

Let the world know - International seminar on human rights and disability  
5-9 November 2000, at Almåsa Conference Center, Stockholm, Sweden

Pre-paper 5. ([Full seminar report, PDF, 610 KB.](#))

## Disability rights and human rights: plunging into the 'mainstream'?

Andrew Byrnes  
Faculty of Law  
The University of Hong Kong

### a. introduction

There are striking parallels between the position of disability rights issues and advocates and that of women's rights issues and activists 15 years ago, so far the response of the "international human rights mainstream" to those issues is concerned. Existence on the conceptual periphery of that dominant discourse, the general neglect of these issues in the work of the human rights bodies, and the assignment of primary responsibility for these issues to specialised bodies to be dealt with as issues of social development rather than as human rights issues, are common features of both areas.

Yet in the past 15 years, there has been a great deal of progress in moving issues of women's human rights into the human rights mainstream. This change, while still far from achieving what needs to be achieved, has been reflected in frequently articulated commitments to integration of gender in the mainstream, the addition of many issues of gender importance to the agenda of human rights bodies, and the enormously increased involvement of women's human rights activists in the work of the human rights bodies. This paper suggests that the development of strategies similar to those which women's human rights activists deployed in their efforts to bring gender issues more fully into the international human rights discourse may also bear fruit in the attempt to ensure that the disability rights issues receive the attention they deserve.

**The purpose of this paper is to sketch some of the ways in which disability rights issues might be moved to a more prominent place on the international human rights agenda. It is written from the perspective of an international human rights lawyer who has been involved in the mainstream and also in the field of women's human rights, but who is not an expert in the field of disability. The underlying assumption of the paper is that greater attention to disability rights issues by human rights bodies may assist in increasing the protection of the human rights of persons with disabilities.**

### b. the current position

Presently the disability rights and human rights communities at the international level are largely separate. Although there is some overlap, the number of those who are fully

conversant with disability rights issues and standards, as well as with general human rights issues is quite small. Much of the activism around disability issues is oriented around disability-specific norms, responsibility for which falls within the mandate of bodies working in the field of social development and humanitarian affairs without a specific human rights focus or mandate. Some of those norms are dated and unsatisfactory in a number of respects, most are embodied in so-called "soft law" instruments such as declarations and bodies of principles, and have weak or non-existence monitoring or enforcement mechanisms.

Nevertheless, while much disability rights activism takes place outside the international human rights frameworks, the separation is by no means a complete one, and there have been efforts to give disability issues a more prominent place on the human rights agenda, to use human rights bodies and their procedures to advance the human rights of persons with disabilities, and to develop new interpretations of existing norms as well as new norms to address violations of the rights of persons with disabilities which are not adequately covered by existing international norms.

There have been some important gains as a result of these efforts. In 1991\*\* the Committee on Economic, Social and Cultural Rights (the body of independent experts established to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights) adopted a general comment on the human rights of persons with disabilities.<sup>1</sup> Although some of other the UN human rights treaty bodies have touched on disability issues in their general comments or recommendations, reporting guidelines or concluding observations on State reports,<sup>2</sup> this general comment represents the first (and so far only) sustained analysis by one of the UN human rights treaty bodies of the applicability of the general human rights guarantees to persons with disabilities.<sup>3</sup> Of particular importance in this general comment is the Committee's definition of discrimination on the ground of disability, which explicitly states that discrimination under the ICESCR includes a failure to afford a person reasonable accommodation. There have also been efforts to utilise the complaints procedures under a number of international human rights treaties to seek redress for violations of the human rights of persons with disabilities. The record here has been mixed. The area where existing human rights standards have proved of some use is that of the right to be free from arbitrary detention, to have any deprivation of liberty carried out in accordance with the provisions of law and subject to review by an independent court, as well as in relation to conditions of detention.

For example, under both the European Convention on Human Rights<sup>4</sup> and the American Convention on Human Rights,<sup>5</sup> the international supervisory bodies have considered, and

---

<sup>1</sup> See Committee on Economic, Social and Cultural Rights, *General Comment No. 5* (1994), UN Doc HRI/GEN/1/Rev.4, available through [www.unhchr.ch](http://www.unhchr.ch).

<sup>2</sup> See, e.g., Committee on the Elimination of Discrimination against Women, *General Recommendation 18* (1991), UN Doc HRI/GEN/1/Rev.4, available through [www.un.org/womenwatch](http://www.un.org/womenwatch).

<sup>3</sup> See the suggestion in the 1993 report of Special Rapporteur on Human Rights and Disability of the Sub-commission on Prevention of Discrimination and Protection of Minorities, Leandro Despouy, that disability issues be taken up within the human rights framework, in particularly by the Committee on Economic, Social and Cultural Rights.

<sup>4</sup> See, e.g., *X v United Kingdom*, European Court of Human Rights, Judgment of 24 October 1981 (holding that procedure for recall of patient to a psychiatric hospital did not satisfy requirement of review on the merits by an independent and impartial court); *Johnson v United Kingdom*, European Court of Human

in some important cases upheld, claims by persons with mental disabilities or who are mentally ill that their fundamental rights have been violated by the legislative scheme providing for their detention or by the manner or conditions of their detention within that legislative framework. In some cases these have been premised on a traditional interpretation of rights that could apply to all; in other cases, the particular needs of the person with a disability or the special responsibility a State may have in relation to ensuring such a person's actual enjoyment of his or her rights was taken into account.<sup>6</sup> In addition, there are many cases under the European Convention in which persons have succeeded in complaints that their claims to pensions or other benefits to which they are entitled as a result of a disability have not been adjudicated upon by an independent and impartial tribunal within a reasonable time.

Apart from these cases, which in essence involve the application of traditional interpretations of rights to cases brought by persons with disabilities, there are relatively few cases which have been brought under international instruments, and even fewer which challenge and lead to the transformation of existing interpretations to reflect the experiences and needs of persons with disabilities.

Perhaps the best-known case from the European Convention system is the case *X and Y v Netherlands*,<sup>7</sup> in which the European Court held that the failure of the Netherlands to allow criminal prosecution of a person who had assaulted a young woman who was mentally disabled was a violation of article 8 of the Convention, since the State had an obligation to provide protection against serious invasions of a person's bodily integrity by other private individuals.

There have also been case in which efforts have been made to raise disability issues in relation to access to education, in which the European Convention organs have implicitly accepted that the right of access to education on a non-discriminatory involves an obligation to take positive steps to accommodate the needs of a person with a disability (though they have not found violations in the cases that have come before them).<sup>8</sup>

Despite these successes, attempts to invoke the European Convention in other areas have not proved as successful. The limitations of the Convention's catalogue of rights<sup>9</sup> for

---

Rights, Judgment of 24 October 1997 (continued detention of an individual no longer suffering from mental illness pending his placement in a hostel a violation of right to liberty in view of inadequate safeguards).

<sup>5</sup> See, e.g., the important case of *Rosario Congo v Ecuador*, Inter-American Commission on Human Rights, Case 11.427, Report 63/99, 13 April 1999 (applying general human rights norms as well as those dealing specifically with the rights of persons with disability in case of detained person who had a mental disability)

<sup>6</sup> See, e.g., *Herczegfalvy v Austria*, European Court of Human Rights, Judgment of 24 September 1994, para 82 ("The Court considers that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with...").

<sup>7</sup> European Court of Human Rights, Judgment of 26 March 1985, Series A no. 91.

<sup>8</sup> See *McIntyre v United Kingdom*, European Commission of Human Rights, Application No. 29046/95, decision on admissibility, 21 October 1998 (rejecting claim that small primary school's refusal to install a lift costing £45,000 denied applicant right to education and to non-discrimination in the enjoyment of that right, in light of in view of other steps taken to accommodate the applicant).

<sup>9</sup> Until the recently adopted Protocol No 12 to the European Convention, there was no free-standing guarantee of equality under the Convention -- article 14 guaranteed only non-discrimination in the enjoyment of rights mentioned in the Convention and its protocols. However, even the Protocol will not

protecting the human rights of persons with disabilities is vividly illustrated by the case of *Botta v Italy*. In this case, Botta, who was physically disabled, complained of a lack of access to the sea and lack of accessible toilets at a private beach in the resort town where he had gone on vacation. Contrary to the relevant national legislation the owner of the beach had not provided ramps or other access, and Botta was refused permission to drive onto the beach. He claimed that the State's failure to ensure that he and others in his position had access to the beach was a violation of his right to respect for private life guaranteed by article 8 of the Convention (among other provisions):<sup>10</sup>

"The applicant asserted that he was unable to enjoy a normal social life which would enable him to participate in the life of the community and to exercise essential rights, such as his non-pecuniary personal rights, not because of interference by the State but on account of its failure to discharge its positive obligations to adopt measures and to monitor compliance with domestic provisions relating to private beaches."

The European Court rejected his claim on the ground that article 8 did not extend so far as to protect this sort of access. It concluded:<sup>11</sup>

"the right asserted by Mr Botta, namely the right to gain access to the beach and the sea at a place distant from his normal place of residence during his holidays, concerns interpersonal relations of such broad and indeterminate scope that there can be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life."

Yet even within this rebuff are the seeds of an approach that is more supportive of the equality of persons with disabilities emerges. The European Commission on Human Rights had rejected Botta's argument before it came to the Court. However, the Commission's decision was by a majority, and a number of Commission members elaborated an interpretation of the article in question that was much more responsive to the needs of the rights of a person in the situation of Botta.<sup>12</sup> They recognised that it was important to recognise the social dimensions of the right to develop one's personality and that therefore the State had a positive obligation to ensure access for all to public spaces and activities.

Thus, while there is some helpful jurisprudence internationally, these cases are largely confined to cases that can be dealt with fairly readily in terms of existing categories, and do not extend the boundaries of existing concepts and categories. Overall, there has been little sustained examination of the extent to which the conceptual framework and practices of the human rights system are premised on ableist models or fail to address issues of concern to persons with different forms of disabilities. Representational issues appear barely to have made it to the agenda.

---

mean much unless it is interpreted in a manner that is sensitive to the needs of persons with disabilities and the social context in which they live.

<sup>10</sup> *Botta*, at para 27

<sup>11</sup> *Botta*, at para 35

<sup>12</sup> See the concurring opinion of Mrs J Liddy and six other members of the Commission, the dissenting opinion of Mr B. Conforti (with whom four other members of the Commission agreed), and the separate dissenting opinion of Mr Loucaides).

**c. the potential of the international**

The rights guaranteed by the international and regional human rights instruments are promised to all human beings, including all persons with a disability. The challenge is to ensure that those guarantees are interpreted and applied in a manner that advances the human rights of persons with disabilities, and that the disability rights advocates take advantage of the available international and national procedures to press these claims. The rights to equality and non-discrimination are central guarantees, but the potential uses of human rights norms are of course not limited to these -- all other substantive rights are relevant, and which one is most helpful will depend both on the factual situation involved and the range of norms that can be invoked under any available procedure.

There is a wide range of different procedures at international and regional level that may be available in any given case. But it is important to identify the purposes that may be served by resort to such procedures. International procedures and bodies are no panacea and their use has to form part of a broader strategy, whether at the international or national level.

Using the different international procedures can serve a number of purposes: increasing public awareness of a particular case or issue, the development of jurisprudence that may be used by international and national advocates, bringing about law and policy change, and providing redress in individual cases. Ultimately, international procedures provide opportunities to exert pressure on government and others to bring about the changes which disability advocates seek to achieve.

**d. the procedures and their possibilities**

The major types of procedures available at the international level<sup>13</sup> -- in particular in the United Nations system -- are:

- (a) Reporting procedures under human rights treaties
- (b) Complaints procedures under human rights treaties
- (c) Special "thematic" and country procedures established within the framework of the United Nations Commission on Human Rights

In addition, opportunities exist within the three regional systems for the protection of human rights which presently exist: the Council of Europe system, the Inter-American system, and the system established under the African Charter on Human and People's Rights. Space does not permit a full review of the procedures in each of the systems, but some or all of the different types of procedures mentioned above are to be found in the regional systems, and regional systems will often provide a more effective route for redressing violations.

---

<sup>13</sup> This section does not deal with the political processes of the Commission on Human Rights, which provide opportunities for publicity and political pressure. Nor have I referred to the importance of studies prepared by the Sub-Commission on Protection and Promotion of Human Rights, or of the working groups established by the Sub-commission which have provided an important public forum for raising patterns of violations.

The following gives a very brief sketch of the above procedure. In addition, I mention some of the initiatives that have been adopted to bring gender issues more into the work of those bodies and procedures -- since these may provide

## 1. TREATY-BASED PROCEDURES

### a. *Reporting procedures*

Under each of the six principal United Nations human rights treaties,<sup>14</sup> States parties undertake to submit regular periodic reports on the measures they have taken to implement their obligations under the treaty in question. While many States do not submit their reports or submit them late, these procedures can nevertheless provide an occasion to raise the profile of disability issues and to put pressure on governments to take steps that they might otherwise have been unwilling to take.<sup>15</sup>

The procedure involves the submission of the report by the government,<sup>16</sup> followed by a review of the report at a public meeting at which government representatives are normally questioned by members of the supervisory committee, followed by the adoption by the committee of concluding observations on the situation in the country concerned. These concluding observations will normally identify those areas where the committee considers that the State is not complying with the treaty and will contain specific recommendations for action by the government.

Non-governmental organisations have come to play an important role in reporting procedures, both at the national level and the international level. Critical to the effectiveness of the procedure is the submission to the committees by NGOs of independent information to supplement or contradict the version given by governments. Committees are generally very receptive to NGO information and there are many opportunities to inform and influence the issues which a committee raises with governments and which it then includes in its recommendations to the government concerned. While some NGOs have raised disability issues before a number of the committees, there is considerable scope for the use of this forum to raise issues when a particular country is reporting and the issues fall within the scope of the treaty. All six treaties provide opportunities to raise disability issues.

### b. *Individual complaint procedures*

Four of the six UN treaties have complaint procedures which permit individuals to lodge complaints with the supervisory committee alleging that their rights guaranteed under the treaty have been violated by a State, provided that the State concerned has accepted the procedure.<sup>17</sup> A case can generally only be lodged by a victim of an alleged violation, and

---

<sup>14</sup> These are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

<sup>15</sup> See generally Philip Alston and James Crawford (eds), *The Future of the UN Human Rights Treaty System* (Cambridge: Cambridge University Press, 2000).

<sup>16</sup> A number of the committees have adopted reporting guidelines which require specific reference to disability issues by governments in their reports.

<sup>17</sup> Under the First Optional Protocol to the International Covenant on Civil and Political Rights, article 22 of the Convention against Torture, article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and, from December 2000, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

the victim must first exhaust any remedies that are available at the national level before the international committee can consider the complaint.

The proceedings are conducted on paper and follow an adversarial procedure. The outcome is a decision by the committee which has the format of a judicial decision. Although as a matter of international law these decisions are not legally binding on the State concerned, they are persuasive and are frequently implemented by governments, though not always immediately.

*c. Inquiry procedures*

Under the Convention against Torture and the Optional Protocol to the CEDAW Convention the respective committees have the power to institute an inquiry on their own initiative into the situation in a country, when the committee receives reliable evidence that torture is being systematically practised in a country, or if there are grave or systematic violations of the CEDAW Convention. The procedure has been initiated under the Torture Convention on only a few occasions, and the CEDAW procedure has yet to enter into force. But in an egregious case where there is systematic policy of using practices such as electroconvulsive shock therapy, it may be arguable that the procedure under the Torture Convention could be initiated, or, that under the CEDAW Optional Protocol if there was a pattern of gender discrimination in the treatment of women with disabilities.

**2. CHARTER-BASED PROCEDURES**

The UN Commission on Human Rights has established a variety of procedures that permit individual cases or patterns of rights violations to be brought to the attention of the Commission or one of the bodies it has established. Most of these fall into the category of what has been called *petition-information procedures* rather than *petition-recourse procedures*, that is they are not intended to provide individual redress, but to inform the body concerned of particular situations or the existence of particular types of violations that may need to be addressed.

*a. Communication procedures*

The oldest communication procedure that exists under the Commission on Human Rights is the procedure established by ECOSOC Resolution 1503. Under this procedure the Commission has power to examine situations in which there is evidence of a consistent pattern of gross violations. It is not intended to provide individual redress directly (though it may have that effect), and a person who submits a complaint which is processed under the procedure plays no part in the procedure after (s)he has submitted the complaint.

The procedure involves a preliminary examination of communications by the Sub-Commission on Promotion and Protection of Human Rights, which forwards cases in which it considers there is such a pattern to the Working Group on Situations of the Commission, which may in turn forward cases to the Commission. The details of the examination are confidential until the Commission decides to release details.

Assessments of this procedure vary, but on the whole the newer procedures adopted by the Commission appear to afford more useful opportunities to bring pressure to bear on governments than the 1503 procedure. Nevertheless, it may be an option that is worth considering as a supplement to other procedures.



The Commission on the Status of Women also has a communications procedure, under which a working group of the Commission examines communications on the status of women and reports to the Commission. To date that procedure has produced relatively little in terms of individual redress or policy developments, but there is no reason why it could not be used to raise violations of the human rights of women with disabilities.

*b. Thematic procedures*

Of potentially greater utility for disability rights advocates are the *thematic* mechanisms of the Commission on Human Rights. Since the early 1980s the Commission has established a number of procedures which focus on specific types of violations. There are now over [20] such procedures, which include a number of working groups (such as the Working Group on Disappearances) and special rapporteurs (such as the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions).<sup>18</sup>

The mandates of the different mechanisms vary slightly, but they engage in some or all of the following activities:

- receipt of allegations of specific violations of rights covered by the procedure and the raising of those alleged violations with the government concerned (sometimes as an *urgent* matter) in order to clarify a case
- the preparation of analytical studies on specific types of violations, including the circumstances which lead to the occurrence of those violations and recommendations of the steps that need to be taken to avoid such violations
- visits to countries (at the invitation of those countries) in order to examine the observance of certain rights in those countries.

Each year the special rapporteurs and working groups prepare reports to the Commission -- these are publicly circulated documents and they are considered at the Commission (though generally superficially). The reports generally contain details of the cases which have been sent to governments for comment/action, and the response by governments.

Although these procedures are not formally set up to provide an individual remedy via a quasi-judicial procedure,<sup>19</sup> in some cases they can in fact provide a remedy in an individual case, as a result of a matter being raised directly with a government. In addition, they may provide a forum in which policy initiatives can be developed.

Of particular interest to disability rights activists would be the Special Rapporteur on torture, the Special Rapporteur on violence against women, the Special Rapporteur on education, and the Special Rapporteur on adequate housing among others.

*c. Country procedures*

The Commission has also established a number of country-specific mechanisms, which are mandated to examine and report on the observance of human rights in the country subject to the procedure. There are relatively few of these but, depending on the particular mandate,<sup>20</sup> they may also provide a forum in which violations of the human rights of persons with a disability could be raised.

---

<sup>18</sup> See the list at [www.unhchr.ch/html/menu2/7/b/tm.htm](http://www.unhchr.ch/html/menu2/7/b/tm.htm) (visited 17 October 2000)

<sup>19</sup> Although the Working Group on Arbitrary Detention conducts itself in this manner and adopts "opinions" in individual cases.

<sup>20</sup> See the list at [www.unhchr.ch/html/menu2/7/a/cm.htm](http://www.unhchr.ch/html/menu2/7/a/cm.htm) (visited 17 October 2000)

### 3. *other procedures*

Procedures in other fora may also offer opportunities to obtain redress in an individual case or to given an issue or a case prominence. These include:

- the individual communications procedure of UNESCO, under which the UNESCO Executive Board considers individual communications of alleged violations of rights within its fields of activities
- the complaint procedures of the ILO which allow trade unions and others to bring complaints of violations of ILO conventions to the ILO for examination
- under the Council of Europe: individual complaints under the European Convention on Human Rights, and collective complaints under the European Social Charter (as well as reporting procedure under the latter)
- within the Inter-American system: individual complaints may be brought before the Inter-American Commission on Human Rights and the Court under the American Convention and Declaration, as well as specialised conventions on torture, violence against women and the recent convention on the human rights of persons with disability
- under the African Charter there are both reporting and complaints mechanisms, the latter beginning to process an increasing number of complaints.

#### e. **what needs to be done at the international level**

There are a number of initiatives that could be taken to give disability rights issues and activists a more prominent place on the international human rights agenda

##### *Training in the use of reporting and other procedures*

A critical aspect of any strategy is to enhance the knowledge of disability rights advocates so that they can access the available procedures to raise the issues of concern to them. Thus it is important to organise training for disability advocates in this field, as well as for human rights advocates on disability issue and disability standards. There are many models for this type of course and many bodies that have experience in the use of international procedures -- working together with disability advocate appropriately targeted courses could be developed.

Preparation of a manual on using human rights procedures

*There are a number of manuals that have been published which give practical guidance to advocates in the use of one or more international human rights procedures. Some of these focus on a specific procedure, while some focus on ways of raising specific violations (such as violence against women or violations of the right to housing) under a number of procedures.*

*It would be useful to prepare a manual which would assist advocates in using international procedures to address violations of rights, as well as to invoke international standards at the domestic level.<sup>21</sup>*

---

<sup>21</sup> One manual that might serve as a model is Women, Law and Development International and Human Rights Watch Women's Rights Project, *Women's Human Rights Step by Step: A Practical Guide to Using*

Creation of a network and focal points for the collection of source material

*Knowledge of case law and other legal developments in other countries can be of great value to advocates in their own countries. Similarly, having a network to seek advice and resources from litigation or other problems can be an extremely effective way of sharing knowledge. A great deal of relevant material has already been collected by organisations such as Interights, and any efforts to build new collections of resources should take these into account -- it may be better to explore collaborations with such organisations rather than seeking to reinvent the wheel.*

Encouraging the human rights bodies to give disability a more prominent place in their work

The human rights bodies have been encouraged to adopt a range of initiatives in response to the attention that their records of dealing with gender issues have received. There are similar initiatives that could be proposed in relation to disability.

For example, the Committee against Torture has appointed one of its members to act as a rapporteur on gender issues -- the same could be done in respect of disability issues, and the member concerned could focus on issues relating to the detention of persons with a disability.

The Human Rights Committee recently adopted a general comment in which it examined all articles of the ICCPR from a gender perspective. While articles 2 and 3 of the ICCPR specifically refer to discrimination on the ground of sex, the Covenant also covers discrimination on the ground of disability, and there would be no reason why the Committee should not undertake a similar exercise in relation to discrimination on the ground of disability in the enjoyment of ICCPR rights. A similar request could also be made to the CEDAW Committee (to expand its rather brief references to disability issues in its general recommendations). The Committee against Torture could make an important contribution by adopting a general comment on issues relating to the arbitrary detention of persons with a disability. The CERD Committee could also be asked to explore the interaction of race and disability, especially in light of its recent general recommendation on the interaction of gender and racial discrimination. All the Committee could be asked to review their guidelines to ensure that they are asking States to report on disability issues that fall within the scope of the treaty in question.

However, such changes are often initiated and supported from outside committees, and then taken up by an interested member of a committee. It is important therefore to stimulate committees to take up these issues and, if necessary, put pressure on them until they do address the issues.

This can be done by preparing analyses of the record of the committee in examining disability issues and suggesting ways in which that record could be improved (for example, the Division for the Advancement of Women recently undertook an analysis of gender in the work of the treaty bodies, that provide a useful basis for evaluating the

---

*International Human Rights Law and Mechanisms to Defend Women's Human Rights* (Washington, DC, 1997), though there are others that would also serve as useful models.

work of those committees.). Bringing committee members together with disability activists also needs to be done in a structured manner -- either a meeting with individual committees or a meeting at which members from a number of committees discuss the issues with disability activists. An NGO-sponsored conference could focus on these issues and bring members of the committees to discuss them with activists. The Special Rapporteur may also wish to explore opportunities for briefing the committees on issues of particular concern to them in the field of disability, in particular by appearing before them while they are in session.

In relation to the thematic mechanisms, the women's human rights lobby shows how one might proceed. In 1996 the Commission on Human Rights requested all of its thematic mechanisms to ensure that they integrated gender perspectives in their work.<sup>22</sup> While in some cases this had led to little more than a formal incantation of the requirement and perhaps some sex-disaggregated statistics, it is an important first step and a similar requirement in relation to disability might usefully be considered.

**f. using the international standards in domestic litigation**

In addition to developing law and policy and seeking redress at the international level, it is frequently more important to pursue these goals through domestic mechanisms. One important dimension of this work is encouraging courts and tribunals and other bodies such as human rights commissions or ombuds institutions to draw on international standards in the process of interpreting and applying national constitutions and laws. There has been a great deal of interest and activity in this field over the past decade, and some of the initiatives already taken in order to encourage the use of general human rights norms and human rights norms relating specifically to women and children by domestic courts could be built on and emulated.

These initiatives have included the organisation of judicial colloquia at which judges, academics, NGOs and others have examined the possibilities for the greater use of international standards in domestic litigation. The Commonwealth Secretariat has been particularly active in this regard, having organised a series of judicial colloquia on the use of international human rights norms in domestic litigation,<sup>23</sup> as well as three colloquia focusing specifically on the use of international norms to advance women's human rights.<sup>24</sup> (The Gender and Youth Affairs Division of the Secretariat has also commissioned the preparation of a compilation of international and national case law which use international standards to advance women's human rights). The United Nations has also organised a number of similar colloquia, focusing in particular on the domestic use of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

---

<sup>22</sup> CHR Resolution 1996/48

<sup>23</sup> See generally *Commonwealth Secretariat and Interights, Developing Human Rights jurisprudence: Conclusions of Judicial Colloquia and other meetings on the Domestic Application of International Human Rights Norms and on Government under the Law 1988-92* (London, Commonwealth Secretariat, 1992).

<sup>24</sup> See, e.g., Andrew Byrnes, Jane Connors and Lum Bik (eds), *Advancing the Human Rights of Women: Using International Instruments in Domestic Litigation: Papers and statements from the Asia/South Pacific Regional Judicial Colloquium, Hong Kong 20-22 May 1996* (London: Commonwealth Secretariat, 1997), and Kirstine Adams and Andrew Byrnes (eds), *Gender and the Judiciary: Using International Human Rights Standards to Promote the Human Rights of Women and the Girl-Child at the National Level* (London: Commonwealth Secretariat, December 1999).

These seminars have provided considerable impetus to the greater use of international norms at the domestic level, in particular by bringing together comparative material and establishing networks that can be drawn on when issues arise litigation in different countries. It would be useful to consider organising similar colloquia for judges and others to encourage the expanded use of international standards in cases involving disability rights.

In many countries considerable use has already been made of international standards in domestic litigation, a process assisted and in some cases stimulated by the efforts mentioned above. Not only has this happened in the field of general human rights norms and women's human rights,<sup>25</sup> but there have also been cases in the field of disability rights where courts have drawn on international standards. In order to promote these developments, it is critical both to educate disability activists in the international standards, but also human rights and other advocates in relation to disability-specific international standards.

### **G. conclusion**

In many ways disability rights issues and advocates are in a position similar to that faced by women's human rights 15 years ago. The human rights system offers some prospects but also many challenges that will need to be overcome by conceptual analysis, legal and political strategising, and energetic lobbying. But the opportunities are there, if we are but prepared to take hold of them.

---

<sup>25</sup> See the proceedings of the judicial colloquia referred to above for the use of general international norms, and in relation to use of the CEDAW Convention specifically, see Andrew Byrnes, "Using International Human Rights Norms in Constitutional Interpretation to Advance the Human Rights of Women", paper presented at the 50th Anniversary Conference, Faculty of Law, University of Colombo, Sri Lanka, 23-26 July 1998.