ACCELERATE THE RATIFICATION AND IMPLEMENTATION OF THE CRPD AND HARMONIZATION OF NATIONAL LEGISLATION WITH THE CONVENTION

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OUTLINE

• Introduction – New Asian and Pacific Decade of PWDs (2013 – 2022)
• Rights and situations of PWDs
• Convention and obligation of States
• CRPD – Salient features, principles and rights of PWDs
• Ratification and Implementation of CRPD by Malaysia
• Proposals to accelerate ratification and implementation of CRPD
• Harmonization of national legislation with the Convention
• Summary
The new Asian and Pacific Decade of PWDs has launched a 10 year (2013 – 2022) strategy to realise a disability-inclusive society – it adopted the Incheon Strategy for implementing the new Decade, and to “Make The Right Real” for PWDs in Asia and Pacific

- The Incheon Strategy comprises 10 Goals, 27 Targets and 62 Indicators
- Goal 9: calls for accelerated ratification and implementation of CRPD and the harmonisation of national legislation with the Convention
Goal 9 has 2 Targets as follows:

(a) By 2017 10 more Asia Pacific Governments would have ratified CRPD
(b) Enact national laws which include anti-discrimination provisions, technical standards and other measures to uphold and protect the rights of PWDs
   – Amend or nullify national laws that discriminate against PWDs, with a view to harmonise national legislation with CRPD
Rights enshrined in the Universal Declaration of Human Rights (1948) and 7 core UN International Rights Treaties cover all people, including PWDs, but in practice, their rights are not protected or promoted.

Since UN declared 1981 as the International Year of Disabled Persons, various initiatives were carried out to raise awareness on the rights and welfare of PWDs and to improve their well-being.

There has also been a gradual shift to a rights-based approach to disability issues in place of a charity-based approach.
Many PWDs still suffer from discrimination in daily lives due to society’s prejudice, ignorance, negative attitudes

- PWDs still encounter physical, attitudinal, policy and other barriers in society
- Inaccessibility to the built environment and public facilities, limits active participation of PWDs in social and economic activities
- Seen as objects of sympathy or charity – so needs social protection, medical treatment
- Many PWDs are dependent – unable to care for themselves; so need to be placed in charitable institutions or just stay at ho
PWDS are citizens and form a significant part of the population – they are PERSONS first and foremost with same basic needs, human rights like all other people.

PWDS are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others in the community.

The Asian and Pacific region has around 650 million PWDS, many live in poverty and suffer discrimination, exclusion, inequality and prejudice.

UNESCAP has tried to promote the full participation and equality of PWDS through the Asian and Pacific Decade of PWDS (1993 – 2002) and from 2002– 2012
RIGHTS AND SITUATIONS OF PWDS

- Biwako Millennium Framework For Action

- Signed in Otsu City, Japan – October 2002
- Provide a policy recommendations for action by Gov’ts in Asia and Pacific region to achieve an inclusive, barrier-free and rights-based society for PWDs in the 21st Century.

Aims to promote:
- "Inclusive" society – means society for all
- "Barrier-free" society – means a society free from physical and attitudinal barriers, as well as social, economic and cultural barriers
- "Rights-based" society – means a society based on concepts of human rights of all in any decisions with affect them (PWDs)
CONVENTION AND OBLIGATION OF STATE PARTY

- An international convention or treaty is an agreement between different countries that is legally binding to the contracting States.
- A convention becomes legally binding to a particular State (or country) when that State ratifies it. Signing a convention only signifies support for the principles of the convention.
- As contracting States are legally bound to adhere to the principles in the convention, a monitoring body is often set up to assess the State party’s progress in implementing it by considering reports submitted by States – compliance with the principles of a convention depends on the commitment of each State.
Before signing or ratifying a convention or treaty, a State must make sure that it has the necessary policy, legislative and administrative framework or other measures to enable it to comply with the provisions of the convention and to implement its principles.

The State may also need to review or amend its national legislation and to harmonise such legislation with the provisions of the convention.
Prior to the enactment of the Persons With Disabilities Act 2008 (Act 685) (which came into force on 8 July 2008), the rights, welfare and programs relating to persons with disabilities (PWDs) in Malaysia are dealt with or being guided by various national policies, such as:

(a) National Welfare Policy (1990)
(b) Vision 2020 (1991) – a caring society
(c) National Social Policy (2003)
(d) National Policy For PWDs (2007)
(e) National Plan of Action For PWDs (2007)
(f) Service Circular No. 16 of 2010: Implementation of 1% Policy on Employment Opportunities of PWDs in the Public Sector
CONVENTIONS AND TREATIES

- Malaysia has participated in or become a signatory (party) to several regional and international instruments or agenda pertaining to PWDs, including the following:
  
  (a) United Nation Charter (1945)
  (b) Universal Declaration of Human Rights (1948)
  (c) UN International Year of Disabled Persons (1981)
  (d) UN Decade of Disabled Persons (1983–1992)
  (e) Convention on Rights of the Child (1989)
  (f) Proclamation on Full Participation & Equality of PWDs in Asia and the Pacific (1994)
  (g) Decade of Disabled Persons for Asia and Pacific (1993–2012)
  (h) Biwako Millennium Framework for Action (2003–2012) - Towards an inclusive, barrier-free and rights-based society for PWDs
  (i) UN Convention on the Rights of Persons With Disabilities, 2006
Convention on the Rights of Persons with Disabilities (CRPD)

- Adopted by UN General Assembly on 13 December 2006, and open for signature on 30 March 2007. CRPD came into force on 3 May 2008, following ratification by 20\textsuperscript{th} party.
- Convention aims to change perception of disability from sympathy to that of respect i.e from a charity-based model to rights-based.
- \textit{The Convention entitles the disabled to the full enjoyment of all human rights and ensures full and effective participation as well as inclusion in society, on an equal basis with others.}
- \textit{CRPD has 50 Articles. Its Optional Protocol has 15 Articles.}
CRPD underlines eight (8) general principles

1. Respect for inherent dignity and individual autonomy;
2. Non–discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Gender equality and respect for the evolving capacities of children with disabilities; and
8. Respect for the rights of children with disabilities to develop and preserve their identities.
RATIFICATION OF CRPD

- Malaysia signed the CRPD on **8 April 2008** and ratified it on **19 July 2010** (but with reservation to articles 15 and 18 thereof)

- It shows that Malaysia has agreed to the Convention
- Signing = indicates intention to take steps to be bound by the Convention later. Creates obligation between signing and ratification to refrain from acts that would defeat the purpose of the treaty.
- Ratification = action taken to undertake legal rights and obligations contained in the Convention
- As of June 2013, CRPD has 155 signatories and 132 parties
CRPD – THE OPTIONAL PROTOCOL

- * Malaysia has not yet accede to the Optional Protocol
- The Optional Protocol is a side agreement to CRPD. It was adopted on 13 Dec 2006, and entered into force on 3 May 2008 (same time as CRPD). As at June 2013, it has 91 signatories and 77 parties.

- Optional Protocol enables the Committee on the Rights of Persons with Disabilities to:
  - **receive Individual complaints** of violations of the provisions of the Convention by a State Party
  - **hold Inquiries** on State Party following information received indicating grave or systemic violations of the Convention.
Persons with Disabilities Act 2008 [Act 685]

Bill passed by Parliament ... December 2007
Date of coming into force ..... 7July 2008

- Part I – Preliminary (sections 1, 2)
- Part II – National Council For Persons With Disabilities (sections 3 – 19)
- Part III – Appointment of Registrar–General, etc. and Registration of Persons With Disabilities (sections 20 – 25)
- Part IV – Promotion and Development of the Quality of Life and Wellbeing of Persons With Disabilities (sections 26 – 40)
- Part V – General (sections 41 – 46)
Purpose of the Act:

- An Act to provide for the:
  (a) registration;
  (b) protection;
  (c) rehabilitation;
  (d) development;
  (e) wellbeing of PWDs;
  (f) establishment of the National Council for PWDs; and
  (g) for matters connected therewith.
Preamble to the Act:

- Recognizing…..
- Disability is an evolving concept and results from interaction between PWDs and attitudinal and environmental barriers that hinders their full and effective participation on equal basis with persons without disabilities
- Value existing and potential contributions by PWDs
- Recognize importance of accessibility to physical, social, economic and cultural environment, to health and education and information and communication in enabling PWDs to fully participate in society
- Entitlement to equal opportunities….subject to such limitations, restrictions and protection of rights as provided by the Constitution
PART 1: INTERPRETATION (Section 2)

- PWD Act 2008 defines important terms including the following:

  - “Persons with disabilities” – includes 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;
“reasonable accommodation” means necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise of the quality of life and wellbeing on an equal basis with persons without disabilities;
PART 1: INTERPRETATION (Section 2)

- “universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design and shall include assistive devices for particular groups of persons with disabilities where this is needed.

- It consists of 7 principles require that all things should be equitable, useful to people with diverse abilities, flexible in use and able to accommodate a wide range of individual preferences, simple to understand, require low physical effort, have appropriate size and space for approach and use.
“rehabilitation” refers to a process aimed at enabling person with disabilities to attain and maintain their full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life;

“habilitation” refers to the process aimed at enabling persons who are born with disabilities to attain and maintain their full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life;
PART II – NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

Section 3: Composition

- Minister for Women, Family and Community Development – Chairman
- Secretary General of the Ministry for Social Welfare – Deputy Chairman
- Attorney–General of Malaysia or Representative
- Secretary General of Ministry for Finance
- Secretary General of Ministry for Transport
- Secretary General of Ministry for Human Resources
- Director General of Education
- Director General of Health
- Chairman of Commercial Vehicle Licensing Board
- Ten (10) other persons appointed by the Minister
PART II – NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

Sections 4, 5, 6: Alternate members, Revocation of appointment, Cessation of membership of Council

- Section 7: provides for meetings of the Council
- Section 8: D–G of Social Welfare as Secretary of Council.
- Section 9: Functions
  - to oversee implementation of national policy and national plan of action, recommend to Government on all aspects of PWDs
  - coordinate and monitor implementation of national policy/plan of action
  - Monitor, evaluate impact of policies, programs and activities to achieve full and effective participation of PWDs
PART II – NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

Section 9 – Functions …(continue)

- Review activities of all ministries, government agencies, organisations and private sector involved in implementation of national policies/plan of action

- Recommend to Government changes to existing law and propose new law, to secure full and effective participation of PWDs, including to facilitate accessibility

- Adopt effective measures to promote recognition of skills abilities of PWDs to the workplace and labour market
Section 9: Functions ...(continue)

- Develop programs and strategies to educate society and raise awareness on PWD – their capabilities, contributions to promote positive perception and foster respect for their rights and dignity of PWDs
- Foster at all levels of education system an attitude of respect for PWDs
- Advise Government on issues of disabilities, including international level
- Collect and collate date, information, undertake and promote research relating to PWDs
- Promote development of training for professionals and staff working in habilitation and rehabilitation services
- Grant incentives/financial assistance to encourage participation of private sector
- Promote employment opportunities and career advancement for PWDs; Perform other functions as directed by the Minister
Section 10: Council to be assisted by Department for the Development of Persons with Disabilities in performance of its functions and exercise of its powers.

Section 11: Establishment of committees to assist Council in performance of functions and exercise of its powers. To date six (6) Committees have been formed, each with its terms of references, and chaired by a Member of the Council:

- Health and Quality Life Care
- Employment
- Education
- Registration
- Built Environment and Universal Design
- Transport
• Section 12: delegation of functions and powers by Council.
• Section 13: **Imposes a duty** on the Council to recommend changes to laws relating to accessibility.
• Section 14: responsibility of Government to take into account financial and human resources available.
• Sections 15 and 16: responsibility of relevant ministries/agencies/private sector to ensure full participation.
• Section 17: requires ministries/agencies to submit report to Council on steps required to be taken by them and to give explanation if reports on progress unsatisfactory.
• Section 18: duty on Government to allocate Council with adequate funds to perform functions.
• Section 19: Council to submit annual report of activities during the year to the Minister.
Part III: Appointment of Registrar General for registration of PWDs

section 20: appointment/duties of Registrar General and Registrar

Section 21: maintenance of register of PWDs

Section 22: application for registration (not compulsory, no automatic registration upon report by doctors, no gathering of data from other sources such as hospitals).

Sections 23 and 24: Registrar can call for additional document/information and can refuse to register

Section 25: issue of Kad OKU to qualified applicants as evidence of PWDs
Part IV: Promotion/Development of Quality of Life of PWDs

CHAPTER I – ACCESSIBILITY

Section 26: provide PWDs right of access to public facilities and buildings

Section 27: provide access to public transport facilities

Section 28: inclusion of PWDs in education system and a duty on educational provider to provide reasonable accommodation suitable with requirements of PWDs
• Section 29: provides right of access to employment on equal basis. Requires employer to protect PWDs to just and favourable conditions of work and Council's role in promoting employment of PWDs

• Section 30: provides PWDs with right of access to information, communication and technology.

• Section 31: provides PWDs right of access to cultural life and to develop artistic potential.

• Section 32: provides right to participate in recreational, leisure and sporting activities.
Part IV: Promotion/Development of Quality of Life of PWDs

Chapter 2 – Habilitation and rehabilitation:

Section 33: requires Government and private healthcare take effective steps to enable PWDs to attain maximum independence, full physical, mental, social and vocational ability and full participation in all aspects of life, promote CBR program and availability, knowledge and use of assistive devices.

Section 34: Government and private sector to ensure PWDs access to in-home, residential and other community services, including personal assistance to support living and inclusion in community.
Chapter 3 – Health

- Sections 35 and 36: Government and private health care provider to make available essential health services

- Section 37: duty on private sector and NGOs providing institutional care to have speech, physiotherapy and occupational therapists. Can apply for exemption from the Minister.

Chapter 4 – Protection of PWDs with severe disabilities

- Sections 38 and 39: Government to provide lifelong protection and social support for persons with severe disabilities. Incentives to NGOs/private sector for this.

- Section 40: Access to assistance – ensures PWDs full assistance in situations of risk and humanitarian emergencies
Part V: General

Section 41: protects the Minister and National Council from prosecution if acts done in good faith

Section 42: application of Public Authorities Act 1948 to the Council and members and committee in legal proceedings against them

Section 43: powers of Minister to make regulations necessary to carry out and implement provision of the Act

Sections 44 and 45: Savings and transitional provisions

Section 46: empowers Minster to make amendments, additions, deletions or substitution to provisions of Act to remove any difficulty occasioned by the coming into operation of the Act.
**OTHER LEGISLATION ON PWDS**

- **Buildings By–laws** – building requirements for PWDs
  (a) By–law 34A of Uniform Buildings By–laws (applicable to Peninsula Malaysia)
  (b) by–law 110A, Buildings By–laws (in Fourth Schedule to the Buildings Ordinance 1994, of Sarawak) (applicable only in Sarawak)

- **Malaysian Standard Codes of Practices:**
  - MS 1184: Code of practice on Access for Disabled Persons to Public Buildings
OTHER LEGISLATION

- Uniform Buildings By-laws
  (for States in Peninsula Malaysia)

- Amended in 1993 to incorporate By-law 34A, to make it compulsory for certain categories of buildings to which the public have access to provide access to and facilities for disabled persons to get into, out of and move within the buildings.

  Buildings already built before the commencement of this by-law must be altered to comply with the by-law within 3 years from the date of commencement.
Buildings Ordinance, 1994 (and By-Laws) of Sarawak
- amended since 1st Jan. 2002 to incorporate By-law 110A to specify requirements for disabled persons in respect of any building where the public has access; include facilities for the use of such disabled persons
- (Types of buildings to which the By-laws apply are listed in MS 1184)

Buildings already built before the commencement of this by-law must be altered to comply with the By-law within 5 years.
BUILDING BY–LAWS – IMPLEMENTATION AND ENFORCEMENT BY LOCAL AUTHORITIES

Parties involved are:

– Developers/builders/owners of the projects
– Consultants (architect/engineer/planner) responsible for the design and supervision
– Local authorities and their technical officers responsible for checking/vetting, before approval of building plans
– Regular enforcement, monitoring and assessment are required to ensure compliance with the requirements in the Building By–laws
– Training and talks should be held to inculcate better awareness and knowledge on the needs of PWDs among the professionals, developers, builders and staff of local authority and other relevant Government agencies, and the public
OTHER LEGISLATION ON PWDs

BUILDINGS BY-LAWS – ROLE OF ACCESS OFFICERS

- **Access Officer** – refer to a local authority officer who has been fully trained in the requirements and needs of PWDs for built environment
- Role of Access Officer is to check/vet building plans submitted by professionals for approval; to advise and recommend the submitting persons on better alternatives to allow for full accessible environment where practical
- May need to consult resource persons (PWDs) from NGOs, specialists or academicians
- Duty of Access Officer to inspect project after completion to ensure minor details and deviations are attended to before recommending for issue of Occupation Permit/Certificate of Fitness for Occupation of the buildings
OTHER LEGISLATION ON PWDs


- Education (Special Education) Regulations 1997
  - Eligibility for special education programme. For Government and Government-aided schools, pupils with special needs who are educable are eligible to attend the special education programme

- SOCSO – disability benefits to disabled workers
OTHER LEGISLATION ON PWDs

- Road Transport Act 1987 – powers of local authorities to reserve parking spaces for PWDs

- Pensions Act 1980 – child include a disabled child, hence a disabled child of pensioners is entitled to be paid derivatives pensions on death of parents

  - provisions to assist disabled persons e.g. the blind, to cast their votes during an election
  - Election Commission should ensure polling centres are disabled friendly and accessible to PWDs (esp. on wheelchairs)
PWD Act 2008 embodies the paradigm shift:

- From welfare/charity approach to human rights protection and promotion of equal and full participation of PWDs in society
- Emphasis on development and alleviation of poverty and hardship of PWDs
- Mainstreaming of disability issues across all sectors
• Composition of National Council for PWDs:

(a) Currently among the 10 other persons with appropriate experience on issues relating to PWDs who are appointed as members of National Council by the Minister include seven (7) who are PWDs

(b) 6 Committees have been formed by the Council

- More comprehensive – inter-ministerial and cross sectoral
- National Council given “ownership” of implementing National Policy on PWDs and Action Plan. Responsible for monitoring and reports on progress from each agency.

e.g education. Now the National Council is given “OWNERSHIP”- can require the other Ministries and agencies such as Ministry of Education, Welfare Dept. and JKR to provide facilities for inclusive education for all children with disabilities.

- Duty on the National Council to recommend amendment to laws relating to accessibility, and Special Education Regulations.
• The Act recognises that no entity or Gov’t agency can achieve goal of equality for PWDs on its own.
• Provides an interconnected network of actors to reach this goal.
Example: In order for a person with disabilities using a wheelchair to access decent work, the person needs to be able:
  – to physically move in and out of his or her home
  – to access the public space and transportation
  – to access the work facilities (both the built environment and its information and communications systems)
• If any one element of the network fails in this obligation, we will not be able to reap the benefit from the other elements, especially in employment.
COMMENTS

Major Weaknesses:
- No compulsion on other Ministries and agencies to comply. Only reports.

- No provision in the Act to set up a body or to appoint a person with powers to enquire into alleged breaches of provisions of the Act, including complaints from PWDs of discrimination

- no provision for PWDs to seek legal remedies or redress if face discrimination in areas such as employment, education, public transport and housing.
– Registration of PWDs is voluntary under the Act. No provision for the setting up of more comprehensive census and data bank on PWDs – basic to planning for facilities and amenities and budgeting.

– Need to include persons with disabilities in all stages of implementation of programs involving PWDs, and to build capacity of self-help organizations of persons with disabilities to do so.
The Government introduced the PWD Act 2008 so as to bring into a domestic law the principles of the UN Convention on the Rights of PWDs. From a human rights perspective, the Act marks a small but significant step forward.

The PWD Act 2008 provides legal status to the National Council for PWDs.

However, without any sanctions for non-compliance, it may render the Act less effective. The Act should therefore be amended to ensure better protection of the rights of PWDs.
PROPOSALS TO HARMONISE NATIONAL LEGISLATION WITH CPRD

1. Amend article 8(2) Federal Constitution to prohibit discrimination on ground of disability
2. Enact anti-discriminatory law
SUMMARY

Malaysia had signed and ratified the CRPD, and should consider when it is appropriate to remove its reservation to articles 15 and 18. Malaysia should also consider signing the Optional Protocol to CRPD to ensure the monitoring mechanism on CRPD are in place, and to enable complaints to be made for any non-compliance with provisions of the CRPD. A comprehensive study must be undertaken on its national legislation, and to identity provisions with need to be revised or amended so as to harmonise with the provisions of the CRPD.

The Disabled Persons Act 2008 must be strictly enforced and the national policy and national action plan and programs on PWDS must also be effectively to further promote and protect the rights of persons with disabilities and to eliminate discrimination against them in various aspects of life. All parties involved must play their respective roles, including Government agencies.
Appendix

• EDUCATION (SPECIAL EDUCATION) REGULATIONS 1997
• [PU(A) 532/1997]

3. Eligibility for special education programme.

(1) For Government and Government–aided schools, pupils with special needs who are educable are eligible to attend the special education programme except for the following pupils:

(a) physically handicapped pupils with the mental ability to learn like normal pupils; and

(b) pupils with multiple disabilities or with profound physical handicap or with severe mental retardation.
3. Eligibility for special education programme.

(2) A pupil with special needs is educable if he is able to manage himself without help and is confirmed by a panel consisting of a medical practitioner, an officer from the Ministry of Education and an officer from the Department of Welfare, as capable of undergoing the national educational programme.