

INTERNATIONAL DISABILITY CAUCUS

Updated contribution on the draft text of

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

Fourth Session of the Ad Hoc Committee

23 August to 3 September 2004

**THIS DRAFT TEXT IS NOT A FINAL PROPOSAL BUT A
WORKING PAPER THAT IS SUBJECT TO CHANGE**

VERSION: 31 AUGUST 2004

During the first week of the 4th Ad Hoc Committee, the members of the International Disability Caucus have continued their analysis and improvement of the thematic working groups draft article 1 to draft article 13 and 24bis.

In this paper, the results of these thematic working groups are presented. A few articles are still being analyzed and we expect to send them as an annex for the present attachment.

Thank you for your attention

International Disability Caucus on the Convention

Australian Federation of Disability Organizations
Bizchut , The Israel Human Rights Center for People with Disabilities
Canadian Association for Community Living
Center for International Rehabilitation
Council for Canadians with Disabilities
Danish Organization of disabled people
Disability Australia Ltd.
Disabled Peoples International
European Disability Forum
Forum of people with disabilities
Forum for Human Rights of people with disabilities – Costa Rica
Fiji Disabled People's Association
Handicap International
Inclusion International
Inter-American Institute on Disability
International Disability Convention Solidarity in Korea
Japan Disability Forum
Landmine Survivors Network
Lebanese Council of Disabled People LCDP
National Disability Party
National Association of Community Legal Centres
National Disability Council of Netherlands
People with Disability Australia Incorporated
People Who
Rehab Group
Rehabilitation International
Support Coalition International
World Blind Union
World Federation of the Deaf
World Federation of the Deafblind
World Network of Users and Survivors of Psychiatry
World Union for Progressive Judaism

Printing of this working paper has been realized thanks to the support of Handicap International

TABLE OF CONTENT

		Pag
	5-9	
Draft Article 1-Purpose	10-11	3
Draft Article 2-General Principles	12	3
<u>Draft Article 4-General Obligations (updated)</u>		4
Draft Article 5-Awareness-Raising Measures		6
Draft Article 6-Statistics and data collection		6
<u>Draft Article 7-Equality and Non-Discrimination (updated)</u>		7
Draft Article 8-Right to Life, survival and development		7
<u>Draft Article 9-Equal Recognition as a Person before the Law (updated)</u>		9
<u>Draft Article 10-Liberty and Security of the Person (updated)</u>		9
<u>Proposed new draft Article on Access to Justice (updated)</u>		10
<u>Draft Article 11-Freedom from Torture or Cruel, Inhuman, or Degrading Treatment or Punishment (updated)</u>		10
<u>Draft Article 12-Freedom from Violence and Abuse (updated)</u>		10
<u>Draft Article 13-Freedom of Expression and Opinion and Access to Information (updated)</u>		11
Draft Article 24 bis -International Cooperation		

Draft Article 1: Purpose

The purpose of this Convention shall be to [ensure, protect and promote] (promote, protect and fulfill) the full, effective and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

Draft Article 2: Principles

The fundamental principles of this Convention shall be:

- a) respect for human dignity, individual self determination (autonomy) including the freedom to make one's own choices, and independence of persons;
- b) non-discrimination;
- c) full inclusion of persons with disabilities as equal citizens and participants in all aspects of life;
- d) respect for difference and acceptance of disability as part of human diversity and humanity;
- e) equality of opportunity
- f) equality between women and men

Draft Article 4: General State Obligations

1. States Parties undertake to ensure the full realisation of all human rights and fundamental freedoms for all individuals within their jurisdiction 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 practices that are inconsistent with this convention;
 - b) to embody the principles of equality and non-discrimination on the ground 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 realisation of these rights;
 - c) the inclusion of disability issues into all economic and social development policies and programmes, including those related to development cooperation;
 - 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 ground of disability by any person, organisation or enterprise;
 - f) to promote and, where appropriate, undertake the research, development, production, application and dissemination of new technologies, including assistive technologies, in order to make available to persons with disabilities goods, services, equipment and facilities accessible to them and aimed at their fullest inclusion in society, based on the principle of universal design
 - g) to ensure that any use of public funds and public procurement should be consistent with the purpose and obligations of this Convention;
2. In relation to economic, social and cultural rights, States Parties undertake:
- a) to give immediate effect to the aspects of those rights which are capable of immediate implementation including, but not limited to obligations of non-discrimination in the enjoyment of those rights; and
 - b) in relation to other aspects of those rights, to take steps to the maximum of their available resources, when needed within the framework of international cooperation, with a view to achieving progressively the full realization of those rights by all appropriate means.
3. Each State Party to this Convention undertakes:
- a) To ensure that any person or class of persons whose rights or freedoms recognized in the Convention are violated shall have, individually or with the support of representative organizations, an effective and appropriate remedy, whether the violation has been committed by persons or entities acting in an official capacity or by private persons or entities;
 - b) To ensure that any person claiming such a remedy shall have his or her right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State; and
 - c) To ensure that the competent authorities shall enforce such remedies when granted.
4. States Parties recognize that access to effective remedies may require the provision of free legal assistance to persons with disabilities, including sign language interpreters and communication assistance, and the modification or flexible application of existing laws and practice regulating matters of procedure and evidence.
5. In the planning, development, implementation and evaluation of policies, standards, guidelines and legislation to implement this convention, States Parties shall do so in partnership with persons with disabilities through their representative organisations, recognising the expertise of persons with

disabilities and the leadership they can provide in all affairs concerning them.

Draft Article 5: Promotion of Positive Attitudes to Persons with Disabilities

1. States Parties undertake to adopt immediate and effective measures to:
 - a) Raise awareness throughout society regarding disability and persons with disabilities and foster respect for the rights of persons with disabilities
 - b) Combat stereotypes and prejudices about persons with disabilities;
 - c) Promote an image of persons with disabilities as capable and contributing members of society sharing 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, among others:
 - a) initiating and maintaining an effective public awareness campaign designed to nurture receptiveness to the rights of persons with disabilities;
 - b) promoting awareness, including in all children from an early age and at all levels of the education system, to foster an attitude of respect for the rights of persons with disabilities;
 - c) encouraging all organs of the media to project an image of persons with disabilities consistent with the purpose of this Convention;
 - d) working in partnership with persons with disabilities and their representative organisations in all measures taken to give effect to the obligations contained in this article.

Draft Article 6: Statistics and data collection

1. States Parties shall encourage actions for the collection, analysis, maintenance, use and dissemination of information on the effective enjoyment of human rights by persons with disabilities. States Parties shall ensure that any such actions:
 - a) respect the right to privacy, the dignity and the right to free and full informed consent of persons with disabilities;
 - b) adhere to ethics regulations and principles regarding respect of anonymity and confidentiality;

- c) are designed and implemented by or in partnership with diverse representative organizations of persons with disabilities;
 - d) are carried out inclusively across different demographic populations and take cultural and ethnic differences into account.
2. States parties shall ensure that the data collected:
- a) is maintained only in a statistical format and integrated into the general statistics of the country;
 - b) includes detailed information on access to public services, rehabilitation programs, education, housing, employment, health care, training and social security as well as the barriers faced by persons with disabilities to exercising their rights;
 - c) is disaggregated, including by gender, age, indigenous populations, and disability, respecting the person's choice of how to identify or describe a disability.
3. States Parties shall assume the responsibility for the dissemination of these statistics and ensure their accessibility to people with disabilities and others.
4. States Parties shall promote international cooperation to compare the data and to improve the collection of statistics and data information and the implementation of obligations under this Article.

Draft Article 7: Equality and Non-Discrimination

1. States Parties shall prohibit any discrimination on the ground of disability, and guarantee to all persons with disabilities equal and effective protection against discrimination.

- a) Discrimination on the ground of disability shall mean
 - (i) any distinction, exclusion, restriction, preference or denial of reasonable accommodation , or
 - (ii) any act, policy, programme, practice or criterion

which have the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by persons with disabilities, on an equal basis, of all human rights and fundamental freedoms in the civil, political, economic, social, cultural or any other field.

b) Reasonable accommodation means necessary and appropriate modifications and adjustments to policies, programs or the built environment, accepted by the person with a disability, which guarantee a

person with a disability the enjoyment or exercise on an equal basis of all human rights and fundamental freedoms.

c) Discrimination on the ground of disability shall also include discrimination based on an actual, perceived, past, imputed or future disability, as well as discrimination based on association with a person with a disability.

d) Discrimination shall also include the interaction of disability with other grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age or sexual orientation.

2. States Parties shall provide those services and measures required by persons with disabilities to achieve the equal and effective enjoyment of all human rights and fundamental freedoms, which shall be provided in consultation with persons with disabilities and shall not be imposed against the will of persons with disabilities. These measures shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards.

Draft Article 8: Right to Life, Survival and Development

1. States Parties recognize and protect the inherent right to life of all persons with disabilities, and shall take all necessary measures to ensure its effective enjoyment by girls and boys, women and men in all stages of life.
2. The right to life also includes the right to survive and to develop on equal basis with others.
3. Disability is not a justification for the termination of life.
4. States Parties shall undertake effective measures to the prohibition of compulsory abortion at the instance of the State based on the pre-natal diagnosis of disability.
5. States Parties shall also prohibit all medical, biological and other experiments reducing the quality of life of persons with disabilities, or seeking to remedy a disability against an individual's will.
6. In case of natural and humanitarian disasters, including wars and armed conflicts, states parties shall secure safety of girls and boys, women and men with disabilities on equal basis with others, taking into account each individual's needs.

Draft Article 9: Equal Recognition as a Person before and Under the Law

States Parties recognize the inherent nature of legal capacity. States Parties further recognize that individuals may make decisions in the context of interdependent relationships as well as independently, and that persons

receiving support in decision-making retain their legal capacity, rights and freedoms. To this end, States Parties shall:

1. Recognize persons with disabilities as subjects of rights and obligations before and under the law, on an equal basis with others.
2. Recognize that persons with disabilities have legal capacity identical to that of other persons and shall accord them equal rights and opportunities to exercise that capacity.
3. Recognize that legal capacity may be exercised with support, and to that end:
 - a) provide for legal mechanisms to recognize supported decision-making relationships between individuals, based on one person's expression of trust in another person or persons, and to create and implement advance directives and powers of attorney.

Draft Article 10: Liberty and Security of the Person

1. States Parties shall ensure that no one is deprived of liberty based in whole or in part on disability.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty, they are treated with respect for the inherent dignity of the human person, including:
 - a) notification of the reasons for arrest or detention, at the time of the arrest or detention, by accessible means and languages;
 - b) accessibility to persons with disabilities of all programs available to detainees;
 - c) reasonable accommodation for individual persons with disabilities in the arrest and detention settings;
 - d) measures to ensure that persons with disabilities have access to their support networks;
 - e) availability of rehabilitation and support services, assistive devices, and medical or other health services; and
 - f) ensuring that conditions of detention do not have a disproportionately harsh effect on persons with disabilities.

Proposed new draft Article on Access to Justice

States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to participate in all stages of procedure in courts and tribunals.

States Parties shall take appropriate and effective measures to ensure:

a) accessibility of judicial proceedings to persons with disabilities, including modification of evidentiary or other procedures so that persons with disabilities can serve as witnesses, jurors, and in other roles; and

b) elimination of physical, social, informational and communicational barriers to the effective exercise of rights and participation in all official proceedings concerning the person or in which the person has an interest.

Draft Article 11: Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. States Parties shall take all effective legislative, administrative, judicial, educational or other measures to prevent persons with disabilities from being subjected to all forms of torture or cruel, inhuman or degrading treatment or punishment.

2. 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, and shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment

Draft Article 12: Freedom from Violence and Abuse

States Parties recognize that persons with disabilities may be at greater risk, both within and outside the home, of all forms of violence and abuse. Violence and abuse is understood to include hate, bias, harassment, victimization, violence, injury, physical or mental and emotional or sexual abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual and economic exploitation. States Parties shall, therefore:

1. 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 violence and abuse.

2. Secure the equal rights of children with disabilities to protection from all forms of violence and abuse.

3. Prohibit, and protect persons with disabilities from abduction, and any forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment.

4. Reaffirm that persons with disabilities have the right to make choices about their own bodies and shall prohibit forced sterilization or abortion.

5. Prevent all forms of violence and abuse, by providing information and education to persons with disabilities, their families, and persons working with persons with disabilities about how to avoid, recognize, report, and seek protection from instances of the above.

6. Ensure that facilities and programmes, both public and private, where persons with disabilities live or receive services, are effectively monitored by independent authorities, which shall include persons with disabilities, to prevent the occurrence of violence and abuse.
7. Where persons with disabilities are the victim of any form of violence and abuse, States Parties shall take all appropriate measures to promote their physical and psychological recovery and social reintegration which shall at all times respect personal autonomy and dignity of the persons concerned.
8. Ensure the identification, reporting, referral, investigation, treatment and follow-up of instances of violence and abuse, and the provision of protection services and, as appropriate, judicial involvement.

Draft Article 13: Freedom of thought, expression and opinion

1. States parties shall take appropriate actions to ensure that:
 - a) all persons with disabilities enjoy the same freedom of expression, thoughts and opinion as that enjoyed by others;
 - b) persons with disabilities can exercise their right to freedom of expression, thoughts and opinion through languages, scripts, modes, means and formats of communication of their choice, including but not limited to sign languages, tactile communication techniques, captioning, plain and easy understood texts, large print and Braille, in order to seek, receive and impart information on the basis of equality with others;
2. States parties shall take actions to:
 - a) accept and promote the use of a variety of languages and modes and means of communication by persons with disabilities in official interactions in order to seek, receive, impart and access information and enable persons with disabilities to communicate on an equal basis as others;
 - b) provide training of assistants, intermediaries, interpreters, including sign language and tactile communication interpreters, note takers and readers to ensure that persons with disabilities have access to information and the facility to communicate;
 - c) officially recognise national sign languages in legislation to guarantee linguistic rights for all Deaf persons, and to ensure communication with their families, immediate community and the general public;.
3. States parties shall protect the freedom of thought of persons with disabilities, including:
 - a) the freedom of choice whether to consider oneself a person with a disability;

- b) the freedom to adopt and hold opinions and beliefs about the experience of disability;
- c) the freedom to choose practices of support for well-being, based on personal thoughts, opinions and beliefs;
- d) the freedom from coercion that interferes with the capacity to freely produce or sustain thought.

Draft Article 24bis: International Cooperation

States parties recognize that the international cooperation is a fundamental element contributing to the inclusion of People with disabilities and for the effective implementation of this treaty. In a spirit of solidarity, state parties undertake to:

- a) Promote and ensure among themselves the exchange of information and the dissemination of the best practices, experiences, knowledge related to the effective implementation of this treaty.
- b) Encourage the technical cooperation that could contribute to build capacities of the parties to design and implement policies that allow the full enjoyment of their human rights by people with disabilities.
- c) Ensure that resources are dedicated to eradicate the extreme poverty that face people with disabilities, their exclusion and the difficulties they face to access to basic services.
- d) Ensure the inclusion of disability issues as described in this convention in any of their program, tool and policies of cooperation, development and humanitarian aid. In case of bilateral cooperation, this should engage both the donors and recipient of the support.
- e) Contribute to the availability of specific resources dedicated to disability and development, especially regarding the empowerment of disabled people organizations and the enhancement of the disability movement.