

# **Disability: The Human Rights Approach**

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## **1: Background and project rationale**

Organisations and individuals interested in promoting the rights of people with disabilities have been increasingly identifying the need for a human rights training program for disability advocates in the Pacific. In 2005 the Regional Rights Resource Team (RRRT) was recognised as the organisation best suited to meet this need.

Unfortunately RRRT has not yet secured the project funding needed to run this training program. RRRT's commitment to promoting the rights of pwd has seen them self fund a shorter pilot version of the training to begin this important capacity building process.

This capacity-building program is supported by the BMF, already endorsed by Pacific Island leaders. The first priority of the BMF is to build the capacity of DPOs and people with disabilities 'to support, inform and advocate for themselves and other persons with disabilities'. Under this first priority, Action F states that 'International funding agencies should give high priority to funding self-help organisations'. Priority 2 of the Biwako Millennium Framework for Action (BMFA) focuses on the need to ensure that women with disabilities are not further marginalised and discriminated against. The focus of this priority is to ensure that anti-discrimination measures are put in place, and that women with disabilities be protected against further discrimination.

Both of these priorities would require an increase in the capacity of DPOs in terms of their knowledge regarding national legislation, knowledge of international human rights norms and conventions, use of human rights conventions to lobby against discrimination, and access to services.

Research by the HRTDA Steering Group in 2005 and 2006 found that there is no project of this nature being run around the world for people with disabilities and/or their advocates. The Steering Group, and RRRT in particular, recognise the risks of breaking new ground but have determined that with the right preparations and partnerships this paralegal training for people with disabilities can be implemented at best-practice standard. It can provide a model for other disability advocacy organisations around the world for the implementation of local and international rights frameworks.

### ***Project rationale***

A rights-based approach must be used to ensure that the needs of Pacific Islanders with disabilities are recognised and understood. As long as the region as a whole, individual countries and donors pursue a policy of simply providing services to identified people with disabilities, the independence and sustained mainstreaming of people with disabilities will be undermined. There are two key benefits of taking a rights-based approach. First, a rights-based approach will provide for a continual increase in the social profile and acceptance of people with disabilities in Pacific Island countries such that services and support will be enjoyed by all Pacific Islanders. Secondly, services and support will be provided with the object of social and economic independence and to the full capacity of each person with a disability. Many people with disabilities will become social and/or economic contributors to their community, while non-disabled people will gain enormously in terms of understanding and respecting the diversity of abilities within their community.

Currently there are few advocates in the Pacific fully skilled in the practices of asserting the legal rights of people with disabilities. A legal rights framework is required to assure people with disabilities in the Pacific recognition by government, employers, educators and society generally that they ought to enjoy equal standing with other Pacific Islanders.

## **2: Access, resources and Logistics**

The need for participants to be able to independently read and write is a highly desirable criterion for course enrolment. Independent reading and writing with adaptive technology (rather than relying on other participants or volunteers to read and/or scribe) will mean that the participant can operate in the course in a way that best approximates their own home work style.

Deaf-sign interpreters will need to be provided for deaf participants who use sign interpretation. Sign language can often be nationally (and sometimes locally) specific. The Additional Needs form will ask deaf participants the name of their preferred sign language and contact details for relevant interpreters or an interpreter service.

Currently most advocates with disabilities in the Pacific either have physical disabilities or vision impairment. Nevertheless, the support for sign interpreters must be factored in.

### **2.1 Eligibility of participants**

A key criterion for participant eligibility for RRRT training is that they have some experience working in the advocacy field. Meeting this criterion will clearly indicate a participant's capacity to undertake and implement the training.

Applicants may be precluded from undertaking the training due to an inherent feature of the training being beyond them due to their disability. In such cases, they will not be eligible for the training. For example, participants must be excellent communicators. If someone has a range of disabilities that significantly impedes their capacity to communicate, they will be unlikely to participate in the course. Each application will be considered on a case-by-case basis.

## **3: Training materials and procedures**

Set out here is some examples of the issues that are discussed in the disability rights advocacy program to give a flavour of the approach taken.

### **Intro to HR context**

Examples of the human rights of people with disabilities that cannot be derogated by culture or religion. For example, most rights under the Universal Declaration of Human Rights (UDHR) are violated by (often unarticulated) cultural and/or religious beliefs, eg children with disabilities bring some form of shame on the family so they are hidden or abandoned.

Trainers may discuss each right under the UDHR and invoke commentary or examples on how it is eroded or denied. Who or which institutions deny such rights: the state, church, family, society, etc.?

### **Human rights Conventions**

Given that the disability convention has not yet been ratified in the Pacific, a useful exercise is to divide the group into two, with one group in favour of the rights of people with disabilities and

the other seeking to minimise these rights due to concerns over onerous state responsibilities. The groups would then debate a range of aspects of a convention for people with disabilities:

- the types of rights it will provide;
- who it will cover (e.g. WHO definition of disability); and
- obligations it will demand of nation states.

## **Bills of rights**

It is worth discussing the fact that some constitutions contain rights and freedoms highlighting certain groups (e.g. relating to race or sexuality), whereas few constitutions (except Fiji's) identify disability in their bill of rights. Why is this so? Political strength, visibility, recognition? (See section 3.2 for discussion of social models of disability.) Also discuss how the rights of people with disabilities can be protected and promoted despite not being enumerated in a bill of rights.

Participants are likely to raise disability examples of culture or customary laws conflicting with rights. If not, trainers should provide some prompts. Examples of customary laws that may conflict with human rights include:

- people with disabilities being unable to marry and/or have children (partly due to fear of the unlikely event that the children will be disabled – most people with disabilities have non-disabled parents);
- assumptions that people with disabilities cannot live independently, cook, clean, etc.; and
- people with disabilities being ineligible to take on chiefly responsibilities, inherit land, etc.

## **Discrimination**

Case studies of more overt disability discrimination, which is common in the Pacific and gives rise to defences such as lack of funds and the disability precluding the person from an inherent part of a job. Case studies include examples of:

- the exclusion of children who are blind, deaf or mildly intellectually disabled from mainstream education;
- non-employment of people with disabilities on the basis that they are unable to do a job because of their disability (e.g. not employing a blind or vision-impaired person because they must read documents); or
- indirect discrimination (which is quite common), e.g. of people with disabilities who are perfectly qualified for a position but are never given satisfactory reasons for their non-employment.

The *Critical Legal Studies* approach can be more narrowly defined. For example, the law is also written and applied from a heterosexual and non-disabled perspective. Adding this will enable participants to recognise that the law (customary and common law) may exclude people with disabilities by its very nature. Therefore, disability advocates may need to seek a paradigm shift to enable equality to even be debated. Examples include:

- a church denying someone the right to be a lay preacher because of his or her inability to stand in the pulpit;

- someone being denied a driver's licence due to an inability to operate the pedals of a car; and
- an education ministry denying a child access to education because he or she cannot hear, because the schools have never taught a deaf child and, most importantly, because the ministry has never considered that deaf people should be educated.

### **Affirmative action**

The nature of this module will tend to facilitate the participants bringing up disability specific opportunities for affirmative action. Affirmative action for people with disabilities is uncommon, so there is more likely to be application of this module to disability when trainers ask participants to provide examples where affirmative action could be implemented and then discuss difficulties such as the 'creamy layer' phenomenon.

Some of the above modules will also benefit from reference to the disability policies developed in many countries across the Pacific with the support of the UNESCAP POC Social Adviser Fiji's is the most recent and comprehensive of these policies to be developed. Together with discussion of these policy issues, there are some examples of relevant local laws that can be raised (see Appendix 1). Participants could be asked to study their in-country policies and find where their disability policies are either inconsistent or have gaps with respect to different international conventions.

### **Poverty**

This module begins with the example that most disability advocates assert to be the clearest link between rights infringement and poverty. According to World Bank estimates, people with disabilities make up at least 20 per cent of those living in poverty. This may be because they are often: the last in the family to receive nutrition; denied access to land; socially excluded; excluded from mainstream education.

In discussing strategic change, trainers should draw on the rare but notable examples in the disability field:

- advocacy for the Pacific Islands Forum Leaders to support and sign up to the BMFA;
- FDPA's strategic advocacy to promote accessible buildings in Fiji; and
- Disability data collection in Samoa and the use of that data as an advocacy tool.

### **Culture**

The tension between culture and human rights is extremely relevant to disability-related issues. Like other forms of discrimination, it is often mixed up with issues such as perceived need for funding, lack of knowledge, fear of disability, and religion. However, because there has been less work done in the area of the rights of people with disabilities, some time may need to be taken to enable disability advocates to easily articulate the way culture impacts on the rights of people with disabilities.

The more common argument about culture being set by 'males in power' can be augmented to recognise that these are usually non-disabled 'males in power'. The exceptions (e.g. the late King of Tonga) are usually people whose disabilities were acquired late in life, after all of their rights have been realised. Therefore, even leaders with disabilities tend to believe that rights are only realisable and exercisable by non-disabled people.

## **Education & employment**

Denial of access to education is often done on the basis of a lack of resources, forcing people with disabilities to either wait or advocate on behalf of the school or ministry of education. Although participants will have learned by this stage of the course that they might have more than one point of advocacy for a single strategy, they must also understand that the 'no money' response is not acceptable. The response is giving voice to the following myths:

- 'It will always cost more money to educate children with disabilities.'
- 'We see the education needs of children with disabilities as less important than the children currently in our schools.'
- 'Children with disabilities are lower down the priorities list than the other aspects of education that are budgeted for.'

In addition to broader conventions referring to employment the material provided on employment, ILO Convention 159 will need to be used. This is the key provision in international law for people with disabilities seeking access to the labour force.

### ***Convention on rights of Persons with Disabilities And biwako Millennium Framework***

There are two key training modules for the human rights training of disability advocates:

1. UN Convention on the Rights and Dignity of Persons with Disabilities; and
2. Biwako Millennium Framework for Action.

The methodology and training tools used by RRRT to promote in-depth understanding of other conventions are used for both of these modules. While it will be important for participants to gain a thorough understanding of existing conventions, the time participants spend appreciating the details of the BMF and the UN draft convention will be crucial to their future work. A new advocacy resource recently developed by DPI, the *ICRPD Ratification Tool Kit*, will be drawn on to this end

- understand their links to other conventions, particularly in relation to women and children given their specific vulnerability as people with disabilities;
- explain them to a layperson in terms of their background, contents and purpose;
- seek the future adoption of the draft UN convention;
- advocate for BMF and UN convention implementation; and
- gain community support for these ends.

When developing these new modules, trainers have used some key concepts to ensure an understanding of the rights model of disability. There are three main social constructs that most attitudes towards disability can be identified under.

1. The charity model depicts people with disabilities as needing pity and handouts from the rest of society. This model tends to promote people with disabilities as being unable to contribute to mainstream society in any way. It is highly patronising towards people with disabilities, resulting in negative self-image for them.
2. The medical model of disability sees only a person's disability. It is unable to look past the disability to see the range of capacities a person has that are often unaffected or even

enhanced by their disability. This is often counter to the way people with disabilities think of themselves, as they will often only think about what they can do rather than what they are stopped from doing.

3. The rights model of disability has society treating people with disabilities as equals if not respecting and honouring them for what they can do (just like others in society are respected for their skills and knowledge).

The two new modules will also provide an opportunity to focus on some areas of disability discrimination that are often forgotten. People with mental illness and people with intellectual disabilities are often put in the 'too hard basket' when advocacy strategies and campaigns are being developed. The discrimination faced by these groups is even more complex and varied than that faced by people with physical and sensory disabilities. Participants will be encouraged early on in the training not to forget these people in their communities and to seek to understand the ways in which their rights are breached.

#### **4. Pilot Pacific Regional Training 12-23 November 2007, Fiji**

##### **4.1. What Worked.**

This first ever regional training on human rights for advocates from disabled persons organisations (DPOs) in Pacific Island countries was both timely and necessary. DPOs in the Pacific are increasingly becoming aware that people with disabilities also have human rights which must be protected, enjoyed and respected. To this end, Pacific DPOs are promoting the need for a paradigm shift from a charity/welfare model of disability services that has shaped the disability sector in the Pacific for many years to a more social rights based approach. It is in this context that the training jointly organised by Pacific Disability Forum (PDF) and UNDP Regional Rights Resource Team (RRRT) was conducted at a very pertinent time in the development, role and activities of Pacific DPOs. Also, the objectives identified for this training were successfully realised as highlighted below. The participants were able to:

- increase their knowledge and understanding on human rights, international human rights instruments and disability specific regional and international instruments and how to use that knowledge to advocate for the rights of people with disabilities in their countries;
- gain a clear understanding of the new UN International Convention on the Rights of Persons with Disabilities and to use that knowledge to advocate for country ratification of this convention;
- outline and review key elements in preparing a community advocacy action plan including budget and resources implications;
- develop key communication and media skills for undertaking advocacy for a barrier free and inclusive environment for people with disabilities;
- gain skills to train colleagues on key issues on community mobilization and how to facilitate a groups discussion with key stakeholders;
- gain skills on different methods of lobbying that can be used in advocacy and campaigning for rights of people living with disabilities; and
- gain skills on how to draft media releases and engage in effective media campaigning.

Also, the participants were actually involved and some holding leadership positions in their national DPOs in their countries. This hopefully ensures information, knowledge and skills gained from the training would be transferred to other members of their DPOs, which is a requirement of the training too. The program topics were appropriate to the learning needs of the participants and presentations pitched at a suitable level for the participants.

#### **4.2. What did not work so well.**

The training program cramped into a 2-week duration was somewhat unfortunate as the organisers were restricted by budget constraints. This training was originally scheduled to be held over a six week period, but had to be reduced to an intensive two weeks due to insufficient funding. Follow-up of the regional workshop in country will be yet another challenge. Whilst participants were required to develop and present action plans to be implemented in their respective countries upon their return, supervision and assessment of such implementation were left to mutual trust.

#### **4.3. What we will do differently next time.**

The program content is excellent. We definitely need to extend the two weeks to the initial plan of six weeks; spreading it over a timeframe with two weeks of training and participants returning to their countries for hands-on and implementation before returning for another two weeks stint, and so on. Also, it might be advantageous to have two participants from each country, preferably a man and woman who are actively involved in a leadership role in their DPO.