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Presentation by

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It is a high honour and privilege to be among you today. I bring you warm wishes from our Irish Human Rights Commission. My subject is the UN Convention on the Rights of Persons with Disabilities.

The convention itself goes beyond non-discrimination and sets out clearly the various substantive rights that persons with disabilities should enjoy. It meets a longstanding demand of the disabled community to adopt and adapt the general human rights to which we are all accustomed and tailor them to the disability context to ensure that they are real and not just rhetorical. It contains many innovations. It innovates by ensuring the dignity of persons with disabilities is respected by protecting them against violence and abuse. It innovates by giving power back to persons with disabilities over their own lives – the capacity to make decisions for themselves and to live independently. It innovates by

focusing on the obstacles to participation and crafts broad liberty rights to ensure these obstacles can be dissolved. It innovates by ensuring that economic and social supports and services and rights – far from being the problem as in the past – are now genuinely part of the solution. Persons with disabilities – just like all citizens – do not want welfare or other supports as compensation for not being in the mainstream – they do not want this support simply to survive. They need social supports re-engineered so that they can lead active and productive lives.

And, most importantly, the convention innovates with respect to both implementation and monitoring. I want to talk briefly about these unique features of this convention – specifically the role of civil society in drafting it and the architecture of implementation and monitoring that it envisages.

To me the symbolism of the convention alone is huge. Persons with disabilities number some 650 million around the world. They have been described by the UN as the World's largest minority. Traditionally they were viewed as objects to be managed or pitied – rather than subjects deserving equal respect. The UN Convention gives crystal clear expression to a reform process that has been going on around the world – New Zealand included – for the past two decades. Put simply, the convention rests on a complete rejection of traditional conceptions of disability. It takes seriously the view that persons with disabilities are subjects with equal rights. And, as a legal instrument, the convention has the potential to not merely passively reflect the reform already underway – but to help frame it, guide it and even drive it.

Benjamin Franklin once said that he developed a lifelong aversion to drafting a text only to see it edited by a committee. Yet it has to be said that the text of the convention produced by the Ad Hoc Committee in the UN seems to have survived with a clear focus.

A large part of the credit is due both to the sterling quality of the New Zealand diplomatic team as well as to the active participation of New Zealand civil society

groups in the process. Your ambassador – Don MacKay – who chaired the negotiations – managed to ensure that the document retained integrity and was grounded on the best ideas in the room. Most importantly, he kept the process open to a diversity of voices. Another member of your diplomatic team – Andrew Begg – deserves the highest praise for his professionalism and support. Let me pay public tribute to their work – and through them, to New Zealand.

Oliver Wendell Holmes once wrote that to truly assess a new idea, a value or a legal instrument, you must first pour cynical acid over it and see if anything remains. I am often asked ‘where is the pulse of this convention’. I usually reply it resides in this shift from viewing persons with disabilities as objects to viewing them as subjects. But it is much more than that. There are a lot of bad laws, policies and programmes around the world on disability. And the rights and obligations contained in the convention will enable one to challenge these laws. That, at any rate, is a lawyer’s way of looking at the convention. I take a broader view of the convention and its potential to help frame change. I believe you miss the point if you confine the convention to the traditional role of challenging bad laws and policies. To me the most important potential of the convention resides in its *potential to transform the process that leads to these laws in the first place.*

One reason why bad laws were enacted in the past had something to do with the relative invisibility of disability and of persons with disabilities in the political process. For one thing, the opportunity costs of political participation were formidably high for persons and their families simply struggling to survive. In addition, the policy process tended to work from a very narrow policy narrative – one that simply equated disability with cost and foreclosed serious analysis of reform. This absence of the most important voices from the table meant that these deficiencies could not be readily undone.

To a certain extent we saw – in brilliant technicolour – just what a difference the inclusion of these voices could make in the very drafting of the Convention. Not only did New Zealand diplomatic prowess keep the negotiations steady, New Zealand civil society groups were prominent in ensuring that the text remained

relevant. People like Robert Martin, Gary Williams, Huhana Hickey and Wendy Wickes ensured that the text is much more than an inert document – it is a living instrument capable of both inspiring and guiding change. Furthermore your Human Right Commission added its voice and deep authoritative analysis to that of other human rights commissions from around the world in the negotiations thus ensuring that there need not be – and was not – any contradiction between active listening to civil society and fidelity to the norms of international law. People like Robyn Hunt deserve the utmost praise and have further enhanced the already high international reputation of your Human Rights Commission.

The framers of the convention were alive to the fact that unless processes are changed there will be little effective outcomes. The democratic system can right itself – but can only do so when the full panoply of voices are at the table. That is why the mantra ‘nothing about us without us’ is now mandated by Article 4 of the Convention. This requires ongoing and active consultation between Government and persons with disabilities. To govern is to choose. So this does not mean that persons with disabilities have a trump card. But it does redress a fundamental flaw and so measurably enhances the prospects of greater equity and better outcomes.

There is another design flaw the framers were alive to. International law exists ‘out there’ – in the ether. In general, there is no transmission belt to ensure that the fresh air of international law can reach into and revive the domestic scene. You may score the odd victory in Geneva – but there the victory remains. So the trick is to find some way of ensuring that the norms of the convention gain traction where they count most – in Wellington, in Dublin, in London. They have to become somehow ‘owned’ by your administration and mine. Policy makers need to become motivated to ‘see’ the symmetry between the convention and their domestic reform agenda. Most importantly, policy makers should see themselves as giving back to the international arena. This is a two way street.

The framers of the convention took the next logical step going beyond a simply listing of rights with a monitoring system hovering in the pure ether of

international law. They put in place a *domestic architecture for change* in Article 33. This article lies at the very heart of the convention – for it makes a stab at putting in place an architecture of change at home – in Wellington or Dublin – that can transform processes that – if left untransformed – simply lead to even more bad laws and policies.

Article 33.1 It demands the existence of a Focal Point as well as a Coordination mechanism within Government. This gets at and seeks to unravel the silo phenomenon whereby most Governments in the world disperse responsibility for disability across many Departments and even within Departments. The predictable result is the ‘tragedy of the commons’ whereby no entity takes lead responsibility and the chaos that ensues creates massive cracks into which ordinary people fall. Article 33 is truly innovative. All the more so when you realize that the Convention requires this Government mechanism to consult actively with persons with disabilities.

So far, so good. Yet something else is needed to ratchet a dynamic of reform into place. Good governance is about accountability – and accountability is not just an end in itself – it helps keep the reform process moving in the right direction. It underpins and not undermines effectiveness. That is why the framers took another logical step by requiring States to designate an independent body or set of bodies to ‘*promote, protect and monitor*’ progress in implementing the convention. The language is somewhat open-ended – an example of constructive ambiguity to bring along those Governments along (not your Government) that do not see accountability in quite the same positive light. But the intent is clear. The intent is to harness an independent body in the process of ensuring the norms are real and not rhetorical.

Human rights commissions have to be to the fore of such bodies – not merely because of their undoubted independence but also because the sweep of their remit – just like the sweep of the convention – flows well beyond the traditional field of equality and non-discrimination. Furthermore, they would appear ideally suited since it is hardwired into their DNA (unlike many other admirable

and wholly effective agencies) to keep a window open to international law in order to constantly frame the relevant domestic questions in terms of the contours of international law. Other bodies too should be 'designated' since they bring to the table subject-specific knowledge as well as competence in areas connected with 'promotion, protection and monitoring'. A first step in a rational process of 'designating' this independent entity or entities under Article 33.2 could well be to map out which entities already do some 'promotion, protection and monitoring' and to meld them together appropriately.

The triangulation is complete when one realizes that Article 33.3. also requires that the monitoring that is to be done by the relevant independent body is to be done in active consultation with persons with disabilities. This is unique and remarkable. It has no precedent. It will perhaps prompt some thinking by commissions on the larger issue of the relationship between independent commissions and civil society. At the end of the day such bodies still have their functions to perform. But the performance of these functions will be very considerably enriched by interaction with civil society. There are embryonic models out there but it is early days yet.

New Zealand has shown the way on many aspects of disability. You are looked on as one of the most progressive nations in the world on both human rights and disability. Your civil society groups have shown just how effective and ultimately responsible they can be. New Zealand now has a golden opportunity again not just to follow but to lead. The domestic institutional architecture for change needs a blueprint that will establish an effective Focal Point and coordinating mechanism – one that will innovate in continuing to ensure that the voices of persons with disabilities are actively listened to. And it will require finesse in designating your domestic monitoring mechanism – one that again innovates with respect to active listening with civil society.

Let me conclude by returning to my main theme. You underplay the significance of the convention if you simply view it as supplying a set of norms against which to measure bad laws and policies. Instead I would encourage you to see it as an

instrument that can transform the process that makes these laws in the first place. The convention does not simply impose obligations – it seeks to improve the democratic process by opening it up to voices that were hitherto excluded or discounted.

You can only bring these voices to the table – and trust the process to reach the right outcomes - do that by active listening to and with persons with disabilities themselves. The process of drafting the convention showed how useful and constructive this engagement can be. In my view, the key to the success of the convention will be in how well States can embed the domestic institutional architecture for change envisaged by Article 33.

One last point. I also think it is best to think of the convention as articulating a theory of justice that every citizen can subscribe to and in which every citizen has a stake in its success. It is not a case of special rights for a particular group. It is about equal rights for all. And it is about making the democratic process open to all voices so that blockages can be dissolved and solutions found to deal with the legacy of the past and build a more inclusive society or all.

Thank you.