

**NGO submission to the United Nations Universal Periodic Review.
The 9th session of the Universal Periodic Review Working Group, November 2010.
Submission of the Marshall Islands Special Parents Association (MISPA).**

Introduction

Persons with disabilities represent an estimated 10 percent of any population¹. This represents some 800,000 Pacific Island people. There is a need to improve quality research and data on the prevalence of disability and the issues affecting the lives of persons with disabilities in the Pacific region². Persons with disabilities and their families face prejudice, discrimination and rejection. Children with disabilities are consistently excluded from attending school, health and welfare service provision is poor and largely inaccessible to persons with disabilities and there are few employment opportunities. Where services exist, implementation tends to be ad hoc, uncoordinated and poorly funded. Most governments are not making provision for disability services and inclusive policies in their budgets³.

Studies have shown that the traditional view in the Pacific is that persons with disabilities are to be looked after or cared for, and cannot be expected to take a full and active part in village community life, thus marginalizing them from mainstream life⁴. This view of persons with disabilities as dependent typifies a ‘charity’ or ‘welfare’ approach and is by no means unique to the Pacific. A ‘medical’ approach is also widespread, where disabilities are seen as health impairments that can be cured. It is only in the last few decades that persons with disabilities in any part of the world have been recognized as fully participating members of society. Forum Island Countries are at different stages of development in regard to disability⁵.

Until relatively recently, the national disability agenda has been largely neglected. While many countries have clear rights-based policies, few have specific legislation. Many have active Disabled Persons Organisations (DPO) that have largely lead the disability agenda in collaboration with governments. The role of DPOs has been central to the implementation of the Biwako Millennium Framework. Pacific Island Countries are at different stages of development in regard to disability.

Information relating to the specific issues and areas of concerns highlighted in this report were sourced from national policies and reports and experiences faced by MISPA. These issues are priority concerns relating to the human rights of the people living with disabilities in Marshall Islands. The issues highlighted in this report are not to be concluded as final, but prominent and needs to be addressed immediately.

Marshall Islands Special Parents Association (MISPA)

The Marshall Islands Special Parents Association (MISPA) acknowledges and congratulates the Government of the Marshall Islands for preparing, submitting and appearing before the Human Rights Council to give an account of human rights situation in the country. MISPA is hopeful that the discussion and recommendations submitted by and on behalf of people with disabilities in the Marshall Islands will be given consideration and priority.

The Marshall Islands Special Parents Association (MISPA) is a parent directed organisation, exists to increase independence, empowerment, and future opportunities for individuals with special needs, their families and communities, through training, information, referral, and support. The members of the organisation work

¹ World Bank estimate as in Social Analysis and Disability: A Guidance Note, 2007, p6.

² World Bank estimate as in Social Analysis and Disability: A Guidance Note, 2007, p6. See also Pacific Island Forum Secretariat : Forum Disability Minister Meeting, Cook Islands , 21st – 23rd October 2009.

³ The Pacific Regional Strategy on Disability 2010-2015

⁴ McKinstry, G, Price, P., & Macanawai, S. (2004). “A Review of Policy and Legislation on Disability in the Pacific”. Pacific Islands Forum Secretariat and Nowland-Foreman, G. & Stubbs, D. (2005). “Free and Equal: A Review of NZAID Pacific Regional Disability Programme for New Zealand Agency for International Development”

⁵ ESCAP Disability at a Glance

towards allowing parents to insure an appropriate educational and vocational program for children with special needs.

National Interagency Council on Disabled Individual and Their Families

There exist a National Interagency Council on Disabled Individuals and Their Families but have not been active in implementing their goal which is to provide services for children with special health care needs and their families. The interagency council consist of: Special Education, Regular Education, Head Start Program, Maternal Health Program, Developmental Disability and Vocational Rehabilitation, Physical Therapy, Women in Development, Youth to Youth in Health, and support from Majuro Atoll Local Government and the Kwajalein Atoll Local Government. The Interagency Council are responsible for quality services for individuals with disabilities and their families, linkages between service providers across the agencies that serve the target population are strengthened and there is a continuity in the transition of clients for services across programs, cooperation between existing program personnel is enhanced through the Interagency Council, training initiatives for service providers and clients are coordinated to eliminate duplication of efforts, and systems of care for target population is fully developed and shared for child identification, screening, data collection and evaluation.⁶

To date the Interagency Council has not been effective in carrying out its mandates and objectives. People with disabilities continue to be disadvantaged and marginalised in society. The ineffectiveness of the Interagency Council is not in line with the principles contained in the regional and internationally agreed norms and standards for people with disabilities namely the Biwako Framework and the Convention on the Rights of People with Disabilities.

Constitution

The Constitution of the Republic of the Marshall Islands is the supreme law of the land⁷. The people of the Marshall Islands through the Constitution have affirmed their desire and right to live in peace and harmony, subscribing to the principles of democracy, sharing the aspirations of all other peoples for a free and peaceful world, and striving to do all we can to assist in achieving this goal.

The Constitution recognises the right of the people of the Marshall Island to freedom of thought, speech, press, assembly and petition, unreasonable search and seizure, due process and punishment, imprisonment of debt, freedom from discrimination, personal autonomy and privacy, access to judicial and electoral process, health, education and legal services and ethical government. No person may be treated in a discriminatory manner under law or by any public official.

Under the Constitution, there is a section on the Fundamental Rights and Freedoms of the Individuals. There is a definition of discrimination, but it does not specifically refer to disability. There is a need to include disability in the non discrimination provision of the constitution. Section 12 (2) of the Constitution of the Republic of the Marshall Islands states that “*no law and no executive or judicial action shall, either expressly or in its practical application, discriminate on any person on the basis of gender, race, colour, religion, political or other opinion, national or social origin, place of birth or family status or descent*”⁸. Disability is not included in the list of non discriminatory grounds. MISPA strongly recommends that the Government of the Republic of the Marshall Islands to amend the Constitution to include disability as non discriminatory ground.

- **Health, Education and legal services**

The Government of the Republic of the Marshall Islands recognizes the “*right of the people to health care, education, and legal services and the obligation to take every step reasonable and necessary to provide these*

⁶ The Republic of Marshall Islands. Designation of Week of the Handicapped. November 20th. 1985. Ref – C.P 915 (85)

⁷ Article I s1 Constitution of the Republic of the Marshall Islands

⁸ Article II s12(2) Constitution Republic of the Marshall Islands

*services*⁹. Whilst this provision exists the reality is that people with disabilities do not enjoy these rights due to limited access. The public as with people with disabilities are not aware of this Constitutional provision.

Health services as with other government services are not fully enjoyed by people with disabilities. Legal services are provided for by the government but having access to the services is not enjoyed by the people with disabilities. This made difficult with the inaccessibility of the building itself by people with disabilities. Ramps are not provided for and those that visually impaired, signs and aids are not provided for by the authorities/departments concerned. This is the same for most public buildings.

- **Transportation & Access to Public Places**

Transportation within the Republic of the Marshall Islands is a major problem. This is more so for people with disabilities. Public transportation is not inclusive of people with disabilities. Public buildings are not inclusive of people with disabilities.

National Disability Legislation

There is no specific disability legislation in the Marshall Islands.

Government has not made plans for the creation for a gender and human rights specific disability legislation. Laws currently exist that also discriminates against people with disabilities. The government to work hand in hand with MISPA and other NGOs working in the area of disability rights in creating a gender and human rights compliant disability legislation. It is important for government to include Article 3 of the Convention on the Rights of People with Disabilities when creating legislation for people with disabilities as a guiding principle. It is important that in creating gender and human specific disability legislation that government consider and apply the Convention on the Rights of People with Disabilities. It also important for government to consider and apply the Biwako Framework when creating national policies and legislation on disability.

Until relatively recently, the national disability agenda has been largely neglected. While many countries have clear rights-based policies, few have specific legislation. Many have active Disabled Persons Organizations (DPO) that have largely lead the disability agenda in collaboration with governments. The role of DPOs has been central to the implementation of the Biwako Millennium Framework. Persons with disabilities must be included in national development processes. Development of rights-based policy, legislation and service provision must be established in partnership with organizations of persons with disabilities and other concerned agencies. Persons with disabilities have proven their capability to contribute to this process¹⁰.

Key international and regional agreements on disability

The Biwako Millennium Framework and the Biwako Plus Five have been influential in the Pacific as a guide to countries in advancing the rights of persons with disabilities. Pacific Islands Forum Leaders endorsed the Biwako Millennium Framework in 2003 – the Republic of Marshall Islands has made the commitment to the BMF.

More recently, at the 2009 Pacific Islands Forum, Leaders gave strong support to the Forum Disability Ministers Meeting and the development of a Pacific Regional Strategy on Disability. One of the most significant recent developments in the area of disability has been the adoption of the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 13 December 2006. The coming into force of the Convention marked the beginning of a new era in the global efforts for recognition that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. The Convention is intended as a human rights instrument with an explicit, social development dimension. It was also recognized that countries are at different stages of development of policy, legislation as well as addressing the process of signing and ratification on the Convention. The Convention provides a framework for countries to address disability even

⁹Article II s15 Constitution of the Republic of the Marshall Islands

¹⁰ The Pacific Regional Strategy on Disability 2010-2015

for those which have not signed or ratified. MISAP notes the importance of building awareness and understanding of a “rights-based approach” and hopes that the government of the Marshall Islands will also do the same.

Convention on the Rights of People with Disabilities

The Republic of the Marshall Islands is neither a party to nor signatory to the Convention on the Rights of People with Disabilities.

The Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly on the 13 December 2006 and came into force on 3 May 2008. The CRPD is a binding treaty that provides a universal standard for the human rights of people with disabilities. The CRPD promotes a shift in understanding that recognizes the limitations created by disability not as a problem of a person but as a problem of barriers created by society. The CRPD can provide specific guidance and a framework for national action even for countries that have not yet ratified. A rights-based approach represents a paradigm shift from earlier charity or medical models. The rights of persons with disability and their participation is central to this approach. Persons with disabilities have argued that their ability to function as full and active citizens in a modern society is limited not by their disability but by society's failure to recognize them and accommodate their needs¹¹.

The MISPA would like to encourage the government of the Marshall Islands to sign and ratify the Convention on the Rights of Persons with Disabilities at the earliest practical opportunity. MISPA also calls on the government of Marshall Islands to urgently develop and implement national disability policy and legislation premised on the Convention on the Rights of Persons with Disabilities and support the use of the BMF as a policy guideline, including strategic plans and implementation frameworks.

National / Regional Human Rights Commission

The Pacific (Marshall Islands included) currently has no UN-recognised human rights regional mechanism.

For all human rights to advance significantly in the region there needs to be a regional body to access information and for individuals to access justice. For longer term stability and social cohesion in the Pacific, the issue of human rights require collective attention and strategic approaches. Prolonged periods of poor governance and disappointing economic growth combined with limited access to resources, a breakdown in traditional systems, political tensions and lack of opportunities have had negative social impacts across the region. This is equally important for the realisation and promotion of the rights of people with disabilities.

This submission believes that the most appropriate long term model for a human rights mechanism in the Pacific region, with a mandate for promoting and defending human rights, is a regional human rights commission, set up under The Pacific Plan, and envisaged by it. A regional mechanism could be closely tied to the Pacific Islands Forum Secretariat (PIFS) which administers and monitors the Plan, although it can be later assessed whether this is appropriate. The mechanism need not start off by being a fully fledged commission but a simple mechanism.

A simple mechanism could be set up whose mandate may include supporting already existing domestic Bills of Rights and ratified international Conventions, as well as reaching consensus over the years on the content of a potential regional Pacific Islands Charter.

This submission believes that a regional mechanism's mandate will be decided by the PICTs governments and its peoples. A regional mechanism can have forms and functions as decided upon by the agreements as mentioned previously. The mechanism could start off with a simple mandate and slowly over time acquire more

¹¹ The Pacific Regional Strategy on Disability 2010 - 2015

sophisticated mandates. In time the mechanism could evolve into a fully fledged Pacific Regional Human Rights Commission.

A regional body would provide a single contact point for the entire region, providing an effective and efficient conduct through which external bodies could disseminate information to the region, and receive reliable information and advice back from the region. It would also enjoy greater independence from individual national governments, reducing the risk of partiality in appointments to the commission and of undue influence in its operations.

Recommendations from Marshall Islands Special Parents Association

Recommendation: Government is urged to amend its Constitution to allow for disability as a non-discriminatory ground.

Recommendation: Government is urged to amend any existing laws that are discriminatory to people living with disability.

Recommendation: Government include Article 6 of the CRPD when creating legislation for people with disabilities.

Recommendation: Government must endorse and adopt a National Disability Policy.

Recommendation: Government to assist in the establishment of an organization run for and by people with disabilities.

Recommendation: Government to assist in the creating awareness and understanding of disability concerns in the wider community.

Recommendation: Government to assist NGOs develop a policy on and improve accessibility of public buildings

Recommendation: Government to develop policy on and awareness of the need for the employment of persons with disabilities

Recommendation: Government to develop training programs for care givers and parents of children with disabilities

Recommendation: Government to develop and strengthen special education training programs through local colleges and schools

Recommendation: Government to improve on the provision of sign language, especially in schools.

Recommendation: Government considers assisting regional organizations with the establishment of a regional human rights commission.