

**제6차 유엔 장애인권리협약 특별위원회  
참가 결과보고**

**2005년 11월**

**국 가 인 권 위 원 회**

## 요 약

- 제6차 특별위원회는 회원국 간 열띤 논의와 의장직을 수행한 뉴질랜드 돈 맥케이 대사(Ambassador Don McKay)의 활발한 개입으로 협약을 최종안에 가깝도록 상당부분 진전시킨 성과가 있었음.
- 또한 의장은 모든 조문의 정부간 논의 후에 NGO와 국가인권기구의 의견을 개진할 수 있도록 의사진행결정을 함으로써 기존의 특별위원회보다는 한층 발전적인 논의가 가능하였음.
- 한국측은 여성장애인 단독조항 (제15조 bis) 설치를 제안하여, ‘여성’이라는 소외집단 문제를 논의의 중심에 끌어올리는 중요한 역할을 하였음.
- 다만, EU 등을 중심으로 단독조항의 설치는 여성의 권리를 이러한 조항에만 한정한다는 주장과 부딪힘에 따라 여성장애인 단독조항 설치 건은 향후에도 논란이 있을 것으로 예상.
- 장애여성 단독조항관련 논의 외에도, 전반적으로 EU는 각각의 조문을 모든 장애인에게 해당시키기 위하여 간소화 하고 포괄적으로 표현하려는 주장을 계속하였으며, 이러한 주장은 가능한 한 세부적으로 명시하는 것이 그 이행에 있어서 현실적이라는 의견을 갖은 여러 국가들과 부딪힘.
- 협약이 경제적, 사회적 및 문화적 권리를 전반에서 다루고 있음에 따라 ‘점진적으로만 현실화(progressive realization)’가 가능하다는 정부의 의견이 대두되었음. 이는 점진적이라는 명목 하에 국가가 조항의 이행을 미룰 수 있으므로 우려의 목소리가 있음.
- APF, ICC 등, 국가인권기구 대표단들은 제25조 모니터링(감시)와 관련하여 국내적 감시와 국제적 감시가 분리되어야 하고 국내적 감시에 있어서 국가인권기구들이 중요한 역할을 할 수 있음을 구체적 조문을 통해 제안하였음

# 목 차

<b>I. 제6차 장애인권리협약 특별위원회 개요</b> .....	5
1. 개    괄 .....	5
2. 특별위원회 현재까지 진행사항 .....	7
3. 특별위원회 향후 진행계획 .....	8
4. 우리측 참가 관련사항 .....	8
<b>II. 제6차 장애인권리협약 특별위원회 주요 논의사항</b> .....	10
1. 제6차 장애인권리협약 특별위원회 쟁점 및 의의 .....	10
2. 인권위측 활동사항 .....	11
3. 한국측 활동사항 .....	11
4. NI측 활동사항 .....	12
<b>III. 조항별 세부 논의사항</b> .....	13
1. 임시의제 채택 등 일반사항 .....	13
2. 제15조 (독립적으로 사는 것과 지역사회에 통합되는 것) .....	13
3. 제15조 bis (장애여성 단독조항) .....	15
4. 제16조 (장애아동) .....	16
5. 제17조 (교육) .....	19
6. 제18조 (정치적, 공적 생활에의 참여) .....	24
7. 제19조 (접근성) .....	27
8. 제20조 (개인의 이동) .....	30
9. 제21조 (건강과 재활에 대한 권리) .....	31
10. 제22조 (노동권) .....	34
11. 제23조 (사회보장과 적절한 삶의 표준) .....	37
12. 제24조 (문화적 삶, 레크리에이션, 여가생활, 스포츠에 대한 참여) .....	39
13. 제24조 bis (국제협력 단독조항) .....	43
14. 제25조 (감시) .....	44

## 붙임자료

1. NI측 모니터링 제안서(국,영문) 각1부
2. 장애여성 단독조항 관련 한국정부 발언문(영문) 1부
3. 조항별 Facilitator 목록 1부
4. 조항별 Facilitator 제작안(영문) 1부
5. 유엔측 제6차 장애인권리협약 개최 결과 보고서(영문) 1 부

# I. 제6차 장애인권리협약 특별위원회 개요

## 1. 개 괄

### ○ 회의 명칭

- 장애인의 권리와 존엄 보호 및 증진을 위한 포괄적이고 통합적인 국제장애인 권리협약 관련 제6차 특별위원회 (Sixtieth Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities)

### ○ 배경

- 유엔 총회에서 유엔인권위원회 및 사회발전위원회의 권고에 따라 장애인권리 협약 특별위원회 설치 결정(56/168)
- 유엔 총회에서 2005년의 경우 1-2월과 7-8월에 2회, 각 10일간 세션을 개최 할 것을 결정(29/198)

### ○ 일시 : 2005. 8. 1(월)~ 8. 12(금) 2주간, 총 20개 회의로 구성

### ○ 장소 : 미국, 뉴욕, UN 본부

### ○ 회의 목적 : 2004년 8월 UN 장애인권리협약 특별위원회 제4차 회의에서 채택된 협약초안에 이어 제15조 ~ 25조에 대한 논의

### ○ 의장단

- 의장 : 돈 맥케이(Don Mackay), 뉴질랜드 대사
- 부의장 : Jorge Ballesteró(코스타리카), Ivana Grollovà(체코), Mu'taz Hyassat (요르단), Laoura Lazouras(남아공)

### ○ 사무처

- 유엔 사회정책·개발부(Division for Social Policy and Development), 경제사

회국(Department of Economic and Social Affairs)에서 실질적 사무처 (substantive secretariat) 역할 담당

- 총회·회의운영국(Department for General Assembly and Conference Management) 하의 무장및식민해제부(Disarmament and Decolonization Affairs Branch)에서 현장 사무처(committee secretariat) 역할 담당

## ○ 회의 일정

1. 개회
2. 의장단 선출
3. 의제채택
4. 회의구성
5. 의제검토
  - 15조 (독립적 생활과 지역사회에의 통합) : 8.1
  - 24조 bis (국제협력 단독조항) : 8.1
  - 15조 bis (장애여성 단독조항) : 8.2
  - 16조 (장애아동) : 8.2
  - 17조 (교육) : 8.2~4
  - 18조 (정치적, 대중적 삶에의 참여) : 8.4
  - 19조 (접근성) : 8.5
  - 20조 (개인의 이동) : 8.5
  - 21조 (건강과 재활에 대한 권리) : 8.8
  - 23조 (사회보장과 적절한 삶의 표준) : 8.8~9
  - 22조 (노동에 대한 권리) : 8.9~10
  - 24조 (문화, 여가 및 스포츠에 참여) : 8.10
  - 25조 (모니터링 ) 8.11~12
6. 제6차 특별위원회 폐회
7. 제6차 특별위원회 보고서 채택

## ○ 회의 진행방식

- 의장인 뉴질랜드 돈 맥케이(Don McKay) 대사는 정부대표의 발언 및 토론은 비공식 협의로 진행하며, 각 조항에 대한 정부의 비공식 토론 이후 공식 세션을 열어 국제단체, 국가인권기구, NGO 등이 발언을 들을 수 있도록 하는 절차를 채택하였음.

## 2. 특별위원회 현재까지 진행사항

- 2001년 56차 UN 총의 결의안('01.12.19, 56/168)에 따라 특별위원회를 설립하고, '02년 8월부터 2004년 8월까지 4차례의 특별위원회를 개최하여 협약의 형태, 성격 및 구조 및 비차별, 평등원칙 등을 토의하여 왔음.
- **제1차 특별위원회(2002년 8월)**
  - 회의 의제 설정 및 회의 구성(organization of work)에 대한 합의부재로 인해 절차적인 사항에 대한 논의로 대부분의 시간을 소진
- **제2차 특별위원회(2003년 6월)**
  - 협약의 형태, 성격 및 구조 및 비차별, 평등원칙 등을 토의하고 특별위원회에서 협약 초안을 작성하기 위한 실무그룹 구성을 결의
- **실무그룹 회의(2004년 1월)**
  - 27명의 정부대표 및 12명의 NGO 대표 및 1명의 국가인권기구 대표로 구성된 실무그룹 회의에서 협약초안 마련
- **제3차 특별위원회(2004년 5월)**
  - 2004년 1월 실무그룹에서 채택한 초안 자료에 대한 정부대표 차원의 구체적인 논의를 진행함.
- **제4차 특별위원회(2004년 8월)**
  - 제목, 구성, 전문, 정의(제3조), 모니터링(제25조)을 검토하여 실무단의 보고서(A/AC.265/2004/WG.1) 내용을 장애인권리협약 초안으로 결정함.
  - 제1조~제15조와 제24-2조를 조항별로 검토하고 추후 회의를 개최하여 초안을 계속적으로 검토하기로 결정
  - 특별위원회는 협약 관련회의를 2005년에도 지속되어야 함을 건의하고 제5차 회의를 2005년 1월24일에서 2월4일까지 개최할 것을 건의함
- **제5차 특별위원회(2005년 1월)**
  - 제7조~제15조의 각 조항별 토의가 이루어졌음.
  - 제11조 앞에 정의에 대한 접근(Access to Justice) 조항을 추가시킬 것인가에 대한 논의가 있었으나 개념과 내용의 중복성이 지적되어 포함하지 않기로 협의함.
  - 여성장애인 등 새로운 조항을 포함시키자는 장애인 NGO들의 의견개진

### 3. 특별위원회 향후 진행계획(권고사항)

- 의장직을 수행한 돈 맥케이 뉴질랜드 대사는 10월까지 모든 의견을 수렴한 장애인권리협약 '의장안'을 제출할 것을 알림.
- 2006년 1월과 8월 최소 2차례의 특별위원회를 추가적으로 개최할 것을 결정하였으며, 최소 10일에서 최고 15일까지 회의를 진행하도록 결정함.
- 제7차 특별위원회 회기의 준비 및 구성을 위하여 멤버와 사무처에서 '회기간 회의(inter-sessional meetings)'를 개최하며 제7차 회의의 최소 4주전까지 회의 일정을 마련토록 함.
- 또한, 특별위원회는 유엔 내에 장애인의 접근성을 보장하기 위한 노력이 필요함을 다시 강조하고 점자문서의 제공 등 조치를 취해줄 것을 사무총장에 요구함.

### 4. 우리측 참가 관련사항

- 우리측 참가 목적
  - 장애인권리협약 성안과정 모니터링
  - 여성장애인 단독조항 신설(15bis)을 위하여 NI차원에서 로비활동
  - NGO 및 정부대표와의 협력 강화
- 우리측 대표단 및 출장기간

소속	직급	성명	출장기간
차별조사국	국장	안종철	2005.8.6~8.14
국제협력담당관실	별정6급	김수산	2005.7.31~8.7



※ 정부측 대표단

소속	직위	성명	비고
외교통상부	유엔대표부 차석대사	신각수	수석대표
	국제기구정책관	강경화	정부대표
	유엔대표부 참사관	최홍기	"
	유엔대표부 서기관	김일범	"
	인권사회과 외무관	조수진	"
	국제협약과 외무관	이석주	"
보건복지부	장애인정책과장	왕진호	"
민 간	한국보건사회연구원	변용찬	"
	한국장애인단체총연합회	김동호	"

※ 국회 장애인특별위원회 위원 참관

- 안택수 위원장을 포함, 장향숙·정화원·현애자의원 등이 장애인특별위원회 대표단 자격으로 제6차 특별위원회에 참관(8.1~8.5)하여 정부대표 및 장애계 격려 \* 나경원의원도 개인자격으로 제6차 회의 참관

※ 장애권리조약추진연대 측 참석자

번호	성명	구분	소속 및 직책
1	김미연	초안위원	장애여성문화공동체 대표
2	김병수	통역	
3	박지영	통역	
4	배용호	초안위원	장애인편의시설시민추진연대 정책실장
5	변승일	집행위원	한국농아인협회 회장
6	서승현	초안위원	내일을 여는 멋진여성
7	이석구	집행위원	한국DPI 사무처장
8	허혜숙	집행위원	내일을 여는 멋진여성 회장
9	최경숙	집행위원	한국여성장애인연합회 대표

※ 국가인권기구 측 참가자 (한국대표 제외 총 11명)

- ICC 대표 : 인도 인권위원회 장애관련 특별보고관 Ms. Anuradha Mohit, Dr. Alice Sheppard (인권고등판무관실)
- APF 대표 : 호주 뉴사우스웨일즈 대학 국제법 교수 Mr. Andrew Byrnes, Ms. Siddhi Vyas
- 국가인권기구 : 뉴질랜드 Ms. Robyn Hunt, 아일랜드 Professor William Binchy, Professor Gerard Quinn, 스웨덴 Mr. Lars Löow, Ms. Anna Bruce, 캐나다 Mr. Harvey Goldberg, Ms. Karen Izzard.

## II. 제6차 장애인권리협약 특별위원회 주요 논의사항

### 1. 제6차 장애인권리협약 특별위원회 쟁점 및 의의

- 제6차 특별위원회는 회원국 간 열띤 논의와 의장직을 수행한 뉴질랜드 돈맥케이 대사(Ambassador Don McKay)의 활발한 개입으로 협약을 최종안에 가깝도록 상당부분 진전시킨 성과가 있었음.
- 또한 의장은 모든 조문의 정부간 논의 후에 NGO와 국가인권기구의 의견을 개진할 수 있도록 의사진행결정을 함으로써 기존의 특별위원회보다는 한층 발전적인 논의가 가능하였음.
- 한국측은 여성장애인 단독조항 (제15조 bis) 설치를 제안하여, '여성'이라는 소외집단 문제를 논의의 중심에 끌어올리는 중요한 역할을 하였음.
- 다만, EU 등을 중심으로 단독조항의 설치에 여성의 권리를 이러한 조항에만 한정한다는 주장과 부딪힘에 따라 여성장애인 단독조항 설치 건은 향후에도 논란이 있을 것으로 예상.
- 장애여성 단독조항관련 논의 외에도, 전반적으로 EU는 각각의 조문을 모든 장애인에게 해당시키기 위하여 간소화 하고 포괄적으로 표현하려는 주장을 계속하였으며, 이러한 주장은 가능한 한 세부적으로 명시하는 것이 그 이행에 있어서 현실적이라는 의견을 갖은 여러 국가들과 부딪힘.
- 협약이 경제적, 사회적 및 문화적 권리를 전반에서 다루고 있음에 따라 '점진적으로만 현실화(progressive realization)'가 가능하다는 정부의 의견이 대두되었음. 이는 점진적이라는 명목 하에 국가가 조항의 이행을 미룰 수 있으므로 우려의 목소리가 있음.
- APF, ICC 등, 국가인권기구 대표단들은 제25조 모니터링(감시)와 관련하여 국내적 감시와 국제적 감시가 분리되어야 하고 국내적 감시에 있어서 국가인권기구들이 중요한 역할을 할 수 있음을 구체적 조문을 통해 제안하였음.

## 2. 인권위측 활동사항

- 장애인권리협약 마련을 위한 제6차 특별위원회의 논의사항의 모니터링 활동
- NGO대표단(장애인권리협약 추진위원회)과 만찬 간담회를 개최하여 위원회 활동경과와 계획(NI를 통한 지원활동 등)을 설명하고 한국 정부의 의견이 반영되도록 하기 위해 최선을 다할 것을 논의하는 등(8.8), 회의 전반에 걸쳐 한국측 NGO와 지속적 협의하며 활동
- 국회 장애인특별위원회 안택수 위원장 및 장향숙의원, 정화원의원, 현애자의원이 주최하고 강경화 공사 등 정부 측 참석자와 NGO 참석자들이 참가한 오찬 간담회에 참석(8.2)하는 등 정부측과 협의
- NI측 참석자들은 매일 오전 9:30경 회의를 갖고 그날의 논의 조항에 대하여 의견을 교환하며, 발언 계획이 있을 경우 이를 공유하였으며, 이러한 오전 회의에 한국측도 참석. (8.1~5)
- 이러한 상시적 회의를 계기를 통하여 한국인권위 참가자는 장애여성 단독조항 설치의 필요성을 논의하기도 하였으나, 결국 인도의 모히트여사를 중심으로 단독조항이 채택될 경우 우려되는 부분이 있다는 방향으로 의견이 모아짐. (8.2)
  - 한국측은 NI측 참석자(인도, 캐나다, 호주, 뉴질랜드)와 토론 시작 전 회의를 갖고 여성장애인의 문제가 협약 내에 적절히 반영되어 있지 않음을 강조하고 그에 대한 방식을 논의함. 한국측은 여성장애인 단독조항의 필요성을 강조하였으나, 일부 국가는 단독조항보다는 협약 전체에 걸쳐 여성의 권리가 보장될 수 있도록 협약의 주요부분에 장애여성에게도 협약이 적용됨을 명시하는 방식을 주장하였음. 결국 인도의 모히트여사는 단독조항을 채택할 경우 우려되는 부분이 있을 수 있다는 내용을 발언할 것을 결정함.

## 3. 한국측 활동사항

- 한국측 정부 대표단은 장애여성, 자립생활 및 이동권 이슈 등에 대하여 비교적 활발하게 토론에 참여하였으며, 특히 장애여성 단독조항을 제안한 바, 이에 대한 연설 및 로비활동에 주력함.

- 한국정부(강경화 공사)는 단독조항이 차별받고 있는 장애여성의 권리보호와 차별방지를 위하여 필수적인 조항임을 설명하는 발언으로 제15조 bis (장애 여성 단독조항)에 대한 많은 국가의 열띤 논의가 시작됨. (발언문 붙임 참조)
- 또한, 장애여성 단독조항 논의에 참관하기 위하여 8월 2일 국회 장애인특별위원회의 안택수 위원장 및 3인의 의원(장향숙, 정화원, 현애자)이 참석하였고, 이들의 참석이 의장에 의하여 시기 적절히 소개되기도 하였음.
- 한국측 장애권리협약추진연대는 장애여성 단독조항 설치를 강력하게 주장하면서 8월 2일 NGO들의 발언 시간을 통하여 발언(김미주)하고, 여러 side event나 facilitator의 회의에 참가하여 활발히 토론하면서 장애여성 단독조항 설치를 위하여 노력함.

#### 4. 비측 활동사항

- 국가인권기구 참석자들은 회의기간 중 매일 오전 9:30 회의를 갖고 정보를 교환하며 그날 발언 여부에 발언내용에 대하여 의견을 교환하였음.
- 국가인권기구 및 APF 대표 활동
  - 국가인권기구측 제안에 대한 로비활동 및 APF 입장 정리
  - 필요 조항에 대한 국가인권기구의 발언안 작성에 참여
  - 제25조 모니터링 관련 제안서 초안작성 및 해당 조항에 대한 발언
  - 전략회의, 부대행사(side-event) 및 facilitator 회의 참석
- 인도의 모히트여사 및 Byrnes 교수는 제24조 bis '국제협력'에 관련하여 UNESCAP 및 Handicap International과의 패널에 참석 (8.11)
- APF는 공식 및 비공식 활동을 통해 자체적 활동이 전체적으로 유용하였다고 평가하였으며, 다음 1월에 개최될 제7차 회의시에는 이번 APF에서 제안한 '국제적 및 국내적 모니터링' 분야에 대한 집중적인 논의가 이루어지기를 희망하였음.

### III. 조항별 세부 논의사항

#### 1. 임시의제 채택 등 일반사항

- ◎ 지난 세션의 경우 NGO 및 NI의 발언을 전체 2주 세션 중 2차례 정도만 허가했으나, 이번 세션의 경우 매일 오전 및 오후세션의 시작시에 해당 조항에 대한 NI 및 NGO 들의 의견을 청취하기로 결정함.
- ◎ 15조부터 24조까지 모두 이번 세션내에 검토하기 위하여 매일 오전 및 오후 각각 한 조항씩 검토하는 것을 원칙으로 함.

#### 2. 제15조 (독립적으로 사는 것과 지역사회에 통합되는 것)

##### 제15조 독립적으로 사는 것과 지역사회에 통합되는 것<sup>1)</sup>

1. 이 협약의 당사국은 다음과 같은 것들을 보장함으로써 장애를 가진 사람들이 독립적으로 살 수 있고, 지역사회에 완전히 통합되도록 하기 위한 실질적이고 적절한 조치를 취해야한다.
- (a) 장애를 가진 사람들은 자신들의 거주지와 생활환경(living arrangements)을 선택할 수 있는 평등한 기회를 가진다.
  - (b) 장애를 가진 사람들은 시설 혹은 특정 생활환경에서 살도록 강요받지 않는다.
  - (c) 장애를 가진 사람들은, 지역사회에서의 생활과 지역사회로의 통합을 지원하고 지역사회로부터 고립되거나 분리되는 것을 방지하는 데에 필요한, 개인적 조력을 포함한 집, 거주지, 지역의 지원 서비스에 접근할 수 있어야 한다.
  - (d) 일반 사람들을 위한 지역사회 서비스는 장애를 가진 사람들이 대등하게 이용 가능해야하며, 장애를 가진 사람들의 욕구에 민감하게 반응해야한다.
  - (e) 장애를 가진 사람들은 이용 가능한 지원 서비스에 접근할 수 있어야한다.

##### Draft Article 15 LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY

1. States Parties to this Convention shall take effective and appropriate measures to enable persons with disabilities to live independently and be fully included in the community, including by ensuring that:
- (a) persons with disabilities have the equal opportunity to choose their place of residence and living arrangements;
  - (b) persons with disabilities are not obliged to live in an institution or in a particular living arrangement;
  - (c) that persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance, necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
  - (d) community services for the general population are available on an equal basis to persons with disabilities and are responsive to their needs;
  - (e) persons with disabilities have access to information about available support services.

1) 장애인권리협약 초안의 각주는 편의상 동 보고서에서 삭제함.

- ◎ EU 및 멕시코 등에서는 ‘시설 및 특수한 생활 환경(arrangement)에서 살도록 강요받지 않음’을 명시하는 (b)를 ‘거주지 및 생활 환경을 결정할 수 있는 권리’를 명시하는 (a)와 내용이 흡사하다는 이유로 삭제하자는 의견이 있었으나 반대의견을 가진 국가들도 많았으며, 결국 (a)과 (b)를 통합하도록 하자는 요르단의 의견이 여러 국가의 지지를 받았음.
- ◎ 뉴질랜드는 15조 (a), (b)에 대하여 장애인의 선택의 자유를 강조하는 전혀 새로운 문구들을 제안하였으나 내용상으로는 많은 지지를 받았음에도 불구하고 한국을 비롯한 많은 국가에서 실무그룹의 text를 바탕으로 수정하는 것을 원칙으로 제안하여 기존 실무그룹 안에서 text를 추가하고 수정하는 방향으로 논의됨.
- ◎ 한국의 경우 living independently 보다는 independent living을 제안함.
- ◎ 제15조와 제10조가 동일한 내용을 다루고 있다는 의견에 따라 다음번 제10조 논의 시 제15조를 감안토록 논의됨.
- ◎ (c) bis를 추가하여 (c)에서 언급된 지원서비스 제공 방식을 첨가하여야 한다는 의견이 있었음.
- ◎ (c), (d), (e) 각 항에 service 다음에 facilities를 넣어 재화와 용역을 함께 명시하도록 뉴질랜드를 비롯하여, 세르비아몬테네그로 등 다수의 국가들이 주장하였음.
- ◎ (c), (d), (e) 항은 경제적 사회적 문화적 권리를 다루고 있기 때문에 ‘점진적으로만 현실화(progressive realization)’될 수 있다는 의견이 있었음.
- ◎ (e)항 가능한 지원서비스에 대하여 정보에 대하여 접근성을 강조하는 문장 (and facilities in format which is accessible and in plain language)을 추가하고자 하는 캐나다의 제안이 있었으나 제19조에 접근성 관련 조항에서 다루자는 의견에 따라 별도 논의됨.

#### 토론 결과 (변경사항 밑줄)

1. States Parties to this Convention shall take effective and appropriate measures to [enable/facilitate] full enjoyment by persons with disabilities of their freedom of choice, independent living and full [inclusion/participation] in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in [an institution or] a particular living arrangement.

### 3. 제15조 bis (장애여성 단독조항)

- ◎ 한국정부(강경화 공사)는 단독조항이 차별받고 있는 장애여성의 권리보호와 차별방지를 위하여 필수적인 조항임을 설명하는 발언으로 제15조 bis (장애여성 단독조항)에 대한 많은 국가의 열띤 논의가 시작됨.
- ◎ 여성차별철폐협약에서 모든 여성의 권리를 명시하고 있지만 장애여성의 권리를 명문화 하지 못함에 따라, 장애여성에 대한 구속력 있는 문서가 없는 상황임. 또한, 현재 장애권리협약의 초안이 이러한 장애여성의 상황을 반영하고 있지 못하다는데 인식을 같이함.
- ◎ 따라서, 위원회는 양성평등의 원칙 및 장애여성의 상황이 적절히 이 협약 내에 반영되어야 한다는데 합의함.
- ◎ 그러나, 그 방식에 있어서 (1) 이미 한국이 제안한 바와 같이 단독조항을 통하여 장애여성의 권리를 명문화 하는 방식, (2) 단독조항을 설치하지 않고 협약 내 서문, 일반원칙, 일반의무, 혹은 모니터링 조항 등 가장 적절한 곳에 권리를 명시하는 방식, (3) 여성과 관련성이 있는 주제별 조항에 mainstreaming 하도록 하는 방식과, (4) 단독조항도 설치하고 mainstreaming도 하도록 하는 방식 등으로 의견이 엇갈림.
- ◎ 장애여성 단독조항 설치에 대한 반대의견과 찬성의견이 맞섰으나, 발언을 하는 모든 국가는 장애여성이 '장애'라는 이유뿐만 아니라 '여성'이라는 이유로 가장 소외된 집단으로서 인식을 같이하고, 한국이 이러한 중요한 문제를 제기하여 논의의 중심에 이끈데 대한 찬사를 아끼지 않았음.
- ◎ 또한, 국회 장애인특별위원회의 안택수 위원장 및 3인의 의원(장향숙, 정화원, 현애자)이 참석하였고, 이들의 참석이 의장에 의하여 적절히 소개되면서 '장애여성'에 대하여 한국정부의 노력이 확실히 피력됨.
- ◎ NGO들의 발언 시간을 통하여는 여러 국가의 NGO들과 한국측 장애권리 협약추진연대(김미주)의 발언이 이어졌으며, 한국측은 단독조항의 필요성을 강조하는 언급을 시기 적절히 제시함.
- ◎ 동 발언시간에 인도 국가인권위원회의 모히트여사도 발언을 하였으며, 장애여성에 대한 포괄적인 단독조항의 설치를 지지하지는 않지만 성적 감수성과 성적으로 조화된 접근이 가능하도록 하는 간략한 조항과 세부적인 행동계획을 갖도록 하는 방식을 제안하였음. 서문과 일반적 의무를 명시하는 조항에 전략적으로 명시하는 방식도 지지하였음.

◎ 제15조 bis에 대한 논의를 통하여 장애여성의 문제를 토론의 중심으로 이끈데 대하여 발언을 하는 모든 정부대표와 NGO들은 찬사를 아끼지 않을 정도로, 인권협약의 성안과정에서의 한국의 리더쉽이 드러난 의의를 갖은 큰 성과로 기록될 날임.

◎ 의장은 마무리하면서, 한국의 노력에 감사하고, 단독조항 채택여부를 포함하여 장애여성의 권리가 협약내에 더욱 적절히 반영될 수 있는 방안을 특별 비공개 협의(open-ended informal consultation)를 통하여 도출할 것을 결정함. 동 협의를 위한 facilitator직은 독일의 Ms. Theresia Degener로 결정

※ 장애여성 단독조항 지지국 및 반대국

<지지국> 엘살바도르, 모로코, 이스라엘, 케냐, 수단, 우간다, 이란, 남아공, 페루

<반대국> 영국(EU), 뉴질랜드, 호주, 멕시코, 세르비아몬테네그로, 일본, 노르웨이, 코스타리카, 요르단, 칠레, 캐나다, 인도

<우려표명 / 유보> 태국, 예멘, 말리

◎ facilitator 회의는 8.5.(금) 오후 6시 및 8.9(화) 오후6시 두차례 실시되었으며, 단독조항의 설치여부에 대한 찬성 및 반대의견의 충돌로서, 제2차 회의에서는 협약에 포함되어야 할 장애여성의 내용(substance)만을 논의함.

< 장애여성 관련 주요 이슈 >

- 통계자료 조항
- 평등과 비차별 조항
- 성매매와 성폭력
- 모성권
- 교육권
- 직장 내 모성보호

#### 4. 제16조 [장애아동]

##### 제16조 장애를 가진 아동

1. 당사국은 그 국가의 관할권 안에 있는, 장애를 가진 모든 아동들이 장애를 근거로 어떤 종류의 차별도 받지 않고 다른 아동들과 동일한 권리와 기본적 자유를 누리도록 보장할 의무가 있다.

2. 당사국은 장애를 가진 아동들이 존엄을 보장하고 자기 신뢰와 자율성을 촉진하고 아동들의 활발한 참여를 증진하는 조건에서 완전하고 품위있는 생활을 향유해야 한다는 점을 인지한다.



3. 당사국은 장애를 가진 아동들에 대한 포괄적인 보살핌의 권리를 인지하는데, 여기에는 다음과 같은 것을 포함한다:

(a) 적절하고 포괄적인 서비스를 조기에 제공하는 것;

(b) 아동의 조건과 아동을 보살피는 부모 혹은 다른 사람들의 상황에 맞추고 또한 그런 조건과 상황에 맞게 적용해서, 적절한 아이들과 보살핌의 책임자에게 가용한 자원하에서 조력을 확대하는 것;

4. 장애를 가진 아동들의 욕구를 인지하고, 이 조항의 문단 3에 의거한 확대 조력은 부모 혹은 아동을 보살피는 사람의 재정적 자원[을 고려해서 가능하다면 무상으로 제공되어야한다. 또한 그러한 조력은 장애를 가진 아동들이 가능한 한 가장 완전한 사회적 통합과 개인 발달(문화적·정신적 발달을 포함한)을 달성하는 데에 도움이 되는 방식으로 교육, 훈련, 건강관리 서비스, 포괄적인 재활 서비스, 취업 준비, 레크리에이션 기회에 접근하고 또한 그런 것들을 받을 수 있도록 보장해야한다;

5. 장애를 가진 아동과 부모 혹은 아동을 보살피거나 법적으로 책임이 있는 자는 적절한 정보, 위탁, 상담을 제공받아야하며, 이러한 방법으로 이용가능한 정보를 통해서 아동의 잠재적 가능성에 대한 긍정적인 전망과 완전하고 포괄적인 삶의 권리가 그들에게 제공되어야한다.

#### Draft Article 16 CHILDREN WITH DISABILITIES

1. States Parties undertake to ensure that each child with a disability within their jurisdiction shall enjoy, without discrimination of any kind on the basis of disability, the same rights and fundamental freedoms as other children.

2. States Parties recognise that children with disabilities should enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and autonomy, and facilitate the child's active participation in the community.

3. States Parties recognise the right of children with disabilities to inclusive care, which shall include:

(a) early provision of appropriate and comprehensive services;

(b) the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child);

4. Recognising the needs of children with disabilities, assistance extended in accordance with paragraph 3 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure that a child with a disability has effective access to and receives education, training, health care services, comprehensive [re]habilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development;

5. Children with disabilities and their parents or other persons caring for or legally responsible for the child shall be provided with appropriate information, referrals and counselling, and information made available in these ways should provide them with a positive view of their potential and right to live a full and inclusive life.

◎ 장애여성 문제를 단독조항으로 풀 것이냐, 협약 내용에 포함(incorporation) 시키는 방식으로 풀 것이냐 하는 문제제기가 장애아동조항에도 계속되어, EU를 중심으로 노르웨이, 캐나다, 코스타리카 등의 국가는 장애아동 조항을 삭제하고 서문, 일반사항을 명시하는 조항 및 모니터링 조항 등에 아동에게도 협약 전체가 해당될 수 있도록 명시하는 방식을 주장함. 주제별 조

향에 mainstreaming 하는 방식도 제안됨.

- ◎ 그러나, 대부분의 국가 및 발언을 한 모든 NGO는 아동의 경우 단독조항 자체를 없애는 것은 이들의 권리를 강화하는데 아무런 역할을 하지 않을 것이며, 어떠한 국가도 단독조항이 없는 상황에서 이들의 권리를 찾아서 지켜주는 경우를 바랄 수 없으므로, 독립조항 삭제를 요구하는 국가에 우려를 표명하고 단독조항의 필요성을 강조하였음.
- ◎ 장애여성과 마찬가지로 이견에 부딪히자, 의장은 informal consultation을 통하여 방안을 도출할 것을 결정함. facilitator는 케냐의 Josephine Sinyo로 결정됨.
- ◎ 8월 4일 및 11일 facilitator와의 비공식 협의를 통해 회원국들은 다음의 주요 이슈들이 협약에 포함되어야 함을 합의하였음. 그러나, 모든 이슈들이 협약에 포함되어야 할지와, 단독조항을 설치할지의 여부에 대해서는 합의되지 못했으며, 아직 세부 조문보다는 중요 골자만이 논의되고 있는 상황임.

#### < 장애아동 관련 주요 이슈 >

- 1) 연령, 성인과 같은 독립성 혹은 법적 역량의 부족 등에서 오는 아동의 취약성(vulnerability) 때문에 아동은 보호의 대상이 되며, 따라서 그들의 특수한 상황은 명시(address)되어야 하고 그들의 발전할 수 있는 권리는 보장되어야 함. 동 협약은 이러한 내용을 인정하고 세부적인 권리가 아동에게 적용될 수 있도록 조문을 작성하는 것이 중요함.
- 2) 모든 인권과 기본적 자유를 적용함에 있어서 다른 아동들과의 평등성의 원칙을 포함시킬 필요성이 있음. 이는 아동권리협약의 장애아동 관련 부분 적용을 보완하고 강화할 것임.
- 3) 장애아동 참여의 원칙 및 이들의 역량 강화를 인정하며, 자신을 표현할 권리를 존중하고, 자신에게 영향을 미치는 사안에 대하여 자신의 의견을 피력하도록 할 필요가 있음.
- 4) 이 협약 하에서 장애아동과 관련된 모든 부분에 있어서 “아동의 최선의 이익” 원칙을 포함하여야 할 필요성이 있음.
- 5) 장애아동이 법적 절차에 접근할 수 있도록 보장할 필요성이 있음.
- 6) 보호를 목적으로 하는 서비스에 장애아동이 접근할 수 있도록 보장할 필요성이 있음.
- 7) 장애아동의 출생등록의 권리를 보호할 필요성이 있음.
- 8) 장애아동에 대한 보호 사실의 은폐, 유기, 방치 및 적절치 않은 시설생활을 방지하기 위하여, 장애아동 및 그 가족에 대한 정보의 제공 및 교육 등 필요한 지원을 제공함으로써 장애아동이 가족생활을 누릴 수 있

는 권리를 보호할 필요성이 있음.

- 9) 일시적 혹은 영구적으로 가족생활이 박탈된 장애아동에 대하여 특별 보호(care)를 제공할 필요성이 있음.
- 10) 장애아동이 다른 아동과 동등하게 비장애인 대상 서비스(mainstream service)에 접근할 수 있도록 보장될 필요성이 있음.
- 11) 장애를 조기 발견, 판단 및 증명하도록 하고 조기에 필요한 조치를 취하도록 서비스를 제공할 필요성이 있음.
- 12) 장애아동이 불임을 강요받지 않도록 보호할 필요성이 있음.
- 13) 동 협약의 이행에 있어서 장애아동과 관련된 사안에 대한 전문적 지식이 제공되어야 할 필요성이 있음.

## 5. 제17조 (교육)

### 제17조 교육

1. 당사국은 장애를 가진 모든 사람들의 교육권을 인정한다. 동등한 기회의 제공을 기본(basis)으로 하고 이러한 권리를 점진적으로 달성하기 위해서, 장애를 가진 아동들의 교육은 다음과 같은 방향으로 나아가야 한다.
  - (a) 인간의 가능성에 대한 완전한[충분한] 발달, 존엄과 자긍심에 대한 감각, 그리고 인권, 기본적 자유, 인간의 다양성에 대한 존중 강화
  - (b) 장애를 가진 모든 사람들이 자유로운 사회에 실질적으로 참여하는 것을 가능토록 하는 것
  - (c) 아동의 개성, 재능, 신체적·정신적 능력을 그들이 가진 최상의 가능성의 정도까지 발달시키는 것
  - (d) 아동의 최상의 이익을 고려하되, 특히 교육계획을 개별화하는 것
2. 이 권리[교육권]를 실현함에 있어서 당사국은 다음과 같은 점을 보장해야 한다.
  - (a) 장애를 가진 모든 사람들이 지역사회 내에서 통합적이고 접근 가능한 교육(유아교육 및 취학전 교육에 대한 접근을 포함한)을 선택하는 것
  - (b) 교사, 학교 상담원, 심리학자의 특수 훈련, 접근 가능한 교과과정, 접근 가능한 교육 수단과 기술, 대안적이고 증대성의 의사소통 양식, 접근 가능한 학습 전략, 접근 가능한 물리적 환경, 장애를 가진 학생들의 완전한 참여를 보장하기 위한 여타의 합리적인 편의제공을 포함해서, 필요한 지원을 제공하는 것
  - (c) 장애를 가진 모든 아동들이 장애를 이유로 무료의 의무 초등교육에서 배제되지 않는 것
3. 일반 교육체계가 장애를 가진 사람들의 욕구를 적절히 충족시키지 않는 경우에 당사국은 특별하고 대안적인 학습 형태가 이용 가능하도록 보장해야 한다. 이러한 특별하고 대안적인 학습 형태는:
  - (a) 일반 교육체계에서 제공되는 것과 동일한 표준과 목적을 반영해야 한다.
  - (b) 장애를 가진 아동들이 가능한 한 최대한으로 일반 교육체계에 참여하는 것이 인정되는 방식으로 제공되어야 한다.
  - (c) 정보를 제공받은 상태에서 일반교육체계와 특수교육체계 중에서 자유롭게 선택하는 것을 허용해야 한다
  - (d) 일반교육체계에서 장애를 가진 학생들의 욕구를 충족시키기 위한 당사국의 의무가 결코 제한되어서는 안 된다.
4. 당사국은 감각기관의 장애를 가진 학생들이 적절한 수화나 점자 교육을 받는 것을 선택하고, 수화나 점자로 교과과정을 수업받는 것을 보장해야 한다. 당사국은 수화나 점자에 능한 교사채용을 보장함으로써 감각기관의 장애를 가진 학생들의 교육의 질을 보장하기 위한 적절한 조치를 취해야 한다.
5. 당사국은 장애를 가진 사람들이 다른 사람들과 대등하게 '일반적 제3차 교육'(중등학교에 이어지는 직업 및 비직업 과정의 총칭), 직업 훈련, 성인 교육과 평생학습에 접근하는 것을 보장해야 한다. 이러한 목적을 위해서 당사국은 장애를 가진 사람들에게 적절한 조력을 제공해야 한다.

## Draft Article 17 EDUCATION

1. States Parties recognise the right of all persons with disabilities to education. With a view to achieving this right progressively and on the basis of equal opportunity, the education of children with disabilities shall be directed to:

- (a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) enabling all persons with disabilities to participate effectively in a free society;
- (c) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (d) take into account the best interests of the child, in particular by individualising education plans;

2. In realising this right, States Parties shall ensure:

- (a) that all persons with disabilities can choose inclusive and accessible education in their own community (including access to early childhood and preschool education);
- (b) the provision of required support, including the specialised training of teachers, school counsellors and psychologists, an accessible curriculum, accessible teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, accessible physical environment, or other reasonable accommodations to ensure the full participation of students with disabilities;
- (c) that no child with disabilities is excluded from free and compulsory primary education on account of their disability.

3. States Parties shall ensure that where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning should be made available. Any such special and alternative forms of learning should:

- (a) reflect the same standards and objectives provided in the general education system;
- (b) be provided in such a manner to allow children with disabilities to participate in the general education system to the maximum extent possible);
- (c) allow a free and informed choice between general and special systems;
- (d) in no way limit the duty of States Parties to continue to strive to meet the needs of students with disabilities in the general education system.

4. States Parties shall ensure that children with sensory disabilities may choose to be taught sign language or Braille, as appropriate, and to receive the curriculum in sign language or Braille. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities by ensuring the employment of teachers who are fluent in sign language or Braille.

5. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning on an equal basis with others. To that end, States Parties shall render appropriate assistance to persons with disabilities.

◎ 제17조를 통해서 장애인 평생 동안 교육이 수반되어야 하며, 통합교육이 이 조항의 주요 주제 중 하나임을 합의함.

### < 제1항 >

◎ 제17조 1항에 대한 논의에서 위원회는 이 조항과 관련된 회원국의 의무가 제한적으로 명시되서는 안되며, 경제적, 사회적 및 문화적 권리에 대한 점진적 실현의 문제가 이 조항에도 해당됨을 일반적으로 합의함.

◎ '장애아동의 교육은 다음과 같은 방향으로 나아가야 한다'에서 교육은 장애아동뿐만 아니라 모든 장애인에게 해당된다는 사유로 발언하는 대부분의

국가에서 장애아동(children with disabilities)을 장애인(persons with disabilities)으로 교체하도록 요구하여 받아들여짐.

- ◎ EU 및 한국 등 많은 국가에서 ‘장애교육이 일반교육 시스템에 통합(inclusiveness)’하도록 하는 목적 혹은 원칙에 따라야 한다는 문구의 삽입을 제안하였으며, 따라서 ‘국가는 일반교육시스템에 통합하도록 하는 목표를 위하여 노력하여야 한다’는 문구를 삽입하도록 결정함.
- ◎ 1항 d호에 ‘아동의 최상의 이익’의 중요성과 이러한 중요한 원칙이 아동권리협약의 수준보다 약해서는 안된다는데 주목하였으나, 제17조가 이러한 중요한 원칙을 명시하는데 적절한 조항인지에 대하여는 의견이 분분했음.

**토론 결과 (변경사항 밑줄)**

1. 당사국은 동등한 기회 제공을 기본으로 하여 [점진적으로] 성취한다는 목적으로 장애를 가진 모든 사람들의 교육권을 인정한다. 당사국은 각 국가의 일반교육 제도에 대한 통합교육을 목표로 한다. 일반교육 제도가 장애인의 요구에 적절히 응하지 못하는 예외적인 경우에는, 당사국은 완전한 통합 목표에 유의하면서 대안적 형태의 [질 좋은/효과적인] 교육은 보장할 수 있는 적절한 조치를 취한다. 장애를 가진 사람들의 교육은 다음과 같은 방향으로 나아가야 한다.

- (a) 인간의 가능성에 대한 완전한[충분한] 발달, 존엄과 자긍심에 대한 감각, 그리고 인권, 기본적 자유, 인간의 다양성에 대한 존중 강화
- (b) 장애를 가진 모든 사람들이 자유로운 사회에 실질적으로 참여하는 것을 가능토록 하는 것
- (c) 장애인의 개성, 창의성, 재능, 신체적·정신적 능력을 그들이 가진 최상의 가능성의 정도까지 발달시키는 것
- (d) 일차적인 고려사항인 아동의 최상의 이익에 대한 고려, [특히 교육 [계획] [및 방법]을 개별화 하는 것]

1. States Parties recognise the right of all persons with disabilities to education with a view to achieving this right [progressively and] on the basis of equal opportunity. States Parties commit themselves to the goal of inclusiveness of their general education systems. Where exceptionally the general education system does not adequately meet the needs of persons with disabilities, States Parties shall take appropriate measures to ensure [quality/effective] alternative forms of education, bearing in mind the goal of full inclusion. The education of persons with disabilities shall be directed to:

- (a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) enabling all persons with disabilities to participate effectively in a free society;
- (c) the development of the personality, creativity, talents and mental and physical abilities of persons with disabilities to their fullest potential.
- (d) the best interests of the child, which shall be of primary consideration, [in particular by individualising education [plans] [and methods]];

**< 제2항 >**

- ◎ 2항 c호에 ‘초등교육(primary education)’ 뿐만 아니라 ‘중등교육(secondary education)’의 보장을 명시하자는 의견이 있었음. 이는 국가의 중등교육 의무를 부과하기 위한 것이 아니라 차별금지 조항으로써 중등교육을 의무교육으로 제공하고 있는 국가의 경우에 장애인이 제외되어서는 안된다는 의

미라는 데 의견이 모아졌음.

- ◎ 제2항에서 '이러한 권리를 현실화하기 위하여, 회원국은 다음과 같은 사항을 보장(shall ensure)한다.'는 부분에 있어서 일본은 보장이라는 표현이 너무 강하며 이 단어보다는 '보장하도록 노력한다(shall endeavor to ensure)'로 바꾸자는 제안에 대하여 대부분이 국가의 의무를 약화시키지 않기 위하여 '보장(ensure)'으로 하여야 한다는 의견을 피력함.

**토론 결과 (변경사항 밑줄)**

2. 이 권리를 실현함에 있어서 당사국은 다음과 같은 점을 보장해야한다.

- (a) 장애를 가진 모든 사람들이 이들이 생활하는 지역사회 내에서 [가능한 한] [평생 동안] [접근이 용이하고 질 좋은/효과적인 통합교육을 받도록 선택하며] [일반 교육제도 중 질 좋은/효과적인 교육에 접근하도록 하는 것] (유아교육 및 취학전 교육에 대한 접근 포함)
- (b) 교사, 학교 상담원, 심리학자의 특수 훈련, 접근 가능한 교과과정, 접근 가능한 교육 수단과 기술, 대안적이고 증대성의 의사소통 양식, 접근 가능한 학습 전략, 접근 가능한 물리적 환경, 장애를 가진 학생들의 완전한 참여를 보장하기 위한 여타의 합리적인 편의제공을 포함한, 필요한 지원
- (c) 장애를 가진 모든 사람들이 장애를 이유로 무효의 의무 초등 혹은 중등교육에서 배제되거나 교육혜택에 접근하는 것이 거부되지 않는것

2. In realising this right States Parties shall ensure:

- (a) that all persons with disabilities [choose inclusive and accessible quality/effective education] [have access to quality/effective education in the general education system] [throughout their lives] [to the extent possible] in the communities in which they live (including access to early childhood and pre-school education)
- (b) required support, including specialised training of teachers, school counsellors and psychologists, an accessible curriculum, an accessible teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, accessible physical environment, or other reasonable accommodations to ensure the full participation of students with disabilities;
- (c) ensure that no person with disabilities is excluded from free and compulsory primary or secondary education, or denied access to education, on account of their disability;

**< 제3항 >**

- ◎ 일반적으로 제3항은 별도의 조항으로 대체되어야 한다는 것이 일반적 여론이었음. 제3항의 대상이 아동뿐만 아니라 모든 장애인이 될 수 있도록 하자는 논의도 있었으나 이는 장애아동이 일반교육제도에서 장애아동이 제외될 근거로 활용될 수 있다는 우려가 있었음. 시각장애아, 청각장애아 그리고 시각·청각의 중복장애아와 같은 특수 장애를 가진 아동들은 이들의 특수한 필요가 충족되는 환경에서 교육받을 수 있도록 하여야 한다는데는 일반적인 합의가 있었음. 아래의 안에 대하여 일부가 지지하였음.

3. 당사국은 시각장애, 청각장애 및 시각·청각의 중복장애를 갖은 아동 및 청소년(young persons)이 자신과 같은 집단과 자신에게 적절한 환경에서 교육받도록 선택할 권리를 보장하여야 하며, 동 조항 내의 다른 규정들과 일치하도록 동등한 수준의 지원과 기준이 제공되어야 한다.

3. States Parties shall ensure that blind, deaf and deafblind children and young persons have the right to choose education in their own groups and settings, where they shall be provided with the same level of support and standards, consistent with other provisions in this article.

#### < 제4항 >

◎ 농아인 아동의 수화 혹은 점자를 선택하여 배울 수 있도록 국가가 보장하고, 농아인 학생이 수화나 점자에 능한 교사에 의하여 배울 수 있도록 이들의 고용을 보장하는 제4항에 있어서 (1)'수화, 점자 및 기타 다른 의사소통 수단(sign language, Braille, or other mode of communication)'으로 확장하여 모든 의사소통 수단이 포함될 수 있도록 하는 논의가 있었으며, (2) 제4항을 단독조항 (제17조 bis)으로 독립시키는 것을 호주에서 제안하고 많은 지지가 있었으나, 현상을 유지하도록 하는 반대의견도 많아 결론에 이르지 않았음. (3) 또한, 초안에는 '농아인 아동' 및 '농아인 학생'으로 명시된 부분에 있어서 동 부분을 모든 농아인에게 확대 적용시키기 위하여 '농아인'으로 교체를 제안하는 많은 발언이 있었음. (4) 수화, Braille, 및 기타 다른 의사소통에 능한 교사의 채용뿐만 아니라 이들의 훈련을 명시해야 한다는 의견이 또한 다수였음.

#### < 제5항 >

◎ '당사국은 장애를 가진 사람들에게 적절한 조력을 제공한다에서 조력이라는 의미의 assistance를 지원이라는 의미의 support로 변경하도록 하자는 의견이 있었음.

#### < 제17조 전체에 대한 공식 논의 >

◎ 제17조 전반에 있어서 International Disability Caucus(IDC) 등 여러 NGO 들은 생활시설 수용 및 강제교육 등에 대한 우려를 표명하였으며 통합교육을 강조하였고, 국가들의 점진적인 실현(progressive realization: 재정지원 등에 있어서 단계적으로 하는 것이 가능하다는 의견) 강조를 반대하는 의견도 있었음.

◎ 아일랜드인권위는 발언을 통해 몇가지 세부사항을 언급함. 먼저 제2항에서 '보장한다'를 '보장하도록 노력한다'로 교체하자는 의견에 우려를 표명하고

국가는 그 의무를 보장하여야 한다고 강조함. 또한 교육은 경제적, 사회적, 문화적 권리뿐만 아니라, 시민적 및 정치적 권리에도 연관되어 있으며, 장애권리협약에 '개별적인 교육계획(individualized education plan)'을 명시하는 것에는 반대함을 발표함.

- ◎ 의장은 제17조를 요약하면서, 동 조항이 '학생'뿐만 아니라 모든 장애인에게 확대되도록 명시하고, 국가가 경제적, 사회적, 문화적 권리에 있어서 '점진적으로 실현'하여야 한다는 것은 현실적인 것이나 국가의 의무를 명시하는데 방해가 되어서는 안된다고 강조하면서, 현실과 이상의 조화가 동 협약에 반영되어야 함을 명시함. 제4항 '농아인 아동의 수화 혹은 점자를 선택(choose)하여 배울 수 있도록 국가가 보장'하는 부분에 있어서 여기에 명시된 '선택'이 장애인의 선택 이 아닌 국가의 선택을 의미할 수 있다는 지적에, 다른 표현으로 수정할 것을 제안함. 제3항은 청각장애아, 시각장애아 및 청각·시각 중복장애아에 관련된 태국의 제안2)을 반영하자는 의견이 많았음을 명확히 함. 제4, 5항에 전문가에 대한 훈련과 학위 시스템을 포함하자는 의견을 반영하도록 함.

## 6. 제18조 [정치적, 공적 생활에의 참여]

### 제18조 정치적 및 공적 생활에의 참여

당사국은 장애를 가진 사람들의 정치적 권리를 차별 없이 인지한다. 그리고 다음의 의무가 있다:

(a) 장애를 가진 시민들이 투표 및 당선의 권리나 기회를 포함해서, 자신들이 직접 혹은 자유롭게 선택한 대표자를 통해서 실질적이고 완전하게 정치적이고 공적인 생활에 참여할 수 있는 환경을 적극적으로 증진해야하며, 이러한 환경은 다음과 같은 투표 절차와 시설을 보장함으로써 이뤄진다. 즉 투표 절차와 시설은:

- (i) 적절하고 접근가능하고 이해하기 쉬워야한다;
- (ii) 장애를 가진 시민들이 비밀 투표를 하도록 보장해야한다; 그리고
- (iii) 필요한 경우에는 투표하는 데에 필요한 조력을 장애를 가진 시민들에게 제공해야한다;

(b) 장애를 가진 사람들이 공공행정을 수행하는 데에 실질적이고 완전하게 참여할 수 있는 환경을 적극적으로 증진해야하며, 또한 다음과 같은 것을 포함한 적절한 공적 사무에 참여하는 것을 장려해야한다:

- (i) 정당이나 시민단체의 활동과 운영에 대등하게 참여하는 것;
- (ii) 국가적, 지역적, 지방적 수준에서 장애를 가진 사람들을 대표하는 장애를 가진 사람들의 조직을 구성하고 참여하는 것;

(c) 장애를 가진 사람들 및 그런 사람들의 조직은 의사 결정 과정, 특히 장애를 가진 사람들과 관련한 의사 결정 과정에 참여하는 것이 보장되어야 한다.

### Draft Article 18 PARTICIPATION IN POLITICAL AND PUBLIC LIFE

States Parties recognise the political rights of persons with disabilities, without discrimination, and undertake to:



(a) actively promote an environment in which persons with disabilities can effectively and fully participate in political and public life, directly or through freely chosen representatives, including the right and opportunity of citizens with disabilities to vote and be elected, and by ensuring that voting procedures and facilities:

(i) are appropriate, accessible and easy to understand;

(ii) protect the right of citizens with disabilities to vote by secret ballot; and

(iii) allow, where necessary, the provision of assistance in voting to citizens with disabilities;

(b) actively promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public administration, and shall encourage, as appropriate, their participation in public affairs, including to:

(i) participate on a basis of equality in the activities and administration of political parties and civil society;

(ii) form and join organisations of persons with disabilities to represent persons with disabilities at national, regional and local levels;

(c) to ensure that persons with disabilities and their organisations participate, on an equal basis to others, in all decision-making processes, in particular those concerning issues relating to persons with disabilities.

◎ 제18조에 있어서 최초문장인 ‘회원국은 장애인의 차별없는 정치적권리를 인식(recognize)하며, 다음의 사항을 수행한다’라는 표현을 대부분의 국가에서 국가의 의무규정이 약하며, 시민적 및 정치적 권리협약(ICCPR)의 제25조 및 여성차별철폐협약(CEDAW)의 제7조 수준으로 일치하여야 한다는 의견을 공유함. 따라서 ‘인식(recognize)’라는 표현을 ‘보장(shall ensure/guarantee)’이라는 표현으로 교체하도록 하는 의견이 가장 많았음.

#### < (a)호 >

◎ (a)호에서 ‘적극적으로 증진한다는 표현을 ‘보장한다’로 강화하자는 의견이 일반적이었음. ‘장애인의 정치적 및 공공생활에 효과적이고 완전하게 참여하기 위한 환경을 적극적으로 증진한다’에 있어서 ‘장애인(persons with disabilities)’을 ‘시민(citizens of disabilities)’으로 축소하여야 한다는 의견과 비시민의 정치적 권리를 인식하여 ‘시민’이 아닌 ‘장애인’으로 하여야 한다는 의견이 팽팽히 맞섬. 그러나 ‘장애인’으로 하자는 의견이 전반적으로 우세하였음.

◎ (a)호 하의 (iii)목에 있어서, ‘투표에 참여하도록 지원(provision of assistance)’하는 부분에 있어서, 국가가 장애인 투표에 대한 지원을 결정하는 것이 아니라, 장애인이 결정하여야 하기 때문에 문장을 변경하여야 한다는 의견이 공유되었음.

### 토론 결과 (변경사항 밑줄)

(a) 장애를 가진 사람들이 투표 및 당선 권리와 기회를 포함해서, 자신들이 직접 혹은 자유롭게 선택한 대표자를 통해서 다른 사람들과 동등하게 [그리고 모든 사람의 정치적 권리를 명시한 국내적 법률과 일치하도록] 장애를 가진 사람들의 실질적이고 완전한 정치적이고 공적인 생활에의 참여를 보장하여야 한다. 이를 위하여 다음과 같은 투표 절차와 시설 및 자료를 보장토록 한다. 투표 절차와 시설 및 자료는,  
(i) 적절하고 접근가능하고 이해하며 활용하기 쉬워야한다.  
(ii) 선거 및 국민투표에 참여하는데 있어서 법률에 일치하며 위협이 없는 상황에서 장애를 가진 사람들이 비밀 투표를 하며, 정부의 모든 단계에서 선거에 출마하고 당선되며 공직을 수행하도록 보장해야한다.  
(iii) 선거 참여자로서 장애를 가진 사람들이 자신의 의지를 자유롭게 표현하는 것을 보장하고, 이를 위하여 필요하다면 이들이 자신의 결정에 따라 요청할 경우 투표 시 도움 받도록 허가할 수 있다.

(a) ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others [and in accordance with national laws outlining political rights for all people], directly or through freely chosen representatives, including the right and opportunity of persons with disabilities to vote and be elected, by ensuring that voting procedures, facilities and materials:  
(i) are appropriate, accessible and easy to understand and use;  
(ii) protect the right of persons with disabilities to vote by secret ballot, [in accordance with law and without intimidation] in elections, and public referenda; to stand for elections and to hold office and perform all public functions at all levels of government;  
(iii) guarantee the free expression of the will of persons with disabilities as electors and to this end, where necessary, allow assistance in voting on their request and by a person of their own choice;

### < (b)호 >

- ◎ (b)호의 '공공행정을 수행하는데 있어서 참여 환경을 증진토록 하는 부분'에 있어서 역시 국가 의무를 규정하는 표현이 충분히 강하지 않다는 의견이 많았음.
- ◎ '적절하게' 공적업무에 참여하도록 한다는 표현이 한정적 표현으로 이해될 수 있으므로 삭제하자는 의견이 많았음. (아래의 토론결과에서도 삭제됨)
- ◎ 국내 조직 외에도 장애인이 국제적 조직에 참여할 수 있도록 하자는 의견이 많았음.

### 토론 결과 (변경사항 밑줄)

(b) 장애를 가진 사람들이 차별없이 남녀가 평등하게 공공 사무를 수행하는 데에 실질적이고 완전하게 참여할 수 있는 [환경을 적극적으로 증진해야하며] [보장해야하며], 또한 다음과 같은 것을 포함한 공적 사무에 참여하는 것을 장려해야한다.  
(i) 시민단체 및 정당의 활동 및 운영을 포함하여 국가의 공적, 정치적 삶과 연관된 연합활동(associations)에 참여하는 것  
(ii) 국제적, 국가적, 지역적, 지방적 수준에서 장애를 가진 사람들을 대표하는 장애를 가진 사람들의 조직을 구성하고 참여하는 것;

(b) [actively promote an environment in which] [ensure that] persons with disabilities, without discrimination and on a basis of equality between men and women, can effectively and fully participate in the conduct of public affairs, and shall encourage their participation in public affairs, including to:  
(i) participate in non-governmental organisations and associations concerned with the public and political life of the country, including the activities and administration of political parties;  
(ii) form and join organisations of persons with disabilities to represent persons with disabilities at

international, national, regional and local levels.

< (c)호 >

- ◎ (c)호의 내용은 이미 협약 내에서 언급되어있으므로 제4조로 이동시키거나 삭제하도록 하는 의견이 있었음.
- ◎ '특히 장애를 가진 사람들' 이라는 문구에 대하여는 제한의 의미가 있으므로 삭제하자는 의견 등 여러 다른 의견이 제기되었음.

< 제18조 전체에 대한 공식 논의 >

- ◎ 인도인권위의 모히트여사는 장애인의 정치적 권리가 넓게 보장되어야 함을 주장함. (b)항의 장애인의 정치참여에 있어서 유엔 여성차별철폐위원회의 일반논평(General Comment)을 참고하여 '국제적' 참여를 보장하여야 한다는 의견. 동 일반논평은 정치적 권리는 입법, 사법, 행정을 포함하는 포괄성을 가지고 있으며, 정책은 국제적, 국가적, 지역 및 지방(international, national, regional and local level) 모든 레벨에서 이행되어야 한다는 내용.(협약초안에는 '국제적'을 언급하지 않았으며, 정부대표의 논의 중 '국제적'을 추가해야한다는 의견과 국가, 지역, 지방만을 정책이행이 이루어져야 한다는 의견이 교환된 바 있음.)

## 7. 제19조 (접근성, Accessibility)

### 제19조 접근성

1. 이 협약의 당사국은 장애를 가진 사람들에게 독립적으로 살고 삶의 모든 영역에 완전하게 참여할 수 있는 능력을 보장하기 위해서, 건축 환경, 교통수단, 정보와 의사소통 기술을 포함한 정보와 의사소통, 여타의 서비스에 대한 접근성을 보장하는 데서 장애물을 확인하고 없애며 그런 접근성을 보장하기 위해서 적절한 조치를 취해야한다. 이러한 조치의 초점은 특히 다음과 같은 것들을 포함해야한다:
  - (a) 공공건물, 도로, 학교·주택·의료시설·실내외 시설, 공공 소유 작업현장을 포함한 공공 용도로 쓰이는 여타의 시설들에 대한 건축과 보수;
  - (b) 공공 교통시설, 의사소통, 전기 서비스를 포함한 여타의 서비스들의 향상과 개조.
2. 당사국은 또한 다음과 같은 것에 대한 적절한 조치를 취해야한다:
  - (a) 건물과 시설에 점자를 포함한 읽고 이해하기 쉬운 형태의 표지를 제공하는 것;
  - (b) 공공 건물과 시설에의 접근성을 용이하게 위해서 활동보조인, 낭독사, 수화통역사를 포함한 또 다른 형태의 살아 움직이는 조력이나 매개자를 제공하는 것;
  - (c) 공공 시설 및 서비스의 접근성을 위한 최소한의 국가 표준 및 지침을 개발하고, 공표하고, 감시하는 것;
  - (d) 공공 시설과 서비스를 제공하는 민간단체에게 장애를 가진 사람들의 접근성의 모든 측면들을 참작하도록 장려하는 것;
  - (e) 비용적으로 감당할 만한 기술에 우선권을 부여하면서, 새로운 보조 기술의 연구, 개발, 생산에 착수하고 그것들을 장려하는 것;
  - (f) 표준, 지침, 보조 기술의 개발함에 있어서 유니버설 디자인과 국제 협력을 촉진하는 것;

- (g) 접근성에 대한 표준과 지침을 개발할 때, 장애를 가진 사람들의 조직에 상담을 받도록 보장하는 것;
- (h) 장애를 가진 사람들이 직면한 접근성 문제들에 대해서 모든 관련자들에게 훈련을 제공하는 것.

**Draft Article 19 ACCESSIBILITY**

1. States Parties to this Convention shall take appropriate measures to identify and eliminate obstacles, and to ensure accessibility for persons with disabilities to the built environment, to transportation, to information and communications, including information and communications technologies, and to other services, in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. The focus of these measures shall include, inter alia):

(a) the construction and renovation of public buildings, roads and other facilities for public use, including schools, housing, medical facilities, indoor and out-door facilities and publicly owned workplaces;

(b) the development and remodelling of public transportation facilities, communications and other services, including electronic services.

2. States Parties shall also take appropriate measures to:

(a) provide in public buildings and facilities signage in Braille and easy to read and understand forms);

(b) provide other forms of live assistance and intermediaries, including guides, readers and sign language interpreters, to facilitate accessibility to public buildings and facilities;

(c) develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of public facilities and services;

(d) encourage private entities that provide public facilities and services to take into account all aspects of accessibility for persons with disabilities;

(e) undertake and promote research, development and production of new assistive technologies, giving priority to affordably priced technologies;

(f) promote universal design and international cooperation in the development of standards, guidelines and assistive technologies;

(g) ensure organisations of persons with disabilities are consulted when standards and guidelines for accessibility are being developed;

(h) provide training for all stakeholders on accessibility issues facing persons with disabilities.

- ◎ 장애인의 접근성에 관한 문제가 동 협약에서 가장 중요한 부분 중에 하나 라는 데에 의견을 같이하면서, 그 중요성으로 제2조 일반원칙(General Principles) 등에 포함시켜야 한다는 의견도 있었음.
- ◎ 접근성을 다루고 있는 제19조와 개인의 mobility를 다루고 있는 제20조의 흡사함으로 멕시코, 칠레 등 몇몇 국가에서 전체를 통합시켜야 한다는 의견이 많았으나, 한국은 다른 사항을 다루고 있으므로 통합에는 우려를 표명함. 이에 비하여 대부분의 국가에서 두 조항을 통합하는 것보다 제20조 (a)항과 같은 조항을 19조의 겹치는 부분을 제거하도록 하는 의견이 많았음.
- ◎ 장애인 접근을 위한 공공건물(public building)의 건설 및 개조를 다루고 있는 제1항(a)호 및 '공공시설과 서비스를 제공하는 개인회사에 있어서 장애인의 접근성을 고려하도록 장려(encourage)'하는 제2항 (d)호와 관련하여 대부분의 국가에서 건물이 공공 혹은 개인 소유인지가 중요한 것이 아니라, 공공용으로 활동되느냐가 중요한 것으로, 공공건물 뿐만 아니라 개인의 소유일지라고 공공용으로 사용되는 건물이 동 조항에 포함되어야 한다

는 의견이 다수였음. 다수가구가 거주하는 개별주거도 포함되어야 한다는 의견도 있었음. 따라서 제2항 (d)호에 있어서 '장려'라는 표현에는 반대하는 국가가 대다수였으며, 보장(ensure), 촉구(urge) 및 새로운 문장 등이 제안되었음.

- ◎ 한국은 발언을 통해 건물들 뿐만 아니라 버스 등 '대중교통(public transportation)'의 장애인 접근성에 대하여 중요성을 강조하고 휠체어 버스와 같은 특수 교통 서비스(special transportation services)의 개발이 언급되어야 함을 발언함.

\*한국의 1항(b)호 수정 건의안 : devise policies and necessary technologies in order to make public transportation accessible to persons with disabilities, and develop special transportation services for persons with disabilities as complimentary measures to accessible public transportation.

- ◎ 또한, 아프리카 그룹을 대표한 남아공 등의 국가에서는 제19조 1항에서 국가는 장애인의 접근성을 보장하고 장애물을 제거하도록 하는 '적절한 조치를 취하도록(take appropriate measure)'하는 부분에 있어서 적절하다는 표현을 제거하고 '점진적(progressive)'으로 조치를 취하도록 하자는 의견이 있었으며, 이러한 의견에 대하여 DPI 등 NGO에서 우려를 표명함.

- ◎ NGO에서는 이러한 우려표명 외에도, 일본장애포럼(JDF)은 개인소유 건물 등의 포함문제를 언급되었음. 또한 국제정신장애권리(MDRI)에서는 정보에 대한 접근의 중요성을 강조.

- ◎ 인도인권위의 모히트여사는 접근성(access, accessibility)이라는 표현은 '평등'이나 '비차별'이라는 개념에 포함될 수 있으며, 접근성을 명시하고자 할 경우에는 그에 대한 정의를 포함하는 것을 검토해줄 것을 제안. 또한 접근성의 영역(scope)에 대하여 디자인도 중요하지만 이에 지나치게 집중하고 있는 것으로 보이며, 경제적인 빈곤이 접근성에 문제를 촉발할 수 있으므로 그 영역을 포괄적으로 확대하는 것이 필요하다는 의견을 피력함.

**토론 결과 (변경사항 밑줄)**

1. 이 협약의 당사국은 장애를 가진 사람들에게 독립적으로 살고 삶의 모든 영역에 완전하게 참여할 수 있는 능력을 보장하기 위해서, 건축 환경, 교통수단, 정보와 의사소통 기술을 포함한 정보와 의사소통, 여타의 서비스에 대한 접근성을 보장하기 위하여 장애물을 확인하고 없애므로써 그런 접근성을 보장하기 위해서 적절한 조치를 취해야 한다. 이러한 조치의 초점은 특히 다음과 같은 것들을 포함해야 한다:

2. 당사국은 또한 다음과 같은 것에 대한 적절한 조치를 취해야 한다:

(d) 공공 시설과 서비스를 제공하는 민간단체에게 장애를 가진 사람들의 접근성의 모든 측면들을 참작하도록

[장려/보장]하는 것;

2항 (e), (g) 삭제

1. States Parties to this Convention shall take appropriate measures to ensure accessibility for persons with disabilities by identifying and eliminating obstacles to the built environment to transportation, to information and communications, including information and communications technologies, and to other services, in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. [The focus of] these measures shall include, inter alia:
2. States Parties shall also take appropriate measures to:
  - (d) [encourage/ensure] private entities that provide public facilities and services to take into account all aspects of accessibility for persons with disabilities;

◎ 동 조항의 초안은 facilitator인 세르비아몬테네그로의 Damjan Tatic에게 회부됨.

## 8. 제20조 (개인의 이동, Personal Mobility)

### 제20조 개인의 이동

이 협약의 당사국은 장애를 가진 사람들에게 최대한 독립적으로 이동의 자유를 보장하기 위해서 실질적인 조치를 취해야하는데, 여기에는 다음과 같은 것들이 포함된다.

- (a) 감당할 수 있는 가격으로 이용할 수 있도록 만드는 것을 포함해서, 고품질의 이동보조기구, 장치, 보조 기술, 살아 움직이는 조력과 매개자의 형태에 대해서 장애를 가진 사람들의 접근성을 용이하게 하는 것
- (b) 이동보조기구, 장치, 보조 기술에 대한 유니버설 디자인을 장려하고, 이런 것들을 생산하는 민간단체들이 장애를 가진 사람들을 위한 이동성의 모든 측면을 참작하도록 장려하는 것
- (c) 새로운 이동보조기구, 장치, 보조 기술의 연구, 개발, 생산에 착수하고 그것들을 장려하는 것
- (d) 장애를 가진 사람들 및 장애를 가진 사람들과 같이 일하는 전문 직원들에게 이동 기술에 대한 훈련을 제공하는 것
- (e) 장애를 가진 사람들에게 방법, 그들이 선택한 시간, 감당할 수 있는 가격의 측면에서 이동의 자유를 용이하게 하는 것
- (f) 이동보조기구, 장치, 보조 기술, 또 다른 형태의 조력과 서비스에 관하여 장애를 가진 사람들에게 정보를 제공하는 것
- (g) 장애를 가진 사람들의 이동 문제에 대한 인식을 개선하는 것.

### Draft Article 20 PERSONAL MOBILITY

States Parties to this Convention shall take effective measures to ensure liberty of movement with the greatest possible independence for persons with disabilities, including:

- (a) facilitating access by persons with disabilities to high-quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (b) promoting universal design for mobility aids, devices and assistive technologies and encouraging private entities which produce these to take into account all aspects of mobility for persons with disabilities;
- (c) undertaking and promoting research, development and production of new mobility aids, devices and assistive technologies;
- (d) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (e) facilitating the freedom of movement of persons with disabilities in the manner and at the time of

their choice, and at affordable cost:

(f) providing information to persons with disabilities about mobility aids, devices, assistive technologies and other forms of assistance and services;

(g) promoting awareness about mobility issues for persons with disabilities.

- ◎ 장애인의 이동장치 등에 초점이 맞추어진 동 조항에 있어서 19조와의 유사성 때문에 제4(일반적 의무), 15(독립적 생활), 18(정치적 참여), 19조(접근성) 등 다른 조항에 통합시켜야 한다는 의견이 많았음. 그러나 조항 삭제에 반대하는 의견도 있었으며, 러시아 등의 국가에서는 동 조항의 내용(substances)이 통합 등 어떠한 방식을 통해서도 남겨져야 함을 강조함.
- ◎ 장애인의 이동에 대한 자유와 비차별을 명시하는 방향으로 1항이 강화되어야 한다는 의견이 있었음.
- ◎ 장애인의 이동장치와 관련하여 세금감면과 기술의 이전을 보장해야한다는 의견이 있었으나, 반대의견도 존재

## 9. 제21조 (건강과 재활에 대한 권리)

### 제21조 건강과 재활에 대한 권리

당사국은 장애를 가진 모든 사람들은 장애를 근거로 한 차별 없이 달성할 수 있는 최고 수준의 건강을 가질 권리가 있다는 것을 인지한다. 당사국은 장애를 가진 모든 사람들이 이 권리를 박탈당하지 않도록 보장하기 위해 노력해야하며, 건강 및 재활 서비스에 대한 장애를 가진 사람들의 접근성을 보장하기 위해서 모든 적절한 조치를 취해야한다. 특히 당사국은 다음과 같은 점들을 이행해야 한다.

(a) 장애를 가진 사람들에게 성적·생식적 건강 서비스를 포함해서 다른 시민들과 동일한 범위와 수준으로 건강 및 재활 서비스를 제공한다.

(b) 장애를 가진 사람들에게 필요한 건강 및 재활 서비스, 특히 그들의 장애에 대해서, 그러한 서비스를 제공하기 위해 노력한다.

(c) 될 수 있는 한 그들의 지역사회에서 가까운 곳에서 이러한 건강 및 재활 서비스를 제공하도록 노력한다.

(d) 건강 및 재활 서비스는 자발적으로 사용할 수 있는 안전한 휴식 공간과, 장애를 가진 사람들을 포함한 상담·지지 그룹을 제공하는 것을 포함한다.

(e) 아동들과 노인들을 포함해서, 이차 장애를 예방하고 보호하기 위한 프로그램과 서비스를 제공한다.

(f) 장애를 가진 사람들에게 혜택이 되는 새로운 지식과 기술의 개발, 보급, 사용을 촉진한다.

(g) 장애를 가진 사람들의 건강 및 재활에 대한 욕구를 충족시키는 데에 필요한 모든 훈련을 포괄해서, 장애를 갖고 있는 사람을 포함한 충분한 수의 건강 및 재활 전문가를 양성하는 것을 장려하고, 또한 그들이 적절한 전문 훈련을 받도록 보장한다.

(h) 이 협약의 원리에 입각해서 모든 건강 및 재활 전문가들에게 장애를 가진 사람들의 권리, 존엄, 욕구에 대한 장애 감수성과 존중감을 신장시키기 위한 적절한 교육과 훈련을 제공한다.

(i) 장애를 가진 사람들의 인권, 존엄, 자율성에 대한 질 높은 보살핌, 개방성, 존중을 촉진하는 공공 및 민간 건강관리 윤리학의 규범이 국가적으로 적절히 시행되는 것을 보장하고, 공공 및 민간 건강관리와 재활 시설·기관의 서비스와 상태를 잘 감시하도록 한다.

(j) 장애를 가진 사람들에게 건강 및 재활 서비스가 제공되는 것, 장애를 가진 사람들의 건강 및 재활에 대한 개인 정보를 공유하는 것은 관련자의 자유로운 고지에 입각한 동의가 있었을 때에만 발생하도록 보장해야한다. 또한 건강 및 재활 전문가들이 장애를 가진 사람들에게 관련 권리를 미리 알리도록 보장해야한다.

(k) 원하지 않는 의학적 및 관련된 개입, 그리고 교정 외과수술이 장애를 가진 사람들에게 부과되는 것을 방지한다.

(l) 장애를 가진 사람들의 건강 및 재활 정보에 대한 프라이버시를 대등하게 보장한다.

(m) 건강 및 재활 서비스를 계획·전달·평가하는 것뿐만 아니라 건강 및 재활의 입법 및 정책을 만들 때 장애를 가진 사람들과 그들의 단체가 참여하는 것을 촉진한다.

#### Draft Article 21 RIGHT TO HEALTH AND REHABILITATION

States Parties recognise that all persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall strive to ensure no person with a disability is deprived of that right, and shall take all appropriate measures to ensure access for persons with disabilities to health and rehabilitation services. In particular, States Parties shall:

- (a) provide persons with disabilities with the same range and standard of health and rehabilitation services as provided other citizens, including sexual and reproductive health services;
- (b) strive to provide those health and rehabilitation services needed by persons with disabilities specifically because of their disabilities;
- (c) endeavour to provide these health and rehabilitation services as close as possible to people's own communities;
- (d) ensure that health and rehabilitation services include the provision of safe respite places, to use on a voluntary basis, and counselling and support groups, including those provided by persons with disabilities;
- (e) provide programs and services to prevent and protect against secondary disabilities, including amongst children and the elderly;
- (f) encourage research and the development, dissemination and application of new knowledge and technologies that benefit persons with disabilities;
- (g) encourage the development of sufficient numbers of health and rehabilitation professionals, including persons who have disabilities, covering all disciplines needed to meet the health and rehabilitation needs of persons with disabilities, and ensure they have adequate specialised training;
- (h) provide all health and rehabilitation professionals an appropriate education and training to increase their disability-sensitive awareness and respect for the rights, dignity and needs of persons with disabilities, in line with the principles of this Convention;
- (i) ensure that a code of ethics for public and private healthcare, that promotes quality care, openness and respect for the human rights, dignity and autonomy of persons with disabilities, is put in place nationally, and ensure that the services and conditions of public and private health care and rehabilitation facilities and institutions are well monitored;
- (j) ensure that health and rehabilitation services provided to persons with disabilities, and the sharing of their personal health or rehabilitation information, occur only after the person concerned has given their free and informed consent, and that health and rehabilitation professionals inform persons with disabilities of their relevant rights;
- (k) prevent unwanted medical and related interventions and corrective surgeries from being imposed on persons with disabilities;
- (l) protect the privacy of health and rehabilitation information of persons with disabilities on an equal basis;
- (m) promote the involvement of persons with disabilities and their organizations in the formulating of health and rehabilitation legislation and policy as well as in the planning, delivery and evaluation of health and rehabilitation services.

#### ※ 건강

- ◎ 이 조항의 논의에서 핵심적인 내용은 재활을 의료재활로 국한시켜야 하고 직업분야 등 다른 분야의 재활은 따로 다루어야 한다는 주장임.
- ◎ 건강과 재활을 분리하자는 의견을 대부분의 국가들이 제시 (칠레,호주,EU, 이스라엘,영국,우간다,뉴질랜드,태국,요르단,자마이카,나이지리아,노르웨이,말리,인도 등이 분리 안을 지지하고 약 2개국 정도 반대)
- ◎ 분리하자는 의견은 건강과 재활은 다른 개념이라는 근거를 두고 있음. 건강권은 기본권이나 재활은 기본권이 될 수 없다는 입장들이었음. 건강에는



건강증진, 예방, 치료, 의료 등이 포함되며 반면에 재활이란 용어는 다양하고 광범위하기 때문에 교육재활, 근로재활, 심리사회적 재활, 의료재활 등이 포함된다는 입장.

- ◎ 이런 이유로 건강과 재활은 같은 조에 두어서는 안되고 건강과 재활은 조항을 달리하여 분리하여(재활을 21-bis, 단독조항으로) 정리하여야 한다는 주장이 우세하였음.
- ◎ 한국도 장애인의 재활 욕구를 감안해 재활을 명시하되 의료재활로 국한시킬 것을 제시함
- ◎ 이를 해결하는 방법으로 21조에 bis조항을 두어 따로 설치하자는 주장이 대세를 이루었음
- ◎ 건강권이 너무 중요하기 때문에 접근가능하고 실천가능한 건강권을 만들자는 입장임. CBR(Community Based Rehabilitation:지역사회 재활)이 가능해야 하며 개발도상국의 농어촌 모델이 이러한 형태라는 주장이었음. 이는 돈을 내지 말고 비용 부담 가능선에서 의료재활, 재활권에 접근 가능해야 한다는 입장임. 일부 국가에서 free of charge(무료)를 주장함으로써 선후진 국가에 건강권의 개념에 대한 차이가 명백하게 나타나고 있음.
- ◎ 머리말의 내용 "당사국은 장애를 가진 모든 사람들이 장애로 인한 차별 없이 달성할 수 있는 최고 수준의 건강을 가질 권리가 있다는 것을 인지한다." 에서 단어 "인식하다" 를 "보장한다" 로 바꿔 그 뜻을 강화해야 한다는 의견이 있었음
- ◎ 각 항의 내용을 점진적으로 실현하자는(progressive realization) 데에는 제한적인 지지가 있었지만, '노력하다 (strive)'와 같이 실천을 한정하는 단어는 삭제해서 그 내용을 강화할 필요가 있다고 지적
- ◎ 많은 조항들이 조약 초안의 다른 조항들과 서로 중복이 되는 경우가 많아 수정이 필요하다는 의견. 예를 들면. (l)호의 경우 (j)호에서 중복이 되고, 14조에서도 다루어진 내용임. 이밖에 (d),(f),(g),(m)호도 중복됨.
- ◎ (a)호 내용 중 "성과 생식건강서비스" 이 삭제되어야 한다는 제안이 있었으나, 위원회는 그 내용이 특정국가의 가족계획에 관련된 정부의 정책을 바꾸려는 의도가 아니고, 장애인 또한 이 서비스에서 차별 없이 평등한 권리를 가짐을 의도함 이라고 설명함.
- ◎ (a)호에 인구를 기반으로 한 공공 건강 프로그램의 개념을 포함해야 하며, '시민' 이란 단어를 '사람'으로 교체해야 한다는데 전반적으로 동의
- ◎ (b)호에 조기발견과 치료에 대한 내용이 포함되어야 한다는 의견
- ◎ (c)호에 '공동 집단'이라는 단어 뒤에 '시골농촌지역' 이라는 단어를 추가할

것 을 제안

- ◎ (e)호에서 후천성 장애의 예방에 관해서만 다루자와, 좀더 포괄적인 내용을 다루자, 전 문단에서 이미 충분히 언급되었으므로 삭제하자 등 다양한 견해가 있었음.
- ◎ (h).(i).(j)호를 병합하자는 의견
- ◎ 일부 대표단은 (k)호는 이미 12조 단독조항에서 다루어졌으므로 삭제되어야 한다고 주장함.
- ◎ 추후 세부사항 논의를 위해 초안서를 facilitator 인 요르단의 무타즈 하야 사트에게 전달함

## ※ 재활 (Rehabilitation)

- ◎ Habilitation은 선천적 장애가 있는 상태에서의 재활을 의미하며, Rehabilitation은 후천적 장애 즉 삶의 중도에 발생하는 장애를 말하며 이를 구분해서 사용해야 한다는 주장이 정리되었음.
- ◎ 재활의 일반적 모델은 의사 등의 전문가가 개입해서 진행하는 것으로 장애인 당사자는 환자라는 입장에서 재활치료를 한다는 입장으로 장애인 당사자들은 이를 거부하는 입장임.
- ◎ 이에 따라 사회(Social)모델이 등장하였고 장애인 당사자는 환자가 아닌 정상인이며 장애인 자신이 재활을 주도해야 한다는 입장이었음 -> 당사자 주의
- ◎ 이러한 논쟁이 진행되는 과정에서 사생활(Privacy)이라는 용어가 등장하였으며 이는 장애인이 동의하지 않는 어떤 치료도 반대한다라는 것이었음. 즉 인공유산, 강제불임 등은 장애인 자신이 동의하는 경우에만 의료재활이 가능하다는 것임.
- ◎ 재활을 의료재활로 국한시켜야 하고 직업분야 등 다른 분야의 재활은 따로 다루어야 한다는 주장이 있었음.
- ◎ 한국도 장애인의 재활 욕구를 감안해 재활을 명시하되 의료재활로 국한시킬 것을 제시함.
- ◎ 결국, WG(Working Group)의 초안을 유지하되 재활을 의료재활로 국한시키며 재활이라는 용어를 확대해석하여 사용하는 것을 반대한다는 쪽으로 의견이 모아짐.

## 10. 제22조 [노동권]

### 제22조 노동권

당사국은 장애를 가진 사람들의 평등한 기회와 대우를 장려하는 것과 그들을 가난으로부터 지키는 것을 목적으로, 장애를 가진 사람들의 일할 권리를 인지하며, 이러한 권리는 그들이 자유롭게 선택하거나 수용한 일을 통해서 생계를 유지할 수 있는 기회를 포함한다. 당사국은 이 권리의 실현을 보장하고 장려하기 위하여 다음과 같은 내용을 포함하여 적절한 조치를 취해야한다.

- (a) 장애를 가진 사람들에게 개방적이고 포괄적이고 접근 가능한 노동시장과 작업 환경을 장려한다.
- (b) 장애를 가진 사람들이 일반 기술 및 직업 지도 프로그램, 배치 서비스, 보조 장치들, 직업 및 계속적 훈련에 실질적으로 접근할 수 있도록 한다.
- (c) 직업을 찾고 얻고 유지하기 위한 지원뿐만 아니라 창업 및 자영업의 기회를 포함해서, 공개 노동 시장에서 장애를 가진 사람들의 고용 기회와 승진을 장려한다.
- (d) 확고한 행동계획, 인센티브, 쿼터제와 같은 것을 통해서 장애를 가진 사람들을 채용하도록 기업주들을 장려한다.
- (e) 작업장과 작업 환경을 갖춘 합리적인 편의제공을 보장한다.
- (f) 공개 노동 시장에서 장애를 가진 사람들이 직업 경험을 할 수 있도록 장려한다.
- (g) 직업적·전문적 재활, 직업 유지, 직업복귀와 같은 프로그램들을 장려한다.
- (h) 고용, 고용의 유지, 승진, 동일 가치의 일에 대한 평등한 보수 및 평등한 기회를 포함한 작업 환경, 불편사항의 해소와 관련하여 입법을 통해서 장애를 가진 사람들을 보호하고, 장애를 가진 사람들이 노동조합의 권리 행사를 할 수 있도록 보장한다.
- (i) 장애를 가진 사람들이 공공 영역에서 직업에 대한 평등한 권리를 갖는 것을 보장한다.
- (j) 작업장과 노동시장에 대한 장애를 가진 사람들의 기술, 장점, 능력, 기여 등에 대한 인식을 촉진하고 작업장과 노동시장에서 장애를 가진 사람들에 대한 고정관념과 편견을 없애기 위한 노력을 촉진한다.

### Draft Article 22 RIGHT TO WORK

States Parties recognise the right of persons with disabilities to work, which includes the opportunity to gain a living by work that they freely choose or accept, with a view to promoting equal opportunity and treatment of persons with disabilities, and protecting them from poverty. States Parties shall take appropriate steps to safeguard and promote the realisation of this right, including measures to:

- (a) promote a labour market and work environment that are open, inclusive, and accessible to all persons with disabilities;
- (b) enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services, assistive devices, and vocational and continuing training;
- (c) promote employment opportunities and career advancement for persons with disabilities in the open labour market, including opportunities for selfemployment and starting one's own business, as well as assistance in finding, obtaining and maintaining employment;
- (d) encourage employers to hire persons with disabilities, such as through affirmative action programs, incentives and quotas;
- (e) ensure the reasonable accommodation of persons with disabilities in the workplace and work environment;
- (f) promote the acquisition by persons with disabilities of work experience in the open labour market;
- (g) promote vocational and professional rehabilitation, job retention and return to work programs;
- (h) protect through legislation persons with disabilities with regard to employment, continuance of employment, career advancement, working conditions, including equal remuneration for work of equal value and equal opportunities, and the redressing of grievances, and to ensure persons with disabilities are able to exercise their labour and trade union rights;
- (i) ensure that persons with disabilities have equal opportunity to employment in the public sector;
- (j) promote recognition of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market, and to combat stereotypes and prejudices about persons with disabilities in the workplace and the labour market.

- ◎ 협약의 내용이 국제노동기구협약과 같은 현존하는 국제조약의 내용을 훼손해서는 안 된다는데 동의.
- ◎ 장애인에 사회에 적극적으로 참여할 수 있게 하기 위해서 공개 노동시장에의 자유로운 접근의 중요성을 국가가 인식해야 한다는 동의. 한편 장애인 노동력 착취의 가능성에 대한 우려와 함께, 장애인 고용 장려를 위해 마련된 작업장이 도리어 장애인을 사회로부터 분리하고, 작업조건 또한 바람직하지 않다는 의견. 이부분에 대해 추가적인 토론을 가질 것을 합의함.
- ◎ 제17조, 19조, 21조 단독조항이 서로 중복된다는 의견.
- ◎ 제22조 첫부분에 일반규범에 대해 다루고, 이하 '조항'은 그 규범을 실행키 위한 방책에 관하여 논의되어야 한다는데 동의함. 이를 기준으로, 현재의 (a)호은 삭제하고, 그 기본개념은 머리말에 포함시켜야 한다는 의견에 대해 전반적으로 동의. 한편, 공공기관이 솔선수범하여 장애인 고용을 촉진하여야 한다는데 강한 지지가 있었으며, 만약 이 내용을 머리말에 포함시키면 (i)목은 삭제될 수 있음.

**토론결과 (변경사항 밑줄)**

당사국은 장애를 가진 사람들의 [평등한 기회와 대우를 장려하는 것을 목적으로] 그리고 그들을 가난으로부터 지키는 것을 목적으로, 장애를 가진 사람들의 [다른 사람들과 대등한] 일할 권리를 인지하며, 이러한 권리는 장애인에게 개방적이고 포용하며 접근이 용이한 노동시장과 근무환경을 자유롭게 선택하고 결정하여 생활을 유지할 수 있도록 선택할 권리를 포함한다. 당사국은 이 권리의 실현을 보장하고 장려하기 위하여 [장애인 고용의 모범을 보여야 하며] 다음과 같은 내용을 포함하여 적절한 조치를 취해야한다.

States Parties recognise the right of persons with disabilities to work, [on an equal basis with others]; this includes the opportunity to gain a living by work that they freely choose or accept in a labour market and work environment that is open, inclusive and accessible to persons with disabilities, [with a view to promoting equal opportunity and treatment of persons with disabilities.] and protecting them from poverty. States Parties [shall set an example of employment of persons with disabilities] and take appropriate steps to safeguard and promote the realisation of this right, including measures to:

- ◎ 현재의 (c)호를 유급직과 관련된 부분과, 자영업을 다루는 부분, 두 조항으로 나누어야 한다는데 지지.

**토론결과 (변경사항 밑줄)**

(c) 직업을 찾고 유지하며 [재근무] 하도록 하는 지원과 함께 공개노동시장에서 장애인이 고용기회와 승진의 기회를 [동등하게] 갖도록 장려한다.  
(c-bis) 장애인의 자영업과, 창업을 장려한다.

(c) promote [equal] employment opportunities and career advancement for persons with disabilities in the open labour market, as well as assistance in finding, obtaining and maintaining [and returning to] employment;  
(cbis) promote opportunities for self-employment, entrepreneurship and starting one's own business

- ◎ (d)호의 쿼터제 단어를 조항에 그대로 포함시키는 것에 대해서 동의를 이끌어내지 못함. 그러나 확고한 행동계획과 특별 지원에 관련하여서는 덜 구체적인 단어를 사용하는 것에 지지.

**토론결과 (변경사항 밑줄)**

확고한 행동계획, 인센티브, [그리고 다른 적합한 정책, 지원 및 특별 조치]를 통해서 장애를 가진 사람들을 채용하도록 기업주들을 장려한다.

(d) encourage employers to hire persons with disabilities, such as through affirmative action programmes, incentives [and other appropriate policies, support and special measures];

- ◎ (f)호를 삭제할 것에 대한 의견이 있었으나, 유지하자는 의견도 많았음
- ◎ 위원회는 (g)호를 (c)호에 병합하거나 삭제, 또는 21조 단독조항에 포함시킬 가능성을 언급함.
- ◎ (h)호에 고용조건과 안전하고 건강한 작업환경을 위한 내용이 포함되어야 한다는 데 지지. 또한 이 조항을 즉각 머리말 아래 새로운 (a)호으로 두어야 한다는 데에도 강한 지지가 있었음.
- ◎ (j)호를 삭제하고 그 항의 첫 번째 부분만 5조 아래 두자는 의견.
- ◎ 추후 세부사항 토의를 위해 초안서를 facilitator인 이스라엘의 단 오렌에게 전달함

**11. 제23조 (사회보장과 적절한 삶의 표준)**

**제23조 사회 보장과 적절한 삶의 표준**

1. 당사국은 사회 보장을 포함해서 모든 장애를 가진 사람들의 사회 보장 권리와, 장애를 이유로 한 차별 없이 그 권리를 향유할 수 있는 권리를 인지하고, 이 권리의 실현을 보호하고 촉진하기 위한 적절한 조치를 취해야 하는데, 여기에는 다음과 같은 것들이 포함된다.

- (a) 장애와 관련한 요구에 의해서 필요한 서비스, 장치, 여타의 조력에 대해서 장애를 가진 사람들의 접근성을 장려해야한다.
- (b) 모든 프로그램과 전략에서 장애를 가진 사람들의 욕구와 관점을 고려해서 사회보장 프로그램과 가난 탈출 전략에 대한 장애를 가진 사람들, 특히 장애를 가진 여성과 노인들의 접근성을 보장한다.
- (c) 가난한 삶을 살고 있는 중증 및 복합적인 장애를 가진 사람들과 그들의 가족들이 국가로부터 장애관련 비용(적절한 훈련, 상담, 재정적 지원, 영양적 보살핌을 포함한)을 조력받을 수 있는 접근성을 보장하되, 이것이 그들의 경제적 성장을 저해하는 것이어서는 안 된다.
- (d) 정부 주택 프로그램(장애를 가진 사람들에게 대한 정부 주택보급 비율을 책정하는 것을 포함한)에 대한, 장애를 가진 사람들의 접근성을 보장한다.
- (e) 장애를 가진 사람들의 수입을 고려한 세금 면제와 세제 혜택에 대한 접근성을 보장한다.
- (f) 장애를 근거로 한 차별 없이 장애를 가진 사람들이 생명 보험 및 건강 보험에 접근하는 것을 보장한다.

2. 당사국은 모든 장애를 가진 사람들 자신과 그 가족들이 적절한 의식주, 깨끗한 물과 지속적인 생활조건 향상에 대한 접근성을 포함한 적절한 생활수준에 대한 권리를 갖고 있음을 인지하고, 또한 이러한 권리의 실현을 보호하고 장려하기 위한 적절한 조치를 취해야한다.

Draft Article 23 SOCIAL SECURITY AND AN ADEQUATE STANDARD OF LIVING

1. States Parties recognise the right of all persons with disabilities to social security, including social insurance, and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures to:

(a) ensure access by persons with disabilities to necessary services, devices and other assistance for disability related needs;

(b) ensure access by persons with disabilities, particularly women and girls with disabilities and the aged with disabilities, to social security programmes and poverty reduction strategies, and to take into account the needs and perspectives of persons with disabilities in all such programmes and strategies;

(c) ensure access by persons with severe and multiple disabilities, and their families, living in situations of poverty to assistance from the State to cover disability related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;

(d) ensure access by persons with disabilities to governmental housing programs, including through earmarking percentages of governmental housing for persons with disabilities;

(e) ensure access by persons with disabilities to tax exemptions and tax benefits in respect of their income;

(f) ensure that persons with disabilities are able to access life and health insurance without discrimination on the basis of disability).

2. States Parties recognise the right of all persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing, housing and access to clean water, and to the continuous improvement of living conditions, and will undertake appropriate steps to safeguard and promote the realisation of this right.

- ◎ 제2항의 '삶의 적정 수준'이 제1항의 '사회안보' 보다 앞서 검토되기 위하여 1항과 2항의 순서가 뒤바뀌어야 한다는데 전반적으로 동의. 또한 '삶의 적정 수준' 과 '사회안보' 이슈를 각각 단독적인 조로 만들어야 한다는 제안이 있었음.
- ◎ 장애인들의 차별을 방지하기 위한 여러 국가적 지원을 총체적으로 요약할 수 있고, 현재의 "사회안보" 단어를 대체하거나 보완할 수 있는 더 넓고 포괄적인 단어를 검토하였음. 제안된 단어로는, '사회적 보조' '사회적 지원' '사회안전망' '사회적 보호' 등이 거론되었음.
- ◎ (a)호에서는 관련 서비스와 보조장치 등이 무료로 제공되어야 한다는 것에 구체적으로 동의. 일부 대표단들은 이 조항에 반대입장을 표했으나 감당할 수 있는 한도 내에서의 제공에는 동의함.
- ◎ 나머지 조약 초안 내용과의 통일성을 위해 (a)호의 "필요한 서비스와 장치를 제공하는데 있어" 의 "필요한" 을 "적절한" 으로 바꾸자는데 동의.
- ◎ (b)호의 장애인이 필요로 하는 것과 그들의 의견 참작에 관한 조항은 4조에 서도 이미 다루어진 문제임을 지적하고, 협약 초안서 내용이 과도하게 특정 이슈들을 중복하지 않도록 하는 것이 필요하므로 삭제되어야 한다고 지적
- ◎ (c)호의 "중증의, 그리고 복합적인 장애" 표현에서 그 장애 정도를 정의하기가 힘들고, 해당되는 장애의 종류도 분류하기 어려우므로 삭제하고 간단히

"장애인" 으로 통합해야 한다는 주장. 하지만 일부에서는 "특별히"를 "중증의, 그리고 복합적인"에 덧붙일 것을 제안.

- ◎ (d)호의 "정부의(governmental)" 를 "공공의(public)" 로 바꾸자는데 동의. 문장에서 단어 '포함하는' 다음부터의 모든 내용 삭제에 동의.
- ◎ (e)호은 지나치게 관례적일 수 있는 가능성이 있다 하여 삭제하는데 동의. 하지만 일부에서는 유지할 것을 주장하며, 대신 "장애관련지출"로 이 조항을 제한할 것을 제안.
- ◎ 위원회는 (f)호과 관련하여, 어떤 국가나 특정 종교아래에서 생명보험이 선호대상이 아닐 수 있음을 밝히고, 조항이 유지되기 위해선 그런 국가들에게 "생명보험 권리" 에 대해 강요하거나 암시하는 내용이 있으면 안된다고 지적. 또한 일부 대표단은 (f)호의 "건강보험" 관련 내용은 21조와 관련이 깊으므로 21조에 속해야 한다고 주장.
- ◎ 2항에서 일부 대표단들이 걱정된 생활수준 유지를 위한 요소들에 대한 목록은 불필요하다며 삭제하길 건의했으나, 다른 대표단들이 지지의사를 밝히며, 특히 깨끗한 물에 대한 접근권은 중요성을 강조하며 보존할 것을 주장.

#### 토론 결과 (변경사항 밑줄)

1. 당사국은 모든 장애를 가진 사람들 자신과 그 가족들이 [적절한 의식주, [깨끗한 물]과 지속적인 생활조건 향상에 대한 접근성을 포함한] 적절한 생활수준에 대한 권리를 갖고 있음을 인지하고, 또한 [장애를 근거로 한 차별 없이] 이러한 권리의 실현을 보호하고 장려하기 위한 적절한 조치를 취해야한다. [당사국은 장애를 가진 사람들이 다른 사람들과 동등하게 깨끗한 물에 접근할 수 있는 권리를 보장하여야 한다.]

2. 당사국은 [사회 보험/사회적 보조/사회적 지원/사회적 안전망/사회적 보호를 포함해서 모든 장애를 가진 사람들의 사회 보장 권리]와, 장애를 이유로 한 차별 없이 그 권리를 향유할 수 있는 권리를 인지하고, 이 권리의 실현을 보호하고 촉진하기 위한 적절한 조치를 취해야 하는데, 여기에는 다음과 같은 것들이 포함된다.

(a) 장애와 관련한 요구에 의해서 필요한 서비스, 장치, 여타의 조력에 대해서 장애를 가진 사람들의 접근성을 장려해야한다.

(b) 장애를 가진 사람들이, [특히 장애를 가진 여성과 여성아동 및 노인들이] [사회보장/사회적 보조/사회적 지원/사회안전망/사회적 보호] 프로그램과 빈곤감소 전략에 [동등하게] 접근하도록 보장한다.

(c) 가난한 삶을 살고 있는 ('심각한 및 중증' 삭제) 장애를 가진 사람들과 그들의 가족들이 국가로부터 장애관련 비용(적절한 훈련, 상담, 재정적지원, 영양적 보살핌을 포함한)을 조력받을 수 있는 접근성을 보장하되, 이것이 그들의 경제적 성장을 저해하는 것이어서는 안 된다.

(d) 정부 주택 프로그램에 대한, 장애를 가진 사람들의 접근성을 보장한다. (이하삭제)

....

1. States Parties recognise the right of all persons with disabilities to an adequate standard of living for themselves and their families, [including adequate food, clothing, housing [and access to clean water]], and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right [without discrimination on the basis of disability]. [States Parties shall ensure that persons with disabilities have access to clean water on an equal basis with others].

2. States Parties recognise the right of all persons with disabilities to [social security, including social insurance/social assistance/social support/social safety nets/social protection], and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and

promote the realisation of this right, including measures to:

(a) ensure access by persons with disabilities to appropriate services, devices and other assistance for disability-related needs;

(b) ensure [equal] access by persons with disabilities, [particularly women and girls with disabilities and the aged with disabilities,] to [social security/social assistance/social support/social safety net/social protection] programmes and poverty reduction strategies;

(c) ensure access by persons with (severe and multiple 삭제) disabilities, and their families, living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;

(d) ensure access by persons with disabilities to public housing programs; (이하삭제)

....

## 12. 제24조 [문화적 삶, 레크리에이션, 여가생활, 스포츠에 대한 참여]

### 제24조 문화적 삶, 레크리에이션, 여가생활, 스포츠에 대한 참여

1. 당사국은 장애를 가진 사람들이 문화적인 삶에 참여할 수 있는 권리를 인지하고, 장애를 가진 사람들에게 다음과 같은 것들을 보장하기 위한 모든 적절한 조치를 취해야한다.

(a) 장애를 가진 사람들이 그들 자신의 이익을 위해서뿐만 아니라 지역사회의 발전을 위해서 창조적이고 예술적이고 지적인 잠재적 가능성을 개발하고 활용할 수 있는 기회를 가질 수 있어야 한다.

(b) 장애를 가진 사람들이 전자 문서, 수화와 점자, 오디오와 멀티미디어의 형식의 문학 및 문화적 자료들에 대한 접근성을 향유할 수 있어야 한다.

(c) 장애를 가진 사람들이 자막과 수화를 포함한 모든 접근 가능한 형식으로 텔레비전 프로그램, 영화, 연극, 또 다른 문화활동에 대한 접근성을 향유할 수 있어야 한다.

(d) 장애를 가진 사람들이 연극, 박물관, 영화관, 도서관, 서비스업과 같은 문화 공연이나 서비스의 장소에 대한 접근성을 향유하고, 국가의 중요한 기념관 및 문화적 명소 등에 대한 접근성을 향유할 수 있어야 한다.

2. 당사국은 국제법 규정들을 존중하면서, 지적 재산권을 보호하기 위한 법률이 장애를 가진 사람들의 문화적 자료 접근에 불합리적 혹은 차별적인 장벽이 되지 않도록 모든 적절한 조치를 취해야한다.

3. 청각 장애가 있는 사람들은 다른 사람들과 대등하게 자신들의 특정한 문화·언어 정체성에 대해서 인정받고 지지받을 수 있어야한다.

4. 당사국은 장애를 가진 사람들이 다른 사람들과 대등하게 레크리에이션, 레저, 스포츠와 같은 활동에 참여할 수 있는 권리를 인지하고, 다음과 같은 적절한 조치를 취해야한다.

(a) 장애를 가진 사람들이 가능한 한 최대한 지역·국가·국제적 수준의 주류 스포츠 활동에 참여할 수 있도록 장려하고 촉진한다.

(b) 장애를 가진 사람들이 스포츠 활동을 조직·참여하고 다른 참가자들이 이용 가능한 것과 동일한 지도, 훈련, 자원을 지원받을 수 있는 기회를 갖도록 보장한다.

(c) 장애를 가진 사람들이 스포츠나 레크리에이션 장소에 접근하고, 장애를 가진 아동들도 교육 체계의 스포츠 활동에 참여할 수 있는 동등한 접근성을 갖도록 보장한다.

(d) 장애를 가진 사람들이 레크리에이션, 여가, 스포츠와 같은 활동 조직과 관련한 사람들에게서 서비스를 받을 수 있는 접근성을 보장한다.

### Draft Article 24 PARTICIPATION IN CULTURAL LIFE, RECREATION, LEISURE AND SPORT

1. States Parties recognise the right of all persons with disabilities to take part in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community;

(b) enjoy access to literature and other cultural materials in all accessible formats, including in electronic text, sign language and Braille, and in audio and multimedia formats;



(c) enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats, including captioning and sign language;

(d) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and the hospitality industry, and, as far as possible, enjoy access to monuments and sites of national cultural importance;

2. States Parties shall take all appropriate steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.

3. Persons who are deaf shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity.

4. States Parties recognise the right of persons with disabilities, on an equal basis with others, to participate in recreational, leisure and sporting activities and shall take appropriate measures to:

(a) encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at regional, national and international levels;

(b) ensure that persons with disabilities have an opportunity to organise and participate in sporting activities and to receive the same instruction, training and resources in support that is available to other participants;

(c) ensure that persons with disabilities have access to sporting and recreational venues, and that children with disabilities have equal access to participating in sporting activities with the education system;

(d) ensure that persons with disabilities have access to services from those involved in the organisation of recreational, leisure and sporting activities.

- ◎ 제24조는 만장일치로 동의를 얻었으나 추가적인 검토를 위한 유용한 제안들이 있었음.
- ◎ 여가생활, 스포츠, 레크리에이션 참가 권리 관련 이슈와 문화적 생활 참가 관련 이슈들을 같은 조에는 포함시키나 따로 다루어야 한다는 의견.
- ◎ 제24조 내용의 범위를 넓히기 위해 관광, 장애아동의 놀이할 권리들이 포함될 것이 제안됨.
- ◎ 제24조 초안에 종교생활에 참여할 권리와 관련한 내용을 포함 시켜야 한다는 제안이 있었으나 대부분 반대함.
- ◎ 1문단 머리말에 "다른 일반 사람들과 같이 평등하게" 라는 구를 넣자는 의견.
- ◎ (a)호 공동체(community)를 사회(society)로 바꾸자는 의견. 또한 이 조항은 권리를 이행할 방법에 관한 것 보다는 권리의 근본적 즐거움에 대한 것이어야 하므로 1-(a)항으로 두기 보다는 단독 조항으로 만들어야 한다는 데 동의.
- ◎ 각 (b), (c), (d)호의 내용을 간단히 단축하고, 관광에 관련된 내용을 포함시킬 것에 지지.
- ◎ 제2항의 지적 소유권을(intellectual property rights) 저작권 (copyright)으로 바꾸는 제안에 대한 강한 지지가 있었으나 동의는 없었음.
- ◎ 일부는 제3항의 삭제를 요청하고 다른 대표단들은 보존할 것을 요구 했으

나 합의점을 찾지 못했음.

- ◎ 일부는 (a)호의 '주류(mainstream)' 라는 단어가 특수 장애를 가진 사람들의 활동들을 배제할 가능성이 있다며 삭제 의견이 있었으나, 일부는 협약의 전체 주 목표는 주류(mainstream) 장애인의 포함이므로 삭제를 반대. 대안으로 (b)호에 특수장애 관련 활동들을 언급할 것은 제안.
- ◎ 추후 세부사항 토의를 위해 초안서를 facilitator 인 타일랜드 몬타이안 번탄에게 전달됨.

### 토론 결과 (변경사항 밑줄)

1. 당사국은 장애를 가진 사람들이 다른 일반사람들과 같이 평등하게 문화적인 삶에 참여할 수 있는 권리를 인지하고, 그 실현을 위해 가능한 모든 방법을 강구한다.

1-bis. 당사국은 장애인 개인의 이익을 위해서 뿐만 아니라, 사회의 풍요로움을 위하여 장애인이 그들의 창조적, 예술적 및 지적 잠재력을 개발할 기회를 주기위하여 적절한 조치를 취한다.

(b) 장애를 가진 사람들이 모든 형태의 문화적 자료들에 대한 접근성을 향유할 수 있어야 한다. (이하삭제)

(c) 장애를 가진 사람들이 TV 프로그램, 영화, 무대 그리고 다른 모든 형태의 문화활동에 대한 접근성을 향유할 수 있어야 한다. (이하삭제)

(d) 무대, 박물관, 영화관, 도서관과 같은 문화 공연장소 및 서비스와 국가적 문화적 기념관 및 명소와 같은 관광 서비스에 대한 접근성을 향유한다.

2. 당사국은 국제법 규정들을 존중하면서, [지적 재산권][저작권]을 보호하기 위한 법률에 의해서 장애를 가진 사람들이 문화적 자료에 접근하는 데에 비합리적 혹은 차별적인 장벽이 되지 않도록 모든 적절한 조치를 취해야 한다.

3. 장애가 있는 사람들은 다른 사람들과 대등하게 수화 및 청각장애문화를 포함한 자신들의 특정한 문화언어 정체성에 대해서 인정받고 지지받을 수 있어야 한다.

4. 장애를 가진 사람들이 다른 사람들과 대등하게 레크리에이션, 레저, 스포츠와 같은 활동에 참여할 수 있도록 당사국은 다음과 같은 적절한 조치를 취해야 한다.

(a) 장애를 가진 사람들이 모든 단계의 주류 스포츠 활동에 참여할 수 있도록 장려하고 촉진한다.

(b) 장애를 가진 사람들이 장애에 특화된 스포츠 및 여가 활동을 개발하고 참가할 수 있도록 조직할 기회를 보장하며, 다른 참가자들이 이용 가능한 것과 같은 적절한 지도, 훈련 및 자원을 지원받을 수 있도록 장려한다.

(c) 장애를 가진 사람들이 스포츠나 레크리에이션 장소에 접근하고, 교육 체계의 스포츠 활동에 참여할 수 있는 동등한 접근성을 갖도록 보장한다.

(c-bis) 장애를 가진 아동들이 학교제도 내의 활동을 포함하여, 놀이, 레크리에이션 및 여가와 스포츠 활동에 동등하게 참여하도록 한다.

(d) 장애를 가진 사람들이 레크리에이션, 관광, 여가, 스포츠와 같은 활동 조직과 관련한 사람들에게서 서비스를 받을 수 있는 접근성을 보장한다.

1. States Parties recognise the right of all persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

1-bis. States Parties shall also take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their benefit, but also for the enrichment of society.

(b) enjoy access to cultural materials in all accessible formats(이하삭제);

(c) enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats(이하삭제);

(d) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and the tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance;

2. States Parties shall take all appropriate steps to ensure that laws protecting [intellectual property rights] [copyright] do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.

That proposal reads:

3. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

4. With a view to enabling persons with disabilities to participate on an equal basis as others in recreational, leisure and sporting activities, States Parties shall take appropriate measures to:

(a) Encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) ensure that persons with disabilities have an opportunity to organise develop and participate in disability specific sporting and recreational activities and encourage the provision of appropriate instruction, training and resources in support that is available to other participants;

(c) ensure that persons with disabilities have access to sporting and recreational and tourism venues , and that persons with disabilities have equal access to participating in sporting activities within the education system;

(c-bis) children with disabilities have equal access to participation in play, recreation, and leisure and sporting activities, including those in the school system.

(d) ensure that persons with disabilities have access to services from those involved in the organisation of recreational, tourism, leisure and sporting activities.

### 13. 제24조 bis (국제협력 단독조항)

facilitator 제작판  
2005년 2월 4일

#### 제24조 bis 국제협력 (단독조항)

협약 당사국은 동 협약의 목적을 실현하기 위하여 당사국간 뿐만 아니라 국제 및 대륙(regional) 기구와 기타 이해관계자들과 협조하여 국제협력을 증진시키고 적절한 조치를 취해야 한다.

국제협력은 특히 아래와 같은 사항을 포함한다.

- a) 동 협약을 이행하기 위한 조치, 법률, 국가 정책, 프로그램, 계획 및 경과와 그 과정에서 발생하는 문제점 등에 대한 모범적 사례 정보의 교환
- b) 장애와 더불어 장애인의 인권과 기본적 자유의 완전하고 동등한 향유에 대한 국민의 인식 제고
- c) 장애인들이 참여(inclusive)하는 국제적 협력 프로그램의 보장
- d) 기술의 이전을 포함해서 개발도상국에 대한 기술적 협력 및 경제적 지원 제공 장려
- e) 접근이 용이한 기술의 연구와 적용을 장려. 접근이 용이한 기술은 장애인을 돕는 기술을 포함
- f) 훈련과정, 세미나, 워크숍 및 연구 수행
- g) 동 협약의 완전한 이행을 위한 지원 및 역량강화

Text of the facilitator  
February 4, 2005

#### Article 24 bis International Cooperation

States Parties shall promote international cooperation and undertake to take appropriate measures in coordination with each other, as well as with international and regional organizations and other stockholders, for the realization of the purposes of this convention.

International cooperation shall include, *inter alia*:

- a) Exchange of information concerning best practices on measures, legislation, national policies,

programmes, and projects to implement the present convention and on the progress and challenges faced in this regard;

b) Increasing public awareness on disability and the full and equal enjoyment of human rights and fundamental freedoms by persons with disabilities;

c) Ensuring that international cooperation programmes are inclusive to persons with disabilities;

d) Encouraging the provision of technical cooperation and economic assistance to developing countries, including transfer of technology;

e) Promoting research and application of accessible technologies, including assistive technologies for persons with disabilities;

f) Conducting training courses, seminars, workshops and research;

g) Supporting and develop capacity building for the full implementation of this convention

- ◎ 멕시코를 비롯하여 많은 국가에서 국제협력에 대한 별도조항의 필요성을 강조하였으며, 따라서 멕시코를 facilitator로 하여 informal consultation을 가진 뒤 국제협력 관련 단독조항의 draft를 작성하여 이에 대하여 논의를 갖음.
- ◎ 국가 간 정보의 교환, 홍보활동, 국제협력 프로그램의 보장, 기술적 협력 및 경제적 지원의 장려, 훈련·세미나 실시, 역량강화 활동 지원 등이 주요내용이며, 선진국의 개도국에 대한 지원 및 기술의 이전이 논의의 중심에 있는 바, 선진국과 개도국의 의견이 엇갈림.
- ◎ EU를 중심으로 서문 등에 관련내용이 이미 포함되어 있고, 다른 협약에 존재하지 않는 형태이므로 단독조항 자체를 반대하는 움직임이 있었으나,
- ◎ 이와는 대조적으로 대부분의 많은 국가들이 단독조항에 찬성하였음.
- ◎ 단지, 많은 국가들이 단독조항의 필요성을 강조하면서도 (d)항의 '기술적 협력 및 경제적 지원'과 관련하여 특히 '경제적 지원'을 협력에 포함한다는 데 부담감을 나타내었음. 동 언어를 삭제 혹은 대체하자는 의견이 있었음.
- ◎ NGO들은 발표를 통하여 장애인의 2/3이상이 개도국에 존재하며, 따라서 국제협력관련 분명한 조항 및 특히 기술의 이전(transfer of technology)을 강조하였음.
- ◎ NI를 대표하여 인도인권위의 모히트여사는 국제협력 단독조항에 대한 법적 근거는 A규약 등에 의무를 명시한 부분 등에서 찾을 수 있으며, 이러한 의무를 다하기 위하여 당연히 재정적 지원을 포함되는 것이 기본적인 사항임을 강조함.

## 14. 제25조 [감시]

25조 감시  
국가 실행 기본틀

1. 당사국은 본 협약의 실행 관련문제를 위해서 정부 내의 연락책(focal point)을 임명하고, 다양한 부문에서 다양한 수준으로 관련 조치를 용이하게 하기 위해서 협력 체계를 수립 혹은 지정하는 것을 고려해야한다.
2. 당사국은 자국의 법적·행정적 체계에 따라서, 본 협약에서 인지된 권리의 실행을 장려·보장·감시하기 위한 국가적 수준의 기본틀을 유지하고 강화하고 지정 혹은 수립해야한다.

**Draft Article 25 MONITORING**  
National Implementation Framework

1. States Parties shall designate a focal point within Government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a coordination mechanism to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework to promote, protect and monitor implementation of the rights recognised in the present Convention.

- ◎ 국내적 및 국제적 차원의 모니터링 모두가 시스템에 포함되어야 할 필요성에 전반적으로 동의
- ◎ 장애인 권리 보호의 효과적인 이행을 위하여 감시기구의 효율성이 중요하다는 의견이 있었음.
- ◎ 동 협약이 가장 최근 인권 협약이니 만큼, 모니터링 조항이 다른 조약들에 좋은 예가 될 수 있도록 모범적이어야 한다는데 동의.
- ◎ 현존하는 조약감시기구를 개혁 관련 유엔 인권고등판무관실 보고서 장애인 권리협약 성안과는 독립적으로 진행되는 것이라는 지적이 있었으나, 조항의 내용 및 단어들이 추후 유엔 개혁 후 변경내용을 포함할 수 있도록 융통성이 있어야 한다는 주장이 있었음.
- ◎ 모든 모니터링 과정에서 장애인과 그들을 대표하는 기구 등 시민사회가 적극적으로 참여할 수 있도록 지원하는데 대하여 전반적으로 동의
- ◎ 국가인권기구 대표로 APF는 이러한 모니터링에 있어서 국내적 감시와 국제적 감시가 분리되어야 함을 강조하고, 국내적 모니터링에 있어서 이미 설치되어 있는 국가인권기구가 일정 역할을 할 수 있음을 역설하였음. (APF가 제안한 모니터링 제안서 붙임 참조)

6차 장애인권리협약 특별위원회

국가인권기구 제안  
**모니터링(Monitoring) 초안**

2005년 8월 10일

아태지역국가인권기구포럼 (APF)



**THE ASIA PACIFIC FORUM**  
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

... a partnership for human rights in our region

## 목 차

### 국내 이행 과정

- 제25조 bis : 기초 보고서의 설치
- 제26조 : 국가행동계획(NAP) 개발 및 이행

### 국가 감시

- 제27조 : 국가감시기구의 설치

### 국제감시위원회

- 제28조 : 위원회 설치와 구성
- 제29조 : 위원회 업무 행정

### 국제감시위원회의 효율적인 기능

- 제30조 : 일반 논평을 통한 당사국의 의무 명확화
- 제31조 : 기초 보고서와 행동계획을 위한 지침 제공
- 제32조 : 위원회의 국가행동계획 심사
- 제33조 : 주제별 연구를 통한 공동과제 해결방안 모색

### 위원회의 협력적 운영

- 제34조 : 장애 NGO와의 협의
- 제35조 : 국가 감시 메카니즘과의 효율적 관계
- 제36조 : 기타 국제기구들과의 협력적 관계
- 제37조 : 위원회 업무에 있어서 지역 중점사안

### 국제 장애인권리 옹호자

- 제38조 : 설치
- 제39조 : 국제 장애인권리 옹호자

## 청원절차

- 개인 청원 절차

- 제40조 : 개인의 청원권리의 선택적 허용
- 제41조 : 임시 조치 요청
- 제42조 : 당사국에 통보 전달
- 제43조 : 청원 심리, 소견 채택 및 후속조치
- 제44조 : 모든 국내 구제책 소진, 심리적격 요건

- 단체 청원 절차

- 제45조 : 단체청원을 심리하는 선택적 권한

## 조사절차

- 제46조 : 조사 절차 확립
- 제47조 : 조사보고 후속조치
- 제48조 : 당사국의 조사절차 선택 이탈 규정
- 제49조 : 위원회에 청원신청과정에서 보복으로부터 보호

## 위원회 보고

- 제50조 : 위원회의 연례보고

## 이행 및 감시 절차 검토

- 제51조 : 검토회의



## 국내 이행 과정

### 제25조 bis

#### 기초 보고서(Baseline Report)의 설치

1. 협약 당사국은 장애인권리와 관련된 협약을 비준하여 보고할 당시 입법, 사법, 행정 및 기타 조치 상황에 대한 기초 보고서를 유엔 사무총장을 통하여 이 협약 하에 설치된 위원회에 제출한다. 이 기초 보고서는 협약의 목적을 달성하기 위하여 얼마나 후속적인 발전이 있었는지 측정하는 척도로서 활용된다.
2. 당사국은 장애인 권리협약을 발효시킨 지 18개월 내에 기초 보고서를 제출한다.
3. 동 조항에 의거 준비된 보고서는 당사국이 협약을 이행하는 데 영향을 미칠 수 있는 요인들과 문제점을 포함한다. 또한, 보고서는 특별한 진전이 있었던 부분을 지적해야 하며, 다른 국가에 모범이 될만한 관행의 예도 포함시킨다.
4. 기초 보고서를 작성할 때, 당사국은 국가 감시기구, 장애인 단체와 기타 유관 기관들과 협의하고, 사무총장에 보고서를 제출하자마자 당사국 언어로 당사국의 모든 국민이 이 보고서를 쉽게 읽을 수 있는 형태로 널리 알리도록 한다.

### 제26조

#### 국가행동계획(NAP) 개발 및 이행

1. 당사국은 장애인권리 협약에 명시된 바대로 장애인들이 완전하고 효율적이며 동등하게 인권을 향유할 수 있도록 하는 조치들을 명기하여 국가행동계획을 개발하고 출판하며 알리도록 한다. 당사국은 행동계획을 작성할 때 국가 감시기구, 장애인 단체와 기타 유관 기관들과 협의하고, 5년마다 주기적으로 내용을 갱신하도록 한다.
2. 국가행동계획은 기초보고서에 포함된 분석내용을 기본으로 하되 특히 현존하는 법률, 정책 및 프로그램과의 차이를 중심으로 하여야 하며, 이를 바탕으로 합리적이고 명백한 기간 내에 성취할 수 있는 합리적인 우선순위를 제시하고, 성공 여부를 측정하고 감시할 수 있도록 하는 실질적인 지표를 제시하여야 한다.

# 국내 모니터링

## 제27조

### 국가감시기구(National Monitoring Body)의 설치

1. 각 당사국은 장애인권리협약을 발효시킨 후 1년 내에 이 협약의 이행여부를 감시하고, 국가 차원에서 장애인의 권리를 증진하고 보호하기 위한 독립 국가기구를 지정, 설치 및 운영한다. 당사국에 이미 독립 국가인권기구가 존재하는 경우, 해당 기구의 의무(mandate)는 이 협약을 준수할 수 있게 확장되어야 한다.
2. 국가감시기구는 최소한 다음의 권한을 부여 받는다.
  - (a) 국가 차원에서 이 협약을 준수하는 지 감시하는 권한. 특히, 국가행동계획 하에 이루어진 발전사항을 감시토록 함.
  - (b) 기존 법률 또는 법안에 대한 제안과 소견을 제출하는 권한
  - (c) 적절하다고 생각되는 경우 국가 차원의 진정사건을 접수받거나 진행하는 권한
  - (d) 이 협약과 기타 관련된 국제규범에 기술되어 있는 의무사항을 바탕으로 하여 장애인의 권리를 보호하고 증진할 목적으로 해당 당국에 권고하는 권한
  - (e) 이 협약의 홍보를 위하여 대국민 캠페인과 더불어 다른 지원(advocacy)활동을 할 권리
  - (f) 협약 이행과 관련한 이슈에 대하여 장애인 및 장애인 단체, International Committee, the Global Disability Rights Advocate, 유엔, 유엔 산하 특별기구 및 유관 단체, 지역 및 정부간기구와 연락을 취할 권리
3. 당사국은 국가감시기구의 기능과 인력의 독립성을 보장한다.
4. 당사국은 국가 감시기구의 기능에 필요한 가용자원을 마련하여야 한다.
5. 국가 감시기구의 설치, 구성 및 운영은 “인권 보호와 증진을 위한 국가인권기구 지위와 기능에 관한 원칙(파리원칙)”을 준수한다.

# 국제감시위원회 (International Monitoring Committee)

## 제28조 위원회 설치와 구성

1. 당사국이 동 협약을 이행하도록 촉진하고 검토할 목적으로 아래 명시된 기능을 행하는 장애인 권리에 대한 위원회가 설치되어야 한다. (이후, "위원회"라 함)
2. 협약 발효 시, 위원회는 높은 도덕수준을 가지고 있고, 위원회의 독립성, 공정성을 저해시키지 않으면서 자신의 역량을 다해 일하는 10명의 독립전문가로 구성된다. 각 전문가는 인권과 장애 분야 면에서 뛰어난 능력을 보유하여야 한다. 25개국이 협약을 비준할 때마다, 위원회는 2명의 인력을 증원하여 최대 20명의 전문가를 보유한다. 이 위원회의 구성은 전반적으로 다음의 요건을 만족해야 한다.
  - (a) 다양한 장애 분야를 공정하게 반영한 다수의 장애인
  - (b) 여성과 남성 동수로 구성
  - (c) 공평한 지역적 안배 반영
  - (d) 주요 법 체제의 대표를 반영
3. 위원회의 위원들은 아래와 같이 당사국들의 비밀투표로 선출된다.
  - (a) 위원회의 전문가 5명은 당사국들이 지명한 인물 목록에서 선출된다.
  - (b) 나머지 5명은 대표적 장애인 단체들과의 협의 후에 유엔 인권고등판무관이 지명한 10명 이하의 인물 목록에서 선출된다.
4. 각 당사국은 대표적 장애인 단체들과 협의 후에, 한 명을 지명할 수 있다.
5. 장애인의 평등한 기회에 대한 기준규칙(Standard Rules for the Equalization of Opportunities for Persons with Disabilities) 관련 유엔 특별보고관은 직권으로 위원회의 위원(*ex officio* member)이 된다.
6. 최초 선거는 협약 발효 후 6개월 이내에 이루어져야 한다. 향후 선거는 2년에 한 번씩 이루어진다. 최소한 선거일 4개월 전에, 유엔 사무총장은 당사국들에게 2개월 내에 후보위원 지명서 제출을 요청하는 서신을 발송한다. 사무총장은 당사국들이 지명한 모든 인물들을 알파벳 순으로 정리한 목록에 후보자들의 이력서를 첨부하여 선거일 1개월 전에 각 당사

국에 제출해야 한다.

7. 위원회 위원의 선거는 사무총장이 유엔 본부에서 주최하고 당사국들이 참석하는 회의에서 치루어진다. 총 당사국의 3분의 2인 정족수를 채운 이 회의에서, 참석한 당사국들의 절대적 득표를 얻고 최대 득표를 한 후보가 선출된다.
8. 위원회 위원의 임기는 4년이다. 하지만, 최초 선거에서 선출된 위원 5명의 임기는 선출된 후 2년에 끝난다. 최초 선거가 끝나자마자 당사국 회의의 의장은 추첨으로 이러한 5명을 선택하게 된다.
9. 위원회 위원들은 재선출되는 경우, 재임할 수 있다. 하지만, 2회 이상 재임할 수 없다.
10. 위원회 위원이 사망하거나, 은퇴하거나, 혹은 더 이상 직무를 수행할 수 없는 이유로 사퇴를 선언할 경우, 해당 위원을 지명한 당사국은 잔여임기를 채울 자국의 후보자 중에 한 명을 이 조항에 조건들을 준수하면서 지명한다. 신규 지명은 위원회의 허가가 있어야 한다.

## 제29조 위원회 업무 행정

1. 위원회는 절차규칙을 채택한다. 절차규칙을 확립하기 위하여 위원회는 다른 인권조약감시기구가 채택한 절차규칙을 참고하고 고려한다.
2. 유엔 사무총장은 위원회의 효율적인 업무에 필요한 인력과 시설을 제공한다.
3. 위원회 위원들은 유엔 총회가 결정하는 임기와 조건에 따라 유엔의 예산에서 급여를 받는다.
4. 위원회 위원들은 유엔의 특권과 면책에 관한 협약에 관련조항에 나와 있는 대로 유엔을 위한 임무 수행 시 시설을 이용하고 특권과 면책특권을 가질 자격이 주어진다.
5. 위원회는 2년 임기로 관리들을 선출한다.
6. 위원회는 업무수행에 필요한 경우 회의를 한다.
7. 위원회 회의는 유엔 본부에서 개최되며 필요한 경우, 유엔의 지역 사무소와 기타의 장소에서 교대로 개최된다.

# 국제감시위원회의 효율적인 기능

## 제30조

### 일반논평(General Comments)을 통한 당사국의 의무 명확화

1. 당사국들의 의무를 설명하고 이들을 지원하여 협약의 목적달성을 앞당기기 위해서, 위원회는 적당한 일반논평뿐만 아니라 개별 당사국이 협약을 이행하는 것과 관련된 특별논평도 채택할 수 있다.

## 제31조

### 기초 보고서와 행동계획을 위한 지침 제공

1. 당사국들이 기초 보고서 작성을 용이하게 하기 위하여, 위원회는 적절하다고 판단되는 경우 보고서 양식과 내용과 관련된 지침을 주기적으로 채택하여 갱신한다.
2. 당사국들이 국가행동계획 준비를 지원하기 위하여, 위원회는 적절하다고 판단되는 경우 보고서 양식과 내용과 관련된 세부 지침을 마련한다.
3. 위원회는 국가행동계획 수립을 지원하는 데 지원을 요청한 당사국들에게 기술지원을 제공한다.

## 제32조

### 위원회의 국가행동계획 심사

1. 위원회가 결정하는 일정에 따라, 위원회는 국가행동계획 달성과 관련한 발전사항을 평가한다. 평가하는 중 위원회는 우선적이라고 판단하는 특정 주제, 권리 혹은 주제 혹은 당사국에 중점을 두도록 선택할 수 있다.
2. 위원회는 특히 당사국들이 마련한 기초 보고서를 염두에 두면서, 국가행동계획 하에 이루어진 발전사항에 초점을 맞춘다. 국가감시기구의 분석을 마땅히 고려(take due account)하여야 한다.

3. 국가행동계획에 의거 이루어진 진전을 검토한 결과, 위원회는 협약이 목적 달성을 앞당기기 위하여 취해야 될 추가적 조치에 관하여 당사국 또는 유엔 특별기구, 기타 유엔기구 또는 기타 대륙 기구(regional organizations)에게 일반적인 혹은 특별한 성격의 권고를 한다.

### 제33조

#### 주제별 연구를 통한 공동과제 해결방안 모색

1. 위원회는 개별 당사국 혹은 지역적으로 함께 활동하는 당사국들, Global Disability Advocate, 그리고 국가감시기구의 요청으로, 또는 자체적으로 주도하여 긴급한 공동과제를 해결하고 협약의 이행을 발전시키기 위한 실제적인 해결안을 모색하는 데 당사국들을 지원할 주제별 연구를 직접 준비하거나 연구의뢰를 할 수 있다.
2. 주제별 연구에는 협약의 목적 달성을 앞당길 목적으로 실제적인 권고가 포함된다. 위원회는 당사국들, 유엔 특별기구 및 유엔의 기타기구, 그리고 이러한 면에서 건설적 역할을 할 수 있는 정부간 기구 및 기타 기구들에게 권고한다. 위원회는 당사국들 간의 협력 부문과 협약 이행을 촉진시킬 자격있는 다른 기구들을 권고해도 된다.

## 위원회의 협력적 운영

### 제34조

#### 장애 NGO와의 협의

협약이 효과적으로 의도하는 혜택을 보장하기 위하여, 위원회는 다음을 행한다.

1. 장애인 대표들 또는 대표적 장애인 단체들뿐만 아니라 장애인 문제와 유관 분야에 전문성이 있는 인권 NGO를 초청하여 위원회의 업무 지원을 위해 정보를 제공하도록 한다.
2. 관련성, 특정 이슈나 문제의 적합성(relevance) 및 그 범위(extent)에 대하여 위원회의 입장을 알리고 적절한 조치를 취하기 위해 대표적 장애인 단체들과 지속적인 대화에 참여한다.

### 제35조

#### 국가 감시 메카니즘과의 효율적 관계

국가 감시 메카니즘들이 협약과 협약의 해석에 관한 발전상황을 완전히 통지받고, 각 지역의 상황에 대해 가능하면 완벽하게 위원회에 전달될 수 있도록, 위원회는 다음을 행해야 한다.

- (a) 지역 차원에서뿐만 아니라 개별적으로 그리고 집단적으로 국가감시기구들과 대화를 시작하고 계속 유지시킨다.
- (b) 국가 감시 메카니즘들에게 가능성 있는 연구주제를 제안한다.

### 제36조

#### 기타 국제기구들과의 협력적 관계

협약의 목적을 달성하기 위하여 모든 유관 국제기구의 공헌을 효과적으로 이용하기 위하여, 위원회는 다음을 행해야 한다.

1. 위원회의 심리를 위하여, 유엔 관련기구(지역 위원회들 포함), 특별 기구 및 기타 인권감시기구 (특별보고관, 주제별 보고관 및 유엔의 기타 특별 절차포함) 뿐만 아니라 정부간 기구 및 기타 해당 기구에게 활동 범위에 속하는 현재 협약을 다룬 관련 문제에 대한 정보를 서면으로 제출하도록 요청한다.
2. 유엔 관련기구(지역 위원회들 포함), 특별 기구 및 기타 인권감시기구 (특별보고관, 주제별 보고관 및 유엔의 기타 특별 절차 포함)을 초대하여 이들이 능력범위 내에 속하는 문제에 대한 소견을 듣는다.
3. 관련된 기술지원을 모색하고, 유엔 관련기구(지역 위원회들 포함), 특별 기구 및 기타 인권감시기구 (특별보고관, 주제별 보고관 및 유엔의 기타 특별 절차 포함), Global Disability Rights Advocate 및 기타 유관 기관이 당사국들의 보고서 심리를 지원할 수 있게 한다.

### 제37조

#### 위원회 업무에 있어서 지역 중점사안

위원회가 각 당사국이 협약에 따른 의무사항을 이행하는데 이러한 의무사항에 대한 편견이 없는 상황에서, 지역 문제의 성격과 가시적 결과를 만들어낼 수 있는 해결방안의 종류를 설

명할 수 있도록 지역 내의 상황을 더 잘 이해하기 위하여, 위원회는 다음을 행해야 한다.

1. 해당 당사국들의 국가행동계획 하에서 달성한 발전사항을 평가하기 위하여 지역별 회의를 교대로 개최한다.
2. 협약의 목적 달성을 향한 발전을 위하여 지역 차원에서 필요한 추가적 조치에 대한 지역별 대화를 시작하고 알린다.

## 국제 장애인권리 옹호자 (Global Disability Rights Advocate)

### 제38조 설치

특히, 국가적 차원에서 역량구축과 관련하여 협약의 효율성을 증진시키기 위한 적극적 조치를 취할 수 있는 국제적 연락책(focal point)을 보장하고자, 유엔 사무총장은 다음을 행해야 한다.

1. 협약의 목적 달성을 도모하기 위하여 구체적인 조치를 취함으로써 위원회의 업무를 보완하는 주요 기능이 있는 상임 국제 장애인권리 옹호자(Global Disability Rights Advocate)를 지명한다.
2. 사무총장은 당사국들과 장애인 대표단체들과 적절한 논의를 거친 후에 유엔인권고등판무관실이 지명한 패널에서 국제 장애인권리 옹호자를 지명한다.
3. 국제 장애인권리 옹호자는 3년 임기이며, 1회에 한하여 재임이 가능하다.

### 제39조 국제 장애인권리 옹호자

1. 국제 장애인권리 옹호자의 기능은 다음과 같다.

(a) 협약을 홍보하고 국제적, 지역적, 국내적 회의, 세미나 개최 및 출판과 이와 유사한 활동을 통한 협약의 목적 홍보



- (b) 당사국 간 모범적 관행(best practice) 교환의 강조 및 촉진
- (c) 주제별 연구가 필요한 부문 추천
- (d) 협약에 의거 장애인들의 권리를 옹호하기 위하여 국내 및 국제 차원에서 대표적 장애인 단체들의 역량 강화 지원
- (e) 국내 차원에서 인권 문제와 장애 문제를 해결하기 위하여 국가감시기구들의 역량 강화 지원
- (f) 협약 이행에 책임이 있는 국가기관의 역량 강화 지원
- (g) 위원회에 청원 제출 시 적절한 경우에는 개별 장애인 또는 장애인 단체를 지원
- (h) 장애와 관련된 모든 유엔활동에 참여

2. 국제 장애인권리 옹호자는 유엔 일반총회에 참가하여 연례활동을 보고한다.

## 청원 절차

### 개별 청원 절차

#### 제40조

#### 개인의 청원권리의 선택적 허용

1. 협약 당사국은 당사국이 현 협약에 나와 있는 장애인들의 권리를 침해했다고 주장하는 개인을 대표한 청원이나 개인이 직접 제출한 청원을 접수하고 심리하는 위원회의 능력을 인정한다고 현 조항에 의거 언제라도 선언할 수 있다.
2. 청원은 해당 재판 관할지역에 의거하여 당사국이 협약에 마련된 권리를 침해했다고 주장하는 개인을 대표하거나 단체에 의해 제출될 수 있다. 이렇게 제출되는 청원은 작성자가 동의 없이도 대표하여 청원하는 것이 정당화되지 않는 한, 실질적 피해자의 동의가 있어야 한다.
3. 청원은 실명으로 서면 작성되어야 한다. 해당 청원이 이 조항에 의거하여 아직 선언하지 않은 당사국에 관한 것이라면 위원회는 청원을 접수하지 않는다.

## 제41조 임시 조치 요청

1. 청원을 접수한 후 언제든지, 그리고 청원본안에 대한 결정이 내려진 후, 위원회는 해당 당사국이 피해당사자에게 돌이킬 수 없는 피해를 입히는 것을 막기 위해 필요한 만큼 임시 조치를 취하라는 긴급한 요구를 할 수 있다.
2. 위원회가 현 조항의 1항에 의거 재량권을 행사하더라도 이것이 청원의 심리적격 또는 청원본안에 대한 결정을 의미하는 것은 아니다.

## 제42조 당사국에 통보 전달

1. 위원회는 통보가 해당 당사국에 대한 관련 근거가 없고 심리부적격으로 판단하는 경우가 아니라면, 그리고 개인 혹은 개인들이 자신의 신분을 해당 당사국에 노출하는 것을 동의하는 것을 증명한다면, 위원회는 현 의정서 하에서 해당 당사국에게 어떠한 통보도 제출할 수 있다.
2. 통보를 받은 당사국은 3개월 이내에 관련 사안 및 구제책을 명확히 하는 서면 설명서 혹은 성명서를 위원회에 제출한다.

## 제43조 청원 심리, 소견 채택 및 후속조치

1. 위원회는 현 조항 하에서 개인 또는 개인들로 이루어진 단체들에 의하여 혹은 이들을 대표하여 접수된 정보 및 당사국이 제출한 정보 등 모든 가능한 정보에 비추어 통보를 심리하며, 이러한 정보는 해당 당사자들에게 전달되어야 한다.
2. 위원회는 이 조항에 의거 개별 청원을 검토할 때, 비공개 회의를 개최한다.
3. 청원을 검토한 후, 위원회는 해당 청원에 대한 소견을 권고안과 함께 당사자들에게 송부한다.
4. 당사국은 위원회의 소견과 권고안을 마땅히 검토하고 6개월 이내에 위원회의 소견과 권고

안에 비추어 마련된 조치 등에 대한 정보를 포함한 답변을 서면으로 위원회에 제출한다.

5. 위원회는 당사국이 위원회의 소견과 권고안에 따라 취한 조치 등에 대한 추가정보를 제출하도록 한다.

#### 제44조

##### 모든 국내 구제책 소진, 심리적격 요건

1. 위원회는 이용 가능한 모든 국내 구제책이 소진되었다고 확신하지 않는 경우, 그리고 이러한 구제책이 불합리하게 지연되거나 효과적으로 이행되지 않았을 경우에는, 청원을 심리하지 않는다. 국내적 구제책이 있거나 모두 이용되었는지 여부를 판단할 때, 위원회는 장애인이 자신의 권리를 행사하는 데 당면할 특정 문제점들을 고려한다.
2. 위원회는 다음과 같은 청원의 경우 심리부적격을 선언한다.
  - (a) 위원회가 동일한 사안을 이미 검토했거나, 국제적 조사 또는 합의 등의 다른 절차 하에 이미 검토했거나 검토 중인 경우
  - (b) 협약 조항에 모순되는 경우
  - (c) 정당한 근거가 없거나 충분히 입증되지 않는 경우
  - (d) 청원을 제출하는 권리를 남용한 경우
  - (e) 당사국이 동 의정서를 발효시키기 전에 발생한 사실에 대하여 청원하는 경우. 단, 이러한 사실이 발효일 이후로 계속 지속되는 경우는 제외함.

#### 단체 청원 절차

#### 제45조

##### 단체 청원을 심리하는 선택적 권한(capacity)

1. 협약 당사국은 현 조항에 의거하여 유엔과 협의 지위에 있는 국제 NGO로부터 단체 청원을 접수하고 심리하는 위원회의 능력을 인정한다고 언제든지 선언할 수 있다.
2. 어느 국가라도 이 조항에 동의를 표명하면, 협약이 적용하는 사안에 대하여 관할권 내에 국내 NGO 대표의 당사국을 대상으로 단체 청원을 신청할 권리를 인정한다고 선언할 수 있다. 그러한 선언은 특정 기간 동안 할 수 있다. 선언은 유엔 사무총장에게 기탁되고 사무

총장은 해당 사본을 당사국에게 송부하고 출판한다.

3. 청원은 서면으로 작성되어야 하고, 당사국이 협약의 권리에 관련하여 어떤 조항을 만족스럽게 적용시키지 않았는지, 그리고, 그 청원사건이 특정 수나 단체의 장애인들에게 영향을 미치는지를 명시하여야 한다.
4. 위원회는 당사국과 청원을 제기한 단체가 위원회가 정하는 일정시간 내에 청원의 대한 서면 정보와 소견을 제출하라고 요청할 수 있다.
5. 만약 청원을 심리적격으로 결정한다면, 위원회는 사무총장을 통해서 당사국에게 통지한다. 위원회는 당사국과 청원을 제기한 단체가 위원회가 정하는 일정시간 내에 청원에 대해 서면으로 정보와 소견을 제출하라고 요청할 수 있다.
6. 위원회는 당사국이 참조되는 협약 조문을 만족할 만큼 적용하여 청원을 해결했는지 여부를 검토하고 결론을 제시하기 위해 취해질 조치를 결정한다.
7. 당사국은 위원회의 결정을 받아들여 취한 조치에 대한 정보를 국가행동계획에 의거 이루어진 청원에 대한 차기 보고서에 포함시켜야 한다.

## 조사절차

### 제46조

#### 조사 절차 확립

1. 만약 당사국이 협약에 보장된 권리를 중대하게 또는 조직적으로 침해하고 있다는 신뢰할 만한 정보를 접수할 경우, 위원회는 당사국이 그 정보를 검토하는 데 협조하고 이를 위해 당사국으로 하여금 해당 정보에 관한 소견을 제출할 것을 요청한다.
2. 해당국이 제출한 소견과 기타 신빙성 있는 정보를 고려하여, 위원회는 1인 이상의 위원을 지명하여 조사를 진행하고 위원회에 조사결과를 빠른 시일 내에 보고하게 할 수 있다. 정당한 이유가 있고 당사국의 동의가 있을 경우, 해당 지역 방문을 포함한 조사가 이루어질 수 있다.
3. 조사결과의 검토 후, 위원회는 이러한 결과를 논평 및 권고안과 함께 당사국에 송부한다.

4. 당사국은 위원회의 결과, 논평, 권고안을 접수한 지 6개월 이내에 당사국의 소견을 위원회에 제출한다.
5. 조사는 비밀리에 이루어져야 하며 해당국은 전 조사 과정에서 협조를 해야 한다.

#### 제47조

##### 조사보고 후속조치

1. 위원회는 당사국이 협약 제38조에 의거한 보고서에 조사에 대한 대응으로 취해진 세부조치를 포함시켜야 한다.
2. 필요할 경우, 위원회는 위 제1항에 관련되어 6개월이 되는 시점에, 당사국이 조사에 대한 대응으로 취한 조치를 위원회에 보고하도록 요청할 수 있다.

#### 제48조

##### 당사국의 조사절차 선택 이탈 규정

1. 당사국은 협약에 조인 또는 비준 혹은 가입한 시점에서 이 협약에서 마련한 위원회의 능력을 인정하지 않는다고 선언할 수 있다.
2. 현 조항의 제1항을 준수하여 선언을 하는 국가는 사무총장에게 통지함으로써 선언을 취소할 수 있다.

#### 제49조

##### 위원회에 청원신청과정에서 보복으로부터 보호

1. 당사국은 관할구역 내에 개인이 협약과 관련하여 위원회에 청원을 한 결과로 부당한 대우나 협약의 대상이 되지 않도록 하기 위하여 필요한 모든 적절한 조치를 취한다.

## 위원회 보고

### 제50조

#### 위원회의 연례보고

1. 위원회는 현 협약의 이행에 대한 연례보고서를 유엔 일반총회에 제출하며, 이 보고서에는 특히 국가행동계획 검토를 바탕으로 한 심리와 권고안과 당사국들이 제출한 소견이 포함되도록 한다. 보고서는 읽기 쉬운 양식으로 마련된다.
2. 유엔 사무총장은 위원회의 연례보고서를 협약 당사국, 경제 사회이사회, 유엔 인권위원회, 유엔 사회개발위원회 및 기타 유관단체에 송부한다.

## 이행 및 감시 절차 검토

### 제51조

#### 검토회의

1. 협약 발효 후 5년 이내에, 사무총장은 기타 유엔 인권조약에 의거하여 감시제도에 관한 진전사항을 중심으로 규정들을심의하기 위하여 당사국들이 참가하는 회의를 개최한다.

\*\*

\* 주

이 제안서 초안은 국가인권기구들의 개별적 그리고 집단적 경험(APF, European National Institutions 포함) 및 방콕 초안, 2004년 1월 의장초안 텍스트, 멕시코 초안, 여러 NGO 배경 보고서 및 제안서(2005년 8월 IDC 제안) 등에 의하여 제작되었다.

**6<sup>th</sup> SESSION OF THE AD HOC  
COMMITTEE**



**THE ASIA PACIFIC FORUM  
OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

...a partnership for human rights in our region

**DRAFT TEXT ON MONITORING**

**Presented by National Human Rights Institutions**

**10 August 2005**

# CONTENTS

## **National Implementation Process**

Article 25bis: Establish a National Baseline Report

Article 26: Develop and Implement a National Action Plan

## **National Monitoring**

Article 27: Establishment and Functions of a Domestic Monitoring Body

## **International Monitoring Committee**

Article 28: Establishment and Composition of the Committee

Article 29: Administration of the Work of the Committee

## **Facilitative Functions of the International Monitoring Committee**

Article 30: Clarifying State Obligations through General Comments

Article 31: Providing Guidelines for Baseline Reports and National Action Plans

Article 32: Consideration of National Action Plans by the Committee

Article 33: Tackling Common Challenges through Thematic Studies

## **Collaborative Operation of the Committee**

Article 34: Consultation with representative organizations of persons with disabilities

Article 35: Facilitative relationship with National Monitoring Body

Article 36: Collaborative relationship with other International Bodies

Article 37: Regional Focus

## **Global Disability Rights Advocate**

Article 38: Establishment

Article 39: Proactive Functions to promote the convention and enhance the capacities of key actors

## **Complaints Procedures**

### Individual Communications Procedure

Article 40: Optional Acceptance of an Individual Right to Petition

Article 41: Requests for interim measures

Article 42: Transmission of communication to State Party

Article 43: Consideration of communications, adoption of views and follow up

Article 44: Exhaustion of domestic remedies and admissibility conditions

### Collective Complaints Procedure

Article 45: Optional Capacity to Entertain Collective Complaints

## **Inquiry Procedure**

Article 46: Establishment of Inquiry Procedure



- Article 47: Follow-up to report of inquiry  
Article 48: Provision for State Party to opt out of inquiry procedure  
Article 49: Protection against retaliation in respect of any Communications with the Committee

**Reporting by Committee**

- Article 50: Annual Reporting by Committee

**Review of implementation and monitoring procedures**

- Article 51: Review conference within five years of entry into force of the Convention

## **NATIONAL IMPLEMENTATION PROCESS**

### *Article 25 bis*

#### *Establish a Baseline Report*

1. States Parties undertake to submit to the Committee established under this Convention, through the Secretary-General of the United Nations, a Baseline Report on the legislative, judicial, administrative and other measures in effect at the time of their ratification of this Convention which are relevant to the rights set forth therein. Such Baseline Reports shall serve as a benchmark against which subsequent progress towards the achievement of the goals of this Convention can be measured.
2. States Parties shall submit the Baseline Report within eighteen months of the entry into force of the Convention for the State Party concerned.
3. Reports prepared under the present article shall indicate factors and difficulties, if any, affecting the implementation of the Convention in the State Party concerned. They shall also point to areas where significant advances have been made and contain examples of good practice which may be of assistance to other States Parties.
4. States Parties shall consult with national monitoring bodies, organizations of persons with disabilities and other appropriate bodies in the preparation of their Baseline Reports and shall make their Baseline Reports widely available to the public in their own countries in local languages and in accessible formats as soon as possible after submission to the Secretary-General.

### *Article 26*

#### *Develop and Implement a National Action Plan*

1. States Parties shall develop publish and make available a National Action Plan which specifies the measures to be taken to achieve the full, effective and equal enjoyment of the human rights of persons with disabilities as set forth in this Convention. States Parties shall consult with national monitoring bodies, organizations of persons with disabilities and other appropriate bodies in the preparation of their National Action and shall be periodically updated at no less than five yearly intervals.
2. National Action Plans shall reflect the analysis contained in the Baseline Report, particularly with respect to gaps in existing laws, policies and programmes and shall set rational priorities accordingly, to be achieved within reasonable and clear timeframes and shall provide practical indicators against which success may be measured and monitored.

## NATIONAL MONITORING

### *Article 27*

#### *Establishment of a National Monitoring Body*

1. Each State Party shall maintain, designate or establish within one year after the entry into force of this Convention for that State, an independent national body responsible for the monitoring of the implementation of this Convention, and for promotion and protection of the rights of persons with disabilities at the domestic level. Where an independent national human rights institution already exists in the State party, its mandate shall be extended to comply with this convention.
2. The national monitoring body shall be granted, at a minimum, the powers to:
  - (a) monitor compliance with this convention at the national level in particular by monitoring progress made under the National Action Plan,
  - (b) submit proposals and observations concerning existing or draft legislation,
  - (c) entertain or support complaints at national level as it considers appropriate,
  - (d) make recommendations to the relevant authorities with the aim of improving the promotion and protection of the rights of persons with disabilities based on the obligations contained in this Convention and other relevant international norms,
  - (e) conduct public awareness raising and other advocacy activities for the promotion of the Convention,
  - (f) liaise with persons with disabilities and their representative organizations, the International Committee, the Global Disability Rights Advocate, the United Nations and its specialized agencies and other bodies, regional and inter-governmental organizations on issues related to the implementation of the Convention.
3. The States Parties shall guarantee the functional independence of the national monitoring body as well as the independence of its personnel.
4. The States Parties undertake to make available the necessary resources for the functioning of the national monitoring body.
5. The establishment, composition and operation of the national monitoring body shall be in compliance with the Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (the “Paris Principles”).

# INTERNATIONAL MONITORING COMMITTEE

## *Article 28*

### *Establishment and Composition of Committee*

1. For the purpose of facilitating and reviewing the implementation by States Parties of this Convention, there shall be established a Committee on the Rights of Persons with Disabilities (hereinafter referred to as "the Committee") which shall carry out the functions hereinafter provided.
2. The Committee shall consist, at the time of entry into force of this Convention, of 10 independent experts serving in their personal capacity, of high moral standing and impartiality, holding no position which compromises the appearance of independence and impartiality expected of the Committee. Each member shall have a recognized competence in human rights and disability. Thereafter, for every additional twenty-five ratifications of this Convention, the membership shall increase by 2 members, until the composition of the Committee attains a maximum number of 20 members. This Committee, in its overall composition, shall, in so far as possible:
  - (a) include a majority of members with disabilities who reflect equitable diverse cross-disability representation;
  - (b) comprise an equal number of women and men members;
  - (c) reflect equitable geographic distribution; and
  - (d) reflect representation of the principal legal systems.
3. Members of the Committee shall be elected by secret ballot by the States Parties as follows:
  - (a) Five members of the Committee shall be elected from a list of persons nominated by States Parties; and
  - (b) the other five members shall be elected from a list of no fewer than ten persons nominated by the UN High Commissioner for Human Rights after due consultation with representative organizations of persons with disabilities.
4. Each State Party may nominate one person after due consultation with their representative organizations of persons with disabilities.
5. The United Nations Special Rapporteur on the Standard Rules for the Equalization of Opportunities for Persons with Disabilities shall be an *ex officio* member of the Committee.
6. The initial election shall be held no later than six months after the date of the entry into force of this Convention and subsequent elections every second year. At

least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

7. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.
8. The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties.
9. The members of the Committee shall be eligible for re-election if re-nominated, but no person may serve more than two full terms on the Committee.
10. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term, in accordance with the terms set forth in this Article. The new appointment is subject to the approval of the Committee.

### *Article 29*

#### *Administration of the Work of the Committee*

1. The Committee shall adopt its own rules of procedure. In establishing its rules of procedure, the Committee shall be guided by and take into its consideration the rules of procedure adopted by other human rights treaty bodies.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.
3. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.
4. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the

relevant sections of the Convention on the Privileges and Immunities of the United Nations.

5. The Committee shall elect its officers for a term of two years.
6. The Committee shall meet for such time as is necessary for it to undertake its work.
7. The meetings of the Committee shall be held at United Nations Headquarters and, on a rotational basis, at the offices of the regional commissions of the United Nations and other locations as appropriate.

## **THE FACILITATIVE ROLES OF THE INTERNATIONAL MONITORING COMMITTEE**

### *Article 30*

#### *Clarifying State Party Obligations through General Comments*

1. In order to elucidate the obligations of States Parties and assist them in advancing the goals of this Convention the Committee may adopt such general comments as it sees fit, as well as specific comments relating to the implementation of the Convention in individual States parties.

### *Article 31*

#### *Providing Guidelines for Baseline Reports and National Action Plans*

1. In order to facilitate States Parties in the preparation of their Baseline Report the Committee shall adopt and periodically update guidelines relating to the form and content of such Reports which it considers appropriate.
2. In order to assist the States Parties in the preparation of National Action Plans the Committee shall prepare detailed Guidelines with respect to the form and content of such Plans which it considers appropriate.
3. It shall provide technical assistance to those States Parties that request such assistance to assist them formulating their National Action Plans.

### *Article 32*

#### *Consideration of Progress Made under National Action Plans by the Committee*

1. The Committee shall, according to a schedule which it will determine, assess progress made with respect to the achievement of National Action Plans. In

doing so, it may chose to focus on certain issues, rights or themes or States Parties which it considers a priority.

2. The Committee shall focus in particular on the level of progress made under National Action Plans bearing in mind the Baseline Report established by the States Parties in their Baseline Reports. It will take due account of the analysis of national monitoring bodies.
3. As a result of its review of progress made under such National Action Plans, the Committee may make recommendations of a general or specific nature to States Parties or to Specialized Agencies and other bodies of the United Nations or to other regional organizations with respect to further measures that should be taken to advance the achievement of the goals of the Convention.

### *Article 33*

#### *Identifying Solutions to Common Challenges Through Thematic Studies*

1. The Committee may, either on request from the States Parties acting regionally or individually, from the Global Disability Rights Advocate, or from national monitoring bodies, or on its own initiative, prepare or commission thematic studies which shall address common and urgent challenges and which will assist States Parties in finding acceptable and practicable solutions that advance the implementation of this Convention.
2. Such Thematic Studies shall contain practical recommendations aimed at advancing the goals of the Convention. The Recommendations may be addressed to the States Parties, the Specialized Agencies and other bodies of the United Nations, and such regional inter-governmental or other bodies as could play a constructive role in this context. The Committee may recommend areas of cooperation among States Parties and other competent bodies that will facilitate the implementation of this Convention.

## **COLLABORATIVE OPERATION OF THE COMMITTEE**

### *Article 34*

#### *Consultations with Disability Non-governmental Organizations*

In order to ensure that the convention effectively serves its intended beneficiaries the Committee shall:

1. invite representatives of or representative organizations of persons with disabilities as well as other human rights non governmental organizations with expertise in the field of disability issues or other relevant fields to submit relevant information to the Committee to assist it in its work.

2. engage in an ongoing dialogue with representative organizations of persons with disabilities to inform its appreciation of the relevance and extent of particular issues or problems and to take appropriate action.

### *Article 35*

#### *Facilitative relationship with National Monitoring Mechanisms*

In order to ensure that national monitoring mechanisms are fully apprised of relevant developments concerning the convention and its interpretation and in order to ensure that its deliberations are as fully informed as possible about local circumstances the Committee shall:

- (a) initiate and sustain an ongoing dialogue with national monitoring bodies both at the regional level as well as individually and collectively,
- (b) invite national monitoring mechanisms to propose subjects for potential thematic studies.

### *Article 36*

#### *Collaborative Relationship with other International Bodies*

In order to effectively harness the contribution of all relevant international bodies toward the achievement of the goals of this convention the Committee shall:

1. request the relevant organs of the United Nations (including regional commissions), the specialized agencies, and other human rights monitoring bodies (including special rapporteurs, thematic rapporteurs and other special procedures of the United Nations), as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.
2. invite relevant organs of the United Nations (including regional commissions), the specialized agencies, and other human rights monitoring bodies (including special rapporteurs, thematic rapporteurs and other special procedures of the United Nations), to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.
3. seek, as relevant, technical assistance, relevant organs of the United Nations (including regional commissions), the specialized agencies, and other human rights monitoring bodies (including special rapporteurs, thematic rapporteurs and other special procedures of the United Nations),, the Global Disability Rights Advocate and other relevant bodies to assist it in its consideration of the reports of States Parties.



*Article 37*

***Regional Focus of the Work of the Committee***

In order to ensure that the Committee has the capacity to better appreciate circumstances within regions that help explain the nature of the problems experienced and especially the kinds of solutions that would produce tangible results and without prejudice to the obligation of each State Party to comply with its obligations under this convention, the Committee shall:

1. meet regionally on a rotational basis to assess progress achieved under National Action Plans for the States Parties concerned,
2. initiate and inform a regional dialogue about further measures that may be necessary at regional level to ensure further progress towards the achievement of the aims of this convention.

**GLOBAL DISABILITY RIGHTS ADVOCATE**

*Article 38*

***Establishment***

In order to ensure that an international focal point exists to take proactive measures to Enhance effectiveness of this convention especially with respect to capacity-building at the national level, the Secretary General of the United Nations shall:

1. appoint a full-time Global Disability Rights Advocate whose primary function will be to complement the work of the Committee by taking concrete steps to promote the achievement of the aims of the convention.
2. The Secretary General shall appoint the Global Disability Rights Advocate from a panel nominated by the Office of the United Nations High Commissioner for Human Rights after due consultation with States Parties as well as with representative organizations of persons with disabilities.
3. The Global Disability Rights advocate shall be appointed for a period of 3 years, and may be reappointed for no more than one additional term.

*Article 39*

***Functions of the Global Disability Rights Advocate***

1. The functions of the Global Disability Rights Advocate are to:

- (a) promote the Convention and raise awareness about its aims through the organization of international, regional and national conferences, seminars and publications and similar activities,
  - (b) highlight and facilitate the exchange of best practice among the States Parties,
  - (c) recommend areas that require thematic study by the Committee,
  - (d) assist in raising the capacity of representative organizations of persons with disabilities to advocate for their rights under this Convention at the domestic and international level,
  - (e) assist in raising the capacity of national monitoring bodies to address the issue of human rights and disabilities at the national level,
  - (f) assist in raising the capacity of national agencies responsible for the implementation of this Convention;
  - (g) assist individuals or groups of persons with disabilities in suitable cases in submitting a complaint to the Committee,
  - (h) participate in all United Nations activities relating to disability.
2. The Global Disability Rights Advocate shall present an annual report on his or her work to the General Assembly of the United Nations.

## **COMPLAINTS PROCEDURES**

### **Individual Communications Procedures**

#### *Article 40*

##### *Acceptance of competence of the Committee to receive individual communications*

1. A State Party to the Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party.
2. Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.
3. Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that has not made a declaration under this article.

## ***Article 41***

### ***Requests for interim measures***

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

## ***Article 42***

### ***Transmission of communication to State Party***

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within three months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

## ***Article 43***

### ***Consideration of communications, adoption of views and follow up***

1. The Committee shall consider communications received under this Article in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining individual communications under this Article.
3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.
4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee,

within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations.

#### *Article 44*

##### *Exhaustion of domestic remedies and admissibility conditions*

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. In deciding whether domestic remedies are available or have been exhausted, the Committee may take into account the particular difficulties which may face persons with disabilities in exercising their rights.
2. The Committee shall declare a communication inadmissible where:
  - (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
  - (b) It is incompatible with the provisions of the Convention;
  - (c) It is manifestly ill-founded or not sufficiently substantiated;
  - (d) It is an abuse of the right to submit a communication;
  - (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

### **COLLECTIVE COMPLAINTS PROCEDURE**

#### *Article 45*

##### *Capacity to Entertain Collective Complaints*

1. A State Party to the Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider collective complaints from international non-governmental organizations which have consultative status with the United Nations.
2. Any State Party may also, when it expresses its consent to be bound by this Article or at any moment thereafter, declare that it recognizes the right of any other representative national non-governmental organization within its jurisdiction which has particular competence in the matters governed by the Convention, to lodge collective complaints against it. Such declarations may be made for a specific period. The declarations shall be deposited with the Secretary General of

the United Nations who shall transmit copies thereof to the States Parties and publish them.

3. The complaint shall be lodged in writing, relate to a provision of this Convention It shall indicate in what respect the relevant State Party has not ensured the satisfactory application of this provision with respect to one or more rights set forth in this Convention and as it affects a significant number or group of persons with disabilities.
4. The Committee may request the State Party concerned and the organization which lodged the complaint to submit written information and observations on the admissibility of the complaint within such time-limit as it shall prescribe.
5. If it decides that a complaint is admissible, the Committee shall notify the States Parties through the Secretary General. It shall request the State Party concerned and the organization which lodged the complaint to submit, within such time-limit as it shall prescribe, all relevant written explanations or information, and the other States Parties, the comments they wish to submit, within the same time-limit.
6. The Committee shall draw up a Decision in which it shall describe the steps taken by it to examine the complaint and present its conclusions as to whether or not the State Party concerned has ensured the satisfactory application of the provision of the convention referred to in the complaint.
7. The State Party concerned shall provide information on the measures it has taken to give effect to the Decision of the Committee in its next report on progress made under its National Action Plan.

### **Inquiry Procedure**

#### *Article 46*

##### *Establishment of Inquiry Procedure*

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

#### ***Article 47***

##### ***Follow-up to report of inquiry***

1. The Committee may invite the State Party concerned to include in its report under article 38 of the Convention details of any measures taken in response to an inquiry conducted the Convention.
2. The Committee may, if necessary, after the end of the period of six months referred to in the preceding article, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

#### ***Article 48***

##### ***Provision for State Party to opt out of inquiry procedure***

1. A State Party may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in this convention.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General

#### ***Article 49***

##### ***Protection against retaliation in respect of any Communications with the Committee***

1. A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the Convention.

## **REPORTING BY COMMITTEE**

### *Article 50*

#### *Annual Reporting by Committee*

1. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of National Action Plans and any observations presented by States Parties. Such reports shall be made available in accessible formats.
2. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Commission on Social Development of the United Nations and other relevant organizations.

## **REVIEW OF IMPLEMENTATION AND MONITORING PROCEDURES**

### *Article 51*

#### *Review conference*

1. No later than 5 years after the entry into force of this Convention, the Secretary-General shall convene a meeting of the States Parties to consider the provisions of this Part in light of any relevant developments concerning monitoring arrangements under other United Nations human rights treaties.

\*\*\*

#### *Note*

In preparing this draft proposal the National Human Rights Institutions have drawn on their individual and collective experience (including papers prepared by the Asia Pacific Forum of National Human Rights institutions and the European National Institutions), as well as the Bangkok draft, the Chair's draft text of January 2004, the original Mexican proposal and a number of NGO background papers and proposals (including the IDC proposal of August 2005).

# 장애여성 단독조항 관련 강경화 공사 발언문

2005. 8.2

Thank you Mr. Chairman.

As you have noted, during the third session of the Ad Hoc Committee, my delegation proposed the inclusion of a separate article on the rights of women with disabilities, indicted as 15 bis in the working group text. We did so, because we see the doubly difficult situation facing women with disabilities as calling for a focused and extensive mention in an international convention on the rights of persons with disabilities. We take up the article in the plenary of the Ad Hoc Committee today, but during the 4<sup>th</sup> and 5<sup>th</sup> sessions, we held informal consultations and exchanged views with interested GO and NGO delegations.

The discussions made clear that we all recognize and keenly appreciate the situation of women with disabilities as being the most neglected of vulnerable groups in society. Without going into the specifics, suffice it to say that the plight of women with disabilities is not the simple sum of barriers faced by persons with disabilities and the barriers faced by women. The combination of disabilities and inferior status as women goes beyond the mechanical doubling of discrimination to a situation of utter social alienation and policy neglect. Women with disabilities have also remained invisible in legislative and policy efforts, at both the national and international level, without any anchor in either the disabilities discourse or the women's rights discourse. The existing global norms either on persons with disabilities or on women's rights directly reflect this lack of attention, and offer little in terms of concrete and action-oriented language addressing women with disabilities.

Under the circumstance, one of the aims of the Ad Hoc Committee, we believe, should be to draft a convention that would lift women with disabilities out of the invisibility and set forth a course of action that would facilitate their full enjoyment of all human rights. We are heartened that the goal is widely shared, and that the work of the Ad Hoc Committee has energized advocacy groups as well as governments to consider how best to do so. The answer would necessarily vary to some extent. But coming from our own experience with and commitment to disabilities issues and human rights, we believe a separate article on



women with disabilities would be vital element in a convention on the rights of persons with disabilities, in addition to references to gender in the general provisions.

We are aware that other delegations are of different views. Some are concerned that a separate article on women with disabilities would trigger an exercise in "listing", prompting others to propose separate articles on other groups of persons with disabilities. We ourselves would certainly resist the drafting becoming such an exercise. However, women with disabilities comprise half the population for which the convention is being drafted, and gender is a cross-cutting dimension that is of a different order than other defining characteristics of vulnerability. By the same reasoning, we would support the inclusion of separate article on children with disabilities.

Others have pointed out that by having a separate article, we risk the danger of relegating the issue of the rights of women with disabilities to the provisions of that article only. Such fear, however, should be allayed with appropriate incorporation of gender equality in the general provisions and perhaps other relevant articles of the convention. Meanwhile, we are more concerned with the opposite danger: With gender equality mentioned in general provisions without a specific article on women with disabilities, we can easily foresee how women with disabilities would slip through the fingers of the government offices in charge of implementation of the convention. We believe the full implementation of the convention for all persons with disabilities requires the active involvement and sense of shared ownership by the national machineries in charge of promoting gender equality. A separate article on women with disabilities would ensure this. Another way to ensure their active involvement could be to mainstream gender equality throughout the convention, rather than having a separate article, as found in the views of some delegations. However, we believe a more effective way is to have a separate article on women with disabilities, complemented by the incorporation of gender in the most relevant provisions of the convention.

Having presented our views, we are flexible about the language of the article, and stand ready to work closely with other delegations towards an outcome that will prove to be the most effective in bringing due attention to women with disabilities, and thereby producing a convention on the rights of persons with disabilities that will truly be an efficacious tool in protecting and promoting the rights and dignity of all persons with disabilities. Thank you.

## 조항별 Facilitator 목록

- 제4조 일반적 의무 Mr. Gustavo Ainchil (Argentina)
- 제5조 장애를 가진 사람들에 대한 인식 개선 Sylvester Rowe 대사 (Sierra Leone)
- 제6조 통계와 자료의 수집 Mr. Leslie Gatan (the Philippines)
- 제7조 평등과 차별금지 Mr. Stefan Barriga (Liechtenstein)
- 제8조 생존권 Mr. Eduardo Calderón (Ecuador)
- 제9조 법 앞에서의 평등권의 인정 (Canada)
- 제10조 인간의 자유와 안전 Ms. Gaile Ramoutar (Trinidad and Tobago)
- 제12조 폭력과 학대로부터의 자유 Ms. Ivana Grollová (the Czech Republic)
- 제13조 의견과 표현의 자유 Ms. Fatima Baroudi (Morocco)
- 제14조 사생활에 대한 존중 Mr. Anthony Miyeni (South Africa)
- 제15조 bis 장애여성 (단독조항) Ms. Theresia Degener (Germany)
- 제16조 장애아동 Ms. Josephine Sinyo (Kenya)
- 제17조 교육 Ms. Rosemary Kayess (Australia)
- 제19조 접근성 Mr. Damjan Tatic (Serbia and Montenegro)
- 제20조 개인의 이동 (Japan)
- 제21조 건강권 Mr. Mu'taz Hyassat (Jordan)
- 제22조 노동권 Mr. Dan Oren (Israel)
- 제23조 사회 보장과 적절한 삶의 표준 Mrs. Faith Innerarity (Jamaica)
- 제24조 문화적 삶에의 참여 Mr. Monthian Buntan (Thailand)
- 제24조 bis 국제협력 (단독조항) Ms. Mariana Olivera West (Mexico)

# **Text of the Facilitator**

## **ARTICLE 5**

### **Promotion of positive attitude to persons with disabilities**

(Revised draft prepared by the Facilitator)

8 August 2005

1. States Parties undertake to adopt immediate and effective measures to:

- a) Raise awareness throughout society regarding disability and persons with disabilities and to foster respect for their rights;
- b) Combat stereotypes and prejudices in all areas of life;
- c) Promote awareness of the capabilities and contributions of all persons with disabilities, emphasizing that as members of society they share the same rights and freedoms as all others and in a manner consistent with the overall purpose of this Convention;

2. These measures shall include, inter alia:

- a) Initiating and maintaining public awareness campaigns designed to nurture an effective receptiveness to the rights of persons with disabilities;
- b) Inculcating at all levels of the education system, including at the early childhood stage, an attitude of respect for the rights of persons with disabilities;
- c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with this Convention;

d) Encouraging all sections of society to develop and maintain as appropriate, disability-sensitive awareness training programmes.

---

## Article 12 – Freedom from violence and abuse

FACILITATOR’S PROPOSAL as of 3 February – to be negotiated later in the process when the article 12 will again appear on the agenda

(To be seen in conjunction with the report of the Co-ordinator from the 5th session)

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both within and outside the home, from all forms of exploitation, violence and abuse.

*Comment by the facilitator: Reiteration of special vulnerability of women and children to the violence and abuse to be further discussed in connection with the question of the general methodological approach to gender aspects of disability in this convention.*

*Comment by the facilitator: 1.bis (new) – “States Parties shall take all appropriate measures to protect the integrity of persons with disabilities on a basis of equality with others” as well as the whole concept of informed consent from the original paragraphs 1.bis – 1.ter to be further discussed under the Article 12 bis.*

2. States Parties shall also take all appropriate measures to prevent violence and abuse by ensuring, inter alia, appropriate forms of assistance and support for persons with disabilities, including through the provision of information and education on how to avoid, recognize and report instances of violence and abuse.

*3. Comment by the facilitator: Concept of situations of emergency has been moved to the Art. 8 bis.*

4. States Parties shall, in order to prevent the occurrence of violence or abuse, ensure that all (care) facilities and programs designed to serve persons with disabilities are (regularly and) effectively monitored by independent authorities.

5. States Parties shall take all appropriate measures<sup>39</sup> to promote physical, cognitive and psychological recovery, rehabilitation and social reintegration to the persons with disabilities who became victims of any form of violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in environment that fosters the health, welfare, self-respect, dignity and autonomy of the person.

6. States parties shall put in place effective policies and legislation to ensure that instances of violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted and that protection services are available in such cases.

---

## Article 16

Children with disabilities (12th August 2005)

Report to the Chairman and to the Ad Hoc Committee

The discussion of Article 16 on the children with disabilities in plenary on 2nd August 2005 generated debate that identified 5 approaches to ensuring that concerns on the rights of children with disabilities are adequately addressed. These were as follows:

(1.) That it is enough to refer to the rights of children with disabilities in general clauses of the draft convention i.e the preamble and Articles 2 and 4.

(2.) That it will be good to mainstream issues relating to children with

disabilities in all the articles addressing issues that also affect children in the draft convention.

(3.) That there is need to have a stand alone article on children with disabilities to recognise their special vulnerabilities to also cover all the issues that affect children with disabilities.

(4.) That we should have a combination of mainstreaming of children's issues in all relevant articles and also have an article on children to cover the issues that are unique to children and cannot be included in any other articles in the draft convention.

(5.) That It will be enough to refer to children in the general articles as in (1) above and then specifically require, in the monitoring article, that State Parties show how they have implemented all the provisions of the this convention with respect to children with disabilities; the article monitoring should also include an expert on the treaty body on matters relating children with disability.

Two informal meetings were organised by the facilitator from Kenya on 4th and 11th August 2005 to discuss the different view points. There was continuous communication and Informal discussions between the facilitator and individual delegations on the different view points during this session. As a result we had a lot of revision of positions and made tremendous progress in gaining common ground on many of the issues.

Some of the key issues that have emerged on children with disabilities are listed below, however there is no agreement as yet on the need to include all of them in this convention:

1.) Because of the vulnerability of children due to their age, lack of autonomy or legal capacity as adults, children are entitled to protection that will address their particular situations and ensure their right to development. It is important that this convention recognises this and makes provisions specifically address the rights in this convention as they apply to children.

2.)The need to include the principle of equality with other children in the application of all human rights and fundamental freedoms. This will complement and reinforce the application of the CRC with respect to children with disabilities.

3.) The need to recognise the principle of participation with respect to children with disabilities, recognise their evolving capacities and respect their right to express themselves and give their views in matters affecting them.

4.) The need to include the principle of “the best interest of the child” in all actions concerning children with disabilities under this convention.

5.) The need to ensure access to justice by children with disabilities.

6.) The need to ensure access to protection services by children with disabilities.

7.) The need to protect the right of the child to registration of their birth.

8.) The need to protect the right to family life of children with disabilities through the provision of the necessary support through information and education of these children and their families in order to prevent the concealment, abandonment, neglect and inappropriate institutionalisation of children with disabilities.

9.) The need to provide special care to children with disabilities who are temporarily or permanently deprived of their family life.

10.) The need to ensure access to mainstream services by children with disabilities on an equal basis with the other children.

11.) The need to provide services to facilitate early detection, assessment and identification of disability and make the necessary interventions early.

12.) The need to protect children with disabilities from sterilisation.

13.) The need to provide for expertise on matters relating to children with disabilities in the implementation of this convention.

Many delegations support the need to have provisions at the preamble, the general clauses and other articles in the main text where applicable. There is no agreement yet on the need for a stand alone article and what should be in that article. The focus currently is on the substance rather than the specific language.

---

**Facilitator's Text**  
**Draft Article 17**  
**EDUCATION**

1. States Parties recognise the right of all persons with disabilities to education. With a view to achieving this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education [system, including pre-school, primary, secondary, tertiary, vocational training] [at all levels] and life-long learning, directed to:

(a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) enabling all persons with disabilities to participate effectively in a free society; and

(c) the development of persons with disabilities' personality, talents, creativity as well as mental and physical abilities to their fullest potential.

2. In realising this right, States Parties shall ensure:

(a) that all persons with disabilities can access inclusive, quality free primary and secondary education to the extent possible in the communities in which they live;

(b) reasonable accommodation of the person's requirements;

(c) the development of initial and continuing training, which incorporates disability awareness, the use of appropriate communication means and modes, educational techniques and materials to support persons with disabilities, for all professionals and staff who work at all levels of education; and

(d) persons with disabilities receive the support required, within the general



education system, to facilitate their effective education. In exceptional circumstances where the general education system can not adequately meet the support needs of persons with disabilities, States Parties shall ensure that effective alternative support measures are provided, consistent with the goal of full inclusion.

(e) that persons with disabilities are not excluded from the general education system on account of their disability, and that [children with disabilities are not excluded from free and compulsory primary and secondary education on account of their disability].

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall:

(a) facilitate the learning of Braille, alternative script, orientation and mobility skills, peer support and mentoring;

(b) facilitate the learning of sign language and the promotion of the linguistic identity of the Deaf community; and

(c) ensure that the education of [children with disabilities] [children who are deaf, deaf/blind, and blind] is delivered in the most appropriate languages and modes of communication for the individual, and in environments which maximise academic and social development.

4. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities by ensuring the employment of teachers who are fluent in sign language or Braille.

5. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on the basis of equality of opportunity. To that end, States Parties shall render appropriate support to persons with disabilities.

*Facilitator's Comments*

*Qualifying language that denotes progressive realisation has been avoided.*

*It is intended that these obligations will be clearly defined within Article 4 (General Obligations), thus eliminating the requirement for qualifying language within substantive articles.*

*The equality provisions in the chapeau may need reworking in light of agreement of the overall approach to be taken throughout the convention.*

*The term 'linguistic identity' has been used to be consistent with other existing international law provisions.*

*Revisions were made to 1(d) based on feedback provided by governments and NGOs in the meeting held on August 11 regarding the need to tighten the exception in that provision.*

---

**August 12th 2005**

## **Draft article 19– ACCESSIBILITY 1**

1. States Parties to this Convention shall take appropriate and effective<sup>2</sup> measures to ensure accessibility to the physical<sup>3</sup> environment, housing, all forms of transportation, information and communications, including information and communications technologies, and to other services, to persons with disabilities on basis of equality with others, by identifying and eliminating [existing and preventing future] barriers<sup>4</sup>, including inter alia architectural, sensorial and cultural barriers, in order to enhance the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. [These measures shall include, inter alia:

(a) The construction and renovation of public buildings, roads and other facilities to which the members of the public have the access, including schools, housing, medical facilities, in door and out-door facilities, and workplaces;

(b) The development and remodelling of public transportation facilities,

including vehicles, and of information and communications and other services, including electronic services.]<sup>5</sup>

2. States Parties shall take appropriate measures to, inter alia:

[(a) Provide in buildings and facilities to which the members of the public have the access the visual and tactile signaling, use of international accessibility symbols, signage in Braille and easy to read and understand forms to orient persons with disabilities;

(b) Provide qualified personnel to assist and guide persons with disabilities in buildings and facilities to which the members of the public have the access, including guides, readers and sign language interpreters, in order to facilitate accessibility to the above- mentioned buildings and facilities;]<sup>6</sup>

(c) Promote mobility for persons with disabilities by facilitating their access to suitable and appropriate accessibility assistive technologies;<sup>7</sup>

(d) Develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of buildings, facilities and services to which the members of the public have the access;<sup>8</sup>

(e) Promote the development, availability and use of universally designed goods, services, equipment and facilities to meet the specific needs of persons with disabilities and promoting universal design in the development of standards and guidelines;

(f)[Require] / [Encourage] private entities that provide facilities and services to which members of the public have the access, to [ensure full] / [take into account all aspects of] accessibility of the above- mentioned facilities and services for persons with disabilities;<sup>9</sup>

(h) Ensure that accessible information and communication technologies, including new information and communication technologies and systems, be designed, developed, produced and distributed at an early stage so that the information society becomes inclusive for persons with disabilities.

*Footnotes:*

1. Majority of delegations were strongly in favor of moving article on accessibility closer to the article on non-discrimination and equality. Some favored inclusion of concepts of accessibility and barrier-free society in article 2 on general principles. The Ad Hoc Committee may wish to consider these issues further.

2. Some delegations were in favour of inserting reference to progressive realization in this paragraph and in the chapeau of paragraph 2. Other members were concerned with consistency with other articles of the Convention, opposed the insertion and favoured addressing the issue in a more general manner. The Ad Hoc Committee may wish to consider alternative formulations.

3. The Ad Hoc Committee may wish to consider whether the term “physical” should be used instead of “built”, which is its near synonym in this context. The Ad Hoc Committee may wish to consider the issue further.

4. Some delegations found this wording too detailed, felt that the issue is adequately covered in the 19(2)(e) and thus should be deleted here, while other delegations welcomed such elaboration in 19(1). The Ad Hoc Committee may wish to consider the issue further.

5. Some delegations found the 2 sub-paragraphs too detailed and suggested their deletion, while the others were in favor of retaining them.

6. Some delegations found the 2 sub-paragraphs too detailed and suggested their deletion, while the others were in favor of retaining them.

7. One delegation expressed concern that there is no reference to technologies and devices that would facilitate and ensure access to information and communication. Another delegation felt this sub-paragraph would be more appropriately placed in article 20 on personal mobility.

8. The Ad Hoc Committee may wish to consider whether the issue of providing training on accessibility for all the stakeholders in cooperation with persons with disabilities and their representative organizations shall be better addressed here in a more specific way, or in a more general provision on training of relevant stakeholders in all disability-related matters in the article on general obligations.

9. Some delegations were strongly in favor of providing for more strict obligations on private entities while the other delegations cautioned against prescribing for something that would be impossible to implement in practice. It was impossible to reach an agreement in the informal meetings and the text in brackets depicts that fact. The Ad Hoc Committee should consider this issue further.

---

## Draft Article 21 Right to Health<sup>1</sup>

States Parties recognise that all persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall take all appropriate and effective measures to ensure access for persons with disabilities to health services, including health-related rehabilitation. In particular, States Parties shall:

- a. provide persons with disabilities with the same range and standard of (health-care services as provided others, including in the field of sexual and reproductive health) ;<sup>2</sup>
- b. provide those health services needed by persons with disabilities specifically because of their disabilities, including those designed to minimize and prevent further disability ;<sup>3</sup>
- c. provide these health services as close as possible to people's own communities;
- d. require health professionals to provide care of the same quality to persons with disabilities as to others by raising awareness of the human rights, dignity and worth, autonomy and needs of persons with disabilities through training and the promulgation, in consultation with all concerned parties, including persons with disability, of ethical standards for public and private healthcare.

## 21 bis Rehabilitation and Habilitation 4

1. States Parties shall take effective and appropriate measures to enable persons with disabilities to attain their maximum independence and functioning and support their full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive rehabilitation and habilitation services, in particular in the areas of health, employment, education and social services, in such a way that

(a) rehabilitation and habilitation services and programmes begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs;

(b) rehabilitation and habilitation services and programmes are available as close as possible to people's own community, including rural areas, and in support of community –based rehabilitation.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in rehabilitation and habilitation services.

### *Footnotes:*

1. The title was not discussed at this stage. In addition, some delegations suggested the inclusion of free and informed consent. Others thought it could be broadly dealt with in other articles such as 3 and/or 9. Another suggestion was made to prohibit “denial of nutrition and medical, life preserving treatment”. However, this suggestion was not agreeable to others as it was overly detailed and descriptive and some elements of the suggestion might be dealt with elsewhere i.e. article 11 on torture.

2. There were conflicting views on the mention of sexual and reproductive health services and, therefore, further discussion is required. Many delegations found it very essential to include it; otherwise issues such as cervical screening would be missed.

3. Few delegations requested more clarification of “to minimize and prevent further disability”.

4. The article is proposed without prejudice to the incorporation of its elements into other relevant articles. At the same time, subject to an agreement on a separate article on rehabilitation, some delegations preserved their rights to comment on its content in due course.

---

11th August 2005

**Draft Article 22: RIGHT TO WORK**

**Facilitator's Proposal**

States Parties recognize the right to work of all persons with disabilities of lawful working age, on an equal basis with others; this includes the opportunity to gain a living by work freely chosen or accepted, with a view to protecting persons with disabilities from poverty, in a labour market and work environment, whether in the public, private, or any other sector, which is open, inclusive and accessible to persons with disabilities.

In order to safeguard and promote the realization of the right to work, States Parties shall take all appropriate steps including by way of legislation and shall in particular:

- a. prohibit discrimination on the basis of disability in all matters connected with employment;
- b. require reasonable accommodation of persons with disabilities in the workplace and work environment;
- c. ensure appropriate representation for persons with disabilities in government ministries and require appropriate representation in the workforce of the public sector and of large private sector employers;
- d. protect the right of persons with disabilities in all forms of employment, to equal application of employment protection laws and standards, in particular equal remuneration for work of equal value;
- e. encourage employers to hire and retain persons with disabilities, by way

of such measures as the promotion of affirmative action programs, and the provision of financial incentives and support;

f. enable persons with disabilities to have effective access to general technical and vocational and career guidance programs, employment counseling and placement services, supplemented by information in accessible formats on rights and obligations under labour-related law and other forms of labour regulation;

g. promote equal employment opportunities and career advancement for persons with disabilities in the open labour market, including opportunities for self-employment and starting one's own business and the promotion and provision of assistance in finding, obtaining and maintaining and returning to employment, including vocational and professional training and transition programmes;

h. take all possible measures to replace alternative forms of employment with employment in the open labour market, and to the extent that alternative forms exist, ensure that they are adequately resourced, in conditions that provide opportunities for vocational advancement and facilitate the move into the open labour market and that employment protection laws and standards apply;

i. promote recognition of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market, and combat stereotypes and prejudices about persons with disabilities in the workplace and the labour market.

---

As of 12 August 2005

Facilitator's draft

Article 24

Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of all persons with disabilities to



participate on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

- (a) Have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community;
- (b) Enjoy access to literature and other cultural materials in all accessible formats;
- (c) Enjoy access to television programmes, films, theatre and other cultural activities, in all accessible formats;
- (d) Enjoy access to places for cultural performances or services including tourist sites.

*Facilitator's note:*

- (1) It might be possible to merge (B) and (C) if the content is well kept.*
- (2) Long lists of examples were taken out provided that they must be mentioned some where in the convention, such as article 13 and 19.*
- (3) It is still not clear whether (a) should stand on its own as 1 bis. More consultation is needed.*

2. States Parties shall take all appropriate steps to ensure that laws protecting intellectual property rights [copyright] do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, [while respecting the provisions of international law].

*Facilitator's note:*

- (1) More investigation is needed to choose between intellectual property rights or copyright, taking into account the best interest of PWDs.*

3. Persons with disabilities belonging to ethnic, religious or linguistic minorities or indigenous groups shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including deaf cultures and sign languages.

*Facilitator's note:*

*(1) Additional text on religion may not be suitable here since it is not about freedom of religion, but more about discriminatory practice against persons on the basis of his/her disability.*

4. States Parties recognize the right of persons with disabilities, on an equal basis with others, to participate in recreational, leisure and sporting activities and shall take appropriate measures to:

(a) Encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at local, regional, national and international levels;

(b) Ensure that persons with disabilities have an opportunity to organize and participate in disability-specific sporting activities and to receive instruction, training and resources in support that is available to other participants;

(c) Ensure that children with disabilities enjoy the right to play and have access to participating in leisure, recreational and sporting activities on an equal basis with others, including within the education system;

(d) Ensure that persons with disabilities have access to sporting and recreational venues and services from those involved in the organization of recreational, leisure and sporting activities.

*Facilitator's note:*

*(1) More consultation is needed to decide whether this whole paragraph should stand on its own as an article.*

*(2) Further investigation is needed to determine whether the Mexican Delegation's proposed paragraph 5 should be part of cultural life or part of sporting activities or should stand on its own.*

*Mexico's proposal: 5. Promote that persons with disability have access to services from those involved in the tourism industry.*

---

## Article 24 bis International Cooperation

States Parties shall promote international cooperation and undertake to take appropriate measures in coordination with each other, as well as with international and regional organizations and other stakeholders, for the realization of the purposes of this convention.

International cooperation shall include, *inter alia*:

- a) Exchange of information concerning best practices on measures, legislation, national policies, programmes and projects to implement the present convention and on the progress and challenges faced in this regard;
  - b) Increasing public awareness on disability and the full and equal enjoyment of human rights and fundamental freedoms by persons with disabilities;
  - c) Ensuring that international cooperation programmes are inclusive to persons with disabilities;
  - d) Encouraging the provision of technical cooperation and economic assistance to developing countries, including transfer of technology;
  - e) Promoting research and application of accessible technologies, including assistive technologies for persons with disabilities;
  - f) Conducting training courses, seminars, workshops and research;
  - g) Supporting and develop capacity building for the full implementation of this convention.
-



---

Sixtieth session

Item 73 (b) of the provisional agenda\*

Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

메모: <<ODS JOB  
>>N0450220E<<ODS JOB  
NO>>  
<<ODS DOC  
SYMBOL1>>A/59/360<<ODS  
DOC SYMBOL1>>  
<<ODS DOC  
SYMBOL2>><<ODS DOC  
SYMBOL2>>

## **Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its sixth session**

### **Note by the Secretary-General**

I have the honour to submit to the General Assembly, pursuant to General Assembly resolution 59/198 of 20 December 2004, the report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its sixth session.

---

\* A/60/150.

## **I. Introduction**

1. In its resolution 56/168, the General Assembly decided to establish the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, based on a holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.
2. In its resolution 59/198, the Assembly decided that the Committee should hold, within existing resources, prior to the sixtieth session of the Assembly, two sessions in 2005, of 10 working days each, to be held, respectively, from 24 January to 4 February and in July/August.

## **II. Organizational matters**

### **A. Opening and duration of the sixth session**

3. The Committee held its sixth session at United Nations Headquarters from 1 to 12 August 2005; it held 20 meetings.
4. The Division for Social Policy and Development, Department of Economic and Social Affairs of the United Nations Secretariat, acted as the substantive secretariat, while the Disarmament and Decolonization Affairs Branch, Department for General Assembly and Conference Management of the United Nations Secretariat, served as the secretariat of the Committee.

5. The sixth session of the Committee was opened by its Chairman, Don MacKay, Ambassador of New Zealand.

## **B. Officers**

6. On 13 April 2005, the Committee held its organizational meeting, at which the following officers were elected to serve on its Bureau:

*Chairman:*

Don MacKay (New Zealand)

*Vice-Chairpersons:*

Jorge Ballesteros (Costa Rica)

Ivana Grollovà (Czech Republic)

Mu'taz Hyassat (Jordan)

Laoura Lazouras (South Africa)<sup>a</sup>

## **C. Agenda**

7. At its 1st meeting, on 1 August 2005, the Committee adopted the provisional agenda for its sixth session, as contained in document A/AC.265/2005/L.3, as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.

---

<sup>a</sup> Elected on 1 August 2005.

4. Organization of work.
5. Continuation of consideration of the proposed revisions and amendments to the draft text of the Working Group as contained in the reports of the Ad Hoc Committee on its third session (A/AC.265/2004/5, annex II), fourth session (A/59/360, annex IV) and fifth session (A/AC.265/2005/2, annexes II and III).
6. Conclusion of the Ad Hoc Committee at its sixth session.
7. Adoption of the report of the Ad Hoc Committee on its sixth session.

#### **D. Documentation**

8. The Committee had before it the following documents:
  - (a) Report of the Committee on its fifth session (A/AC.265/2005/2);
  - (b) Note verbale dated 18 July 2005 from the Permanent Mission of Morocco to the United Nations addressed to the Secretariat (A/AC.265/2005/3);
  - (c) Provisional agenda for the sixth session of the Committee (A/AC.265/2005/L.3);
  - (d) List of participants (A/AC.265/2005/INF/2);
  - (e) Proposed programme of work for the sixth session of the Committee (A/AC.265/2005/CRP.3);
  - (f) The concept of “special” measures in international human rights law: background document prepared by the Office of the United Nations High Commissioner for Human Rights (A/AC.265/2005/CRP.4);

- (g) Legal capacity: background document prepared by the Office of the United Nations High Commissioner for Human Rights (A/AC.265/2005/CRP.5);
- (h) Report of the Committee on its third session (A/AC.265/2004/5 and Corr.1);
- (i) Report of the Working Group (A/AC.265/2004/WG.1);
- (j) Report of the Committee on its fourth session (A/59/360).

### **III. Organization of work**

9. At its sixth session, the Committee conducted informal discussions on articles 15, 24bis, 15bis, and 16 through 25 of the draft convention, in accordance with the programme of work adopted at its first meeting, on 1 August 2005. At its 20th meeting, on 12 August, the Committee heard the report of the Chairman on the progress made in the informal discussions held on the aforementioned draft articles (see annex II). The Committee decided to continue to review the draft convention at its seventh session.

### **IV. Recommendations**

10. The Committee recommends that it continue its work in 2006 and that it hold, within existing resources, prior to the sixty-first session of the General Assembly, two sessions in 2006, of at least ten working days and up to a maximum of fifteen working days each, to be held, respectively, in January and August.



11. The Committee invites the members of its Bureau to hold intersessional meetings in regard to the preparation and organization of its seventh session, including the preparation of the provisional agenda, which should be issued at least four weeks before the seventh session.

12. With regard to accessibility and in accordance with General Assembly resolutions 58/246 and 59/198 and decision 56/474, the Committee reiterated the need for additional efforts to be made to ensure accessibility at the United Nations, with reasonable accommodation as regards facilities and documentation, for all persons with disabilities.

13. In this regard, the Committee requests the Secretary-General to explore and implement innovative measures, within existing resources and in consultation with organizations of persons with disabilities and the Bureau, for the provision of selected documents in Braille. The Committee requests the Secretary-General to report to it at its seventh session on the implementation of this recommendation.

14. The Committee calls upon the organizations and bodies of the United Nations system, including the World Bank, to intensify their cooperation in support of the work of the Committee, as well as in anticipation of the implementation of the draft convention, and invites the Department of Economic and Social Affairs of the United Nations Secretariat, in close collaboration with the Office of the United Nations High Commissioner for Human Rights, to take the necessary steps to secure this inter-agency collaboration.

## **V. Adoption of the report**

15. At its 20th meeting, on 12 August, the Committee adopted the draft report on its sixth session (A/AC.265/2005/L.4), as orally amended.

## **Annex I**

### **Additional non-governmental organizations accredited to the sixth session of the Committee**

Abilities

Action on Disability and Development

Afghan Disabled Union

Autisme Europe

British Council of Disabled People

Consiglio Nazionale sulla Disabilità

Consortium Humanitarian Agencies

Federation of and for People with Disabilities

Friends of Peace and Development Organization

Gambia Future Hands on Disable People

Instituto Paradigma

International Stuttering Association

Iraqi Handicapped and Survivors Society

Lebanese Physical Handicapped Union

Leonard Cheshire International

Mine and Weapon Victims Association

Peace and the Tolerance International Organization

Persons With Pain International

Society for Mental Health Care

Sudan Association for Combating Landmines

Union des personnes handicapées du Burundi

---

**Annex II****Report by the Chairman**

1. The Ad Hoc Committee held informal and formal meetings from 1 to 12 August 2005 on draft articles 15, 24bis, 15bis, and 16 through 25.
2. The text of the draft convention prepared by the Working Group (A/AC.265/2004/WG.1, annex I) formed the basis for the discussion, which took into account various amendments and proposals made during previous meetings, as contained in the compilation document.
3. The aim of the discussions was to clarify as many of the issues concerning the draft articles as possible. The present report indicates areas of general agreement on language and areas where there remains a divergence of views that will need to be resolved subsequently. Where general agreement was reached, it was on the clear understanding that it was without prejudice to the ability of delegations to reconsider the draft articles at a subsequent stage, when the shape of the overall convention became clear.
4. It was again clear from the discussion that there are overlaps and duplications between provisions in some articles, which deal with similar matters, and this will need to be rationalised. There were also suggestions for restructuring and streamlining some articles, which will need to be taken into account.
5. Many of the draft articles deal with economic, social and cultural rights, which are to be realised to the maximum of available resources (that is, they are subject to the “doctrine of progressive realisation”). Some of those draft articles also cover civil and political rights, which are of immediate effect and to which the doctrine of progressive realisation does not apply. This can make it difficult to insert a reference in the chapeaux to those draft articles saying that they shall be

progressively implemented. It was agreed that the matter needed to be dealt with in the convention, perhaps by a generic provision in draft article 4.

6 The issue of whether the convention should ‘recognise’ or ‘ensure’ a right, and related questions around similar language, has arisen several times during these negotiations. The Committee will need to look at making these terms consistent throughout the convention. Similarly The Committee will also need to address proposals that were made throughout the text to insert language such as ‘on an equal basis with others’ and ‘equitable’.

#### **Summary of discussions on the structure of the draft convention**

7 The Committee considered the structure of the draft convention in general terms. A number of delegations suggested that certain draft articles should be shifted elsewhere in the draft convention in order to place them within a more suitable or logical grouping of draft articles.

8 It was agreed that it would be largely unhelpful to try to place a rigid demarcation in the draft convention between those draft articles dealing with “civil and political” rights and those dealing with “economic, social and cultural” rights, especially as many of the draft articles were of a hybrid character. It was also important to avoid creating the appearance of a “hierarchy” of rights in the draft convention.

9 There was general agreement that the articles in the draft convention should be clearly delineated and avoid unnecessary repetition.

10. The Committee considered that “titles” could contribute to the accessibility of the draft convention. This issue was to be given further thought.

**Discussion of draft articles****Draft article 15**

11. There was general support that there should be an article in the convention on this issue, and that the Working Group text was a good basis for discussion. There was general support to the essence of draft article 15 that persons with disabilities should be free to choose their living arrangements on an equal basis with others. It was also noted that the key to this draft article was the right of every person with disabilities to live in the community.

**Chapeau**

12. There was support to re-draft the chapeau as follows:

States Parties to this Convention shall take effective and appropriate measures to [enable/facilitate] full enjoyment by persons with disabilities of their freedom of choice, independent living and full [inclusion/participation] in the community, including by ensuring that:

13. The Committee noted that the use of the word “facilitate” might not be linguistically correct, and that this would need to be looked at again when draft article 15 was next discussed.

14. There was some support for a proposal to re-draft the chapeau so that it drew on Article 12 of the International Covenant on Civil and Political Rights, and incorporated the right of persons with disabilities to liberty of movement and freedom to choose their residence. Others however argued that this proposal did not take into account the limits on this right that were contained in the Covenant.

**Subparagraphs (a) and (b)**

15. There was support to merge subparagraphs (a) and (b), with slight amendment, so that they read:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in [an institution or] a particular living arrangement.

16. Some delegations objected to the inclusion of any reference to “institutions”, and proposed the deletion of the substance of subparagraph (b) on the basis that it was covered under either draft article 10 or in the substance of subparagraph (a). Other delegations proposed to append paragraph (b) with clauses such as “except where necessary” or “subject to the provisions of article 10”. It was noted, however, that such language went beyond the situations set out in draft article 10, and would undermine the approach taken in that draft article.

17. There was general agreement that there was an element of duplication with draft article 10, and that when that article was next discussed it should be ensured that the elements of draft article 15, subparagraph (b), were adequately covered to avoid the duplication.

**Subparagraphs (c), (d) and (e)**

18. There was a proposal to insert a new subparagraph (c) bis, which would address the manner in which support services were to be provided. The Committee noted that this proposal replicated elements that appeared in the preamble and under draft article 4, although there might also be a place for inclusion in the context of this draft article.

19. There was general agreement that the phrase “and facilities” should be inserted in subparagraphs (d) and (e) after the word “services”.

20. It was noted that draft article 15(e), with the additional language of “and facilities in a format that is accessible to and in plain language” could be considered in future discussion on draft article 19.

21. The Committee noted that subparagraphs (c), (d) and (e) related to economic, social and cultural rights, and as such were progressively realisable. While it had been previously agreed that draft article 4 should include the concept of progressive realisation, it was noted that this did not necessarily preclude the use of progressive realisation language in draft article 15 or in other articles containing hybrid or ambiguous provisions. The issue of how to address economic, social and cultural rights in the draft convention was an issue still to be properly discussed.

22. A view was expressed that in draft article 15, subparagraphs (a) – (e) were not helpful in that by “listing” measures that States Parties must take, it could be perceived as excluding other, unlisted, measures. The Committee noted that the subparagraphs were illustrative only, and not an exclusive list.

#### **Draft article 15bis**

23. The Committee noted that while all women are covered under the Convention on the Elimination of Discrimination against Women, that Convention does not specifically mention women with disabilities and there are no other legally binding texts that do. There was general agreement in the Committee, therefore, to include in the Convention the principle of gender equality. All delegations agreed that the Convention needed to adequately address the situation of women with disabilities.

24. There were different views expressed, however, on how best to achieve this aim in the convention. Some delegations supported the proposal for a stand-alone article. Others suggested that a reference in the preamble combined with language in the general principles, the general obligations, or the monitoring section best met



the aim. Others proposed to mainstream gender issues throughout thematic Articles of specific relevance to women. Others supported both a separate article in addition to mainstreamed references.

25. The Chair noted that delegations should bear in mind that any programme of action to implement the convention would be an additional place to deal with the situation of those that faced additional disadvantage due to discrimination on intersecting grounds.

26. The issue of women with disabilities was referred to the facilitator (Theresia Degener, Germany) to explore further the best approach and examine where and if there were gaps in the convention that needed to be addressed from a gender perspective.

#### **Draft article 16**

27. There was general agreement in the Committee that some specific references to children with disabilities were needed in the draft convention. There was also general agreement that draft article 16 did not add much substance to what was already contained in Article 23 of the Convention on the Rights of the Child.

28. Views varied in the Committee on how best to include children with disabilities in the draft convention. Proposals included retaining a separate (but redrafted) article on children; a reference in the preamble with a general statement in a draft article of horizontal application (such as draft articles 2, 4, or 25), or mainstreaming references in relevant thematic draft articles.

29. The issue of children with disabilities was referred to the facilitator (Josephine Sinyo, Kenya) to explore further the best approach.

**Draft article 17**

30. The Committee noted that education laid the foundation for the participation by persons with disabilities in society as a whole throughout their lives, and that inclusiveness was one of the main themes of the Article (and of the convention more generally). There was a need to balance this with the other main theme of education options for persons with disabilities.

**Paragraph 1**

31. There was general agreement in the Committee that the obligations of States in this draft article should not be qualified, and it was noted that the issue of progressive realisation of economic, social and cultural rights could be dealt with in an earlier general article that applies to the whole convention including this paragraph.

32. There was otherwise general acceptance of the first sentence of paragraph 1 of the Working Group text. There was also general support to include, as the second and third sentences of paragraph 1, a proposal on inclusiveness in the general education system.

33. There was general agreement to replace “children with disabilities” with “persons with disabilities” throughout this draft articles, except in subparagraph 1d of the Working Group text, where the word “child” would continue to be more appropriate.

34. There was also general agreement to include the word “creativity” in paragraph 1(c).

35. The Committee noted the important reference to the “best interests of the child” in paragraph 1(d), and agreed that the paragraph should not use weaker language than was employed in the Convention on the Rights of the Child. But

there were divergent views on whether Article 17 was the appropriate place for such a reference. There were also divergent views on whether to retain the reference to “individualised education plans” from the Working Group text. Some delegations supported the idea, but could not agree as to how it should be expressed. Other delegations wanted the reference deleted.

36. Following the discussion, paragraph 1 currently reads:

1. States Parties recognise the right of all persons with disabilities to education with a view to achieving this right [progressively and] on the basis of equal opportunity. States Parties commit themselves to the goal of inclusiveness of their general education systems. Where exceptionally the general education system does not adequately meet the needs of persons with disabilities, States Parties shall take appropriate measures to ensure [quality/effective] alternative forms of education, bearing in mind the goal of full inclusion. The education of persons with disabilities shall be directed to:

- (a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) enabling all persons with disabilities to participate effectively in a free society;
- (c) the development of the personality, creativity, talents and mental and physical abilities of persons with disabilities to their fullest potential.
- (d) the best interests of the child, which shall be of primary consideration, [in particular by individualising education [plans] [and methods]];

---

**Paragraph 2**

37. On paragraph 2(c), there was some support to add the word “secondary”. In doing so, the Committee noted that the reference, which now reads “free and compulsory primary or secondary education”, did not create any new obligation for States to provide free and compulsory secondary education. Rather, the provision is a non-discrimination one, and means that if a State did provide free and compulsory secondary education to the general population, then it should also be provided to persons with disabilities.

38. Paragraph 2 currently reads:

2. In realising this right States Parties shall ensure:

(a) that all persons with disabilities [choose inclusive and accessible quality/effective education] [have access to quality/effective education in the general education system] [throughout their lives] [to the extent possible] in the communities in which they live (including access to early childhood and pre-school education);

(b) required support, including specialised training of teachers, school counsellors and psychologists, an accessible curriculum, an accessible teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, accessible physical environment, or other reasonable accommodations to ensure the full participation of students with disabilities;

(c) ensure that no person with disabilities is excluded from free and compulsory primary or secondary education, or denied access to education, on account of their disability;

### **Paragraph 3**

39. There was general support to replace paragraph 3 of the Working Group text. Some delegations favoured broadening the coverage of this paragraph to include all persons with disabilities. But the Committee accepted that this might be used as a basis for excluding all children with disabilities from the general education system. There was general support, however, that children with particular disabilities, such as blind, deaf and deafblind children, may need to commence their learning in an environment that is more specific to their needs. This would allow them to gain maximum benefit from a fully inclusive general education system, and ultimately more effectively participate in society.

40. One proposal, that received some support, reads:

3. States Parties shall ensure that blind, deaf and deafblind children and young persons have the right to choose education in their own groups and settings, where they shall be provided with the same level of support and standards, consistent with other provisions in this article.

### **Paragraph 4**

41. The Ad Hoc Committee debated the issue of acquisition of life skills. While some delegations supported including this issue in a separate draft article 17bis, most delegations were in favour of including the concept in this paragraph. Many delegations also emphasised the importance of training as well as education.

42. The Ad Hoc Committee also agreed to use the same language on types of communication that was proposed during the discussion of draft article 13.b

43. Paragraph 4 currently reads:

---

<sup>b</sup> See of the Report of the Coordinator to the Ad Hoc Committee at its Fifth Session, A/AC.265/2005/2, Annex II, paragraph 69.

4. States Parties shall ensure that children with sensory and communication disabilities may choose to be taught sign language or Braille, as appropriate, and to receive the curriculum in sign language, or Braille, or augmentative alternative communication or other accessible means, modes and formats of communication. States Parties shall take appropriate measures to ensure [quality/effective] education to students with sensory disabilities by ensuring the employment of teachers who are fluent in sign language or Braille. States Parties shall take appropriate measures to ensure that people with disabilities have the opportunity to learn the life, social development, orientation and mobility skills that are required for people with disabilities to participate on an equal basis with others as members of the community.

**Paragraph 5**

44. There was general agreement to retain paragraph 5 of the Working Group text.

45. Paragraph 5 currently reads:

5. States Parties shall ensure that persons with disabilities may access general, tertiary education, vocational training, adult education and lifelong learning on an equal basis with others. To that end, States Parties shall render appropriate [assistance/support] to persons with disabilities.

46. The draft article was referred to the facilitator (Rosemary Kayess, Australia) for further discussion.

**Draft article 18**

47. There was general agreement to the importance of this draft article. There was also general agreement that its provisions needed to be strengthened to better reflect

the stronger commitments found in similar provisions of the International Covenant on Civil and Political Rights and the Convention on the Elimination of Discrimination against Women.

48. The Committee noted that General Comment 23 of the Committee on the Elimination of Discrimination against Women provided some useful guidance in relation to this Article.

**Paragraph (a)**

49. There was general support to strengthen the chapeau of paragraph (a) by replacing the opening phrase “actively promote an environment in which” with the phrase “ensure that”.

50. There was general support to change the term “citizens” to “persons” in paragraph (a) and subsequent paragraphs. This would be consistent with the term used in the Convention on the Elimination of Discrimination against Women, and also reflect that in many States some non-citizens (such as permanent residents) have the right to vote and therefore no lesser standard should be accepted for persons with disabilities.

51. To ensure that there would be no expectation that States should grant extra political rights to persons with disabilities that others did not enjoy, the Committee agreed to add the phrase “on an equal basis with others”. That would ensure that no state would be obliged to give non-citizens with disabilities a right to vote if non-citizens in general would not be entitled to vote.

52. A proposal to add a phrase “and materials” to the end of the paragraph received no opposition. The phrase is intended to clarify that all aspects of voting and participation in political life should be accessible.

53. Following the discussion, paragraph (a) now reads:

(a) ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others [and in accordance with national laws outlining political rights for all people], directly or through freely chosen representatives, including the right and opportunity of persons with disabilities to vote and be elected, by ensuring that voting procedures, facilities and materials:

**Subparagraphs (a)(i), (a)(ii) and (a)(iii)**

54. There was general support on the inclusion of these three paragraphs, although a number of technical issues were raised.

55. In particular, the Committee noted that a secret ballot might not always be technically possible for some persons with disabilities. Some wording such as “in accordance with law” might help, and the phrase “without intimidation” might also be an important qualifier. Such language could help protect people with disabilities who are not able to engage in a completely secret ballot.

56. It was generally agreed that any assistance provided to people with disabilities should only be on their request and provided by someone they trust. It was also noted that political rights are broader than the right to vote in elections and several delegations wished to express specifically the right to hold office and participate effectively in the political process.

57. There was also agreement to make some minor changes to make the language consistent with the Convention on the Elimination of Discrimination against Women and the international Covenant on Civil and political rights.

58. Following the discussion, the paragraphs now read:



- (i) are appropriate, accessible and easy to understand and use;
- (ii) protect the right of persons with disabilities to vote by secret ballot, [in accordance with law and without intimidation] in elections, and public referenda; to stand for elections and to hold office and perform all public functions at all levels of government;
- (iii) guarantee the free expression of the will of persons with disabilities as electors and to this end, where necessary, allow assistance in voting on their request and by a person of their own choice;

**Paragraph (b)**

59. The Committee considered a number of linguistic and structural proposals that strengthened and broadened paragraph (b), and also brought it more closely into alignment with the Convention on the Elimination of Discrimination against Women.

60. In particular, there was general agreement to delete the term, “as appropriate” from paragraph (b) as it might be misinterpreted as a qualifier. There was a preference in the Committee for the broader term “public affairs” rather than “public administration”, in order to be consistent with other international treaties. There was general agreement to add the word “international” to the settings in which persons with disabilities could participate.

61. Following the discussion, paragraph (b) now reads:

(b) [actively promote an environment in which] [ensure that] persons with disabilities, without discrimination and on a basis of equality between men and women, can effectively and fully participate in the conduct of public affairs, and shall encourage their participation in public affairs, including to:

- (i) participate in non-governmental organisations and associations concerned with the public and political life of the country, including the activities and administration of political parties;
- (ii) form and join organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

**Paragraph (c)**

62. The Committee noted that there was general agreement at its fourth session that the elements of paragraph (c) should be consolidated in draft article 4(2) along with several other provisions from other paragraphs that have general application across the whole convention<sup>c</sup>. Some delegations noted at this meeting, however, that the paragraph needed to be retained in the context of political participation. The Committee noted that these elements should be looked at in a future meeting from the perspective of the balance of text and repetition.

63. Divergent views were expressed on the phrase “in particular those with disabilities”. Some delegations proposed to delete the phrase in order to broaden the paragraph to take into account participation in matters wider than those concerning disability issues. Other delegations, however, considered that there was a need to ensure the primacy of the voice of persons with disabilities in relation to disability issues.

64. Participation in the implementation and evaluation of policy, in addition to decision making, was also emphasised by several States, in particular in relation to development programmes.

**Draft article 19**

---

<sup>c</sup> See the report of the fourth session of the Ad Hoc Committee, A/59/360, Annex IV, paragraphs 9 and 10.

65. There was considerable discussion in the Committee of the relationship and overlap between draft articles 19 and 20, as well as, to a lesser extent, draft articles 13 and 15. The Committee noted that draft articles 19 and 20 are essentially two sides of the same coin. There was general support to merge the two draft articles.

66. A number of delegations pointed out that “accessibility” was not just about access to buildings. Accessibility also related to, for example, accessible information. It was important to ensure that this draft article did not slant towards one type of accessibility. There was also support to include accessibility as a principle in draft article 2.

**Paragraph 1**

67. There was general support to re-draft the beginning of paragraph 1 to delete superfluous text, in order to make the goal of this draft article clear.

68. The Committee noted that the words “the focus of these measures” in the last line of the chapeau might have a limiting effect. Delegations agreed to give this issue more thought.

**Paragraphs 1(a) and (b), 2(a), (b), (c) and (d)**

69. There was considerable discussion on the question of whether subparagraphs 1(a) and (b), and 2(a), (b), (c) and (d), which generally refer to public buildings, facilities and services, should also extend to privately owned or developed buildings, facilities and services intended for public use. There was general agreement that access to buildings should be viewed from a “who uses the building” perspective, rather than from a “who owns the building” perspective.

**Paragraphs 2(e) and 2(g)**

70. The Committee noted the general agreement at the fourth session to incorporate these two paragraphs in paragraph 1 and paragraph 2 of draft article 4, respectively.<sup>d</sup>

71. Draft article 19 currently reads:

1. States Parties to this Convention shall take appropriate measures to ensure accessibility for persons with disabilities by identifying and eliminating obstacles to the built environment to transportation, to information and communications, including information and communications technologies, and to other services, in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. [The focus of] these measures shall include, inter alia:

(b) the construction and renovation of public buildings, roads and other facilities for public use, including schools, housing, medical facilities, in-door and out-door facilities and publicly owned workplaces;

(c) the development and remodelling of public transportation facilities, communications and other services, including electronic services.

2. States Parties shall also take appropriate measures to:

(a) provide in public buildings and facilities signage in Braille and easy to read and understand forms;

(b) provide forms of live assistance and intermediaries, including guides, readers and sign language interpreters, to facilitate accessibility to public buildings and facilities;

---

<sup>d</sup> See note 2.

(c) develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of public facilities and services;

(d) [encourage/ensure] private entities that provide public facilities and services to take into account all aspects of accessibility for persons with disabilities;

(f) promote universal design and international cooperation in the development of standards, guidelines and assistive technologies;

provide training for all stakeholders on accessibility issues facing persons with disabilities.

72. The draft article was referred to the facilitator (Damjan Tatic, Serbia and Montenegro) for further discussion.

**Draft article 20**

73. The Committee noted that there were three important issues under consideration in the discussion of this Article: accessibility in the broadest sense (as dealt with in draft article 19); personal mobility of the individual; and liberty of movement.

74. The Committee also noted that there were considerable overlaps between draft article 20, and draft article 19, along with elements of other draft articles of the Convention. There was general support, therefore, to move elements of draft article 20 to other Articles, and delete draft article 20 altogether. In this regard, the Committee noted that there was general agreement at its fourth session that paragraph (c) should be incorporated into draft article 4.e

75. Some delegations were, however, concerned that deletion of the Article might result in the loss of essential elements.

---

<sup>e</sup> See note 2.

76. On the issue of liberty of movement, the Committee noted that this was a right guaranteed under the International Covenant on Civil and Political Rights. There was general agreement that this right should not be ignored. Some delegations noted instances in which the liberty of movement of persons with disabilities was adversely affected by, for example, being denied birth registration or a passport. Language on this issue had been proposed and would need to be further considered by the Committee.

#### **Draft article 21**

77. There was general agreement in the Committee that draft article 21 should address the right to health, and a separate draft article 21 bis should address habilitation and rehabilitation. The Committee did not resolve, however, whether to retain medical, or health-related, rehabilitation in Article 21, or to delete all references to it and deal with it in Article 21 bis. The Committee agreed to consider this issue, and the proposed texts for Article 21 bis, further at a later date.

78. It was also generally agreed that the concept of health, as defined by the World Health Organisation, was a very broad one and that this needed to be reflected in the text (or a footnote). This could be achieved by using the descriptive language of the International Covenant on Economic, Social and Cultural Rights.

79. A proposal was made that persons with disabilities should not be denied food, water or life support, and this was supported by a number of delegations.

#### **Chapeau**

80. There was some support to strengthen the chapeau by replacing the word “recognise” with “guarantee”.

81. The chapeau currently reads:

States Parties [recognise/guarantee] that all persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall ensure no person with a disability is deprived of that right, and shall take all appropriate measures to ensure access for persons with disabilities to [affordable/free] health and [medical/health-related rehabilitation services]. In particular, States Parties shall:

**Paragraphs (a) to (m)**

82. There was broad agreement that the sub-paragraphs should be strengthened by the deletion of qualifying words such as “strive”, although there was also some limited support for retaining the idea of progressive realisation in the text.

83. It was also generally agreed that in many of the sub-paragraphs there was a great deal of duplication with other Articles in the Convention text and that others were too prescriptive. There were consequently many proposals to streamline or delete sub-paragraphs including:

(d), which was too prescriptive, and in any case, if were retained, more properly belonged in the new proposed draft article 21 bis on rehabilitation;

(f) and (m), on which there was general agreement at the fourth session to consolidate in draft article 4f;

(g) on the grounds that the Committee agreed at its 4th session to consider general language on the training of professionals dealing with persons with disabilities, but without prejudice to its inclusion or ultimate placement in the textg, and

---

<sup>f</sup> See note 2.

<sup>g</sup> See the report of the fourth session of the Ad Hoc Committee, A/59/360, Annex IV, paragraph 17.

(l) which not only replicates part of sub-paragraph (j) but also is covered in Article 14.

84. The Committee was noted that where text was to be deleted or merged, there was a need to ensure that important elements were not lost, and were incorporated in the text when the same issues were considered again under other Articles. It would be necessary, for example, to reconsider whether the confidentiality of medical records was adequately covered under draft article 14.

85. Some delegations proposed the deletion of the words “including sexual and reproductive health services” from sub-paragraph (a), but there was broad support for retaining it. The Committee noted that this phrase was not intended to alter or prejudice the general policies of governments in regard to family planning or related matters, to the extent that these were permitted by national legislation of general application. The phrase was a statement on the right to be free from non-discrimination, and its effect was that persons with disabilities would need to be treated on an equal basis with others in this area.

86. In paragraph (a), there was general agreement to include the concept of population-based public health programmes, and general support to replace the word “citizens” with “persons”.

87. In paragraph (b) there was support to include the concept of early detection and treatment

88. There was also support for adding “rural areas” after “people’s own communities” in paragraph (c).

89. There were divergent views on whether paragraph (e) should deal with prevention of secondary disabilities, the prevention of disabilities more generally, or



be deleted entirely on the grounds that its provisions were already covered adequately by preceding sub-paragraphs.

90. There was also some support for proposals to add references to the compatibility of research with respect for human rights and the protection of human life to paragraph (f), if this sub-paragraph were retained.

91. There was also general support to merge paragraphs (h), (i) and (j).

92. Some delegations considered that (k) should be deleted because the issue would be covered by draft article 12bis. Other delegations preferred to retain it here.

93. Following the discussion, paragraphs (a) – (j) of the text read:

(a) provide persons with disabilities with the same range and standard of [affordable/free] health [and rehabilitation services] as provided other persons, [including sexual and reproductive health services] and population-based public health programmes;

(b) provide those health and [medical/health-related rehabilitation] services needed by persons with disabilities specifically because of their disabilities [including early identification and intervention as appropriate];

(c) endeavour to provide these health and [medical/health-related rehabilitation] services as close as possible to people's own communities [and in rural areas];

(e) [provide programs and services to prevent and protect against [secondary] disabilities, including amongst children and the elderly;]

(f) [encourage research and the development, dissemination and application of new knowledge and technologies that benefit persons with disabilities [that are compatible with the respect for human rights and the protection of human life] ];

(h/i/j) require health professionals to provide care of the same quality to persons with disabilities as to others by, where necessary, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation, in consultation with other concerned parties, of ethical standards for public and private healthcare.

94. The draft article was referred to the facilitator (Mu'taz Hyassat, Jordan) for further discussion.

**Draft article 22**

95. There was general agreement in the Committee to take a rights-based approach to this article. The Committee also noted that the text of the Convention should not derogate from existing international instruments, such as International Labour Organisation Conventions.

96. The Committee expressed a general preference for States to recognise the importance of access by persons with disabilities to the open labour market, in order to empower and enable them to participate fully in society. General concern was expressed about the potential for exploitation of persons with disabilities. The balance of views in the Committee on sheltered workshops was that such settings were undesirable because of the potential for segregation from the community and their conditions of employment. There was agreement that there should be further consideration of this point.

97. The Committee noted that there was a degree of over-lap between this Article and Articles 17, 19 and 21 bis (habilitation or rehabilitation for the purposes of work).

**Chapeau**

98. There was general agreement that the chapeau should deal with general principles, and that the sub-paragraphs should deal with measures to realise those principles. With this in mind the Committee agreed to delete paragraph (a), and incorporate its concept in the chapeau. There was also considerable support for the idea that employment of persons by the public service should be mentioned, because of the role the public sector should play in setting an example to the private sector, and that this idea could be included in the chapeau. This could allow the deletion of sub-paragraph (i).

99. The chapeau now reads:

States Parties recognise the right of persons with disabilities to work, [on an equal basis with others]; this includes the opportunity to gain a living by work that they freely choose or accept in a labour market and work environment that is open, inclusive and accessible to persons with disabilities, [with a view to promoting equal opportunity and treatment of persons with disabilities,] and protecting them from poverty. States Parties [shall set an example of employment of persons with disabilities] and take appropriate steps to safeguard and promote the realisation of this right, including measures to:

**Paragraph (c)**

100. There was general support for dividing sub-paragraph (c) into two, the first dealing with paid employment, and the second with self-employment.

101. Paragraph (c) now reads:

(c) promote [equal] employment opportunities and career advancement for persons with disabilities in the open labour market, as well as assistance in finding, obtaining and maintaining [and returning to] employment;

(cbis) promote opportunities for self-employment, entrepreneurship and starting one's own business

**Paragraph (d)**

102. There was no agreement on the issue of quotas in paragraph (d). There did appear, however, to be support for using instead some less specific language on affirmative action or special measures.

103. Paragraph (d) now reads:

(d) encourage employers to hire persons with disabilities, such as through affirmative action programmes, incentives [and other appropriate policies, support and special measures];

**Paragraph (e)**

104. There was general support to amend the text of paragraph (e) so that it now reads:

(e) ensure that reasonable accommodation is provided to person with disabilities in the workplace;

**Paragraph (f)**

105. Some delegations proposed that this paragraph could be deleted, while others supported its retention.

**Paragraph (g)**

106. The Committee noted the possibility that paragraph (g) could either be merged with paragraph (c) or deleted and covered under proposed draft article 21 bis.

**Paragraph (h)**

107. There was support for including references to conditions of hiring or recruitment and for safe and healthy working conditions in paragraph (h). In view of its importance, there was also firm support for the placement of this paragraph immediately under the chapeau as a new sub-paragraph (a).

108. Paragraph (h), now paragraph (a), currently reads:

(a) protect through legislation persons with disabilities with regard to conditions of recruitment, hiring and employment, continuance of employment, career advancement, working conditions, including equal remuneration for work of equal value and equal opportunities, safe and healthy working conditions, and the redressing of grievances, and to ensure that persons with disabilities are able to exercise their labour and trade union rights.

**Paragraph (j)**

109. There was general support for deleting paragraph (j) and to consider the first part of it under draft article 5.

110. The draft article was referred to the facilitator (Dan Oren, Israel) for further discussion.

**Draft article 23**

111. There was general agreement that the order of paragraphs 1 and 2 should be reversed, so that “adequate standard of living” (paragraph 2) would be addressed ahead of “social security”. There was also a suggestion to create two separate draft articles out of draft article 23, one on an “adequate standard of living”, and the other on “social security”. The Committee agreed to reflect further on this proposal.

---

**Paragraph 1**

112. The Committee discussed options to replace or complement “social security” in order to find a broader phrase to encapsulate the assistance provided by a state, and to ensure that there was no discrimination against persons with disabilities in the provision of that assistance. Suggestions included “social insurance” (currently used in this draft article), “social assistance”, “social support”, “social safety nets”, and “social protection”. The Committee noted that further reflection on this issue was required.

113. The paragraph, now paragraph 2, currently reads:

2. States Parties recognise the right of all persons with disabilities to [social security, including social insurance/social assistance/social support/social safety nets/social protection], and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures to:

**Sub-paragraph (a)**

114. Proposals for this sub-paragraph included specifying that the services, devices and other assistance referred to in this provision should be offered “free of charge”, a proposal that had also been made in the context of other draft articles. There was resistance to this specific proposal, although it was agreed that delegations were committed to the concept of “affordability”.

115. There was general support to replace “necessary” with “appropriate” in this sub-paragraph, in order to ensure consistency with the rest of the draft convention.

116. Sub-paragraph (a) currently reads:

(a) ensure access by persons with disabilities to appropriate services, devices and other assistance for disability-related needs;

**Sub-paragraph (b)**

117. There was general support for the deletion of the references in this sub-paragraph to particular groups of persons with disabilities, and it was noted that the incorporation of “women” and “girls” (children) in to the draft convention was being examined by the facilitators on those issues. The difficult situation of many aged persons with disabilities was also highlighted, but there was no agreement as to how this issue should be handled.

118. The Committee noted that taking into account the needs and perspectives of persons with disabilities was addressed in paragraph 2 of draft article 4. It was agreed that the Committee needed to ensure that the draft convention did not unduly duplicate coverage of specific issues, and there was general support to delete this phrase.

119. Sub-paragraph (b) currently reads:

(b) ensure [equal] access by persons with disabilities, [particularly women and girls with disabilities and the aged with disabilities,] to [social security/social assistance/social support/social safety net/social protection] programmes and poverty reduction strategies;

**Sub-paragraph (c)**

120. Many delegations suggested that the defining element of this sub-paragraph was the situation of persons with disabilities living in poverty.

121. There was some support for “severe and multiple” to be deleted from this sub-paragraph, largely because of the difficulty in defining “severe” and “multiple” and

of identifying which categories of persons with disabilities they encompassed. The provision would then simply refer to “persons with disabilities”. This was not an unopposed view, however, and other proposals included referring “in particular” to “severe and multiple” disabilities.

122. There was general support to retain the reference to “families” in this sub-paragraph, as families were particularly relevant in the context of this draft article.

123. Sub-paragraph (c) currently reads:

(c) ensure access by persons with disabilities, and their families, living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;

**Sub-paragraph (d)**

124. There was general support to replace “governmental” with “public”. It was also agreed that the rest of this sub-paragraph, from “including”, would be deleted.

125. Sub-paragraph (d) currently reads:

(d) ensure access by persons with disabilities to public housing programs;

**Sub-paragraph (e)**

126. There was general support to delete this sub-paragraph on the basis that it had the potential to be unduly prescriptive. Some delegations, however, wanted to retain it, and there was a suggestion that this sub-paragraph should be limited to “disability-related expenses”.

**Sub-paragraph (f)**

127. The Committee noted that in some countries, and under some religions, life insurance was not looked on favourably. If this sub-paragraph was to be retained,



there was a need to ensure that it did not in any way imply or create a “right to life insurance” in those countries where it was not permitted.

128. Some delegations suggested that the reference to “health insurance” under this sub-paragraph properly belonged under draft article 21. This issue needed to be considered further by the Committee in order to ensure an integrated text.

**Paragraph 2**

129. In relation to paragraph 2, some delegations suggested that the “listing” of elements of an adequate standard of living was not necessarily helpful, and could thus be deleted. Other delegations, however, supported such a list, and in particular supported the reference to access to clean water.

130. The paragraph, now paragraph 1, currently reads:

1. States Parties recognise the right of all persons with disabilities to an adequate standard of living for themselves and their families, [including adequate food, clothing, housing [and access to clean water]], and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right [without discrimination on the basis of disability]. [States Parties shall ensure that persons with disabilities have access to clean water on an equal basis with others].

**Draft article 24**

131. There was unanimous support for this article and many valuable proposals to strengthen it need to be reflected on further.

132. There was general support to deal with the issues of participation in leisure, sport and recreation, and participation in cultural life separately, but both in the same article.

133. There was general support to include a number of proposals to broaden the scope of the article. These included tourism, and the right of children with disabilities to play.

134. There was a proposal to include a provision on participation in religious life in draft article 24 or elsewhere in the text. The general feeling of the room, however, was not to include such a provision in this article.

**Paragraph 1 Chapeau**

135. There was general support to include the phrase “on an equal basis with others” within the chapeau of paragraph 1, so that it now reads:

1. States Parties recognise the right of all persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

**Sub-paragraph (a)**

136. There was general support to replace the word “community” with “society” in the paragraph. There was general agreement that this sub-paragraph is about enjoyment of a right, rather than being a measure to implement a right. There was general agreement, therefore, to a proposal to make the paragraph 1 bis rather than 1 (a).

137. It now reads:

1bis. States Parties shall also take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their benefit, but also for the enrichment of society.

**Sub-paragraphs (b), (c) and (d)**

138. There was general support to shorten these sub paragraphs and to include text related to tourism. They now read:

(b) enjoy access to cultural materials in all accessible formats;

(c) enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats;

(d) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and the tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance;

**Paragraph 2**

139. A proposal to replace “intellectual property rights” with “copyright” received strong support, but there was no general agreement.

140. The text now reads:

2. States Parties shall take all appropriate steps to ensure that laws protecting [intellectual property rights] [copyright] do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.

**Paragraph 3**

141. There was no agreement on this paragraph, with some delegations proposing to delete it, and others proposing to retain it.

142. A compromise formula was proposed that gained support from those who supported retention of the paragraph. That proposal reads:

3. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

**Paragraph 4 chapeau**

143. There was general support to amend the chapeau to make it clear that the paragraph does not refer to an existing right to participate in sport and leisure activities. It now reads:

4. With a view to enabling persons with disabilities to participate on an equal basis as others in recreational, leisure and sporting activities, States Parties shall take appropriate measures to:

**Sub-paragraphs (a), (b), (c) and (d)**

144. Some delegations proposed to remove the word “mainstream” from sub-paragraph (a) so that disability specific activities would not be ruled out. Others thought, however, that because an overall aim of the convention is the inclusion of persons with disabilities in the mainstream, the deletion would not be appropriate. An alternative approach was suggested to include a reference to these disability specific activities in sub-paragraph (b).

145. There was general support for inclusion of the concept of participation at local or municipal levels.

146. The paragraphs currently read:

(a) Encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) ensure that persons with disabilities have an opportunity to organise develop and participate in disability specific sporting and recreational activities and

encourage the provision of appropriate instruction, training and resources in support that is available to other participants;

(c) ensure that persons with disabilities have access to sporting and recreational and tourism venues , and that persons with disabilities have equal access to participating in sporting activities within the education system;

(cbis) children with disabilities have equal access to participation in play, recreation, and leisure and sporting activities, including those in the school system

(d) ensure that persons with disabilities have access to services from those involved in the organisation of recreational, tourism, leisure and sporting activities.

147. The draft article was referred to the facilitator (Monthian Buntan, Thailand) for further discussion.

**Draft article 24 bis**

148. The Facilitator for draft article 24 bis (Mariana Olivera West, Mexico) introduced a revised draft designed to take into account the different proposals and views that had been expressed during the Third Session of the Ad Hoc Committee.

149. There was general agreement that international cooperation was a vital factor in the convention and would play an important part in assisting developing States.

150. There were different views expressed, however, on whether international cooperation should be dealt with in a separate article, and to what extent international cooperation should be detailed in the text of the draft convention.

151. Some delegations expressed concern that States Parties may be able to use a provision on international cooperation as a justification for non-implementation of the Convention. The Committee noted, however that it could be made clear in the final report of the conference adopting this Convention that the international

cooperation obligation did not detract from the obligation of States to implement the Convention.

152. The Committee noted that Article 4 of the Convention on the Rights of the Child provided one model. In addition, international cooperation was mainstreamed throughout the text of that Convention.

153. The Chair noted that it was likely that this Convention would be accompanied by a detailed action plan, so a framework for international cooperation should be set out in the Convention. Rule 22 of the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities provided detailed guidance that could be considered in the formulation of an action plan.

154. The proposal was referred to the Facilitator, who was requested to conduct further consultation.

#### **Draft article 25**

155. There was general agreement that the convention needed to include an article on both national and international monitoring.

156. There was general agreement that monitoring mechanisms needed to be effective. This was particularly important because of the lack of effective implementation of the existing rights for persons with disabilities.

157. Secondly, there was agreement that the monitoring provisions of this convention should be at least as good, and preferably better, than those of other treaties. Being the most recent human rights convention its monitoring provisions will be the most up-to-date and will have the potential to serve as an example for the others

158. The Committee noted the work being done to reform the existing treaty bodies, and the report being prepared by the Office of the High Commissioner on Human Rights for the 7th session of the Ad Hoc Committee. While there was agreement that these would usefully inform the Committee's discussion on monitoring provisions, many delegations also noted that the Committee should not be held hostage by timeframes imposed by the reforms (this work had been going on for many years and might go on for some time yet). The Committee may have to decide on the monitoring provisions of this convention while still waiting for the outcomes of the reform work. It will be important, therefore, to ensure the provisions are flexible enough to take account of later reforms and to come up with language that preserves that approach.

159. Thirdly, there was general support for the involvement and full participation of civil society, both persons with disabilities and their representative organizations, in all levels of the monitoring process.

160. Most delegations were only able to express a preliminary view, and look forward to further discussions next session when they will have had an opportunity to consider the report from the Office of the High Commissioner on Human Rights to this committee, and other proposals.

October 7<sup>th</sup>, 2005

**Chairman's Text** (please see accompanying explanatory letter)

**Draft Comprehensive and Integral International Convention on the  
Protection and Promotion of the Rights and Dignity of Persons with  
Disabilities**

*The States Parties to this Convention,*

- (a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,
- (b) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,
- (c) *Reaffirming* the universality, indivisibility and interdependence of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,
- (d) *Reaffirming also* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- (e) *Recognizing* the importance of the principles and policy guidelines contained in the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,
- (f) *Recognizing also* that discrimination against any person on the basis of disability is a violation of the inherent dignity of the human person,
- (g) *Recognizing further* the diversity of persons with disabilities,
- (h) *Concerned* that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations to their human rights in all parts of the world,
- (i) *Recognising* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,



- (j) *Emphasizing* the existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in significant advances in the human, social and economic development of their societies and the eradication of poverty,
- (k) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,
- (l) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, especially those directly concerning them,
- (m) *Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,
- (n) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,
- (o) *Recognising* that a disproportionately large number of persons with disabilities live in conditions of poverty, and mindful of the need to alleviate the negative impact of poverty on persons with disabilities,
- (p) *Concerned* that situations of armed conflict have especially devastating consequences for the human rights of persons with disabilities,
- (q) *Recognizing* the importance of accessibility to the physical, social and economic environment and to information and communication, including information and communication technologies, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,
- (r) *Convinced* that a convention dealing specifically with the human rights of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

*Have agreed as follows:*

## **PART I**

### **Article 1 PURPOSE**

The purpose of this Convention is to promote, protect, and fulfil the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities.

## **Article 2 DEFINITIONS**

For the purposes of the present Convention:

“Communication” includes oral-aural communication, communication using sign languages, and Braille, and tactile communication, large print, audio, accessible multimedia, human reader and other augmentative or alternative modes of communication, including accessible information and communication technology.

[“Disability”...]

[“Persons with disabilities”...]

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on a basis of equality with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including direct and indirect discrimination.

“Language” includes oral-aural languages and sign languages.

“National laws of general application” means laws that apply to society as a whole and which do not differentiate in respect of persons with disabilities. “National laws and procedures of general application” and “national laws, customs and traditions of general application” shall have the same meaning, *mutatis mutandis*.

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on a basis of equality with others of all human rights and fundamental freedoms.

“Universal design” and “inclusive design” mean the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

## **Article 3 GENERAL PRINCIPLES**

The fundamental principles of this Convention shall be:

- (a) Dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society on an equal basis with others for persons with disabilities;
- (d) Respect for difference and acceptance of disability as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;

- (g) Equality between men and women.

#### **Article 4 GENERAL OBLIGATIONS**

1. States Parties undertake to ensure the full realization of all human rights and fundamental freedoms for persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) to adopt legislative, administrative and other measures to give effect to this Convention, and to amend, repeal or nullify any laws and regulations and to discourage customs or traditions that are inconsistent with this Convention;
- (b) to embody the rights of equality and non-discrimination on the basis of disability in their national constitutions or other appropriate legislation, if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realization of these rights;
- (c) to mainstream disability issues into all economic and social development policies and programmes;
- (d) to refrain from engaging in any act or practice that is inconsistent with this Convention and to ensure that public authorities and institutions act in conformity with this Convention;
- (e) to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- (f) to undertake or promote the development, availability and use of:
  - (i) universally designed goods, services, equipment and facilities, to meet the specific needs of persons with disabilities, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, and to promote universal design in the development of standards and guidelines;
  - (ii) new technologies, including information and communication technologies, mobility aids, devices, assistive technologies, suitable for persons with disabilities, giving priority to affordably priced technologies;
- (g) to provide accessible information to persons with disabilities about mobility aids, devices, and assistive technologies including new technologies, as well as other forms of assistance, support services and facilities.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international co-operation, with a view to achieving progressively the full realisation of these rights, except where achieving progressively the full realisation of these rights would result in discrimination on the basis of disability.

3. In the development and implementation of legislation and policies to implement this Convention, and in other decision-making processes

concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve, persons with disabilities and their representative organizations. Such issues shall include standards and guidelines for accessibility, the formulation of health, habilitation and rehabilitation legislation and the planning, delivery and evaluation of health, habilitation and rehabilitation services, and the design and implementation of data collection.

4. Nothing in this Convention shall affect any provisions which are more conducive to the realisation of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State.

## **Article 5 EQUALITY AND NON-DISCRIMINATION**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit any discrimination on the basis of disability and guarantee to persons with disabilities equal and effective protection against discrimination. States Parties shall also prohibit any discrimination and guarantee to persons with disabilities equal and effective protection against discrimination on any other grounds.

3. States Parties undertake to take all appropriate steps to ensure that reasonable accommodation is provided.

4. Measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination on the basis of disability.

## **[Article 6 WOMEN WITH DISABILITIES]**

## **[Article 7 CHILDREN WITH DISABILITIES]**

## **Article 8 RAISING AWARENESS REGARDING DISABILITY**

1. States Parties undertake to adopt immediate and effective measures to:

- (a) raise awareness throughout society regarding disability and persons with disabilities, and to foster respect for their rights;
- (b) combat stereotypes and prejudices about persons with disabilities in all areas of life;

- (c) promote awareness of the capabilities and contributions of persons with disabilities.
- 2. Measures to this end include:
  - (a) initiating and maintaining effective public awareness campaigns designed to:
    - (i) nurture receptiveness to the rights of persons with disabilities;
    - (ii) change negative perceptions and social prejudices towards persons with disabilities in all matters of [sexuality,] marriage, parenthood and family relations of persons with disabilities;
    - (iii) promote recognition of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market;
  - (b) fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
  - (c) encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of this Convention;
  - (d) promoting disability-sensitive awareness training programmes.

## **Article 9 ACCESSIBILITY**

- 1. States Parties to this Convention shall take appropriate measures to ensure accessibility for persons with disabilities by identifying and eliminating obstacles to the built environment, to transportation, to information and communications, including information and communications technologies, and to other services, in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. These measures shall apply to, inter alia:
  - (a) the construction and renovation of public buildings, roads and other facilities for public use, including schools, housing, medical facilities, indoor and out-door facilities and publicly owned workplaces;
  - (b) the development and remodelling of public transportation facilities, communications and other services, including electronic services.
- 2. States Parties shall also take appropriate measures to:
  - (a) provide in public buildings and facilities signage in Braille and easy to read and understand forms;
  - (b) provide forms of live assistance and intermediaries, including guides, readers and sign language interpreters, to facilitate accessibility to public buildings and facilities;

- (c) develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of public facilities and services;
- (d) ensure that private entities which provide public facilities and services take into account all aspects of accessibility for persons with disabilities;
- (e) provide training for all stakeholders on accessibility issues facing persons with disabilities;
- (f) promote access for persons with disabilities to the new communication technologies and systems, including the Internet;
- (g) promote the design, development, production and distribution of accessible information and communication technologies at an early stage, so that the information society becomes inclusive at minimum cost;
- (h) promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information.

## **PART II**

### **Article 10 RIGHT TO LIFE**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

### **[Article 11 SITUATIONS OF RISK**

States Parties recognize that in situations of risk to the general population persons with disabilities are especially vulnerable and shall take all feasible measures for their protection.]

### **Article 12 EQUAL RECOGNITION AS A PERSON BEFORE THE LAW**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities have [legal capacity] on an equal basis with others in all fields and shall ensure, to the extent possible, that where support is required to exercise [that capacity] [the capacity to act]:

- (a) the assistance provided is proportional to the degree of support required and tailored to the person's circumstances, that such support does not undermine the legal rights of the person, respects the will and preferences of the person and is free from conflict of interest and undue influence. Where appropriate, such support shall be subject to regular and independent review;
  - [(b) where States Parties provide for a procedure, which shall be established by law, for the appointment of personal representation as a matter of last resort, such a law shall provide appropriate safeguards, including regular review of the appointment of and decisions made by the personal representative by a competent, impartial and independent tribunal. The appointment and conduct of the personal representative shall be guided by principles consistent with this Convention and international human rights law.]
3. States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit; and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

### **Article 13 ACCESS TO JUSTICE**

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, facilitating their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including the investigative and other preliminary stages.

### **Article 14 LIBERTY AND SECURITY OF THE PERSON**

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
- (a) enjoy the right to liberty and security of person;
  - (b) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and in no case shall the existence of a disability justify a deprivation of liberty.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through a civil, criminal, administrative or other process, they have at least the following guarantees:
- (a) to be treated with humanity and respect for the inherent dignity and worth of the human person, and in a manner that respects their human rights, conforms with the objectives and principles of this Convention, and reasonably accommodates their disability;

- (b) to be provided promptly with adequate accessible information as to their legal rights and the reasons for the deprivation of their liberty;
- (c) to be provided with prompt access to legal and other appropriate assistance to:
  - (i) challenge the lawfulness of the deprivation of their liberty and to receive a fair hearing, including the right to be heard before a court or other competent, independent and impartial authority (in which case, they shall be provided with a prompt decision on any such action);
  - (ii) seek review on an equal basis with others of the deprivation of their liberty, including periodic review as appropriate;
- (d) to have an enforceable right to compensation in the case of unlawful deprivation of liberty.

**Article 15**  
**FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING**  
**TREATMENT OR PUNISHMENT**

1. No person with disabilities shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

**Article 16**  
**FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both within and outside the home, from all forms of exploitation, violence and abuse.
2. States Parties shall also take all appropriate measures to prevent exploitation, violence and abuse by ensuring, inter alia, appropriate forms of assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of violence and abuse.
3. In order to prevent the occurrence of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.



4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person.

5. States Parties shall put in place effective legislation and policies to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

### **Draft article 17**

## **PROTECTING THE INTEGRITY OF THE PERSON**

1. States Parties shall protect the integrity of the person with disabilities on a basis of equality with others.

2. States Parties shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving or alleviating any actual or perceived impairment.

3. In cases of medical emergency or issues of risk to public health involving involuntary interventions, persons with disabilities shall be treated on an equal basis with others.

[4. States Parties shall ensure that involuntary treatment of persons with disabilities is:

- (a) minimized through the active promotion of alternatives;
- (b) undertaken only in exceptional circumstances, in accordance with procedures established by law and with the application of appropriate legal safeguards;
- (c) undertaken in the least restrictive setting possible, and that the best interests of the person concerned are fully taken into account;
- (d) appropriate for the person and provided without financial cost to the individual receiving the treatment or to his or her family.]

### **Article 18**

## **LIBERTY OF MOVEMENT**

[States Parties to this Convention shall take effective measures to respect and ensure the rights of persons with disabilities to liberty of movement on an equal basis with others, including by ensuring that persons with disabilities:

- (a) have the right to acquire a nationality and are not deprived of their nationality arbitrarily on the basis of disability;

- (b) are not deprived, on the basis of disability, of their ability to possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- (c) have the right to leave any country, including their own.]

### **Article 19**

#### **LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY**

States Parties to this Convention shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of their freedom of choice, living independently and full inclusion and participation in the community, including by ensuring that:

- (a) persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- (c) community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

### **Article 20**

#### **PERSONAL MOBILITY**

States Parties to this Convention shall take effective measures to ensure liberty of movement with the greatest possible independence for persons with disabilities, including:

- (a) facilitating the freedom of movement of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) facilitating access by persons with disabilities to high-quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

- (d) encouraging private entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

## **Article 21 FREEDOM OF EXPRESSION AND OPINION, AND ACCESS TO INFORMATION**

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice, including by:

- (a) providing information intended for the general public in a timely manner and without additional cost to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities;
- (b) accepting and facilitating the use of sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) urging private entities that provide services to the general public including through the internet to provide information and services in accessible and usable formats for persons with disabilities;
- (d) urging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) [[developing] [recognizing] [promoting] a national sign language.]

## **Article 22 RESPECT FOR PRIVACY**

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

## **Article 23**

### **RESPECT FOR THE HOME AND THE FAMILY**

1. States Parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family and personal relations, and in particular shall ensure, on an equal basis with others:

- (a) that persons with disabilities are not denied the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships and experience parenthood [in accordance with national laws, customs and traditions of general application];
- (b) that the right of all [men and women] [persons] with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized [and that spouses should be equal partners];
- (c) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children [and to have access to information, reproductive and family planning education, the means necessary to enable them to exercise these rights and the equal opportunity to retain their fertility to the extent that these are permitted by national laws of general application].

2. States Parties to this Convention shall ensure the rights and responsibilities of persons with disabilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount. States Parties shall render appropriate assistance to disabled persons in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that a child is not separated from his or her parents against their will, except when competent authorities determine, in accordance with national laws and procedures of general application and subject to judicial review or other forms of administrative review as established by law, that such separation is necessary in the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

## **Article 24**

### **EDUCATION**

1. States Parties recognise the right of persons with disabilities to education. With a view to achieving this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education at all levels and life-long learning, directed to:

- (a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

- (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
  - (c) enabling persons with disabilities to participate effectively in a free society.
2. In realising this right, States Parties shall ensure:
- (a) that persons with disabilities are not excluded from the general education system on the basis of their disability, and that children with disabilities are not excluded from free and compulsory primary and secondary education on the basis of their disability;
  - (b) that persons with disabilities can access inclusive, quality, free primary and secondary education to the extent possible in the communities in which they live;
  - (c) reasonable accommodation of the individual's requirements;
  - (d) that persons with disabilities receive the support required, within the general education system, to facilitate their effective education. In exceptional circumstances where the general education system can not adequately meet the support needs of persons with disabilities, States Parties shall ensure that effective alternative support measures are provided, consistent with the goal of full inclusion;
  - (e) the development of initial and continuing training, which incorporates disability awareness, the use of appropriate communication means and modes, educational techniques and materials to support persons with disabilities, for all professionals and staff who work at all levels of education.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall:
- (a) facilitate the learning of Braille, alternative script, orientation and mobility skills, and facilitate peer support and mentoring;
  - (b) facilitate the learning of sign language and the promotion of the linguistic identity of the Deaf community;
  - (c) ensure that the education of children who are blind, deaf, and deaf/blind is delivered in the most appropriate languages and modes of communication

for the individual, and in environments which maximise academic and social development.

4. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities through the employment of teachers who are fluent in sign language or Braille, including teachers with disabilities.

5. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on the basis of equality of opportunity. To that end, States Parties shall render appropriate support to persons with disabilities.

## **Article 25 HEALTH**

States Parties recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services, including health-related rehabilitation. In particular, States Parties shall:

- (a) provide persons with disabilities with the same range and standard of affordable health services as provided other persons, [including sexual and reproductive health services] and population-based public health programmes;
- (b) provide those health services needed by persons with disabilities specifically because of their disabilities including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities including amongst children and the elderly;
- (c) provide these health services as close as possible to people's own communities, including in rural areas;
- (d) require health professionals to provide care of the same quality to persons with disabilities as to others and on the basis of free and informed consent by, where necessary, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private healthcare;
- (e) prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where permitted by national law, which shall be provided in a fair and reasonable manner.

## **Article 26**

### **HABILITATION AND REHABILITATION**

1. States Parties shall take effective and appropriate measures to enable persons with disabilities to attain their maximum independence, fullest physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organise, strengthen and extend comprehensive habilitation and rehabilitation services, particularly in the areas of health, employment, education and social services, in such a way that:

- (a) habilitation and rehabilitation services and programmes begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs;
- (b) habilitation and rehabilitation services and programmes support participation and inclusion in the community and all aspects of society, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

## **Article 27**

### **WORK AND EMPLOYMENT**

States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall set an example through employment of persons with disabilities in the public sector, and shall take other appropriate steps to safeguard and promote the realisation of the right to work, including measures to:

- (a) protect through legislation persons with disabilities with regard to conditions of recruitment, hiring and employment, continuance of employment, career advancement, working conditions, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, and the redressing of grievances;
- (b) ensure that persons with disabilities are able to exercise their labour and trade union rights in accordance with generally applicable national legislation;
- (c) enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services, and vocational and continuing training;

- (d) promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining and maintaining and returning to employment;
- (e) promote opportunities for self-employment, entrepreneurship and starting one's own business;
- (f) encourage employers to hire persons with disabilities through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (g) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (h) promote the acquisition by persons with disabilities of work experience in the open labour market;
- (i) promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

**Article 28**  
**ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION**

1. States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, and to the continuous improvement of living conditions including access to clean water, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability.
2. States Parties recognise the right of persons with disabilities to social protection, and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures to:
  - (a) ensure access by persons with disabilities to appropriate and affordable services, devices and other assistance for disability-related needs;
  - (b) ensure access by persons with disabilities, [particularly women and girls with disabilities and the aged with disabilities,] to social protection programmes and poverty reduction strategies;
  - (c) ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;



- (d) ensure access by persons with disabilities to public housing programmes.

**Article 19**  
**PARTICIPATION IN POLITICAL AND PUBLIC LIFE**

States Parties shall guarantee to persons with disabilities their political rights and the opportunity to enjoy them on an equal basis with others, and undertake to:

- (a) ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others in accordance with national laws of general application, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, by:
  - (i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
  - (ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referenda, without intimidation, and to stand for elections and to hold office and perform all public functions at all levels of government;
  - (iii) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request allowing assistance in voting by a person of their own choice;
- (b) actively promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
  - (i) participation in non-governmental organisations and associations concerned with the public and political life of the country, including the activities and administration of political Parties;
  - (ii) forming and joining organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

**Article 30**  
**PARTICIPATION IN CULTURAL LIFE, RECREATION, LEISURE AND SPORT**

1. States Parties recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

- (a) enjoy access to cultural materials in all accessible formats;
- (b) enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats;
- (c) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis as others in recreational, leisure and sporting activities, States Parties shall take appropriate measures to:

- (a) encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- (b) ensure that persons with disabilities have an opportunity to organise, develop and participate in disability-specific sporting and recreational activities, and to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- (c) ensure that persons with disabilities have access to sporting and recreational and tourism venues;
- (d) ensure that children with disabilities have equal access to participation in play, recreation, and leisure and sporting activities, including those in the school system;

- (e) ensure that persons with disabilities have access to services from those involved in the organisation of recreational, tourism, leisure and sporting activities.

### **PART III**

#### **Article 31 STATISTICS AND DATA COLLECTION**

1. Where necessary, States Parties undertake to collect appropriate information, including statistical data, to enable them to formulate and implement policies to give effect to this Convention. The process of collecting and maintaining this information should:

- (a) comply with legally established safeguards to ensure confidentiality and respect for the privacy of persons with disabilities, including legislation on data protection;
- (b) comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles of statistics.

2. The information collected in accordance with this Article shall be used to assess the implementation of States Parties obligations under this Convention, and shall also be used to identify and address the barriers faced by persons with disabilities in exercising their rights.

#### **[Article 32 INTERNATIONAL COOPERATION]**

#### **Article 33 NATIONAL IMPLEMENTATION AND MONITORING**

[1. States Parties shall designate a focal point within government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a coordination mechanism to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework to promote, protect and monitor implementation of the rights recognized in the present Convention.]

3. Civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in all levels of the monitoring process.

**Article 34**  
**INTERNATIONAL MONITORING**

**PART IV**

**Article XX**  
**SIGNATURE**

The present Convention shall be open for signature by all States.

**Article XX**  
**RATIFICATION**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article XX**  
**ACCESSION**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article XX**  
**ENTRY INTO FORCE**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**Article XX**  
**AMENDMENT**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall

convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

## **Article XX RESERVATIONS**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

## **Article XX DISPUTE SETTLEMENT**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

**Article XX  
DEPOSITARY**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

**Article XX  
AUTHENTIC TEXTS**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.



## **Covering Letter from the Chair**

October 7<sup>th</sup>, 2005

Dear Colleagues

You will recall I indicated, at the end of our meeting in August, that I would now prepare a “Chair’s text” reflecting our work to date, streamlining the draft Convention in light of that, and making suggestions as to how some of the differences of view might be bridged. That text has now been completed, and I am submitting it to you.

Let me say at the outset that I have not attempted a wholesale rewriting of the draft Convention. We have made extremely good progress towards coming up with generally agreed language in many areas, as reflected in the Annexes to our meeting reports, and in those instances my approach generally has been not to tamper with that language. I have not tried to reinvent the wheel. Otherwise we will be starting all over again, and not building on the considerable progress we have made. After all, the text that we have to end up with is one that the Committee considers best, not what the Chair considers best, and that has been my fundamental guiding principle.

My approach has been to work through detailed notes of the discussion, which I have compared with the working group text and the texts that we came up with in the Annexes to our reports, particularly where various alternatives have been proposed, to see how (and if) particular differences can be bridged. You will recall that there were also many instances where we deferred issues with the intention that they are taken up elsewhere, and I have carefully tried to ensure that nothing has been lost. The other challenge has been to reduce the amount of duplication and detail, although I have been generally cautious in reducing detail where we appear to have generally accepted text that is detailed.

In the course of this work I have also referred to and drawn on the work of the facilitators, to whom I should once again like to express my appreciation. As you know, though, the facilitators’ texts are at diverse stages of refinement - many have not yet been reported back and discussed in detail in the full committee meetings or still leave many issues outstanding— so I have been cautious in drawing on those facilitator’s texts where there has been only a preliminary discussion of them. I have also kept in mind that in some instances it was quite specific issues that were referred to the facilitators’ groups for further work. It goes without saying that facilitators’ texts or revised



facilitators' texts that can command a greater level of support than our other texts, can contribute significantly to advancing our work.

Finally, by way of general comment, let me say that the Chair's text is a good-faith attempt to come up with a text that can bring us closer to general agreement. I hope that it will therefore be the basis for the next stage of our work, when we move to negotiations in January.

Colleagues therefore need to come to the January meeting prepared to negotiate on the basis of this text. In this respect, let me repeat the mantra that "the perfect is the enemy of the good". I would urge colleagues not to come to the January meeting with wholesale proposals for new language. We need to move past that stage. Please consider the Chair's text on the basis of what you can accept, not what you would prefer. Or, as some colleagues put it during our last meeting, "what you can live with, not what you love." Only by taking this approach will we be able quickly to conclude our work.

Accordingly, at the January meeting, I will be asking colleagues whether there is anything in the attached text that they absolutely cannot accept. Any suggestions for improvement or change that do not quickly draw a consensus will have to be forgone, or we will find ourselves engaged in a protracted process that has no end.

I would also remind colleagues that drafting issues can be taken up in the Drafting Committee that we will need to establish at the final stages of our process. Accordingly, we should not now be taking up time with purely drafting issues.

You will recall that at the end of our last meeting we had a discussion of the **structure** of the Convention. As we are now moving to a new stage of our work, I have therefore restructured it reflecting as best I can that discussion. I have also separated the Convention into four parts, consistent with the approach in other Conventions. I have not separated Civil and Political rights from Economic, Social and Cultural rights, as there were strong views that this should not be done. For ease of reference I have attached two charts comparing the old and new structures.

For the first time in our draft convention, I have included draft final clauses. These are drawn primarily from CRC and CEDAW. As these are purely technical provisions, they should not create difficulty.

I hope that the following commentary will assist colleagues in identifying some of the changes and suggestions I am making regarding specific Articles, and the reasons behind them. References to AHC4, AHC5, AHC6, mean the reports of the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Sessions respectively of the Ad Hoc Committee. References to CRC are to the Convention on the Rights of the Child, CEDAW is

the Convention on the Elimination of All Forms of discrimination Against Women, ICCPR is the International Covenant on Civil and Political rights, IESCR is the International Covenant on Economic, Social and Cultural Rights, and CAT is the Convention Against Torture.

## **Preamble**

Although there has not been a very detailed discussion of the Preamble, I have made some changes on the basis of the discussion so far. They relate to (e), (h), (i) and (o). I should note that I have not expanded the list in (m) as had been suggested by some, because the current list is identical to other treaties, and colleagues may therefore wish to retain it on that basis. The numbering of preambular paragraphs ((a), (b), (c)...etc) has been retained the moment for ease of reference, but this will be removed in the final Convention. As you know, it is the usual practice to finalise the Preamble last. I do not expect that the Preamble will prove controversial.

## **Article 1 - Purpose**

This has been revised in light of the discussion. We will later need to consider, however, whether we need this Article *at all*. That depends on what we do with the title of the Convention, because the existing title actually contains the purpose of this Convention i.e. the “protection and promotion of the rights and dignity of persons with disabilities.” Article 1 may therefore be repetitive at least, and at worst potentially confusing if it sets out a “purpose” that is different from that contained in the title. I would also note that it is not the practice in other treaties to have a “purpose” provision, although some have a “scope” provision.

## **Article 2 - Definitions**

I have slightly reordered the language in the definition of “Communication” so as to make it consistent with the order we agreed in Article 13 (which is now Article 21).

I have moved several definitions from the body of the Convention into this Article (see “Discrimination on the basis of disability” and “Reasonable accommodation”). Those definitions have had detailed discussion in the context of the relevant Articles.

We have not discussed a definition for “Accessibility”, and I suggest that we do not need one. We have a separate Article on this.

Views are divided as to whether it is necessary to define “Disability” and “Persons with disabilities”. I tend to think that we don’t, as this will be very difficult, and there is a risk that we will unintentionally exclude someone.

I should note that we had not been consistent throughout the draft convention in how we referred to persons with disabilities. In some instances we had referred to “all” persons with disabilities, in others not. I have deleted the word “all” from those provisions where it was found, which is consistent with the approach in other Conventions.

The definition of “Discrimination on the basis of disability” did not include the words “on the basis of disability”, so I have included that key element. I would also note that we had not been consistent in our usage of this term throughout the draft Convention; in some places we had used “on the basis of disability”, in others places we had used “on account of disability”, for example. I have made the text consistent, so that it uses “on the basis of disability”.

I have suggested a definition for “Universal design” and “Inclusive design”, which I think would be useful as these are not commonly understood concepts. The definition I have suggested is taken from the website of the North Carolina State University Center for Universal Design.

I have also suggested the inclusion of a definition of “National laws of general application”, and similarly, “national laws and procedures of general application”, and ‘national laws, customs, and traditions of national application”. The background and explanation for this is given under Article 23 (below).

### **Article 3 – General Principles**

This has been revised, with a slightly reworded (c), and two additional paragraphs (f) and (g), which received a good level of support.

### **Article 4 – General Obligations**

A recurring issue that came up in the discussion of many Articles was the inclusion of language relating to the progressive realization of economic, social and cultural rights. While the principle was accepted, it is repetitive and often difficult to include such language in individual Articles, since many of them contain a hybrid of civil and political, and economic social and cultural rights, including non-discrimination. I think there was general agreement to include a generic provision in Article 4 to cover this matter, and this is included as paragraph 2. I have drawn on the language from the facilitator’s group, and CRC Article 4 that takes a similar approach, and have also made it clear that non-discrimination is not for progressive implementation. You will recall that the latter point is a very important one for some delegations, and when I specifically put it to the meeting no one disagreed with it (see also report of AHC4, Annex II, para. 7).

By including this generic provision in Article 4 there should be no need to repeat the matter of progressive implementation in any of the subsequent Articles, which would be both messy and complex for the reasons noted above.

There were some questions raised in the facilitator's group about including the phrase "within their jurisdiction" in the chapeau to Article 4(1). As it causes difficulties for some, I suggest we delete it, as clearly States Parties cannot take action where they have no jurisdiction.

I have consolidated into paragraphs (1)(f) and (g), the elements contained in (old) draft Articles 13(d), 19(2)(e), 20(c), and 21(f) (see AHC4, Annex II, para. 9).

I have consolidated into paragraph 3, the elements contained in (old) draft Articles 5(2)(d), 6(c), 18(c), 19(2)(g) and 21(m) (see AHC4, Annex II, para. 10).

In both instances I have endeavoured to ensure that no elements have been lost.

You will recall that we had brief discussion of the need for a provision stipulating non-derogation from existing rights, and there was a suggestion that it might be incorporated in Article 4. I have accordingly incorporated such a provision, which is drawn from CRC Article 41 and CEDAW Article 23, into paragraph 4.

The draft Article is otherwise essentially unchanged from the Working Group text. You may recall that there was some discussion in the facilitator's group about the possibility of restructuring this Article, but that proved quite complex and did not progress. As we should now be focusing on substance, I believe that the working group structure for this Article should be generally acceptable, and my notes of the meeting support that.

I hope, therefore, that we can rapidly conclude this draft Article.

## **Article 5 – Equality and Non-Discrimination**

This Article was considerably refined in the facilitator's group and in the main meeting. The text is now well developed.

As noted above, I have moved the definitions of "discrimination on the basis of disability" (AHC4, Annex V, paras. 22 and 23) and "reasonable accommodation" (AHC4, Annex V, para. 27) from this Article 7 to Article 2 on definitions.

As regards paragraph 2(a) of the Working Group text, some delegations proposed including denial of reasonable accommodation within the definition of "discrimination", on the basis of CESCR General Comment no.5. This would lead to a problem if "discrimination" is excluded from the scope of progressive realization in Article 4(2), because in practice many States are unlikely to be

able to provide reasonable accommodation immediately. I would also note that including denial of reasonable accommodation within the definition of “discrimination” was opposed by some delegations for other reasons, including because it would lead to uncertainty and lack of clarity.

There were proposals to expand the listing in paragraph 2(b) of the Working Group text, but these were opposed by some delegations as too detailed.

As regards paragraph (3) of the Working Group text (which does not appear in any other core Human Rights treaty and on which a consensus is clearly not possible), I suggest that the existence of the Human Rights Committee’s General Comment relating to Article 26 of the ICCPR should in itself go some distance to meeting the concerns of those delegations supporting this Working Group paragraph.

To avoid the “special”/“positive” measures dilemma, I suggest we delete the adjective as was supported by many delegations. This is not an issue of substance. I have suggested an abbreviated formula for this paragraph as a whole. By including only measures that are *necessary* to accelerate or achieve de facto equality, I hope we can meet the concerns of various delegations regarding this paragraph.

I expect, therefore, that this Article should be concluded quickly.

### **Article 6 – Women with Disabilities**

You will recall that discussion was continuing under the auspices of the facilitator as to the need for a separate Article dealing with women with disabilities, or whether this could be covered in other parts of the draft convention. As this fundamental issue has not been resolved, Article 6 is contained in square brackets without text.

There was clearly agreement that disabled women are at a particular disadvantage and vulnerability and that their situation needs to be appropriately covered by the Convention. The divergence amongst states on this issue is mainly with respect to placement rather than substance.

I would urge delegations to come to the next session of the Ad Hoc Committee with flexible instructions which would enable them to reach agreement on this, whatever the outcome, so that they are able to join in whatever consensus appears to be emerging. This will then enable further discussion to take place, and for us to agree at the next meeting on the appropriate way of dealing with this and also on appropriate language. We cannot afford to be held up by such differences of approach.

### **Article 7 – Children with Disabilities**

Here we face a similar issue, i.e. whether there should be a separate Article on children with disabilities, or whether the particular disadvantages and vulnerabilities of children with disabilities should be dealt with in a separate Article or alternative approaches. The Working Group text for this Article is based on Article 23 of the CRC. There has been an argument that the inclusion of a specific Article in the CRC on the rights of children with disabilities has to some extent been counterproductive, because States parties have normally reported on compliance Article by Article; i.e. due to the specific CRC Article on children with disabilities there has been a tendency not to mainstream disability throughout the CRC. At the same time, it is clear that inclusion of Article 23 has been influential and useful in highlighting and identifying issues faced by disabled children.

That said, the wording for Article 7 as found in the Working Group text did not receive a great deal of support, and it is clear that many delegations have problems with it. It did not receive general agreement as a good basis for our future work. I have therefore treated this Article the same way as Article 6, and left it blank (see also AHC6, Annex II, para. 27).

My general comments relating to Article 6 apply equally in respect of Article 7. I would urge colleagues to come to the next session with flexible instructions that would enable them to accept either a separate Article on children with disabilities or the alternative approaches, so that they can join in an emerging consensus. We cannot afford to be held up on this important issue because of disagreement as to the modalities for handling it

### **Article 8 – Raising Awareness Regarding Disability**

The text has been redrafted to reflect the outcomes of the discussion in the committee meetings and in the facilitator's group. I have however deleted the phrase "and in a manner consistent with the overall purpose of the Convention" from the end of paragraph 1(c) (see AHC4, Annex III, para. 14), as it has no clear meaning in this context. As noted above, the previous paragraph 2(d) has been moved to Article 4(3).

There was concern that paragraph (2) of the working group text was overly prescriptive, and many delegations proposed the merging of paragraph (2) into paragraph (1). Others however were concerned that substance might be lost, as they deal with different concepts. I would therefore suggest that a compromise might be to use a slightly softened chapeau to this subparagraph.

I therefore hope that this draft Article can also be rapidly concluded.

### **Article 9 – Accessibility**

In paragraph 2(d), I suggest we can use “ensure”, as the chapeau contains the qualification of “appropriate measures”.

I have inserted some additional subparagraphs into paragraph 2, reflecting the discussion at AHC5 (see Annex II, para. 89). Subparagraphs (f) and (g) are taken from the facilitator’s text on Article 13 (now 21) the relevant provisions of which it was agreed to take up under Article 19 (now 9). Similarly, the new subparagraph (h) is taken from Article 13(e) of the Working Group text (see AHC5, Annex II, para. 82). I would note that Article 13(j) of the facilitator’s text is now included in Article 4(1)(f)(ii).

### **Article 10 – Right to Life**

I suggest that the language previously proposed in AHC5, Annex II, para.11, best reflects the discussion of this Article. I hope that we can quickly reach agreement on it.

### **Article 11 – Situations of Risk**

You will recall the discussion relating to the need for the protection of persons with disabilities in situations of risk to the general population. I hope that the language that I proposed at AHC5 (see Annex II, para. 12) drawing on CRC Article 38(4), which is replicated in the attached text, can quite quickly provide a basis for consensus.

### **Article 12 – Equal Recognition as a Person before the Law**

The main issue here was the legal capacity of all persons with disabilities. This particular issue clearly requires further consideration by delegations, and I have left square brackets reflecting this.

I would ask all delegations to come to the next session prepared to resolve this issue. We need to take into account the different legal systems, but I hope that delegations can be as flexible as possible, bearing in mind that guardianship or substitute decision-making for persons with disabilities has led to many injustices in the past. I hope it will be possible to resolve this matter by distinguishing between (1) the possession of legal capacity by all persons, and (2) the exercise of that capacity, which may require the provision of assistance in some circumstances. I note that CEDAW Article 15(2), for example, uses the term “legal capacity” and in the same paragraph refers to “exercising” that capacity; it does not refer to “capacity to act”. I therefore suggest that we stick to the term “legal capacity” as used in CEDAW, which would mean deleting the language in the last set of square brackets in the chapeau to paragraph 2.

As regards paragraph 2(b), you will recall that there was no agreement on the necessity for specific language on this in light of the provisions of 2(a) on

assisted decision-making (AHC5, Annex II, para. 22). Paragraph 2(a) clearly envisages a wide spectrum of “assistance” depending on the circumstances of each case, which in the view of some delegations may make paragraph 2(b) redundant. I would therefore ask colleagues to consider whether 2(b) might not be deleted, and in the meantime I have placed square brackets around it, reflecting disagreement over the necessity for it.

### **Article 13 – Access to Justice**

I have included this as a separate Article dealing with Access to Justice, as was supported by a number of delegations. As it is quite a brief Article, however, you may wish to consider whether its elements might not better be left in Article 12.

You will recall from AHC5, Annex II, para. 15, that that it was agreed that the issues in (old) Article 9(d), (e), and (f) of the Working Group text are to be addressed in other Articles of the Convention. I considered including them in Article 13, but they do not really fit here. Accordingly I have combined these elements and left them in Article 12.

### **Article 14 – Liberty and Security of the Person**

You will recall that there was extensive discussion around the need for a qualifier such as “solely” or “exclusively” before the words “on disability”, in paragraph 1(b) (see AHC5, Annex II, para. 27). Some delegations strongly supported those words, but many opposed them. I suggest that the third alternative in square brackets in AHC5, Annex II, paragraph 28, should be an acceptable compromise, and think we came close to that point in our discussions. I have revised the text accordingly, and urge all delegations to accept this outcome.

In the chapeau to paragraph (2), I suggest we remove the square brackets, as there was considerable support for the bracketed language.

In paragraph 2(b), the word “promptly” is found in other Conventions (see, for example, ICCPR Articles 9(2) and 14(3)(a), and CRC, Article 40(2)(b)(ii)), and was widely supported in our discussions, and I suggest that we also follow that approach here.

I also suggest that we remove the square brackets in paragraph 2(c)(i), as I don’t think that the bracketed language creates major problems for delegations. I hope that we can also reflect the provisional agreement on paragraph 2(c)(ii) by removing the square brackets around it. I do not believe it should cause major problems for delegations.



You will recall that there was general agreement that there should be a provision for compensation for persons with disabilities in the event of an unlawful deprivation of liberty. I suggest that in paragraph 2(d) we draw on both of the square bracketed provisions relating to this, and ICCPR Article 9(5), and have included language accordingly.

### **Article 15 – Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment**

In paragraph 2, I suggest that we follow the formula used in the Convention Against Torture, Article 2(1), which refers to “legislative, administrative, judicial or other measures” and was supported by a number of delegations. It is not necessary to amplify it further, and doing so could create interpretive difficulties as against the CAT.

As regards the matter of monitoring of facilities and programmes (AHC5, Annex II, paragraph 42), I should note that the Committee subsequently incorporated this into Article 12(3) (AHC5, Annex II, paragraph 53 refers).

### **Article 16 – Freedom from Exploitation, Violence and Abuse**

Given the difficulties we experienced in getting agreement as to the various forms of violence and abuse that should be listed, I suggest that we stick with the generic phrase “all forms of exploitation, violence and abuse” in paragraph (1). However, should colleagues insist that some form of listing is required, I suggest we use the listing in CRC Article 19(1).

Many colleagues gave considerable emphasis to the inclusion of “exploitation” in this Article. I therefore suggest that “exploitation” be included in the title, and that it be coupled with “violence and abuse” where that phrase appears throughout the Article.

In paragraph (2) I suggest that we remove the square brackets and also include reference to families and caregivers, since the latter part of that paragraph (i.e. providing information on how to recognize instances of violence and abuse) would logically seem to be directed at families or caregivers rather than persons with disabilities themselves. I would note that there was also considerable support during our discussion to including a reference to families and caregivers here.

In paragraph (3), the major issue was what facilities and programmes should be covered by it; there was concern that its scope should not be so broad as to cover banking facilities, for example, and the facilitator’s proposal seems to cover this well.

In paragraph (4), most of the language in square brackets was well supported in our discussion, although it was questioned whether including “worth” was appropriate in this particular context, and I suggest it should be deleted.

“Protection services” have been removed from the end of paragraph (5), since they are already covered in paragraph (4).

### **Article 17 – Protecting the Integrity of the Person**

In paragraph (1), the qualification of “physical and mental” integrity was not strongly supported, and it could imply a right of intervention that does not otherwise apply. I therefore suggest we delete it.

Paragraph (4) is in square brackets, as there were quite strong differences of view as to whether it was necessary to include it.

### **Article 18 – Liberty of Movement**

You will recall that there was agreement that language on liberty of movement should be included (see AHC6, Annex II, para. 76). There was no working group text on this. I have therefore included a more abbreviated version of the Kenyan proposal, which drew some general support from several other delegations but was not discussed in detail.

### **Article 19 – Living Independently and being included in the Community**

In the chapeau, I suggest we use the word “facilitate”, which is then subsequently balanced by the stronger word “ensuring”, and that we use both “inclusion” and “participation” since both words were supported by quite a wide range of delegations.

As regards subparagraph (a) there appeared to be no difference of view over substance – i.e. that persons with disabilities should not be obliged to live in a particular living arrangement including institutions – but some delegations were concerned that saying that persons with disabilities are not obliged to live in an institution implicitly approved of the use of institutions per se. I therefore suggest that we not specifically refer to “institutions” here, as this is included in the generic term “particular living arrangement” anyway.

### **Article 20 – Personal Mobility**

Although there was initially support for merging (old) Articles 19 and 20, this weakened as the discussion went on and several delegations subsequently supported the retention of a separate Article 20 as it deals with individual mobility rather than accessibility. While there was clearly agreement that the duplication between the two Articles should be removed, there was concern that elements might be lost in a merger of the two. I have therefore retained a

shorter Article 20, which contains those elements not already in Article 19 (now 9). If colleagues do want to combine both Articles that should not be too difficult.

I would note that training, which is dealt with in paragraph (c), comes up in a great many places throughout the Convention (see, for example, Articles 8, 9, 24, 25 and 26). I have not attempted a consolidation of the training provisions in Article 4, as some of them are quite specific, but colleagues might want to bear that possibility in mind).

## **Article 21 – Freedom of Expression and Opinion, and Access to Information**

A wide variety of views were expressed regarding the various options in square brackets in paragraph (a) (see AHC5, Annex II, paras. 73-75). On the one hand it was considered desirable to ensure the widest provision of official material to persons with disabilities in accessible formats; on the other hand there was recognition that an unreasonable burden should not be placed on governments. I have suggested a compromise, which needs to be read carefully in light of the chapeau, and also the subsequent subparagraphs.

The elements contained in the previous paragraph (c), now appear to be adequately covered in Article 24.

The former paragraph (d) has been consolidated with similar provisions elsewhere and moved to Article 4 on general obligations (see AHC5, Annex II, para 81.)

I have moved the former subparagraph (e) to Article 9(2)(h), as there was quite a lot of support for doing this (see also AHC5, Annex II, para 82).

In the former subparagraphs (f) and (g) (now (c) and (d)), there was considerable support for “urging” as the middle ground between “encouraging” and “requiring”, and I hope we can quickly agree on this. I have also included reference to the Internet here, as there was strong support for this. (I have also included the Internet in 9(2)(f), as we are there dealing with technology whereas in Article 21 we are dealing more with content).

There was no agreement on the inclusion of a subparagraph regarding a national sign language, and I have therefore bracketed that provision.

## **Article 22 – Respect for Privacy**

I have added a new paragraph dealing with privacy of medical information, which we deleted from Article 21 (now 25) on Health on the basis that it needed to be covered here (AHC6, Annex II, para 84 refers)

## **Article 23 – Respect for the Home and the Family**

This Article raises a general issue, in this instance relating to personal and family issues that also comes up elsewhere. We have all agreed on numerous occasions during the discussions, that this Convention is not intended to pronounce on, change or attempt to influence the general rules that apply to the population as a whole in different countries and cultures on sensitive questions such as (for example) family planning issues (see AHC5, Annex II, paragraphs 94, 99, 100, and 110; AHC6, Annex II, paragraph 85).

What the Convention is intended to do on such issues is simply to ensure that persons with disabilities are treated no differently from others in the population. These provisions are essentially just non-discrimination clauses. In other words, on these issues, people with disabilities should be subject to the same values, rules and customs that generally apply to the whole population, and not a different set of standards. That understanding would allow each State Party to retain its own distinct values, traditions and cultures, and continue to determine its national laws and policies on such issues for itself.

There have been various proposals for amendments to achieve this understanding, such as to make these provisions “subject to national law/customs/traditions” etc. The problem with such an open-ended formula, however, is that if national law/customs/traditions permit persons with disabilities to be treated differently, then we are potentially legitimising or recognizing such differentiation of treatment. We therefore need a different formula. The phrase “national laws, customs, and traditions of general application” might be one approach. If we understand the phrase to mean “national laws, customs and traditions of application to society as a whole and which do not differentiate in respect of persons with disabilities” then the ability for States Parties to continue to determine their own standards is retained, and the purely non-discrimination approach of the provision is made clear.

When this issue has been raised during the discussions there has been no objection to the concept. I would invite delegations, therefore, to consider this phrase that, as you will have seen, I have defined in Article 2 to ensure that the point is adequately covered.

I would also note that in some instances the point can be captured by using the phrase “on an equal basis with others” as we have in the chapeau of paragraph 1 of this Article. You will recall that this was the intention behind adding this phrase into the chapeau, although there is now another proposal in square brackets to repeat the point in a different way in paragraph 1(a) and (c).

In paragraph 2, I suggest that we use the same formula used in Article 16(1)(f) of CEDAW.

In paragraph 3, as suggested earlier we should be using the same phrase consistently throughout the Convention, and therefore should say here “on the basis of disability”

There was discussion regarding the best placement of paragraph 4 (see AHC5, Annex II, para. 122), and I have included it in Article 8(2), which deals with combating negative perceptions and stereotypes.

### **Article 24 - Education**

The report on this Article in AHC6 has a detailed account of the discussion in the committee meeting, and also the text discussed. The text for Article 17 (now 24) was subsequently much further developed in several meetings that the facilitator was able to convene on this Article. Although there was not time for this to be reported back in detail and discussed in the committee meeting, my sense is that the text from the facilitator’s group is regarded by many delegations as a considerable improvement. As the main changes are structural rather than substantive, I have therefore adopted this text as the basis for Article 24.

You will note that the promotion of the linguistic identity of the Deaf community (paragraph 3(b)) is already covered in Article 30(4). I have left both in for the time being, although colleagues might like to reflect on the most appropriate place for this reference.

Employing teachers with disabilities has come up on several occasions, not least by way of role models, and I have included this in paragraph 4.

### **Article 25 - Health**

You will recall that there was general agreement that draft Article 21 (now 25) should be split into two, dealing separately with the right to health in Article 21 and habilitation and rehabilitation in Article 21bis (now 26) (AHC6, Annex II, para. 77). I have therefore drawn on the facilitator’s text for this Article and for Article 26, as the facilitator’s group was able to refine this over several meetings.

I suggest that in the chapeau we use “recognise” since this is found in other conventions such as ICESCR (Article 12(1)) and CRC (Article 24(1)). It is not necessary to reaffirm that States Parties shall ensure that no person with a disability is deprived of that right – we have not done that with regard to other rights elsewhere in the text. As regards the issue of “free” or “affordable” health services, I note that General Comment 14 on ICESCR Article 12 refers to “affordability” of health services, and suggest we use that word. In some individual cases, of course, for health services to be affordable they will actually need to be free. I note that the issue of affordability and cost also arises in some other Articles (see, for example, Article 28(2)(a)).

In paragraph (c), it should not be necessary to use “endeavour to”, as this obligation is already qualified by the phrase “as close as possible.”

Health and life insurance has been moved from Article 28 into paragraph (e), and I have attempted a formula that I hope will bridge the difference of views over this.

### **Article 26 – Habilitation and Rehabilitation**

As we have no working group text for an Article specifically on habilitation and rehabilitation I have drawn on the facilitator’s text, relevant elements from the working group text on health, and also the EU proposal which received support, so as to ensure that no key elements are lost. Although this text is new, I hope that it will not need extensive discussion, as the key elements are included.

### **Article 27 – Work and Employment**

Although the Committee considered that paragraph (g) could either be merged with paragraph (c) or deleted and covered under Article 21 bis (now 26) (AHC6, Annex II, para. 106), it does not seem to fit very well in either Article. Accordingly I have left it in this Article (now paragraph (h)). The first part of paragraph (j) of the working group text has been moved to Article 8, as paragraph 2(a)(iii) (see AHC6, Annex II, paragraph 109).

### **Article 28 – Adequate Standard of Living and Social Protection**

I suggest that we use the term “social protection”, which is very broad, as defined in the Report of the Commission for Social Development, 39<sup>th</sup> Session, 13-23 February 2001, doc. E/CN.5/2001/2. “Social protection” is also the term used in Articles 23(3) and 25(2) of the Universal Declaration of Human rights. Delegations appeared to be supporting the broadest term in this respect (AHC6, Annex II, para. 112). I hope we can resolve the issue relating to access to clean water in the manner proposed in the text, as this has become a distraction from other issues (I would draw colleagues’ attention to CEDAW Article 14(2)(h) and CRC Article 24(2)(c)).

As noted above, I have included a provision on health and life insurance in Article 25 (see AHC6, Annex II, para. 128), but have rephrased it so that it rules out discrimination in the provision of health and life insurance, but would not rule out actuarial considerations relating to particular disabilities which was a concern of some delegations (see comment under Article 25).

### **Article 29 – Participation in Political and Public Life**

In paragraph (a)(ii), I have deleted the reference to “in accordance with law”, since this is superfluous.

The chapeau to (b) has been redrafted (and, I hope, clarified). I would note that equality between men and women has now been included as a general principle in Article 3.

Paragraph (c) of the working group text has been consolidated along with other similar provisions into Article 4(3).

### **Article 30 – Participation in Cultural Life, Recreation and Sport**

In paragraph 2 I suggest we retain the reference to “intellectual property rights” which is broader – the qualifications later in the provision (“do not constitute an unreasonable or discriminatory barrier”) circumscribe its application, as does making it subject to international law.

In paragraph 5(c) and (d) there was duplication in respect of sporting activities, and I have removed them from the former.

### **Article 31 – Statistics and Data Collection**

I have included the streamlined text from AHC4, Annex IV, para. 18, together with some language taking up the concept of compliance with ethical principles of statistics.

Drawing on discussion in the facilitator’s group, I have also added a new paragraph 2 dealing with the usage of this information.

This draft Article should be rapidly concluded.

### **Article 32 – International Cooperation**

There is a large group of countries in favour of a separate Article on international cooperation. A particular concern of those countries with reservations about a separate Article is that international cooperation (or the lack thereof) might be used as an excuse by states for not implementing the Convention. We could overcome this by including language along the lines of “The provisions relating to international cooperation do not in any way derogate from the obligations of States to fulfill their obligations under this Convention.”

You will recall that at the end of our August meeting, Mexico reported back on some very useful discussions it had held, including “Principles and Elements for a provision on International cooperation”. This seemed to be well received, and I do hope that it will provide a basis for rapid progress on this Article.

**Articles 33 and 34 – National Implementation and Monitoring and International Monitoring**

There was general agreement that we should include national monitoring and international monitoring in the text, and this will need to be discussed further at our meeting in January. I would ask colleagues to come to the January meeting with flexible instructions, as we will need to discuss specific text. As you know, a number of proposals have been made, some of them quite comprehensive.

I look forward to meeting with colleagues, and making considerable progress, at our next meeting in January. I expect the dates and duration of that meeting to be decided shortly by the Third Committee.

Yours sincerely

Don MacKay  
Chairman, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities



**OLD STRUCTURE**

1	Purpose	(same)
2	General principles	(now 3)
3	Definitions	(now 2)
4	General obligations	(same)
5	Promotion of positive attitudes	(now 8)
6	Statistics and data collection	(now 31)
7	Equality and non-discrimination	(now 5)
8	Right to life	(now 10)
8bis	Situations of risk	(now 11)
9	Equal recognition as a person before the law	(now 12)
9bis	Access to justice	(now 13)
10	Liberty and security of the person	(now 14)
11	Freedom from torture etc	(now 15)
12	Freedom from exploitation, violence and abuse	(now 16)
12bis	Protecting the integrity of the person	(now 17)
13	Freedom of expression	(now 21)
14	Respect for privacy	(now 22)
14bis	Respect for home and family	(now 23)
15	Living independently	(now 19)
15bis	Women with disabilities	(now 6)
16	Children with disabilities	(now 7)
17	Education	(now 24)
18	Participation in political and public life	(now 29)
19	Accessibility	(now 9)
20	Personal mobility	(now 20)
20bis	Liberty of movement	(now 18)
21	Health	(now 25)
21bis	Habilitation and rehabilitation	(now 26)
22	Work and employment	(now 27)
23	Adequate standard of living and social protection	(now 28)
24	Participation in cultural life	(now 30)
24bis	International cooperation	(now 32)
25	National implementation and monitoring	(now 33)
25bis	International monitoring	(now 34)

**NEW STRUCTURE**

## Preamble

## PART I

1	Purpose	(old 1)
2	Definitions	(old 3)
3	General principles	(old 2)
4	General obligations	(same)
5	Equality and non-discrimination	(old 7)
6	[Women with disabilities]	(old 15 bis)
7	[Children with disabilities]	(old 16)
8	Raising awareness regarding disability	(old 5)
9	Accessibility	(old 19)

## PART II

10	Right to life	(old 8)
11	[Situations of risk]	(old 8 bis)
12	Equal recognition as a person before the law	(old 9)
13	Access to justice	(old 9 bis)
14	Liberty and security of the person	(old 10)
15	Freedom from torture etc	(old 11)
16	Freedom from exploitation, violence and abuse	(old 12)
17	Protecting the integrity of the person	(old 12 bis)
18	Liberty of movement	(old 20 bis)
19	Living independently etc	(old 15)
20	Personal mobility	(old 20)
21	Freedom of expression and opinion, etc	(old 13)
22	Respect for privacy	(old 14)
23	Respect for home and the family	(old 14 bis)
24	Education	(old 17)
25	Health	(old 21)
26	Habilitation and rehabilitation	(old 21 bis)
27	Work and employment	(old 22)
28	Adequate standard of living etc	(old 23)
29	Participation in political and public life	(old 18)
30	Participation in cultural life	(old 24)

## PART III

31	Statistics and data collection	(old 6)
[32	International cooperation]	(old 24 bis)
33	National implementation and monitoring	(old 25)
34	International Monitoring	(old 26)

PART IV		<b>(new)</b>
XX	Signature	<b>(new)</b>
XX	Ratification	<b>(new)</b>
XX	Accession	<b>(new)</b>
XX	Entry into force	<b>(new)</b>
XX	Amendment	<b>(new)</b>
XX	Reservations	<b>(new)</b>
XX	Dispute settlement	<b>(new)</b>
XX	Depositary	<b>(new)</b>
XX	Authentic texts	<b>(new)</b>