employment. There are significant advantages to this approach,

including that countries can have detailed provisions and spell out the definition of disability discrimination and means of discrimination.

#### **4.2.2 Asian Disability Non-Discrimination Law**

*Mr. Andrew Byrnes, University of New South Wales, Australia*

Mr. Byrnes first provided an overview of the Convention. He reminded the participants of the components of the Convention. Then, he mentioned the obligations of the States under the Convention and detailed some of them from four perspectives: first, the process States must go through in implementing the Convention at the national level; second, the form legislation has to take to implement the Convention; third, the critical issues of substance that need to be addressed in legislation; and fourth, the necessary international cooperation critical to enhancing the implementation of the Convention.

Mr. Byrnes noted that as of late June 2008 three countries in Asia had ratified the Convention: India, Bangladesh and the Philippines.<sup>2</sup> Only Bangladesh had also ratified the Optional Protocol. Therefore, Asia was behind other regions in ratification terms, but, hopefully, this means that Asian countries are being diligent in assessing the implications of ratification for their law and practice rather than rushing to ratify without serious consideration of the steps that the Convention required States parties to take. While it is very important for countries to have laws to implement the Convention, implementation is not just a question of law. Changes in policies, procedures, attitudes and culture of countries are critical to the implementation of the Convention. And even in terms of law, there is more involved than just drafting legislation. Effective monitoring, implementation and enforcement mechanisms, accessible remedies, and the education of communities need to be part of the implementation plan if the law is to be understood and properly used.

Article 4 of the Convention sets out a broad range of obligations, including legislative obligations. State parties are required both to review and amend existing laws for consistency with the Convention as well as to enact new laws where necessary to fulfil the rights in the Convention. The Convention requires a comprehensive review of existing legislation to assess conformity to the Convention. The results of this review would be expected to appear in the initial report of the State party under the Convention and will lead to revisions of laws which are inconsistent with the standards of the Convention.

What each country needs after having a well drafted law will depend on its own context, but each State party must identify who will take responsibility for the implementation of the Convention. Article 33 identifies two main focal points for implementation and monitoring. One is a focal point within the Government to ensure coordination of policy and programmes. The second instrument is a body independent of the executive Government that will monitor and evaluate the implementation of the convention. The drafters of the Convention contemplated that national human rights institutions established in conformity with the *Paris Principles* would be the most appropriate bodies to perform this role, but other models may also be possible.

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<sup>2</sup> By 29 October 2008, the following countries had also ratified or acceded to the Convention: Thailand (29 July 2008) and China (1 Aug. 2008). Australia (17 July 2008) and New Zealand (25 Sep. 2008) had also ratified the Convention. However, as of that date Bangladesh was still the only State in the Asia South Pacific region that was party to the Optional Protocol: *Multilateral Treaties deposited with the Secretary-General*, available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=0&lang=en> .

Mr. Byrnes ended his presentation by saying that this Convention was the first UN human rights treaty to have a detailed provision relating to international cooperation and he mentioned that this was politically contested. During the drafting there had been concerns over the possible costs of implementation of the Convention and resource disparities between developed and developing countries. Mr. Byrnes also suggested actions that could be taken in relation to donors. In this regard, he emphasised that for people in civil society and Governments it is very important to insist to donors that development programmes include persons with disabilities in their design and implementation. Discussion following Mr. Byrnes' presentation concentrated on issues of eligibility, the concept of neglect and discrimination, and the establishment of fast-track courts to punish alleged discriminators.

### **4.3 Current key concepts in Disability Discrimination Legislation**

#### **4.3.1 Reasonable Accommodation**

*Mr. Andrew Byrnes, University of New South Wales, Australia*

In his presentation, Mr. Byrnes focused on the terminology of the Convention and its origins. He analysed the notion of reasonable accommodation in the context of the Convention and of various statutes from the region. He also gave some examples of what might be covered by the concept of reasonable accommodation in the context of employment and discussed what sort of issues could go into determining whether an accommodation is "reasonable" or "unreasonable". In this regard, he mentioned that the concept raises issues of undue burden and unjustifiable hardship. Finally, he mentioned the importance of carrying out not just an analysis of the costs of reasonable accommodation, but also the benefits, both economic and non-economic, of doing so or failing to do so.

The term reasonable accommodation is used in slightly different ways in the international literature and in domestic laws regarding disability and discrimination. However, the underlying concept is the same: that someone who can perform the essential requirements of the job should not be excluded from doing so because of environmental or structural barriers. For example, a lawyer who also uses a wheelchair should be provided unfettered access to his/her office. The person's use of a wheelchair does not restrict the person's ability to employ his/her skills as a lawyer. Accordingly, the notion of reasonable accommodation is an obligation on the employer to make the necessary changes: it is not an option, but part of the obligation not to discriminate.

The definition of discrimination in the CRPD includes denial of reasonable accommodation. For the purpose of the Convention and international legislation, the failure to provide reasonable accommodation without a reasonable justification (such as undue burden or unjustifiable hardship) is something which a State must itself avoid and which it must also take appropriate measures to ensure that private parties avoid.

The Convention defines reasonable accommodation in Article 2 and refers to the necessary and appropriate modification and adjustment not imposing disproportion and undue burden within a particular case. Within the framework of the CRPD, reasonable accommodation should be defined in relation to individual cases and on what needs to be done for a particular person.

The content of the obligation to afford reasonable accommodation varies depending on context. Decisions on what reasonable accommodation actually means need to consider the

costs involved, as well as the benefits. In a 2003 article,<sup>3</sup> Professor Michael Stein looked at a number of US studies and concluded that the cost of providing reasonable accommodation is very often minimal, especially when other benefits are taken into account. Cost-benefit analysis determines whether the financial impact of the accommodation is unreasonable or not. It is important to not only look at what an employer would have to pay, but also the direct and indirect benefits the employer would receive. There are also other elements that need to be considered. An element that is often determinant is the size of the business. For instance, for a private firm with only 5 staff, it could be unreasonable to insist on the installation of an elevator, but for a large government office, this may be a reasonable demand. Moreover, Mr. Stein's article, which drew on research considering adjustments over a 20-year period, noted that 72 per cent of the adjustments in question had required no expenditure at all from the employer; 70 per cent required USD100; 10 per cent required USD100 to 500; and 1 per cent required USD500 to 1000. Accordingly, it can be concluded that the costs of providing reasonable accommodation have so far not proven to be overwhelming, and that concerns about cost often turn out to be unfounded.

#### **4.3.2 Affirmative Action**

*Prof. Ye Jingyi, Peking University, School of Law, China*

Prof. Ye Jingyi focused her intervention on affirmative action in China. Affirmative action has been used by the Chinese Government since 1990. However, the first law protecting people with disabilities was adopted in 1996 in a regulation detailing implementation of policy for the employment of persons with disabilities. In 1999, the China Federation of Disabled Persons (CDFP) and the administration drafted another Act that guaranteed to people with disabilities equal rights as people without disabilities. In February 2007, the Government made additional recommendations to improve equality for persons with disabilities. Finally, in June 2007, the Government focused more on the employment of persons with disabilities, granting preferential treatment in respect of enterprise income tax to enterprises who have employed people with disabilities according to laws and regulations.

According to the Government, the rate of employment of persons with disabilities should not be less than 1.5 per cent of the total work force of enterprises and employers should have training programmes for persons with disabilities. Tax benefits are foreseen for employers who employ and maintain a certain level of employment of persons with disabilities. In 2007, the newly adopted Employment Promotion Law was further improved with additional protection standards for persons with disabilities, equal opportunity provisions and the promotion of job opportunities for persons with disabilities in Government agencies. On 25 April 2008, the newly revised Law on the Protection of Disabled Persons launched the campaign on the equal rights for persons with disabilities.

The increased protection recognised to persons with disabilities by the new regulations is improving the employment rate of persons with disabilities. For instance, as of the end of 2007, China had 4,300,000 persons with disabilities employed by government. In Shanghai, 113,000 persons have been allocated decent work by government, collective employers and private employers, and in Shandong the Fund for Disability which totals 1.1 billion RMB, has created jobs for more than 95,000 people with disabilities.

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<sup>3</sup> Stein, M.A. 2003. "The Law and Economic of Disability Accommodations" in *Duke Law Journal*, Vol. 53, pp. 79-191.

Even with these improvements, China is facing significant difficulties. Although more than 24 million people are employed, there are still more than 8 million people who are not. After the recent earthquake this problem has intensified. Laws alone are not enough to solve this problem because it is also related to economic, political, and social issues.

### **4.3.3 Accessibility**

*Ms. Aiko Akiyama, Emerging Social Issues Division, UNESCAP*

Ms. Akiyama made a presentation about the meaning of accessibility in the context of disability, and of the difficulties faced with regards to the concept. Article 9 of the CRPD is about the general principle of accessibility. Accessibility means that physical, environmental, informational communications and transportation facilities need to be accessible to people with disabilities, so that they can live independently and participate fully in society.

States need to develop minimum standards of accessibility and must undertake capacity building efforts for stakeholders (although the Convention does not define who a stakeholder is in this particular regard). The Convention also highlights that countries need to implement, monitor, maintain, and evaluate the participation of persons with disabilities. In terms of accessibility of information, distribution of information in accessible formats should be prioritized. Additionally, transportation systems that include road, water, light and heavy mass railway and air transport systems should also be made accessible. Although there are extra costs for improving accessibility for persons with disabilities, the challenges are not just of a financial nature. Legislation and the same concept of accessibility used by designers need to be changed.

In this session, questions focused on the specific obligations of stakeholders and the practical implementation of accessibility. The Panelist highlighted that state parties need to take appropriate actions to develop, implement and monitor minimum standards of accessibility, as well as take action to build the capacity of the stakeholders. Ms Akiyama highlighted that there are three stages to implement accessibility needs: first, to undertake a study identifying the problems faced; second, to remove the barriers diagnosed, and third, to monitor progress.

## **4.4 Improving Training and Employment Opportunities – What works in practice?**

### **4.4.1 Approaches used to encourage implementation of non-discrimination legislation**

- **Employment**

*Ms. Meghamali Aluvihare, Employers' Federation of Ceylon, Sri Lanka*

Ms. Meghamali Aluvihare said that the Sri Lankan legislation applicable to disability issues has its basis in the Constitution, which guarantees equal protection and prohibits discrimination. At the legislative level, the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996 protects persons with disabilities from unequal treatments in employment, education and services. At the policy level, Sri Lanka's National Policy on Disability covers very important areas like the equity of citizen and twenty-six policy areas

on which the Disability Rights Bill has been based. In 2003, Disabled Person (Accessibility) Regulations were adopted to make all public buildings accessible for PWDs.

The Employers' Federation of Ceylon (EFC) is a "trade union" for employers which was registered in 1929 and whose membership includes over 500 companies, employing approximately 400,000 employees. As part of its role in promoting employment opportunities, the EFC designed a special project – the Employers' Network on Disability - with the assistance of the ILO, to enhance employment opportunities for people with disabilities in the private sector. The rationale for EFC to be involved in this issue is that:

- The EFC is committed to extension of social inclusiveness to workplace;
- No group should be marginalized from the mainstream of economic life;
- The extension of opportunities to all such persons to be engaged in useful occupations for mutual benefit;
- Enterprises should have access to best human resources; and
- The rate of unemployment among disabled is over 84 per cent.

With the assistance of the ILO, EFC started awareness-raising programmes for member companies and for companies who are invited to join the Network. EFC realized that there was no data with regard to employable disabled persons and prepared a database of employable disabled persons. Over 35 companies have joined the network. A Steering Committee was formed as the nucleus of the Employers' Network on Disability with the objective of linking the business community with the organizations of disabled and to facilitate employment/training opportunities for persons with disabilities in the private sector. EFC formed partnership with the Ministry of Social Services (the policy making body on disability issues) and organizations for disabled persons, in order to receive expert assistance to move forward. From the database, EFC selected groups of people, each group consisting of 20 to 25 disabled persons, and began to conduct job-seeking skills training sessions, such as preparation of applications, interviewing techniques and necessary presentation skills. EFC was assisted and supported in this exercise by an NGO called Motivation. The training sessions were conducted by human resource managers from member companies as well as personnel from the NGO. The EFC also raised funds from members to conduct certificate recognized training courses on IT skills and English.

Following the ILO's suggestion, EFC began hosting job fairs in 2003 and invited persons with disabilities who had gone through its job-seeking skills training programmes to be interviewed by its member companies. The initial job fair resulted in 22 of the 100 attendees receiving employment from the fair. Since then, the statistics of the EFC's annual job fairs have been quite promising with over 250 persons with disabilities having found employment at the five job fairs that have been held between 2003 and 2007.

EFC's additional services include: using operational codes on managing disability issues in the workplace designed for employers' use and based on ILO's Code of Practice on Managing Disability in the Workplace conducting trainings with human resource professionals on managing disability in the workplace; producing CD-ROMs about basic sign language interpretation; conducting counseling services for both employers and newly recruited disabled employees; launching publicity campaigns in newsletters and the media; having regular meetings of the Steering Committee with invited DPOs; and conducting physical accessibility publications such as a book on regulations for employers. Additionally, EFC has a small logo of persons with disabilities and encourages members to use the branding on their recruitment advertisements.

EFC has found that their activities have positively impacted employers and persons with disabilities. Employers have access to expanded labour market for recruitment and benefit from a diverse workforce. Recruitments have proved to be productive, conscientious, and loyal, enhancing staff morale and team development, as well as companies' public images. Through EFC's efforts, persons with disabilities have equal opportunities and access to training and employment in mainstream economic activity, creating dignity and self respect for persons with disabilities.

***Mr. Tran Van Tu, Viet Nam General Confederation of Labour, Viet Nam***

According to Mr. Tran Van Tu, Viet Nam is a poor post-conflict society currently undergoing processes of industrialization and modernization. In this process, similar to that of other countries, Viet Nam is facing difficulties relating to the inclusion of persons with disabilities, including those disabled due to past conflict. Currently, Viet Nam has about 5.3 million persons with disabilities, or 6.64 per cent of its population. Despite being a poor country, Viet Nam has made efforts to help persons with disabilities overcome difficulties in their daily life to: ensure they are able to exercise their rights in all aspects of politics, economics, and culture; uphold their capacity to stabilize their life; integrate into surrounding communities; and participate in social activities. These views have been codified in its Labour Code (1994), the Ordinance of People with Disabilities (1998) and other guiding legal documents.

Current Vietnamese laws and regulations on employment for persons with disabilities are divided into four main categories.

1. *Workers with disabilities and enterprises for persons with disabilities:* The Government of Viet Nam has issued provisions for persons with disabilities in the Labour Code (including Decree 81/CP dated 23 November 1995 and Decree 116/2004/ND-CP supplementing Decree 81). Article 1 of Decree 81/CP reads that: *persons with disabilities, regardless of causes, are those who have deformities on one or more than one functions or those whose working ability has been diminished by 21 per cent or more as certified by competent Medical Evaluation Council in accordance with regulations by the Ministry of Public Health.* To enterprises for persons with disabilities, Article 3 provides: *"1. Production and Business establishments for disabled labourers, as mentioned in this Decree, include State-owned enterprises, private enterprises, companies, co-operatives, production groups organized in accordance with the law; 2. Production and business establishments for the disabled labourers must meet the following requirements: a) Having 10 labourers or more, at least 51 per cent of who are disabled; b) Having regulations or statutes suitable for disabled labourers."*
2. *Regulations on employment and recruitment:* Viet Nam's Labour Code states that everyone has the right to work, to choose freely a job or profession, to learn a trade and to improve his/her professional standard without discrimination of sex, nationality, social background, belief or religion. Maltreatment of an employee and forcible labour, in any form, is forbidden. The State encourages, creates conditions for, or assists all activities which generate employment or self-employment, all activities in job teaching and learning to create employment, as well as all activities in production and business which employ a large work-force. In addition, Ordinance 06/1998/PL-UBTVQH10 dated 30 July 1998 on persons with disabilities also states that administrative and non-business agencies must not refuse job applicants who are disabled persons and who

meet all the criteria for the suitable jobs for which the agency has the need of recruitment. The recruitment of disabled persons to work at enterprises of all economic sectors and all forms of ownership shall be carried out according to the prescriptions of the labour legislation. When recruiting labourers who are disabled persons, the employer must conform to the prescriptions of the Labour Code and specific regulations regarding labourers who are disabled persons.

3. *Obligatory target of recruiting persons with disabilities to enterprises:* Apart from Viet Nam's Labour Code which regulates that, "*the Government shall set a mandatory quota for disabled labor for a number of occupations and jobs. If a business with these occupations and jobs does not accept this quota, it shall pay a sum proscribed by the Government to the employment fund to help in the creation of employment for the disabled. Any business which employs a number of disabled than the assigned quota shall receive financial support or low-interest loans from the Government in order to create working conditions suitable for disabled employees*", there are various provisions in the Decree regulating obligations of enterprises for recruiting persons with disabilities.
4. *Regulations on support and assistance to enterprises for persons with disabilities:* The regulations are: exemption from enterprises' income tax; exemption from land using fee and land and wetland hiring fees; and access to preferential loans from Social Policy Bank at the interest rate equal to 50 per cent of that applied to others and subject to help from Employment funds.

There are various measures for enforcement of laws including communication campaigns to raise awareness of employers, persons with disabilities, labourers, and local authorities at all levels; clarification of functions and duties of agencies and individuals concerned; upholding roles and responsibilities of local Employment Promotions centres; organizing regular job fairs for persons with disabilities in integration with propagating laws; incorporating vocational training to job promotion for persons with disabilities; improving working conditions for persons with disabilities; implementing employment policies for persons with disabilities as assist them to access vocational training, functional rehabilitation; working with local authorities in cooperation with Representatives of Employees and persons with disabilities to monitor, audit the law enforcement by enterprises; and modifying laws and regulations to strengthen effectiveness of laws on hiring persons with disabilities.

Viet Nam's labour union, the Viet Nam General Confederation of Labour (VGCL), also launched some initiatives to promote law abidance by disseminating and communicating policies to employers and employees and encouraging good examples of employers hiring of persons with disabilities on labour newspapers (both paper-based and internet-based news) and of persons with disabilities overcoming difficulties. So far, VGCL has: set up 13 vocational schools and 36 job promotion centres; participated in setting up labour relationships at grassroots levels to ensure equality of employment via the Recruitment regulations and Collective Labour Agreement; coordinated with local authorities to monitor the implementation by enterprises; and together with the Ministry of Labour, War Invalids and Social Affairs (MOLISA), has reviewed, revised and supplemented legal documents in line with reality.

Viet Nam has made some progress in terms of positively affecting the lives of persons with disabilities, although much work still needs to be done. Enforcement of employment for

persons with disabilities laws has brought about opportunities for many persons with disabilities, improving the incomes of thousands of persons with disabilities. According to MOLISA's statistics, only 2.5 per cent persons with disabilities have professional skills but 4 per cent have long-term jobs, including jobs working with embroidery, flower placement, toothpick making, sewing, motorbike repairing, etc. That said, only 9.3 per cent of enterprises follow the obligatory target of hiring persons with disabilities. A study by Ho Chi Minh City Department of Labour, Invalid, and Social Affairs (DOLISA) reports that persons with disabilities account for 0.69 per cent of the total workforce. Further to this, only eight out of 64 provinces have set up job creating funds, five of which have just been set up. Therefore, although small strides have been made for employment of persons with disabilities, the implementation of policies and laws is still quite weak.

Various constraints exist in terms of enforcing laws on decent employment for persons with disabilities. Many persons with disabilities lack the confidence or initiative to exercise their rights for employment, partly because of irregular and ineffective communication and understanding about legal rights. Additionally, employers often do not realize that it is their social and legal responsibility to recruit persons with disabilities. However, it is also the case that the limited penalties for not following the law have encouraged some employers to ignore their legal obligations. Moreover, the establishment of employment funds has lagged because local authorities have not paid sufficient attention to monitoring. Adding to these obstacles, employment consultation with persons with disabilities is often ineffective because of inappropriate consultative infrastructure and many persons with disabilities associations are not yet working up to their potentials.

***Mr. Sagheer Ahmed, Secretary General, Employers' Federation of Pakistan (EFP)***

Mr. Sagheer Ahmed said that the Constitution of Pakistan treats all people as equal citizens and without any discrimination. It provides equal rights for all and equal employment opportunities to all without reservation. A provision of the Constitution secures the well-being of the people, irrespective of sex, caste, color, religion, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustments of rights between employers and employees, as well as landlords and tenants. Within the available resources of the country, it provides facilities for work and adequate livelihood for all citizens, with reasonable rest and leisure and social security by compulsory social insurance or other means for all persons employed.

These provisions were the basis under which the Government introduced anti-discriminatory legislation for the employment of disabled persons known as "Disabled Persons' (Employment and Rehabilitation) Ordinance 1981" (1981) to provide for the employment, rehabilitation and welfare of disabled persons. In the law "disabled person" is defined as, "*a person who, on account of injury, disease or congenital deformity, is handicapped for undertaking any gainful profession or employment in order to earn his livelihood, and includes a person who is blind, deaf, physically handicapped or mentally retarded; disease includes the physical or mental condition arising from the imperfect development of any organ*".

Apart from the Constitution, Pakistan has other national legislation and policies for persons with disabilities. In 2005, the Decent Work Country Programme (DWCP) for Pakistan was signed by the Tripartite Constituents along with the ILO office in Pakistan.

Mr. Ahmed mentioned that the Employers' Federation of Pakistan (EFP), which started operations in 1950 is the only employers' forum in Pakistan and as such, is well recognized at all levels. The vision of EFP is to provide a forum for the employers of Pakistan to progress in the global society through decent industrial relations and better human resource management, while keeping in view the society's social responsibilities. The EFP is a member of the International Organization of Employers (IOE) and a member of the Confederation of Asia-Pacific Employers (CAPE).

Mr. Ahmed noted that the EFP signed the Decent Work Country Programme (DWCP) and is abiding by the DWCP, encouraging decent work and decent employment among employers. Importantly, the EFP conducted a seminar, in coordination with ILO Islamabad, in April 1995 in Lahore with the objective of raising awareness about employment of skilled disabled persons in EFP's member organizations. Additionally, EFP has encouraged the implementation of non-discriminatory legislation and in 1998 took the practical step to provide skill development training among disabled persons. A total of 3,406 disabled persons, more than 1 per cent of the total workforce, have been employed by EFP members. In general feedback from participants has been quite positive.

In May 1998, the EFP established a vocational guidance, rehabilitation and employment of disabled persons unit in the EFP Secretariat. In 2002, EFP, in consultation with a research scholar, conducted a survey about the employment of persons with disabilities. A total of 60 small, medium and large organization/industries were selected to participate in the survey. The survey revealed that out of 60 organizations, 50 of them employed disabled persons.

In order to promote the employment of persons with disabilities, EFP has proposed a project to the ILO office in Pakistan entitled "Productivity through Disabled Persons". The project is based on their belief that disabled persons can be useful in productive work and hence can contribute to the economy instead of becoming a liability for society. As it is estimated that 1.8 per cent of the population is blind and 10 per cent of the population are considered as "special" persons. Thus, there is a need to assess the skill capacities of disabled persons and to promote skills training and education for disabled persons. The proposed project activities would include a further survey of disabled persons, the compilation and printing of data and awareness-raising seminars, sensitizing employers to their roles and obligations in making disabled persons useful and productive persons of society.

- **Training**

*Ms. Ngo Thi Thuy, Swisscontact, Viet Nam*

Ms. Ngo Thi Thuy noted that, in Viet Nam, there are approximately one million persons with disabilities who need training for employment but that there are very few vocational training providers who can effectively cater to this need. Most often, professional vocational training providers for people with disabilities are located in urban areas and often have to turn down persons with disabilities from the countryside because of limited capacity and quotas. As a result, each year only 5,000- 6,000 persons with disabilities can receive appropriate skill development which includes shelter, upgrading of general education, job skill, social skill, and placement service. Moreover, while statistically, there are approximately 100 institutions that provide job skill training to persons with disabilities, most of them just operate on a head-count basis, without essential support such as infrastructure, appropriate methodology and curriculum, training on social skills and entrepreneurship, upgrading of general education, and shelter for people from rural areas.

Persons with disabilities face various obstacles when they start to look for job skill training. For instance, 70 per cent of disabled persons who enrolled at vocational training centers need upgrading of general education in order to learn job skills effectively. Often, persons with disabilities have withdrawn from mainstream society because of social stigmas and it takes time and effort to overcome this withdrawal. Both physical impairments and lack of public infrastructure limit mobility of persons with disabilities, especially considering the majority of persons with disabilities are from the countryside. In addition to the physical barriers, social and financial barriers are still very high. Lack of access to internet and to the labour market system in general can make peoples' desire to develop their skills seem less realistic. Lack of social skills and legal knowledge put persons with disabilities at a disadvantage in market competition and persons with disabilities usually find their skills unmatched with expectations of the industry, and more importantly, they lack the expected attitude to perform effectively at the workplace. Many are also not aware of the chance to start their own business, or are not trained to prepare for entrepreneurship should they wish to do so. Accordingly, vocational training opportunities for persons with disabilities need to acknowledge and work towards overcoming these obstacles.

Ms. Ngo Thi Thuy highlighted that the Swiss-Vietnamese Project, "Strengthening of Vocational Training Centers in Viet Nam" (SVTC), is a support project that applies an integrated approach to school development, working towards a more conducive environment for the informal vocational training sector of Viet Nam. SVTC is a non-specialist in terms of working with persons with disabilities, but in "Phase 5" of its work (2005-2008), it was decided that SVTC would make efforts to advocate inclusion of persons with disabilities in mainstream training and employment. These efforts have included involving "ordinary" vocational training providers and other stakeholders in various activities, such as trainings on gender and life skills and entrepreneurship training for persons with disabilities.

A successful example regarding placement and self-employment is the case of "For-wages employment" of the Viet Hung company, which, in addition to meeting all regulations promoting the employment rights entitled to persons with disabilities, additionally provides opportunities for persons with disabilities to increase their income by allowing persons with disabilities to choose to work one or two more hours a day and receive 15 per cent overtime pay. Persons with disabilities also earn a bonus of 10 per cent of their basic wages. In this environment, persons with disabilities are welcomed as equal members, with respectful treatment from peer workers and supervisors. The other side of this is that persons with disabilities are also expected to perform according to the labour contract. As such, this can be seen as a start to a non-discriminatory working environment.

Efforts towards the principle of non-discrimination for persons with disabilities in the workplace have been undertaken in various manners; however, in order to achieve a holistic framework, different actors should play an active role:

- *Role of policy-makers and implementers:* Policy and regulations are in place. A holistic approach to legislation and a sense of non-discrimination as opposed to specific regulation must be added. Provincial stakeholders are expected to be proactive in implementation
- *Readiness of the industry:* Many companies have already participated, such as Viet Hung Company, which uses SA 8000 and also developed their own policy to support persons with disabilities population in their workplace.

- *Readiness of persons with disabilities as Vocational Training Center graduates:* It is essential for persons with disabilities to have acquired not only job skills but also social skills and appropriate attitudes to join the labour market. Faith in oneself is crucial for persons with disabilities to integrate themselves as fully-fledged members of the society in all senses.
- *Contribution of local, regional and international institutions:* There is an excellent base of knowledge in place with contribution from the UN and other stakeholders to various extents. Viet Nam will certainly benefit from lessons learned and well attested approaches to bring about its own legislation that ensures full citizenship for persons with disabilities.

***Mr. Pecharat Techavachara, Foundation for the Employment Promotion of the Blind, Thailand***

Mr. Techavachara started his intervention by saying that in several years Thailand has made good progress in the area of disability. Thailand has passed various legislations and has undertaken many initiatives to provide disabled persons with opportunities for employment. It is understood that without employment and income, disabled people will always be second class citizens. Accordingly, if disabled people have opportunities for employment and income, they will be able to live by themselves and will decide what they want to do instead of asking help from other people.

At present, Thailand has proved that it can provide education opportunities to disabled people, particularly to the blind. Blind people have been successful in the education field, receiving every level of university degree available. However, in terms of employment for persons with disabilities, Thailand still has been unsuccessful. Although the legislation is in place, it is very important that Thailand also look at the situation from the employers' perspectives.

Many employers are very generous and understand that there are many ways to help disabled people and that when they make profit, they have to give something back to the society. However, most employers also have their own responsibilities to their shareholders and this must be understood. As such, the government must convince employers that when they hire disabled people, they will not get less but actual they get more. Some employers are very reluctant to hire persons with disabilities because they feel that they may be a burden for them. The Government has to prove to employers that persons with disabilities are not a burden. Actually, disabled people, after training, can do many things. NGOs could train some disabled people and may go in the first period for one or two months. They have to be with the specialist to see that those people can really do the job. The Government must empower persons with disabilities and give them appropriate training, and also ensure that there are suitable work places. To do so the Government has to consult with employers to consider what kind of jobs disabled people can do and then provide specific, not general, training that will facilitate appropriate job related skill development.

## **4.5 Ensuring compliance**

### **4.5.1 Enforcing Disability Discrimination Legislation in Employment/Training – What mechanisms are in use?**

***Ms. Barbara Murray, ILO***

Ms. Murray said that there are a lot of excellent laws on the statute books in the Asia-Pacific region. However, without enforcement, they are of little use to disabled people. In the discussions and presentations, there have been references to the legal system, the judicial

system and the court system, as ways to ensure that persons with disabilities enjoy their rights. It was also noted that another administrative approach to enforcing legislation which is quite common in many countries is using the labour inspector system. Some countries have developed administrative monitoring systems, which include a special agency, council, or institution that has been set up with the distinct job of making sure that the laws are being observed. Countries might have a National Disability Council and many countries that are just beginning to go down the road of anti-discrimination laws are considering establishment of national discrimination council. Other countries have opted for an ombudsman institution or have set up commissions that go by various names. As discussed, there are various pros and cons of the different approaches to enforcement.

### *Courts*

Studies about the practicalities of these different approaches have been clear that the constitutional court approach is rather difficult, costly, and time consuming. The operation of criminal law courts depends on the particular country's disability legislation. Three or four countries in the region have a criminal law court. That said, as of now, civil law courts are the preferred approach as is it easier, less costly, and less time-consuming to bring cases to these courts. An even easier approach is to utilize labour courts which are more informal, meet more regularly and deal with court cases more quickly.

It was noted that attention still needs to be paid to how improvements can be made. For instance, in many cases there is a need to introduce provisions protecting workers against victimization or retaliation if they seek legal redress for grievances. Further to this, there is a need for pre-court conciliation or mediation opportunities, as often grievances do not really need to reach a court level and an agreement can be reached through discussion and negotiation. Such efforts are less costly and protect people's reputations.

In terms of a disabled person's ability to file a grievance claim, whether that ability is financial or in terms of confidence, it should also be possible for relevant third parties such as non-governmental organizations or trade unions to be involved or to take the case to court on behalf of the disabled person. This has been very important in many countries, not only in developing countries, but also in more developed countries.

In the past, in many countries, anti-discrimination laws put the burden of proof on the shoulders of the person who was bringing the complaint. In the case of laws in Europe, this created some difficulties, especially if the complaint was placed by an employee, since the employee did not have access to all the relevant information, held by the employer. Recent reforms have placed the burden of proof on the employers to prove they did not discriminate, and associated with this reform, there has been an increase in the number of cases won by persons with disabilities.

Another important thing to be done in every single country is to increase sensitization and provide training for judges and legal advisors, because this opportunity to file a court case is new and many judges have never come across the disability concept or the idea of reasonable accommodation.

### *Labour Inspectorates*

In terms of labour inspectorates and the role that they can play, it is important to understand that in many countries labour inspectors are well-known by and have good relationships with employers. In countries with quota laws in place, labour inspectorates often have the task of gathering information on whether employers are complying with these laws or not. Countries

using the quota system include Germany, France and Spain. The labour inspectorate also plays a role in countries which have non-discrimination laws – in New Zealand, for example, where a very strong anti-discrimination law is in place, labour inspectorates monitor not only workplaces, but also sheltered workshops.

### *Ombudsman Institutions*

The other main way to make sure that the laws on equality for persons with disabilities are being observed is through the creation of ombudsman institutions. Ombudsman institutions mainly focus on what the public authorities are doing and they consider individual complaints about alleged abuses by public authorities. They carry out investigations, publish results and make recommendations for improvement. They do not often focus on the private sector. They have a more conciliatory approach, calling the parties together to have an informal discussion on what is happening and then trying to get people to come to an agreement.

The reference of the ombudsman institutions is important because it defines their authority and affects their effectiveness. For example, the Scandinavian countries of Norway and Finland have the Equality Ombudsman. Their permanent responsibility is to monitor compliance with the Equal Status Act that aims to promote equal rights and opportunities. They may receive complaints and issue recommendations, but there is a difference between Norway and Finland in terms of whether they can make an order or not. It is only under an exceptional case that the ombudsman in Norway can make an order or bring a case to court or to the Equal Right Board to be considered, whereas the mandate of the ombudsman institutions in Finland is stronger. They can make an order which is binding on the concerned parties. Sweden has a specialized ombudsman institution for different grounds of discrimination while the Netherlands has a single National Ombudsman with broad mandate concerning state acts and omissions. A lot of people are looking at this option to see how this works and if this is a more effective way of trying to resolve differences of opinion than going to the courts or to the labour inspectorate.

### *Commissions*

Additional mechanisms for enforcing legislation on equality and non-discrimination include different commissions that have been set up to promote and protect human rights and equal treatment laws. These commissions may receive individual complaints against public and private persons and bodies; this is different from the ombudsman institutions, which only focus on the public authorities. The commissions are also broader in scope. For instance, in Asia-Pacific Region, the four commissioners of the Australian Human Rights and Equal Opportunity Commission deal with discrimination on the base of sex, disability, human rights and ethnic origin. The United Kingdom had a Disability Rights Commission until recently, until it was merged into the Equality and Human Rights Commission in October 2007. The Republic of Korea has recently set up the Sub-Committee on Remedies for Discrimination against Persons with Disabilities under the country's new anti-discrimination legislation. This is a sub-committee of the National Human Rights Commission in Korea.

The functions of the commissions may include adjudicating and making decisions pertaining to individual complaints. They may decide to start investigations on their own initiative and they may conduct independent surveys on human rights compliance, equal opportunities, and the rights of disabled persons. Additionally, they may publish independent reports and make recommendations on issues falling within their mandates. Finally, the most important function regarding the CRPD is that they may provide assistance to persons with disabilities or to other persons who have allegedly been discriminated against to bring about court cases. Employers may be required to report to the commissions on actions they have taken to implement the

law. This is increasing throughout Europe because employers are now required to develop action plans for the implementation of the law, which they can show to the inspectors or to the commissions.

This session raised a number of questions from the audience. The discussion that followed highlighted that:

- The creation of persuasive mechanisms would be useful for the employers as well as the disabled communities;
- Quick defined ways to redress grievances and ways to sanction the employers who do not do what they should do for persons with disabilities are important;
- It is a primary responsibility of employers to follow the laws or legal obligations and to uphold social responsibilities;
- Social awareness is important to encourage employers to hire disabled persons;
- Activities and workshops on legislation pertaining to the employment of persons with disabilities should be conducted;
- Social responsibilities need to be more seriously campaigned for;
- Public facilities for persons with disabilities need to be taken into account; and
- Disability laws still need to be adopted in some countries.

#### **4.6 Litigating Equality**

*Ms. Shivaun Quinlivan, Law Lecture, National University of Ireland, Galway*

Ms Quinlivan mentioned that in Ireland when the anti-discrimination law was introduced, two equality bodies were created, the Equality Authority and the Equality Tribunal. The Equality Tribunal is a quasi-judicial body and deals only with equality cases. The Equality Tribunal has an investigative role, it enforces legislation, and its decisions are binding. The Equality Authority deals with promoting equality in Irish society and works with trade unions, employer organizations, small and medium enterprises and local authorities. It has a very active system in place and mounts massive public awareness campaigns. It is involved in research on all the areas of the nine protected grounds of the legislation. Employers can invite the Equality Authority into their workplaces, where the Authority will review a company's entire system and report what the problems are, what they could do better, and then can create an action plan for the employer. The Equality Authority also plays a role in litigating cases.

In Ireland there are three main equality provisions: the Employment Equality Act 1998-2004, the Equal Status Act 2000-2004, and the Intoxicating Liquor Act 2003. They are not related to disability alone but cover nine protected grounds. As a result, one of the significant benefits is that people can claim discrimination on more than one ground. People may be discriminated because of their disabilities but it may also be because of their race. Accordingly, a party can say it is race and disability discrimination. It can be said that it is discrimination on the basis of age because when people get older, people are inclined to get more disabilities and this disability and age discrimination go hand and hand. One in four cases now claims multiple grounds of discrimination.

In terms of a definition of "disability", there is no specific reference to particular impairments or conditions. The definition does not require the disability to reach a certain threshold of severity, or for there to be a substantial restriction on the range of activities considered normal before a person comes within the definition. The definition does not distinguish between short or long-term disabilities. Disability can pertain to somebody who has any of the following:

- Total or partial of a part of a person's bodily or mental functions;
- Malfunction, malformation or disfigurement;
- Condition or malfunction which results in a person learning differently; or
- Condition that affects a person's thought processes or perceptions of reality.

Further the definition recognises the role of society in disabling an individual by prohibiting discrimination against a person with a history of a disability, a future disability, an imputed disability and also discrimination by association.

It is very hard to find somebody who is excluded by that definition. The definition will allow almost anybody who has a disability to be accounted for, including people that may no longer have disabilities. Therefore, somebody that had a mental health problem when he/she was younger but no longer has that mental health problem is included under the law for example if he/she is discriminated against because people are aware that he/she once had a mental health problem. Persons are also protected by the legislation in reference to genetic testing and medical advances. An example of this is if genetic testing is used to predict who may or may not be disabled in the future, if those predictions are used to discriminate against an individual.

In the Employment Equality Act, reasonable accommodation is based on a merit based system; no employer is required to recruit or promote an individual if the person will not or is not capable of undertaking the duties attached to that job. This applies to employers, vocational training organizations, regulatory bodies, and employment agencies. A person with a disability is deemed capable to undertake the duties of the post where, with reasonable accommodations they would be able to do so. Appropriate measures include adaptation of premises, equipment, patterns of working time and distribution of tasks, and the provision of training or integration resources. To determine if an undue burden exists, considerations of the financial and other costs involved, the scale of the financial resources of the employer and the potential to obtain public funding are considered.

The system involves three stages of enquiry, beginning with the factual position concerning the employee's capability, including the degree of impairment arising from the disability and its likely duration. Second, if it is apparent that the employee is not fully capable, then it must be considered what, if any, accommodations may be available by which the employee can become fully capable. Finally, such an enquiry could only be regarded as adequate if the employee concerned has the opportunity to participate at each level.

In terms of enforcement, the Equality Acts established two permanent national institutions with enforcement functions. The Equality Authority works towards elimination of discrimination, promotion of equality and provision of information to the public, and may litigate on behalf of a party or assist others. The Equality tribunal is a quasi-judicial body, that acts as an Equality Court. The strengths of this system are that there are two independent bodies and the litigation process has inbuilt benefits such as informality, ease of access, investigative role, and affordable costs. The weaknesses though include a ceiling on compensation awards, delays, strategic cases as distinct from day-to-day cases, costs in Circuit and District Courts, statutes of limitations, and anonymity.

***Mr. James Turpin, Head of Rule of Law Programme, OHCHR***

Mr. Turpin said that OHCHR Cambodia's rule of law programme aims to encourage Cambodian institutions to provide effective remedies for violations of rights. Given its recent history, it is a very real challenge for Cambodia to provide that kind of effective remedy.

The rule of law in Cambodia remains very weak. Cambodia is engaged in a very slow process of rebuilding its legislation. In terms of using the courts to provide remedy, things are improving slowly. One important positive factor in Cambodia is that the constitution contains a relatively strong declaration of human rights, including the right to seek the remedy through the courts. All of the human rights treaties are specifically incorporated in Cambodian law, which means that they are directly applicable in the courts.

The CRPD would be in the same position as all the other human rights treaties in that regard. This means that, when Cambodia ratifies the Convention, individuals who feel that their rights under the Convention have been violated would be able to try to seek redress in courts. However, how that might work in practice remains to be seen because the court system has not really developed the prerequisite procedures.

The mechanism in the Optional Protocol to the Convention might provide a solution, since it provides individuals who have not been able to obtain remedy in the domestic system to take individual complaints to a designated international committee in Geneva. This procedure is optional: States may choose whether to ratify the Optional Protocol or not. It is a voluntary procedure used when domestic remedies at a national level have failed to provide remedy. In the country like Cambodia, this could provide an additional means of resolving particular cases. The Committee in Geneva does not have a judicial mandate; it can consider individual cases and make recommendations based on the facts of the case but it can not enforce its decisions. It has to rely on the national Government to do that.

***Dr. Amita Dhanda, Nalsar University of Law, India***

Dr. Dhanda said that although legislation in India has largely not been interpreted in terms of equality for persons with disabilities, normatively, all people, including people with disabilities, are guaranteed equality by means of the Bill of Rights and the Indian Constitution. These instruments also allow for the enforcement of those rights and the use of the court system in order for fundamental rights to be realized.

The equality of people with disabilities is also protected through national acts ensuring equality of opportunity and full participation. Both the Constitution and the Persons with Disabilities Act normatively protect people with disabilities seeking equality and allow them access to the courts. In India, a person whose rights have been infringed upon need not necessarily file a case personally; but such a case may be filed by a third party. Additionally, the Indian High Court has established that if an employer does not hire a person with a disability because he/she feels that the disability will hinder the disabled person's performance, then the burden is on the employer to prove that this would, in reality, be the case. Courts are also mandated to intervene in cases of deprivation or discrimination. Finally, Indian courts have also taken a leading role both in terms of affirmative action, as well as with reservations.

In India, everything has to be done through schemes and that is the way policies are to be made. For instance, nobody can come to ask for concession for lands for the persons with disabilities. Even if someone asks for lands with concession rate but the government doesn't have a scheme in place, the court will require the government for a scheme within a certain period. Unfortunately, it has been found that a number of these schemes failed to achieve their objectives.

#### **4.7 Enforcing the CRPD at National Level, linked to the Future Disability Rights Treaty Body**

*Mr. James Turpin, Head of Rule of Law Programme, OHCHR, Cambodia*

Mr. James Turpin said that after having examined national legislation, practical ways of implementation, existing enforcement systems, etc., participants may wonder what added-value can be derived from the CRPD. His presentation will therefore look at how the CRPD is enforced nationally and internationally and the work of the international committee which will be set up in Geneva.

Effective implementation of the CRPD, as any other human rights treaty, is time consuming and complex. It requires new laws, policies and programmes and correcting gaps of the legal framework, etc. It requires a constant effort of progressive realization on the part of governments. In this context, the initial step that any government needs to take is to understand the situation by undertaking a thorough assessment of where the country currently is before planning what is needed to take the country to where it wants to be in terms of respecting the rights of persons with disabilities.

In order to help each state party to monitor its process, all human rights treaties have established at the international level support structures in the form of treaty bodies. These treaty bodies are committees of independent experts that examine reports submitted by governments regarding the implementation of the treaty and identify the challenges for further effective implementation. The aim is not to criticize the government, but to assess the situation objectively and provide useful recommendations to help the government move forward.

Every country in the world, whether rich or poor, developed or developing, is faced with real challenges in implementing the rights set out in the Convention. The effective way to benefit from the recommendations of the Committee is to encourage national debate of the issues. It is important for the government to make this initial assessment and report to the Committee. But the Committee can assist in other ways, such as through optional procedures, like the individual complaint procedure, country visits and inquiries. These procedures provide further opportunities for States to benefit from the expertise of the Committee.

In the subsequent discussion, Mr. Turpin was asked whether the reporting process is a kind of 'name and shame' mechanism and if countries that come before to the Committee are under pressure to make changes at home. Mr. Turpin responded that the Committee would work on the basis of constructive dialogue, looking at both the positive and negative aspects of each State's implementation record. The Committee's concluding observations include a section highlighting positive progress, before moving on to areas of concern. It is also worth mentioning that no country in the world can get through the process without criticism. Therefore, the intervention of the Committee should be seen as helping the country to improve the situation in the country, not as 'naming and shaming'.

## 5. Parallel Working Group Sessions

Participants were asked to form country-based working groups to discuss a series of given questions and to report on the conclusions to the plenary.

### 5.1 First Working Group Session

- 1) *Making a difference with reasonable accommodation*
- 2) *Affirmative action measures – What impact?*
- 3) *What works in improving accessibility?*

The representative of the **Cambodia** Working Group reported that Cambodia provides skills training to persons with disabilities in order to make their skills marketable and noted that employers will be pleased to employ persons with disabilities and are prepared to accommodate them reasonably. Cambodia assured the meeting representatives that at least the minimum numbers of persons with disabilities required will be employed. Additionally, employers who do not comply with quota systems will be fined and the fines will be used to assist persons with disabilities. Cambodia has established minimum standards of accessibility.

The representative of the **China** Working Group reported that relevant legislation should have a clear definition about the term of “reasonable accommodation” for the good of the implementation of the CRPD and to clearly lay out the obligations of all stakeholders. Affirmative action measures are imperative to the de facto enjoyment of the right to work. In this context, the impact of affirmative action is not only in terms of eradication of discrimination, but also in terms of removing barriers, as well as creating enabling and favourable conditions for the enjoyment of the right to work for persons with disabilities. The importance of affirmative action in terms of accessibility is to increase the legal-binding force in relevant legislations and effective enforcement mechanisms for legislation.

The representative of the **Lao PDR** Working Group reported that the Draft Decree on the Rights of Persons with Disabilities is awaiting government approval. Additionally, Lao PDR is amending its construction law with the support and participation of the Lao Disabled People’s Association. The Government has to determine clearly in the law what it means to make accommodation “reasonable”. It should details penalties for discrimination offenders or enforcement for those who do not follow the regulations. The legislation must clearly identify and define non-discrimination. This means persons with disabilities in Lao PDR should have equal rights on par with non disabled persons in regard to rights in education, training and paid employment opportunities. The Government should provide funds for trainings and training centers. The Government needs to raise awareness in society about the CRPD through mass-communication such as television, radio and other tools, in order to sensitize people on the importance of including persons with disabilities fully in society. The government should understand what disabled persons want from society, for example, that disabled persons want job opportunities, and accordingly, should provide facilities or accommodations so full inclusion is possible.

The representative of the **Pakistan** Working Group reported that Pakistan has in place a system for identification and registration of persons with disabilities. It also manages a

multifunctional centre for persons with disabilities, facilitates employment through placement services, educates the community regarding persons with disabilities, provides loans to self-employed persons with disabilities, and expands infrastructure services for persons with disabilities. For its affirmative action measures, the government and cooperative sectors have decided to reserve seats for disabled persons while promoting recruitment at all levels. The government ensures that persons with disabilities are able to enjoy their rights and opportunities as other citizens do. Pakistan also uses modern technology, tools and skills to streamline national policies, planning, programming and service delivery for effective redress of grievances by persons with disabilities and ensures that legislation relating to employment and rehabilitation of persons with disabilities is adequately formulated and strictly enforced. In regards to accessibility, Pakistan will develop advocacy campaigns to address special groups such as policy-makers, opinion leaders, youth, and adolescents to increase ownership of disability issues by stakeholders and to strengthen service delivery. Additionally, Pakistan has shifted from an exclusive system of education for children with disabilities to ensure the provision of quality services to all age groups, through expansion and strengthening of service delivery in infrastructure and through decentralization of programme management and service delivery.

Representatives of the combined **Sri Lanka** and **India** Working Groups reported that there is no specific definition of “reasonable accommodation” in Sri Lanka and understandings can vary from place to place. The issue of disproportionate burden is of significant concern as there is such a large scale population with disabilities. Additionally, representatives noted that a general definition of reasonable accommodation cannot be imposed because what is reasonable often depends on context. So, although affirmative action in Sri Lanka and India in both legal and administrative spheres is available, there has been a lack of implementation. In regard to accessibility, in both countries, direct action by rules and regulations are combined with participatory approaches by all stakeholders in order to improve accessibility.

The representative of the **Thailand** Working Group reported that the Government should review all obstructs that limit opportunities of persons with disabilities. The government should also promote awareness raising efforts to change societal attitudes, making people realize that non-disabled people and disabled people are equal. All persons with disabilities should be invited to participate in all types of work. Policies and their implementation need to be set up by various institutions and the government must take the lead on this issue. In regards to accessibility, the government has tried to include persons with disabilities as much as possible in society. However, due to budget limitations it is going to take quite a long time for progress of accessibility management.

The representative of the **Viet Nam** Working Group reported that the government has paid attention to persons with disabilities. Social services throughout the country have been developed consistently with policies giving attention to vulnerable groups. The state’s macro-policies aim at linking the social services with economic development, to create harmonies between economic growth and social equity. In order to achieve this, the government has made efforts to improve legal systems to institutionalize the advocacy, views and solutions related to social safety. In addition, the government is also mobilizing all social resources, (i.e. from local authorities, mass organizations and citizens), in hopes to make this policy possible. For better efficiency, this macro policy has been integrated into action plans at the grassroots level with specific targets.

## 5.2 Second Working Group Session

- 1) ***How do different Implementation mechanisms work in practice?  
(Ombudsman Institutions, Tribunals, Labour Inspectorates, Disability Councils, Equality and Human rights Commissions, Criminal, Civil and Labour law Courts)***
- 2) ***What needs to be done to improve effectiveness?***

The **Thailand** Working Group representative noted that although Thailand has the necessary mechanisms in existence, it does not fully use them. Instead the country prefers to initially use human relationships to solve problems. In line with Thai culture, negotiation rather than legal mechanisms are used for disputes. As most disabled people are not aware of their rights, trainings need to be organized for them. In 1991, Thailand adopted the Rehabilitation Act, which requires employers with at least 200 employees to employ at least 1 disabled person. However, this law is not effective because there is no enforcement mechanism. Instead, the Thai government has encouraged employers to hire disabled people. In 2007, Thailand passed a new act called the Promotion and Development of Quality of Life for People with Disabilities Act, which includes punishment measures and requires government agencies to employ disabled people.

The **Viet Nam** Working Group representative stated that Viet Nam has a number of different implementation mechanisms. First, there is a labour inspectorate which exists nationally, inspects enterprises and implements legal regulations regarding persons with disabilities employment. It also inspects cases and then refers them to the court. Another mechanism is the Disability Council, which includes the National Council of Coordination the People with Disabilities (NCCD) and the Association for the Handicapped. They provide guidance, support and protection for persons with disabilities, as well as disseminating information on persons with disabilities relevant legal documents. They also have responsibilities for coordinating the promotion and implementation of particular regulations with stakeholders. The final mechanism is the Labour Court.

In terms of improving effectiveness, the Viet Nam Working Group mentioned that efforts were needed regarding: consistency of laws; capacity building; awareness raising for inspectors, judges, law enforcers; stakeholders networking; legal knowledge for the persons with disabilities; and disability related knowledge for employers.

The **Lao PDR** Working Group representatives were not sure whether Lao has an ombudsman institution and tribunals dealing with disability issues. However, they think that it is good to bring consultation to the country. Regarding implementation mechanisms, they said that the ombudsman should have full authority for investigating government officials or relevant sectors in order to protect the rights of the persons with disabilities. Tribunals should have a role to listen to opinions of persons with disabilities. There should also be a consultant or a judge for persons with disabilities.

In addition, in Lao PDR, there are three implementation mechanisms. First, labour inspectorates can investigate any workplace that may be considered to have violated the rights of persons with disabilities. Labour inspectorates should also check whether the employers employ disabled people or not. Second, the Disability Council has been a representative of the labour inspectorates in the country in order to bring issues of disabilities to the attention of the government. Third, the Equality and Human Rights Commission has committees working on

the implementation of other UN conventions or treaties such as CEDAW and the Convention on the Rights of the Child (CRC), and includes the implementation of the rights of persons with disabilities.

The **China** Working Group representative reported that, according to the Chinese Disabled People Protection Law and Employment Promotion Law, the implementation mechanisms in China are the administrative departments in charge of implementing the laws. The Chinese Labour Department and Civil Affairs Department are especially in charge of the employment of persons with disabilities. The Working Committee on People with Disabilities coordinates all government institutions and the China Disabled People's Association has been entrusted by the government to undertake the specific work of protecting persons with disabilities. Another relevant institution is the labour inspectorate. Since the new laws have come into effect, discrimination of persons with disabilities seems to have been reduced, but there are still some problems. Therefore, the labour inspectorates play an important part in diminishing employment discrimination. Finally, if persons with disabilities feel that they have been discriminated against, they can bring the case to the People's Court. Each of these ways of relief has its own merit and cannot be replaced by another because discrimination occurs in different employment stages and in different ways. For instance, if the discrimination occurs in the employment advertisement and is therefore not aimed at a specific person, the labour inspection is more effective. If the case occurs in the course of employment or working, and accordingly the discrimination is more targeted at an individual, the most effective way for redress is to file a lawsuit in civil court.

With regards to necessary improvements, China's representative said that as there are an increasing number of anti-discrimination cases being filed and the courts are gradually accepting these kind of suits, there is the difficulty of how to regulate the duty of presenting the evidence. The ILO could perhaps collect and compile references from different countries for dissemination. Additionally, in terms of the legal aid mechanism, China has to consider how to provide legal aid to persons with disabilities who cannot afford legal fees.

The combined **India** and **Sri Lanka** Working Group representative reported that ombudsman institutions have not actively been used as relating to persons with disabilities, as the institutions have mainly been instituted for fighting, detecting, and punishing corruption. Regarding tribunals, Sri Lanka has no special tribunal for persons with disabilities. In India, there are Disabilities Commissioners, who are quasi-judicial bodies and have taken up issues of persons with disabilities in large numbers.

In Sri Lanka, the labour inspectorate currently does not have the power to address issues of persons with disabilities specifically. However, it should be empowered sufficiently under the present Disability Act to address issues and grievances of persons with disabilities. In India, labour inspectorates have authority to issue any cases, but they mostly are overloaded with other issues which are more political and urgent in nature and therefore generally neglect issue of persons with disabilities. Also, in India labour inspectorates have tended to be quite corrupt.

Regarding a disability council, Sri Lanka has a National Council for Persons with Disabilities but at the moment it is not present in the provinces, although this extension has been proposed. India has national Chief Commissioners on Disability at the centre level and in most states, while other states are in the process of installing them. That said, their work is uneven as some Councils are more affective than others, and it has been observed that they

are region and person specific. If the individuals/commissioner or the state government is very proactive, a great deal of work can be done.

In respect to equality and human rights commissions, persons with disabilities have used the National Human Rights Commission (NHRC) in India but judgements are not binding. However, the judgments of the NHRC in India have promoted the cause of human rights in terms of publicity in the media.

Finally, with regard to the use of courts, both countries have the full range of courts more or less. About what should be done, whereas according to the Sri Lanka representative there should be special courts, it was noted that in India special courts have been a disaster, and therefore are not recommended. An Act could be passed but the state will not appoint the Special Court because of a lack of budgetary provisions, infrastructure and human resources. In Sri Lanka, courts should be educated and advised to give priority to the cases of persons with disabilities.

India and Sri Lanka agree that there should be more awareness among all stakeholders. Refresher camps should be organized for officials of courts and ministries to sensitize them to issues faced by persons with disabilities. It was mentioned that employers should not only have fiscal incentives for employing disabled persons, but also countries should follow the policy of “name and shame”. Additionally, last but not least, persons with disabilities should be educated on each mechanism available so that they can go utilize the appropriate mechanism for their case.

The **Pakistan** Working Group representative reported that it has a disability council, the National Council for the Rehabilitation of Disabled Persons (NCRD), which mainly focuses on formulating policies for the employment, rehabilitation and welfare of disabled persons. At the provincial level, there is the Provincial Council for the Rehabilitation of Disabled Persons (PCRD). At the local government level, it is called the Community Development Work. As far as ombudsman institutions, tribunals, labour inspectorates and equality and human rights commissions are concerned, Pakistan considers that they are not effective for disabled persons. Pakistan’s policies are formulated at the national level and are executed at the provincial level by the PCRD and at the local government level. The implementation is done by social welfare officers who are under the authority of the Ministry of Social Welfare. The criminal court has magistrates of first class and offences are punishable through them. In the NCRD and PCRD, which are the institutions for formulating and executing the policy, representation of disabled persons is ensured.

In terms of what should be done, certain attention should be given to capacity building for those who are formulating or implementing policies. Implementation mechanisms need to be strengthened through capacity building and awareness-raising and transparency should be increased. Currently, a registration authority exists but does not function. Pakistan proposes that the registration authority should be at the sub-division level where the disabled persons can go and get themselves registered.

The **Cambodia** Working Group representative noted that Cambodia has several mechanisms available, including the Disability Action Council and the Cambodian Human Rights Committee. The Disability Action Council is the mechanism for national coordination and consultation on disability issues. It has responsibilities to provide expertise on the issue of disabilities and rehabilitations; to assist the ministries and concerned entities in preparing policies, national plans and strategies related to disabilities and rehabilitations; to promote the

implementation of policies, laws and regulations; suggest rectification, additional completion or amendment of policies, laws, or regulations; and to communicate with national and international communities in order to exchange experiences and collect international resources. The Council is composed of a representative from the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY), as the chair, other relevant ministries, DPOs, business sectors, international and local NGOs, and the Cambodian Mine Action Authority. The Council brings together government representatives and personnel from other bodies involved in providing disability and rehabilitation services. About what should be done to improve the situation, it was noted that national legislation needs to be adopted.

Cambodia also has the Human Rights Committee, which is a part of the Council of Ministers and has certain functions such as the power to investigate complaints and to visit places of detention. Moreover, there are also two parliamentary commissions, one in the National Assembly and one in the Senate. Both also have a mandate to investigate complaints. Up to now, there have not been many cases in which they have investigated disability rights cases, but that is likely to change when the Convention is ratified or when the new law is passed.

Some members of the group noted that these institutions are not very effective partly because they are not well known and partly because the Parliament is not very strong as an institution, at least in terms of its ability to criticize government policy. This is partially because of the culture in Cambodia and in the region, where the approach of criticizing and “naming and shaming” is not well appreciated and is not actually effective; it tends to close doors not actually open doors.

A possible independent human rights commission under the ASEAN process is currently being negotiated. The Government of Cambodia and the Prime Minister himself made a very public commitment to establishing this body fully independent of government control. A law is in the process of being drafted for its establishment, but that process has been on and off for more than ten years so there is no clarity as to when it would actually come into being.

In addition, some members of the group noted that the courts do not currently provide an enforcement mechanism for disability issues. Rule of law is extremely weak in Cambodia and, although the country has come a long way in recent years, it still has a long way to go. Currently, it is not really possible to use the courts to enforce the rights foreseen in the CRPD on any issue, let alone in terms of employment. That said, the new law does impose certain penalties, not so much in the area of employment, but in the area of caring and in the duties of “carers” or guardians to look after certain people. At the moment, Cambodia has fairly few institutions, but in the future they are likely to be strengthened and could potentially provide a remedy for these kinds of rights.

## **6. Closing Remarks**

In closing the meeting, Ms. Barbara Murray, ILO Geneva, Mr. Homayoun Alizadeh, OHCHR Bangkok, and Mr. Pablo Espiniella, OHCHR Bangkok, expressed their gratitude for the collaborative event involving two UN agencies and participants from many countries in the Asian and Pacific Region. They congratulated the participants on their active participation and assured them of the ILO's and the OHCHR's commitment to closely work with Governments, employers' organizations, workers' organizations and disabled people organizations from countries throughout Asia to: support the implementation of the UN CRPD; disseminate information about its key concepts; promote equality of opportunities for persons with disabilities; and sensitize the public about the capacity and rights of disabled persons in countries in the region.

## **Annex I. Profile of Panelists**

### **Mr. Homayoun Alizadeh**

Homayoun Alizadeh was born in 1952 in Zürich, Switzerland, and attended primary and high school in Teheran and Shiraz, Iran. He studied Political Science (Ph. D) and Law at the University of Vienna, Austria, and graduated from the Diplomatic Academy of the Austrian Ministry of Foreign Affairs in 1983. Since 1987, Mr. Alizadeh has been working with the Austrian Federal Ministry of the Interior as Deputy Director of the Department for Refugees and Migration where he is currently on unpaid leave. Since 1995, Mr. Alizadeh has been working with the United Nations. From 1995 to 1998, he worked as Government Liaison Officer and Assistant to Chief of Mission with the United Nations Human Rights Field Operation in Rwanda, and from 1999 to 2001, he worked as a Member of the Identification Commission and was Coordinator of the Appeals Analysis Teams with the United Nations Mission for the Referendum in Western Sahara. From March 2001 to June 2005, Alizadeh was Head of Office of the United Nations High Commissioner for Human Rights in Khartoum. From July 2005 to March 2006, Alizadeh served as Senior Human Rights Advisor to the Director of the Inter-Agency Internal Displacement Division, Office for the Coordination of Humanitarian Affairs, Geneva, Switzerland. He is currently working as the Regional Representative of OHCHR for South-East Asia with its seat in Bangkok, Thailand. Alizadeh has longstanding experience in human rights training programmes for members of the armed forces, including military, security and police personnel.

### **Ms. Barbara Murray**

Barbara Murray is Senior Disability Specialist in the International Labour Office Skills and Employability Department, working primarily on disability issues in training and employment. Key elements of her work include: the development of the ILO Code of Practice on Managing Disability in the Workplace; promoting ratification and implementation of ILO Convention No. 159 concerning Vocational Rehabilitation and Employment (Disabled Persons); and representing the ILO at sessions of the Ad Hoc Committee on the United Nations Convention on the Rights of Persons with Disabilities. At present, she is involved in: knowledge development on good practice in training and employment of disabled persons; providing policy advice to governments in the development and implementation of disability-related laws, policies and programmes based on the principles of equal opportunity, equal treatment and non-discrimination; and technical cooperation projects relating to the training and employment of disabled persons. Prior to her current assignment, she worked for four years as ILO Senior Vocational Rehabilitation Specialist for the Asian and Pacific Region, based in Bangkok, Thailand. Before joining the ILO, she worked in the research department of the National Rehabilitation Board in Dublin, Ireland. Barbara holds a Doctoral degree in Sociology from the University of Zurich, Switzerland, and a Masters degree in Economics from University College, Dublin, Ireland.

### **Mr. Eric Guozhong Zhang**

Mr. Eric Guozhong Zhang was born in eastern China's Jiangsu Province. Trained as a social scientist with degrees from Shanghai Fudan University (1985) and Nanjing University (1988), Mr. Zhang worked as a social policy specialist and official in a number of China's governmental departments. In the early 1990s, he transferred to the disability field and currently works as a focal point for international affairs at China Disabled Persons Federation, a NGO with consultative status with United Nations' ECOSOC. Mr. Zhang is also Chairman of Development Committee and Executive Member of The Far East and Southern Pacific

Sports Federation for Disabled Persons and an executive member of International Abilympic Federation. In recent years Mr. Zhang has actively participated as a disability and human rights adviser and member of Chinese delegations in the Ad Hoc Committee on Disability Convention and its working group. He also participated in and contributed to a number of inter-governmental and international NGO forums on disability especially Convention-related topics. Mr. Zhang is author of numerous books, articles and translations on disability, social development and human rights in China, India and the USA.

### **Dr. Amita Dhanda**

Dr. Amita Dhanda is Professor of Law at National Academy of Legal Studies and Research (NALSAR) Hyderabad, India where she teaches courses in Legal Theory, Law and Psychology, Comparative Disability Jurisprudence and Law and Poverty. She is Visiting Fellow at Faculty of Law, University of New South Wales where she has been exploring the intersections between CEDAW and the newly adopted Disability Rights Convention. Dr. Dhanda is an internationally acknowledged expert in mental health law and her book *Legal Order and Mental Disorder* (Sage 2000) examining the legal status of persons living with mental illness, is a pioneering study on how Indian laws address human rights of persons living with mental illness. Her services have been utilized by the Supreme Court of India to investigate and advise on the problem of persons with mental illness being housed in prisons. Additionally, at the request of the Indian government, she headed a high powered committee to suggest amendments to the Indian Persons with Disabilities Act 1995. More recently she was actively involved in the deliberations of United Nations Ad-Hoc Committee which has negotiated the Disability Rights Convention and made a special research and drafting contributions to the issue of legal capacity of persons with disabilities.

### **Ms. Shivaun Quinlivan**

Shivaun Quinlivan is a graduate of the National University of Ireland (NUI), Galway, King's College London and King's Inns. Ms. Quinlivan joined the Law Faculty at NUI, Galway in 2000 and currently teaches Constitutional Law, Education Law and Policy, and Disability Discrimination Law. From 2002 – 2004 Ms. Quinlivan served as the Irish Legal Expert on the EU Network of Legal Experts on Disability Discrimination established by the European Commission and, from 2004-2007, as the Irish member on the EU Network of Legal Experts on Non-Discrimination. From 2004-2007, Ms. Quinlivan was also a project consultant for the European Project on Disability Discrimination. This project was designed to provide training on the disability aspects of the Framework Directive on Equal Treatment at Work to NGOs representing people with disabilities, within the new Member States. She has published widely on the rights of persons with disabilities and is a founder member of the Law Faculty's Disability Law Policy and Research Centre. Ms. Quinlivan is also a member of the Board of the Association of Higher Education Access and Disability (AHEAD).

### **Dr. Andrew Byrnes**

Dr. Andrew Byrnes is Professor of Law at the University of New South Wales and Chair of the Committee of Management of the Australian Human Rights Centre. His research and teaching interests are in the fields of international law (particularly human rights law and humanitarian law) and the domestic implementation of international human rights standards. He has written on a range of human rights topics, including the CEDAW Convention, the Convention against Torture (CAT), the Hong Kong Bill of Rights, and disability and human rights. He was recently involved in the development of the CRPD, as a participant in the meetings which adopted the Bangkok Draft Convention within the framework of UNESCAP, and as an adviser to the delegation of the Asia-Pacific Forum of National Human Rights Institutions at sessions of the UN General Assembly committee which drafted the Convention.

He contributed to the Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities (2007), a joint publication of the Inter-Parliamentary Union, the UN Department of Economic and Social Affairs and the OHCHR.

**Dr. Ye Jingyi**

Dr. Ye Jingyi is a Professor of Law at Peking University's School of Law. She is also the Deputy Director and a Research Fellow of the Institute of Labour Law and Social Security Law. As an expert in the fields of Labour and Employment Law, Social Security Law and Social Law, she has published several notable books and articles including, most recently, the 2007 Labour and Social Security Law Book Series. In addition to contributing regularly to international conferences, Professor Ye has also acted as an advisor and consultant on the drafting of labour and security-related legislation for several institutions, such as the Committee on Legal Affairs of the National People's Congress, the Legal Affairs Office of the National Council, the Department of Civil Affairs of the National Council and the Department of Human Resource and Social Security of the National Council. Professor Ye actively participates in pro bono affairs, particularly in connection to gender-related concerns.

**Ms. Aiko Akiyama**

Ms. Akiyama is Social Affairs Officer at the Population and Social Integration Section, Emerging Social Issues Division of the United Nations Economic and Social Commissions for Asia and the Pacific (UNESCAP). She has extensive experience in the area of disability and provides technical assistance on disability related matters to policy-makers, disability NGOs and UN agencies in the region. Ms. Akiyama holds a Bachelor of Arts (Honours Degree) in Cultural Anthropology from the University of California, Berkeley, USA; and a Master of Arts in Disability Studies, University of Leeds, England. She is author of numerous articles on the implementation of the Biwako Framework and the Convention on the Rights of Persons with Disabilities.

**Ms. Meghamali Aluvihare**

Ms. Meghamali is the Head of Plantation Services of The Employers Federation of Ceylon. She is an Attorney at Law and also the Coordinator of the Employers' Network on Disability, set up by the Employers' Federation of Ceylon to enhance employment opportunities for persons with disabilities in the private sector.

**Mr. Tran Van Tu**

Mr. Tran Van Tu is a senior executive in the Division of Socio-Economic Policy of the Viet Nam General Confederation of Labour (VGCL). From 1993 to 2008, Mr. Tran Van Tu has participated in developing the labour code, salary and social insurance law, and other policies in innovating economics management, reshuffling state-owned enterprises and implementing grassroots democracy; assisted VGCL to help Labour Unions implement policies and laws and monitoring those activities; and participated in international projects in order to develop capacity-building campaigns and policies for Viet Nam Labour Unions. Mr. Tran Van Tu majored in Labour Economics and Union.

**Mr. Sagheer Ahmed**

Mr. Sagheer Ahmed is the Secretary General of the Employers' Federation of Pakistan. He is a trained lawyer with 32 years of successful experience at the senior management level in many renowned firms, including Wajedo International Corporation Limited and Pak Suzuki Company. His academic qualifications include Bachelor Degrees in Science and in Law and Legislation. He attended professional courses at the Pakistan Institute of Management and the National Institute of Public Administration. He is an Honorary Visiting Professor of the

Western Graduate College and has attended national and international seminars on personnel management, human resources management, human resources development and industrial relations. Mr. Sagheer Ahmed is author of several articles on human resources management and human resources development published in national and international professional magazines.

**Ms. Ngo Thi Thuy**

Ms. Ngo Thi Thuy is currently serving as the Deputy Director of Swisscontact, a Swiss NGO active in Viet Nam in the vocational training sector. Since 1998, she has been engaged in managing a partnership project between Swisscontact and the Ministry of Labour, Invalids and Social Affairs of Viet Nam, entitled “Strengthening of Vocational Training Centers in Viet Nam” (VTC). Ms. Thuy is also engaged in activities to build the capacity of partners working in the areas of school development, support for the entrepreneurship of VTC trainees and the promotion of inclusive training and employment for people with disabilities. Ms. Thuy holds a Master of Education degree from La Trobe University in Australia and is presently undertaking an MBA in International Management Consulting from Ludwigshafen University in Germany.

**Mr. Pecharat Techavachara**

Mr. Techavara attended the Bangkok School for the Blind, St. Gabriel’s College, the Overbrook School for the Blind and the Wharton School of Finance and Commerce at the University of Pennsylvania, USA. He is President of the Foundation for the Employment Promotion of the Blind (FEPB), of the Thai Blind Union (TBU), and of the Advisory Council Thailand Association of the Blind. He is also President of several private companies, including APT Properties and Land Management Co. Ltd., Naerunchara Oriental Health Co. Ltd., Tak Green Power Co. Ltd., Nongbua Green Power Co. Ltd. and BPP Ltd. Mr. Techavara is 68 years old, is married and has two children.

**Mr. James Turpin**

James Turpin studied law at King’s College London and international relations at the University of Cambridge. He holds a doctorate in international law from the European University Institute in Florence, Italy, having defended a thesis on the legal framework for conflict resolution in Palestine and Vanuatu. James Turpin joined OHCHR headquarters in Geneva in 1993 to work on reform of the human rights treaty monitoring system. In 2005, he was seconded to the Ministry of Foreign Affairs in Kabul to assist with their treaty reporting project. He was posted to OHCHR’s Phnom Penh office in January 2006, where he is responsible for the rule of law programme.

## Annex II. List of Participants

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## Annex III. Programme for the Sub-regional Meeting

**Monday 23 June 2008**

**MOC:** *Barbara Murray, ILO*

09.00 – 09.30

### **Official opening**

*Ms. Sachiko Yamamoto (ILO Regional Director for Asia and the Pacific)*

*Mr. Homayoun Alizadeh (OHCHR Regional Representative for South East Asia)*

### **Session I**

### **Convention on the Rights of Persons with Disabilities**

**Chair:** *Mr. Francesco Notti, OHCHR*

09.30 – 10.00

Convention on the Rights of Persons with Disabilities

- Provisions of the Convention

*Mr. Homayoun Alizadeh, OHCHR Regional Representative for South East Asia)*

- The CRPD, a paradigm shift

*Ms. Barbara Murray, ILO*

10.00 – 11.15

### **Panel Discussion – Making the required paradigm shift. Challenges for Governments, National Human Rights Institutions, Social Partners, Civil Society**

*Mr Eric Zhang (China Disabled Persons' Federation)*

*Dr. Amita Dhanda (Nalsar University of Law, India)*

General discussion

11.15 – 11.30

Tea/Coffee Break

### **Session II**

### **Non-Discrimination Law and the Context of Disability**

**Chair:** *Ms. Barbara Murray, ILO*

11.30 – 12.30

Employment discrimination as a human right violation –Overview of current European disability discrimination legislation

*Ms. Shivaun Quinlivan (National University of Ireland)*

Asian Disability Non-Discrimination Law

*Mr. Andrew Byrnes (University of New South Wales, Australia)*

12.30 – 13.00

Discussion

13.00 – 14.00 Lunch break

**Session III Current key concepts in Disability Discrimination Legislation**

**Chair:** Mr. Pablo Espiniella, OHCHR

- 14.00 – 15.00
- Reasonable Accommodation  
*Mr. Andrew Byrnes (University of New South Wales, Australia)*
  - Affirmative Action  
*Prof. Ye Jingyi (Peking University, School of Law, China)*
  - Accessibility  
*Aiko Akyama, Emerging Social Issues Division, UNESCAP*

Questions

- 15.00 – 16.00
- Parallel Working Groups – focusing on country level experience**  
– **Overview of purpose** – *Mr. Pablo Espiniella, OHCHR*
- The country working groups will address the questions with a view to identifying proposals for each:**
1. Making a difference with reasonable accommodation
  2. Affirmative action measures – What impact?
  3. What works in improving accessibility?

16.00 – 16.15 Tea/Coffee break

16.15 – 16.45 Panel Discussion

Chair: Mr. Pablo Espiniella, OHCHR

*Workshop Facilitators*

*Contributions from the plenary*

**Session IV Improving Training and Employment Opportunities – What works in practice? (Panel Presentation)**

**Chair:** Ms. Barbara Murray, ILO

- 16.45 – 17.45 Approaches used to encourage implementation of non-discrimination legislation -
- Employment:
    - o *Ms. Meghamali Aluvihare, Employers' Federation of Ceylon*

- *Mr. Tran Van Tu, Viet Nam General Confederation of Labour*
- *Mr. Sagheer Ahmed, Employers' Federation of Pakistan*

- Training

- *Ms. Ngo Thi Thuy (Swisscontact, Viet Nam)*
- *Mr. Pecherat Techavachara (Foundation for the Employment Promotion of the Blind, Thailand)*

17.45 – 18.00 Discussion  
 18.00 Closure for the day  
*Ms. Barbara Murray, ILO*

18.30 **Reception**

<b>Tuesday 24 June</b>
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09.00 – 09.15 Review of Day 1 and Introduction to Day 2

**Session V Ensuring Compliance**

**Chair:** *Ms. Shivaun Quinlivan (National University of Ireland)*

09.15 – 09.45 Enforcing Disability Discrimination Legislation in Employment/Training - What mechanisms are in use?  
*Ms. Barbara Murray, ILO*

09.45 – 10.15 Discussion – What questions need to be addressed?

10.15 – 10.30 Coffee/Tea Break

10.30 - 12.00 Parallel workshops (country groups):  
 How do different Implementation mechanisms work in practice? (Ombudsman Institutions, Tribunals, Labour inspectorates, Disability Councils, Equality and Human Rights Commissions, criminal, civil and labour law courts). What needs to be done to improve effectiveness?

12.00 – 13.00 Panel Discussion  
 Chair: *Ms. Shivaun Quinlivan (National University of Ireland)*

*Workshop Facilitators*

*Contributions from the plenary*

13.00 – 14.00           **Lunch**

**Session VI   Litigating Equality**

*Chair: Francesco Notti, OHCHR*

14.00 – 15.30           **Speakers**

*Ms. Shivaun Quinlivan (National University of Ireland)*

*Mr. James Turpin, Head of Rule of Law Programme, OHCHR, Cambodia*

*Dr. Amita Dhanda (Nalsar University of Law, India)*

General discussion

15.30 – 16.00           Tea/Coffee break

**Session VII           Enforcing the CRPD at National Level, Linked to the Future Disability Rights Treaty Body**

*Chair: Barbara Murray, ILO*

16.00 – 17.00           *Speaker: Mr. James Turpin, Head of Rule of Law Programme, OHCHR, Cambodia*

*General Questions and Answers*

17.00 – 17.30           **Summary and Conclusions – The Way Forward**

*Mr. Pablo Espiniella, OHCHR*

*Ms. Barbara Murray, ILO*

17.30                   **Meeting closure**