Tháinig an Comhchoiste le chéile ag 4.30 p.m.

The Joint Committee met at 4.30 p.m.

Comhaltaí a bhí i láthair/Members present:

<table>
<thead>
<tr>
<th>Teachta Dála/Deputies</th>
<th>Seanadóirí/Senators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seán Canney,</td>
<td>Ivana Bacik,</td>
</tr>
<tr>
<td>Neasa Hourigan,</td>
<td>Alice-Mary Higgins,</td>
</tr>
<tr>
<td>Pauline Tully,</td>
<td>Erin McGreehan,</td>
</tr>
<tr>
<td>Violet-Anne Wynne.</td>
<td>Fiona O’Loughlin,</td>
</tr>
<tr>
<td></td>
<td>Mary Seery Kearney.</td>
</tr>
</tbody>
</table>

Teachta/Deputy Michael Moynihan sa Chathaoir/in the Chair.
UN Convention on the Rights of Persons with Disabilities

**Chairman:** The purpose of today’s meeting is to discuss the progress on the United Nations Convention on the Rights of Persons with Disabilities, UNCRPD.

On behalf of the committee, I extend a warm welcome to Professor Gerard Quinn and thank him for coming before us. We look forward to our discussions and I am sure they will be of mutual benefit.

The witness is directed that only evidence connected with the subject matter of these proceedings is to be given and he is asked to respect the parliamentary practice to the effect that, where possible, he should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

I wish to advise that witnesses giving evidence from a location outside of the parliamentary precinct note that the constitutional protection afforded to witnesses attending to give evidence before committees may not extend to them. No clear guidance can be given as to whether, or the extent to which, the evidence given is covered by absolute privilege of a statutory nature. The person giving evidence from another jurisdiction should also be mindful of the domestic statutory regime. If witnesses are directed by the committee to cease giving evidence in relation to a particular matter they should respect that decision.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I invite Professor Quinn to make his opening statement.

**Professor Gerard Quinn:** Even though I am in County Galway, I cannot travel for obvious reasons. I am delighted to attend virtually today.

I am the incoming UN special rapporteur on the rights of persons with disabilities. Part of the role involves constructive interaction with Governments and, indeed, Parliaments and other key institutions. I see this as by far the most important part of the work, which is another reason I am delighted to be here today with the committee.

In preparation for today I was reminded of the famous publication of the Inter-Parliamentary Union, maybe three years ago, on the role of national parliaments in monitoring the implementation of the UNCRPD. This Parliament is among the first parliaments in the world to do so and is to be highly commended. I believe Iceland will follow soon. It would be nice, in time, to see this committee engage with other committees around the world to share experience and know-how.

I also note a recent consultative report of the Law Reform Commission, LRC, on the implementation of treaties in Irish law. In its report, the LRC highlighted the growing role of the Oireachtas not merely in the ratification process but also in the domestic monitoring process. The committee’s work helps to advance that useful trend in the Oireachtas and it is to be commended for that.

At the end of the day, a treaty is just a collection of words - a collection of majestic generalities. They have to be translated into concrete lines of action. There is a world of difference between the law in the books and the law in action. They have to reach the small places where
people live in their own lives whether as students, workers, carers or family members. That is where the committee comes in as it is the bridge between the high aspirations of international law and Irish life whether it is in Kinvara, Athy or Crossmolina.

In the time available I will focus on three things very briefly. First, I will say something about the core foundation pillars of the treaty. To me, they are a commitment to personhood and equality. This goes to what the witnesses who attended here last week described as the “attitudinal” changes that the convention seeks to bring about.

Second, I will say something about how to characterise the many rights in the UNCRPD. There are many ways to slice and dice them but I will put forward a simple way of doing that.

Third, I will say something about a core distinction in the treaty. Some of the committee’s witnesses in previous testimony have touched on the distinction between obligations of immediate effect and obligations of so-called progressive realisation. That may sound very academic but, believe me, it will become a core part of the committee’s work in the months and years ahead.

First, I will discuss the core of the treaty. We all thought when drafting the treaty that it would be another equal opportunities act, like the Americans with Disabilities Act or the British Disability Discrimination Act. It is to a large extent but something happened during the negotiations. Civil society began asking why is it that we are treated unequally in the first place and insisting that we deal with the underlying cause and not just the symptoms. To me, that is why the personhood provisions of the treaty are front and centre. To use a bit of jargon, they go to the very object and purpose of the treaty. We have made a lot of headway in Ireland on the two key personhood rights: the right to autonomy, legal capacity and supported decision-making; and the right to independent living. What the committee heard last week was that although some progress has been made, much more remains to be done. It is key to remember that the reason these rights are so important and central is that they carry the essential message of the treaty, which is that persons with disabilities are not objects to be managed and are subjects with rights just like everyone else.

Second, I will discuss how one characterises the rights in the treaty. Obviously one starts with the personhood rights, with the foundational, and then builds outwards. The drafters of this treaty did not want to create new rights. There is no such thing as disability rights. There are human rights that apply to everybody. What they wanted to do was find ways to give equal, effective access to exercise these rights by and for persons with disabilities. That is why the concept of equality in the convention is absolutely central. This is not equality in a traditional, narrow or legalistic sense. This is a concept of equality that takes account of accumulated disadvantages. It seeks to correct for those disadvantages and build a more inclusive future. The treaty takes this broad conception of equality and applies it to all of the usual rights of education, employment, health, the right to life and so forth. It innovates by emphasising multiple disadvantages or discrimination based on gender, age, indigenous groups and so forth.

Lastly, the committee in its work needs to be aware of a key distinction in international law and this treaty is no exception. All obligations associated with civil and political rights, such as freedom of expression, are to be immediately achieved - no excuses, no delays. There is no excuse for not providing the right to a fair trial. On the other hand, obligations associated with economic and social rights are to be progressively achieved over time with appropriate resources. This is very important to the committee’s work because many of the more important obligations in the treaty are of this character. Most of the rights in the treaty blend the two sets
of obligations. For example, it is obvious with respect to inclusive education that it is not going to be achieved immediately in a lower income country, but there are some important limiting principles. States are expected to use the maximum available resources and to be mindful of the impact of retrogressive steps. Retrogressive steps should never intrude on the inner core of a right. What really matters is the forward dynamic of change, that is, measurable progress over defined timelines with dedicated resources. Measuring this progress – this is what the committee’s guests were talking to it about last week - and judging whether enough has been done or more can be done is the essence of the committee’s job.

Most people focus on the substantive rights in the treaty, such as education, employment and independent living, and rightly so. The process innovations, however, are really key, as some guests of the committee mentioned last week with respect to Article 4.3 of the convention, and will be key to the committee’s future work too. Unlike most similar treaties, the UN disability treaty envisages, sets out and maps a domestic institutional architecture for change within particular states involving: power, which is governments and parliaments; voice, which is civil society; and ideas, which concerns the providers of innovative ideas for change. It is this co-production of change that really counts in the long run. I would add that this goes to legitimacy, for sure, but also to deficiency. For example, if people with disabilities had been consulted at the beginning of the Covid crisis, many of the predictable problems probably would not have happened. Parliamentary committees like this one have a key role to play in bridging abstract ideals, bringing them home and giving them reality in people's lives. After all, our Republic was founded on the idea of equal rights and opportunities for all our citizens, and I like to think the treaty is a spur for us to think more deeply about our national conversation and what equality means for all our citizens with disabilities.

The committee’s work will become even more important as the world recovers from Covid. The World Bank recently emphasised the need for a resilient and inclusive recovery. What it had in mind was the sheer fragility of support systems for many different vulnerable groups, including in particular people with disabilities, and the need to build in more robust and continuous modes of service into the future. For these and many other reasons, I greatly welcome the establishment of the committee and wish it every success in its work.

Chairman: I thank Professor Quinn. There is plenty of food for thought and there were some good points as to what we should apply ourselves to do.

Deputy Pauline Tully: I welcome Professor Quinn to the committee and thank him for his presentation. I congratulate him on his appointment as UN special rapporteur and wish him luck going forward. It is a very important role. As he pointed out, our committee has a very important role. I think, based on the meetings we have held, that we are determined to work cohesively to progress the implementation of the UNCPRD but to do so in a focused way and by engaging with all the key personnel, such as Professor Quinn and others who have appeared before us, including the Minister and the Minister of State with responsibility for disability issues, as well as others we will work with in the near future.

What does Professor Quinn consider the key aspects that we need to reflect in our terms of reference? It is something we are working on and want to finalise by the end of December. We are one of the first parliaments to set up a committee to monitor this issue, as the professor noted. What does he think will impact the implementation and progress of the UNCPRD? Are there lessons to be learned from other countries or international best practice?

Professor Gerard Quinn: They were very interesting questions but I might take some from
Senator Fiona O’Loughlin: It was very refreshing to listen to Professor Quinn and I wish him the best of luck in his very important role. I have no doubt, in light of what he shared with us, that he is the right person for the job. He outlined the whole notion of bridging abstract ideas and making them pragmatic and practical on the ground. That is his role, working with us, and I have no doubt we can work together really well. He talked about the committee having been set up and being one of the first of its type in the world. At our previous meeting, we said we wanted to show ambition and leadership and to make a difference to the lives of people with disabilities. How can we reflect that in our terms of reference?

Professor Quinn mentioned the optional protocols and how important they are. We have discussed them in recent meetings and would appreciate the advice he could give us in that regard. One of the key ways in which we want to do our business really well is by hearing the voices of people with disabilities, and we have received more than 180 submissions from people with disabilities, which is great. We want to ensure we go through them all in detail. Is there anything else that Professor Quinn feels we should do to ensure that the voices of those with disabilities are heard?

Will the professor elaborate on the key process innovations he mentioned? We would love to engage with other parliaments to ensure we can learn from them and they can learn from us. While we have a national function, globally we need to work to ensure that people with disabilities are accepted throughout the world and have opportunity throughout the world.

Senator Ivana Bacik: Professor Quinn is very welcome to the committee and I congratulate him again on his very well deserved appointment. I was thrilled to see him appointed as UN special rapporteur on the rights of persons with disabilities. I pay tribute to him on all the work he has done over many years at the National University of Ireland, Galway, and on an international stage to progress the rights of persons with disabilities in law. It is so important. I thank him for the great presentation and the emphasis he put on equality and the practical import of our committee’s work and of the convention. Senator O’Loughlin pointed out that the committee is keen to ensure we are representing and hearing the voices and lived experiences of persons with disabilities in our work. With this in mind, I want to focus my question on the issue of decongregation. Professor Quinn made a point in his legal memo on segregation and segregated facilities in respect of conflicts. It appears there are conflicts regarding the implementation of the convention between the right to independent living and the use of EU funding to build and refurbish long-term residential institutions. Professor Quinn has said Articles 5 and 19 of the UNCRPD clearly establish that long-term care residential institutions are a form of discrimination. How do we address this, particularly where we have seen concerns expressed by some organisations and individuals that a one-size-fits-all policy of decongregation may not have regard to individual wills and preferences of persons with disabilities? It is one of the areas where we may have difficulty in finding a balance and I would love to hear Professor Quinn’s views on this.

Professor Gerard Quinn: That is a fantastic set of questions. With respect to Deputy Tully’s question on the terms of reference, I suggest she goes back and has a look at the Inter-Parliamentary Union report on the role of parliaments. There are two or three other parliaments in the world that are very active, including the New Zealand Parliament. The European Parliament has a group on disability. It does not match exactly what a national parliament does but nevertheless it would be worthwhile to have conversations with colleagues in those settings to get their view. My sense of it, having watched previous proceedings of the committee, is that...
Ireland had been doing pretty well. We have a lot of law on the books. It has not been commenced and for whatever reason it has been held back. One of the committee’s initial jobs of work will be not just to expose that this has happened but to ask why and ask the deeper questions about what are the inhibiting factors holding this back. Then it will be for the committee to make a judgment on whether there has been sufficient progressive realisation of the rights in Ireland. The UN committee can make this judgment from afar but it is much better that this committee makes it in Dublin and puts it finger on what systemic changes are needed to unleash the process of change. Whether the committee likes its or not, probably one of its first jobs of work will be to try to figure out what is going on, why these things are being held up and whether there is a way it can actually fix them.

With respect to Senator O’Loughlin’s question on voice and including people with disabilities, let me backtrack a little bit. Most international treaties set out a number of benchmarks and norms and then it is for governments to figure out how to apply them and work them out. This treaty is a bit different. It states there is a transmission belt between New York and Dublin, or Berlin, Johannesburg or wherever, or between Geneva and Dublin, which requires Dublin to get its act together. It actually imagines what the process for domestic implementation and domestic monitoring would look like. This is Article 33 of the convention. It is a very unusual provision in any international convention. Arguably, it should have been in all of the other conventions, and many people say the disability convention actually delivers on the original intent of the UN Universal Declaration of Human Rights, going back to the 1940s and the 1950s, which got sidetracked by the Cold War and other elements. It is a very simple construct. It is that governments act smartly and that there would be a focal point and co-ordination mechanism within government. We can go down a rabbit hole on the technicalities of this but the thinking behind it is simple. It is that if regular people fall between the cracks, so what as they will recover, but for people with disabilities and people living on the margins, falling between the cracks is a luxury we cannot afford so we have to have more smart governance in place to try to deal with this.

Governments have to actively collaborate with civil society on the production of policy. This is what a lot of people call the co-production of social policy. It is probably the future anyhow for many different issues and many different groups. It just happens to be mandated by the treaty. In the drafting of the treaty, many civil society groups turned up and governments were very fearful of this at the beginning but towards the end of the process they were competing with one another to say they had listened better and had taken on board better what the various groups were saying. Suddenly the penny dropped that this is the way to move forward. This is why Article 4.3 is written into the convention. It requires active consultation with people with disabilities and their representative organisations. One of the tricky issues here is what is a representative organisation. Even if it is representative, are there some voices that are not heard to which we should reach out?

The convention imagines there would be a reality check in terms of an independent framework for monitoring progress made in implementation. This monitoring framework is the Irish Human Rights and Equality Commission alongside two or three others. When I was listening last week, I was struck that the legislation that specifically posits this in place has still not been enacted. The convention requires this legislation be enacted. In an ideal situation we would not want to be before the UN committee defending setting up the framework without having the legislation in place. This is part of the catch up the committee will have to have a look at.

By the way, and I was trying to figure out how to make this point before the committee, there
is another article that the committee might want to have a close look at, perhaps in conjunction with the foreign affairs committee. Article 32 of the convention requires countries such as Ireland to make sure its foreign policy and development assistance programme is also inclusive of people with disabilities. Why is this relevant? Ireland’s development assistance builds schools in Africa. Are they inclusive? Is the education system being put in place inclusive? This is a question of value for money for the Irish taxpayer as much as anything else but perhaps there is a way the committee can examine it with the foreign affairs committee.

I thank Senator Bacik for her kind words. With regard to community living and the right to live independently and be included in the community, the reason we did not call it independent living in the text was because everybody was aware of what happened in the early 1980s with people with disabilities and others being dumped on the streets in various countries. We thought the language was a little bit debased and, therefore, a separate language is applied, which is living independently and being included in the community.

There are many tensions and one of the most important is between autonomy rights, that is, the right of people to choose where they live and with whom they live versus the mandate for community living. One of the arguments made before the task force on ending congregated settings way back in 2010 and 2011 was that we cannot assume a person will not choose to live in an institution, therefore let us keep the funding stream going to enable them to live in an institution. This was actually taken seriously back then. To its credit, the committee on ending congregated settings dismissed this argument and said the right to live in the community is the right to choose how to live in a community and not whether to live in a community. I was very mindful listening to the testimony last week that some people were making a distinction between the cultural shift and some of the technical interpretations of the culture shift. The way I saw the report on the ending of congregated settings is that if it is viewed through the cultural shift, valuing people living and flourishing in the community, then that magic figure of four that was mentioned last week really boils down to two, that is to say, one choosing to live with somebody with a disability while the other would be people without disabilities and not the service providers. That was very important. That was the original vision of the report on ending congregated settings. Some countries around the world have used it as a model and are now far ahead of us.

I will end by saying that the controversy about the Structural Fund continues. This is taxpayers’ money that is being used in some countries to build institutions for people with disabilities. They are not called institutions anymore. They are downsizing to what they call hostels, of 12 to 14 people, in some countries, but to us they are institutions. It is a running scandal within the European institutions about how to end this. I am sorry that they were long-winded answers but the questions were really good too.

Deputy Neasa Hourigan: I thank Professor Quinn for attending the meeting. I have a number of quick questions. He touched on the matter relating to one of my first questions, about whether the current legislation is fit for purpose both in terms of its definition of disability and in supporting the work of this committee. Professor Quinn has spoken a bit about that. I am interested in his opinion on whether the charitable status of section 38 and 39 organisations, which are such a major provider of services in the State, has an impact on our ability to conform to the requirements of the UNCRPD in the future. I think in particular of our inability to audit them through the Comptroller and Auditor General, which we would be able to do if they were Government bodies. I am interested in whether Professor Quinn would see the non-State status of some of the services we provide as a barrier.
Professor Quinn is correct. The energy in the committee is brilliant in terms of making this really meaningful for the community of people with disabilities, but I fear that we will focus more on the Article 4.3 side of things and listening to people’s experience and less on the monitoring side. For it to be meaningful, I think we need to start talking very early in the process about the metrics and how we are going to measure this. I am interested in hearing Professor Quinn’s views on that because I am aware that the convention requires states, in accordance with their legal and administrative systems, to maintain, strengthen, designate or establish a framework to promote the text and monitor implementation of the convention. I was wondering about the use of the small word “or”. In Professor Quinn’s estimation, what is expected of us in two years’ time or whenever we make a report on the UNCRPD? What would the evaluation look like? I want to make sure that we are really effecting change, that the change is measurable and that we can hold people to account. For me, that means having fairly hard data. I am interested in that area.

Deputy Seán Canney: I thank Professor Quinn. I hope everything is well in Galway. I will be down there tomorrow night. I ask him to keep it safe for me. His opening remarks were very critical in terms of the language he used. As the Chairman said, there are many lines we can take from it for the committee. One of my questions also concerns what Deputy Hourigan said about measuring progress. Last week, we heard that surveys are not really the way to do it. We need to talk to people and let them tell us, but we also need to dig deeper than just to get people’s feelings or what they believe is happening. I would welcome Professor Quinn’s thoughts on that.

How do we get the legislation on a trajectory where we can see what is happening when and that we ensure we get it over the line? In terms of dealing with disabilities, what local authorities say is that they will do it if they have the resources. It gets done if it is the law, so we need to make sure that we get the resources but also that we back things up with the law to ensure progress.

The committee will have to interact to a significant extent with people with disabilities and their families right across the spectrum from when children are born to when they are older. In my experience of public life, I have seen many issues arise. Professor Quinn alluded himself to the fact that the law is words on paper, as is the UN convention, but they require implementation and action. What seems to happen is that gaps appear in every facet of service provision at the transition point, for example, from young children to teenage years to adulthood. At each stage families have to start again because of the gaps. Families have to fight for everything. I would welcome Professor Quinn’s views on that and how we can put the teeth that are required into all of the words that we have.

Deputy Violet-Anne Wynne: I echo all of the comments made so far by members. I welcome Professor Quinn to the meeting, congratulate him on his appointment and thank him for all of the information he has provided, especially his legal memo, which was very informative.

We all want the same kind of information. I had questions on the terms of reference and other issues that have been raised already, so I will try to focus on something a little bit different. People want to see action. Legislation has not been enacted but was just left on the shelf. I am concerned about the optional protocol. I accept that we have set up the committee and we are leading the way in Europe in that regard but, at the same time, we are the only member state that has not ratified the optional protocol. My question concerns how Professor Quinn feels the situation is developing at the moment. I know we have to report at the end of the year. The Minister of State, Deputy Rabbitte, has committed to looking at ratification in January. Is that
realistic, given that legislation has not been enacted? Professor Quinn has already stated that we have to expose the irregularities or discrepancies in legislation but at the same time to push for them to be enacted first before the ratification can take place.

In his submission, the professor mentioned about how the retrogressive steps should not ever intrude on the inner core of a right. In our reaction to Covid, the shutdown of day services was a violation of the human rights of people with disabilities. That is how it felt to them every single day. Until the ratification takes place, is there anything Professor Quinn could suggest we can do to ensure that does not happen again?

Senator Erin McGreehan: I thank Professor Quinn for attending. It is a great pleasure to have him with us. It is an extra pleasure for me as I am a graduate in law from NUIG. For the many years I was in Galway his reputation among students and staff was high, both academically and personally. It is fantastic to have him here. I congratulate him on his new role.

His opening remarks were most inspiring. They filled me with possibilities about the what-ifs and the many successes we can and must have in this committee. We must make sure that the committee is wide reaching and that we take the opportunity to be transformative. Professor Quinn referred to a line in the Proclamation about equal rights and equal opportunities. I used to read that line endlessly as a child and believe that nothing was beyond me. I was able to live that line. Not everybody is able to live it. It has driven me for my entire life. We now have the mindset change to bring about change and regard everyone in society as equal. I realise there are many challenges regarding the implementation of the UNCRPD because there are so many complex issues and dynamics involved. We must generate the commitment in both civil society and the Government.

Many questions have already been asked. I would really appreciate Professor Quinn’s comments on how we can best move forward from policy to implementation, and on how we can monitor and evaluate our progression in this regard.

Article 8 of the convention alludes to awareness raising. This is a huge issue for me. No child should leave school without disability awareness training. We should all receive it as public sector workers. In Professor Quinn’s opinion, what is the best way to do this? I refer to change from the bottom up. How can we best achieve a kinder society for everybody?

Senator Alice-Mary Higgins: I join the others in extending to Professor Quinn my warmest congratulations. I was delighted that he was appointed to his role. Of course, I am delighted as a Galwegian but, most important, we are now in our national roles and Professor Quinn is in his international role.

It was interesting that Professor Quinn commented on foreign policy. In his new international role, I encourage him to engage with us always where there are points of policy coherence. He mentioned overseas aid and the question of how we can be consistent in championing these issues. Are there other areas he wants to flag in terms of international policy coherence, not just concerning Ireland? I am thinking of areas where these issues are forgotten and where the relevance is sometimes neglected.

I want to focus on what Professor Quinn said about “obligations of immediate effect and obligations of ... progressive realisation”. As I understand it, civil and political rights are the obligations of immediate effect. Could Professor Quinn give some examples? The right to private and family life and the right to choose where and with whom one lives, for example,
are important. Questions of participation, including public participation, arise in this context. Education, as a very large bloc, and the health system and transport are easier areas in which to speak of rights but I am referring to civil and political rights such as the rights to political or civil participation and social and cultural participation. Do they fall into that space? How can we address them?

I would really appreciate it if Professor Quinn could comment on regressive steps. While, on the one side, there is the work on progressive realisation, designated resources and the momentum or direction of positive change, are regressive steps more than just steps that attack the rights of somebody? When major steps forward as a State, such as substantial capital expenditure on schools, as Professor Quinn mentioned, or on social housing, fail to take account of or acknowledge the rights of persons with disabilities, do they become regressive? I am not referring to a step that is simply hostile per se but to one that involves negligence through omission. Can it be read as a regressive step?

Deputy Hourigan rightly pointed out the problem whereby so much is dependent on procurement and outsourcing within Ireland. Some outsourcing is to the voluntary sector and some is to the private sector. How do we ensure our resource allocation as a State is responsible and cognisant of the UNCRPD?

Could Professor Quinn comment specifically on universal design and how it might be incorporated? It is the very literal part of the architecture of change. I am definitely noticing what Professor Quinn mentioned regarding Article 33. How we intersect with other treaties will be important. It could be that a stronger implementation mechanism for the UNCRPD and rights could set a useful example.

I thank Professor Quinn. I hope this engagement will be ongoing.

Chairman: The engagement will have to be ongoing because Professor Quinn has very useful information for us. May I put him on the spot? We will be deliberating over the coming weeks on the terms of reference we want to set as a committee. I speak for everyone who has attended our meetings recently and acknowledge they are passionate about what they want the committee to achieve. We are trying to advance the case of people with disabilities in Ireland and internationally. We have been challenged to implement the treaty in front of us. Could Professor Quinn state, in a sentence or two, what he would like to see reflected in our terms of reference so we may achieve the best outcomes possible for people with disabilities in the State and abroad?

Professor Gerard Quinn: Those were fantastic questions. I will make one or two comments before I deal with the individual questions. It seems to me there was a culture shift, or what was described last week as an “attitudinal” change, among some of the witnesses before the committee. It is very easy to achieve at a headline level but it is very difficult to have it percolate down into how systems behave and function. It has always seemed to me, or to a close reader of Max Weber, that systems take a lot longer to change than might be envisaged and that they harbour within them the DNA of old ways of thinking. They are not even conscious of that. We have done a pretty good job at headline level but it has not really percolated all that deeply. The litmus test is a crisis, like Covid, whereby one can see the old way of thinking coming directly to the surface. The real challenge concerns how we can bring about systems change so attitudinal change will become a natural reflex of the system, not something to be imposed after the fact and so forth.
The added value of the committee is that it is not just a passive recipient of testimonials from civil society; it has space for deliberative reason. Members can ask the hard questions about what is really going on, identify the blockages, get them out into the light of day and figure out a way of trying to resolve them. That is a great service to government and civil society. In this regard, value is added to the testimonials from civil society. Therefore, I do not regard the committee solely as a passive recipient of the testimonials. I consider the testimonials to be prodding members to ask the harder questions, go deeper and unleash the dynamics for genuine systems change in the future. One reason I believe there is close chemistry between the UN-CRPD work that the committee is about to do and the work on the UN sustainable development goals is that the latter are much more intentionally directed at the systems change that needs to be brought about.

Deputy Hourigan talked about how we measure progress and asked what the metrics are for progressive achievement and progressive realisation. The committee can learn from the international work being done, but at the end of the day it is down to it to decide whether, given X, Y or Z - committee members will know what X, Y and Z are - the Department of Education, for example, is doing enough on inclusive education and so on. There are a lot of metrics out there for slicing and dicing the convention. Sooner or later, one goes down lots of rabbit holes and misses the actual dynamic of change. It is a very tricky thing.

I would say - this comes across in some of the questions, indirectly at least - we have yet to see a real change in service design and delivery in Ireland. This cuts across the board, not just for people with disabilities but for older people as well. We have begun a few things. We had the task force on the individualisation of budgets and services. It seems that is not going as fast it could and that this points to a break-up of the existing architecture for service delivery. It is, almost, an invitation to very different kinds of providers to enter the market. People are talking at the moment about the “Uberisation” of services for people with disabilities and the “you go out there, you discover what suits you” response. This might not necessarily be a traditional service provider but the individual can tailor what is useful to him or her at the end of the day. This has proven itself to be responsive and, also, very efficient and not a waste of taxpayers’ money. Somebody asked earlier what the ambition is. That could be a wonderful ambition for Ireland. Ireland will find many allies in the European Association of Service Providers who want to see revolutions in how services are delivered.

On the optional protocol, it is a bit of a mystery to me because Ireland ratified a revised treaty on economic and social rights in the Council of Europe system in April 2000. At the same time, not one day, one year or five years later but on the same day, it also ratified the optional protocol under that convention allowing for complaints. *A priori*, there is no reason known to me that the optional protocol could not be ratified within the next five minutes. That does not take legislation; it just takes a resolution from both Houses enabling the Government to ratify and so forth. I see an inconsistency in the approach between the CRPD optional protocol and the approach taken under what is called “the revised European Social Charter”. Both optional protocols allow for the ventilation of complaints that deal with economic and social rights, which moves this into the debate about progressive realisation. If it was not an obstacle for one ratification, I am not so sure why it should be an obstacle for ratification of an additional protocol. The Government may have been worried that this would be an indirect route to the judicial enforceability of economic and social rights but that cannot be the case because ratification of this international instrument, by no stretch of the imagination, confers extended jurisdiction on the Irish courts to litigate, as it were, these kinds of rights and complaints. I think that was the issue for Deputy Wynne.
The point Senator McGreehan made about equality is interesting. There is a tendency to see the treaty as an external imposition. To me, it is not. It is about reminding us we have already committed to doing this. It is a roadmap that helps us to ask the right questions and to own the process of change. It is not about Geneva or New York dictating but about us internalising these values very deeply. In that sense, I see the treaty as an aid to that process of internalisation. This is something we should be doing. Sometimes, it is not a good idea to do things because the law or an international treaty states we should do it. One has to do something because one believes in it.

Senator Higgins asked a lot of interesting questions, one of which was on development assistance. There is a guidance note being prepared by our development aid people on how to take into account disability in how we spend our moneys, for example, in Africa or places like that. It would be well worth the committee’s time to follow that work in conjunction with the Joint Committee on Foreign Affairs and Defence. I am not sufficiently au fait in how this committee would do that but it is a very important piece of work. We will have to answer on that before the UNCRPD committee and so it would be a very interesting piece of work to look at. Senator Higgins also asked what are the other big issues. There was a resolution last year before the UN Security Council, which Ireland is about to join, on protecting civilians with disabilities during armed conflicts. It is an historic resolution. Unfortunately, there are 16 armed conflicts around the world today. The plight of people with disabilities in those countries can only be imagined. There is an ongoing conversation, particularly about peacekeeping operations in disabilities but also about the laws of conflicts and people with disabilities. NATO is doing a lot of work on this issue. It would be nice if Ireland could be encouraged, via this committee or otherwise, to keep this issue on the agenda at the level of the UN Security Council. It would be fully in keeping with our traditions for peacekeeping throughout the world.

As to how one distinguishes between obligations of immediate effect and those that have to be progressively realised, which is the hard question Senator Higgins threw at me, it is complicated and complicated further by the fact that the treaty does not separate them out. Each right is a blending of the two. It is sometimes really hard to disentangle. For example, is everything under Article 12, which deals with legal capacity and assisted decision-making, to be implemented immediately or can a country progressively achieve the supports system we need to put in place to enable people to exercise their rights? It is a bit academic in that context because it is pretty obvious that there are delays in putting support systems in place. Even if one decided that that side of the provision is only to be progressively realised, Ireland is falling short. There is no straightforward answer. It depends on how one reads each particular article. I would be guided by what the UNCRPD committee says in its jurisprudence. Also, retrogressive steps are not necessarily with hostile intention. Periodically, we go through economic ups and downs and this will have implications for resource allocation. International law makes allowance for that. One cannot legislate against economic retrenchments; they just happen in economical cycles. There are limiting principles in how far one can go. The squeaky wheel sometimes gets the oil, but on the other hand, the wheel that does not squeak is punished first. That is something to be avoided at all costs. Hopefully, we are going to bounce back after Covid but even beyond that, there will be some retrenchments within Departments as distinct from between Departments. That is a very interesting issue to look at.

There were one or two other issues raised. The speaker did not use the phrase “outsourcing either to municipal authorities or to private actors” but I am going to use it. There is an important point of principle here, which is the notion of what is called “state responsibility”. Even if one delegates to a third party to do X, Y or Z, one cannot avoid liability and answerability for
their deficits on the international stage. I remember one country famously took this to mean that when it came to all of the economic and social stuff it had given to private parties, it had no answerability. That is wrong; it retains full answerability. That is not just under the treaty, it is under general principles of state responsibility in international law. As to universal design, I am not an expert on that but I know it is important.

Reference was made to public procurement debate. The UN has produced a disability inclusion strategy. We are trying to make sure that all its specialised agencies are also inclusive of disability and one of the big debating points is the role of public procurement in making that happen. There are many interesting debates happening around the world on public procurement that we can easily tap into.

Last but not least, getting back to the issue of systems and structural change, we should be looking at the approach of the Australian Government, which is that we should view disability and even old age as a natural contingency and make explicit allowance for it in terms of insurance programmes so that we can adequately fund what is needed into the future. That is the way they are rolling out the personalisation of services in Australia and it is proving to be quite successful so far. It is certainly worth exploring in an Irish context because it would help to get around the stranglehold of very traditional support service structures in this country. I am sorry that I have been very long-winded with my answers.

Chairman: I thank Professor Quinn very much. His contribution was insightful and I believe members all got something from it. We will be referring back to it again as we are charged with the implementation of the UN convention. He has asked some stark questions in his responses for us to follow up on in terms of trying to get answers from the Government, which we will be doing. I ask him to keep in contact with us. We will revert to him on a number of occasions looking for clarification on points and so forth. I congratulate Professor Quinn and wish him every success in his new role. We look forward to working with him.

I thank everyone for their engagement today. Let us keep it going. Our committee stands adjourned until our next meeting on Wednesday, 25 November. We will have a private meeting first and then move to our other business.

The joint committee adjourned at 5.35 p.m. until 4.30 p.m. on Wednesday, 25 November 2020.