

AD HOC COMMITTEE ON A COMPREHENSIVE AND INTEGRAL INTERNATIONAL CONVENTION ON THE PROTECTION AND PROMOTION OF THE RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES

8th session (New York, 14 - 25 August 2006)

Overview

- The Ad Hoc Committee concluded the drafting of a comprehensive convention on the rights of persons with disabilities.
- States adopted the draft text of the Ad Hoc Committee *ad referendum*.¹
- The text will go to a drafting committee and then onto the 61st session of the General Assembly for adoption.

Background

In 2005, the World Health Organization (WHO) estimated that there are nearly 600 million persons with disabilities (PWD) worldwide.² Roughly 80% of PWD live in low-income countries where competition for scarce resources often leave PWD without adequate health care or equal access to education. Despite the fact that numerous human rights treaties already exist, the systematic violation of human rights of PWD is a global reality. Reported violations range from forced sterilisation, sexual exploitation, denial of educational and vocational training opportunities, inaccessible public services and institutionalisation.³

In December 2001, the General Assembly (the GA) adopted *Resolution 56/168* establishing an Ad Hoc Committee (AHC) to 'consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities based on the 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'. The main aim of the Convention is to guarantee PWD equal access to previously established human rights, ensure that they have the tools to live their lives with dignity and to guarantee they will benefit from equal enjoyment of all their human rights.

Over several prior sessions, United Nations (UN) member States and non-governmental organisations (NGOs) contributed to an evolving draft convention text. At the close of the 7th session, the Chair issued a text reflecting the work of delegates to date in streamlining the draft convention, including some suggestions on how to bridge outstanding differences. According to the Chair, the text is not a 'wholesale rewriting of the draft convention', but a 'good-faith attempt' to come up with a text that would bring States closer to general agreement.⁴ The Chair identified contentious issues and

¹ Adoption '*ad referendum*' refers to the provisional adoption of the Convention by the Committee who will then forward it to the General Assembly which has the authority to formally adopt the text.

² http://www.who.int/gb/ebwha/pdf_files/WHA58/A58_17-en.pdf.

³ <http://www.rehab-international.org/un/steps.html>.

⁴ <http://www.un.org/eas/socdev/enable/rights/ahcchairletter7oct.htm>.

highlighted them by placing brackets around words in the new Working Text.⁵ This bracketed Working Text became the starting point for negotiation for the 8th session.

Introduction

Based on the many contributions made during the first two sessions of the AHC, a Working Group—composed of 27 governments and 12 NGOs—was established to elaborate a draft convention.⁶ The Working Group met at UN headquarters from 5 to 16 January 2004 with the aim of preparing and presenting a draft text of a convention, which became the basis for negotiation by member States.⁷

The 3rd session⁸ of the AHC was held in spring 2004, the 4th session⁹ in summer 2004, the 5th session¹⁰ in winter 2005, the 6th session¹¹ in summer 2005 and the 7th session¹² in winter 2006. This 8th session of the AHC was a two-week long meeting at the UN headquarters in New York from 14 to 25 August 2006. H.E. Don MacKay of New Zealand returned as Chairman for this final session.¹³

Governmental participants included UN member States and UN permanent Observers (most active of which was the Holy See). Civil society was represented by numerous NGOs, including disabled peoples' organisations (DPOs) and over 800 registered civil society representatives. The International Disability Caucus (IDC), a broad coalition of DPOs and their allied NGOs from the international, regional and national levels, was particularly prominent in discussions.

Working Methods

The Chair opened week one by addressing the most contentious issues. The justification for this method was to ensure that these tough issues were negotiated first to guarantee enough time to finish the text prior to the end of the session. Very little debate was held in the plenary on bracketed issues as they had all been extensively debated in previous sessions. Rather, the Chair opened the floor for short discussion and then reserved the issues for informal meetings where serious negotiations could take place between delegations, and NGOs could engage in strong lobbying. Three exceptions to the method mentioned above were 1) definitions 2) international monitoring and 3) final clauses. These three issues were being negotiated in structured informals led by appointed facilitators. These structured meetings were open to all delegations. Regular updates by the facilitators took place on the floor throughout the two weeks.

⁵ AHC Report of the 7th session. See Annex II for the complete Working Text including brackets, available at <http://www.un.org/esa/socdev/enable/rights/ahc7report-e.htm> .

⁶ A/AC.265/2004/WG.1.

⁷ See <http://www.ishr.ch> for details.

⁸ A/AC.265/2004/5.

⁹ A/59/360.

¹⁰ A/AC.265/2005/2.

¹¹ A/60/266.

¹² A/AC.265/2006/2.

¹³ Don MacKay served as Chair since his election on 13 April 2005.

Week two was marked by very little formal meeting time in the plenary. Rather, the Chair suspended the plenary and allowed informal negotiations to continue as he walked around the room to gauge consensus on various articles. As he felt delegations were close to consensus, he would reconvene the plenary and attempt to adopt individual articles ad referendum. As the second week progressed, several articles were adopted without modification from the Working Text. For the remaining articles, a compilation of proposed amendments by both governmental and non-governmental bodies was circulated for informal negotiation. From these amendments, and through compromise, came the final text that was adopted on the last day of the 8th session.

Texts

Draft Convention on the Rights of Persons with Disabilities and Draft Optional Protocol¹⁴

This document is the result of negotiations conducted throughout all eight sessions of the AHC. Adopted ad referendum at the 8th session, the document is considered 'unedited' as it will first be reviewed by a drafting committee before submission to the 61st session of the General Assembly for adoption. This draft convention is a reflection of both the Working Text (see below) and adopted amendments as of the close of the 8th session on 25 August 2006.

Working Text¹⁵

This draft convention text is the result of negotiations through the 7th session. It was the starting point for negotiations during the 8th session, in particular contentious issues that the Chair bracketed prior to the start of the session. States adopted many articles ad referendum directly from the Working Text.

IDC Proposed Text¹⁶

The IDC Proposed Text is a comprehensive compilation of the IDC proposed changes to the Working Text. IDC inserted their proposed amendments directly into a copy of the Working Text and circulated it on 18 August 2006.

Compilation of amendments¹⁷

During the second week of the session, the Chair called upon States and NGOs to forward their proposed changes to the Working Text to the Secretariat in order to compile a comprehensive list of proposals for circulation. The Secretariat gathered all requests, organised them according to article and posted them online for easy availability.

¹⁴ An 'advanced unedited version' is available at <http://www.un.org/esa/socdev/enable/rights/ahc8adart.htm>.

¹⁵ <http://www.un.org/esa/socdev/enable/rights/ahc7report-e.htm>. The original Working Text was drafted by 27 governments, one National Human Rights Institution and 12 NGOs.

¹⁶ <http://www.un.org/esa/socdev/enable/rights/ahc8contngos.htm> (see ' Working Text as amended by the IDC, 18 August 06').

¹⁷ <http://www.un.org/esa/socdev/enable/rights/ahc8contgovs.htm>.

Facilitator's texts¹⁸ on definitions, international monitoring body and final clauses

The Chair identified three issues that required structured informal consultations. The three issues that necessitated separate negotiations were definitions, international monitoring and final clauses. The facilitator of each informal issued a draft text of the progress of negotiations periodically throughout the session.

Drafting of the adopted draft convention

The following is an analysis of the adopted draft convention broken down by each article. The AHC adopted several articles without modification from the Working Text; where applicable, this fact is noted. For similar analyses of the previous seven sessions, visit the International Service for Human Rights (ISHR) webpage.¹⁹

Preamble

The preamble was the only portion of the Working Text to force a vote from the floor. The contentious issue was the Arab Group's proposal²⁰ to include 'foreign occupation' in paragraph s bis.²¹ The United States of America (the USA) requested a vote on the issue. The member States voted 102 in favour of the Arab Group proposal, five against²² and eight abstentions. The vote resulted in the addition of the term 'foreign occupation' into the text of preambular paragraph s bis. Canada, Australia, the USA and Israel each made a statement justifying their vote to exclude the proposed wording. Canada stated that this is a political issue that does not lead to further protection of PWD. Israel argued that the language unnecessarily politicises the Convention. Australia felt that PWD face no rights gap during armed conflict or times of foreign occupation under the unmodified preambular paragraph, thus the proposed language was extraneous. The USA objected to the proposal on principle because the amendment is out of context for a human rights convention. The USA argued that foreign occupation is a humanitarian issue and thus will lead to legal confusion if included in a human rights context. Several States in favour of the amendment also took the floor to justify their votes. Among the most impassioned States were Libya, Cuba and Sudan (on behalf of the Arab Group). Libya felt the amendment does not politicise the Convention and that States need to protect PWD in times of armed conduct and foreign occupation. Cuba contended that this additional language is a way to prevent disabilities, not just protect those with already-existing disabilities during conflict. The delegate stated that if there was no occupation then there would be less people with disabilities in the world, pointing out that foreign occupation is often the cause of many disabilities. Lastly, the Arab Group blamed the States opposing

¹⁸ <http://www.un.org/esa/socdev/enable/rights/ahc8confacilitator.htm>.

¹⁹ <http://www.ishr.ch>.

²⁰ The Arab group based the wording of s bis on that of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The adopted language is identical except that it references protection of PWD instead of children.

²¹ The debate regarding inclusion of 'foreign occupation' in the preamble is intimately tied to a similar proposal concerning Article 11 (Situations of risk and humanitarian emergencies). For more discussion on the connotation of this proposal, see Article 11.

²² States opposing the proposal were Australia, Canada, Israel, Japan and the USA.

the amendment, calling them the 'problem'. Ultimately, the vote resulted in the addition of the phrase 'foreign occupation' and the draft convention reflects this modification.

Preambular paragraph n also received considerable attention. It addresses multiple forms of discrimination. The paragraph lists examples of additional ways PWD can be discriminated against, e.g., religion, race, colour and others. Venezuela proposed the addition of 'indigenous' to the enumerated list, but the Chair never opened the proposal for adoption. At the session's last meeting, as the Chair was asking the delegates to adopt the preamble, Venezuela realised that their proposal had not been incorporated into the text and the delegate asked to address the floor. The Chair discovered the confusion over the omission; at a previous meeting during the 8th session, Venezuela withdrew all of their amendments submitted to the Secretariat for inclusion in the compilation of amendments. Realising the mistake, Venezuela re-proposed the amendment. Finland, on behalf of the European Union (the EU), objected to the amendment given that Venezuela re-proposed it minutes before the end of the 8th session. The EU was primarily concerned about accepting this proposal without first being consulted as it felt that the amendment diverged from other human rights treaties that do not reference indigenous peoples. In the interest of time, the Chair postponed adoption of the preamble allowing delegations to negotiate outside of the plenary, while he used the plenary to discuss less contentious articles. During these informal consultations, the EU eventually agreed to the proposal 'out of the spirit of flexibility' and the amendment passed. The IDC favoured the addition very early on in the 8th session. Their daily newsletter for 21 August 2006 stated, 'Although no Government has stated support for the IDC proposal to include "indigenous" in the list of grounds in preambular paragraph n, IDC continues to support the term "indigenous" in this preamble paragraph'. Also modified in this preambular paragraph was the word 'gender' which was changed to 'sex'. This change is to bring this Convention into conformity with other human rights treaties that reference sex rather than gender.²³

The ACH adopted other slight modifications into the preambular text. Firstly, it added the words 'and worth' after 'inherent dignity' in paragraphs a and f. Paragraph a regards the rights of all humans grounded in the UN Charter and paragraph f recognises 'that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person'. The Holy See and Uganda were primarily responsible for these amendments. Secondly, Bangladesh proposed adding a paragraph stressing the importance of mainstreaming disability issues into general strategies of sustainable development to ensure equalised opportunities for PWD. Their proposed, and adopted, language reads, 'emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development'. This amendment is incorporated into the draft convention as preambular paragraph e bis. Thirdly, the Working Text placed brackets around a proposal introduced in the 7th session by the USA, in cooperation with the IDC, which focuses on the protection of the family. These brackets were removed and AHC added the paragraph addressing the family as the 'natural and fundamental group unit of society', which is 'entitled to protection by society and the State' as preambular paragraph v bis.

Article 1—Purpose

This article sets out the overarching purpose of the Convention. It states that the purpose of the Convention is generally to 'promote, protect and ensure the full and equal enjoyment of all human

²³ This change is reflected other places in the Convention as well and will be noted as they arise.

rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'. While the wording was unchanged from the Working Text, there was an addition to the text coming from the article on definitions (Article 2).²⁴ The additional paragraph states that, 'persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

Article 2—Definitions

The definition of 'disability' proved to be the most problematic aspect of this article. Throughout the negotiations, several member States, as well as the IDC, insisted that if a broad and inclusive definition could not be agreed upon, then no definition should be included in the text. Ultimately, through intense structured informal negotiations a definition was adopted. The compromise language defines disabilities by saying the definition 'includes' certain characteristics rather than saying that disability 'means' something specific. This language prevents the list from being exhaustive or exclusive of further developments in understanding disabilities. In particular, the IDC expressed concern regarding the exclusion of psychosocial disabilities in a prior version of the facilitator's draft on definitions. However, the more inclusive and open-ended definitions adopted eased tensions on this article and led to consensus.

In the final draft, Article 2 defined the following terms used throughout the Convention: 'communication', 'discrimination on the basis of disability', 'language', 'reasonable accommodation', 'universal design' and 'inclusive design'. The Working Text originally included reference to 'national laws of general application'. The IDC strongly opposed reference to national laws as they saw them as a potential loophole for States to avoid their obligations under the Convention. The States reached consensus on this point and at the last meeting the States agreed to remove explicit mention of national laws. Another phrase cut from the Working Text was 'direct and indirect discrimination'. Many States²⁵ supported this amendment to the Working Text, but Kenya and the IDC opposed it. Negotiation and compromise brought consensus and it was decided to delete the bracketed text. The resulting language emphasises that discrimination on the basis of disability includes *all* forms of discrimination, thus satisfying desires to reference direct and indirect discrimination.

Article 3—General principles

This article passed by consensus without any amendments. Article 3 identifies the main and overarching principles of the entire Convention. The main principles of the Convention are identified as: respect for the dignity, autonomy, freedom and independence of persons, non-discrimination, full societal participation, respect and acceptance of differences, equal opportunity, accessibility, equality between men and women and respect for children with disabilities.

Article 4—General obligations

²⁴ The debate on this definition was primarily conducted in the facilitator's meetings regarding Article 2, thus the discussion on the wording is discussed under that article.

²⁵ China, Egypt, Morocco, Sudan, Syria, Japan, Qatar, Bahrain, Kuwait, Oman, Saudi Arabia, Yemen and the United Arab Emirates.

This article is an overview of the obligations that this Convention places on State parties in the implementation of the principles listed in Article 3 and throughout the entire Convention. Obligations include: promotion of the full realisation of all human rights and fundamental freedoms for PWD, taking measures to ensure economic, social and cultural rights, and development of legislation to implement the Convention.

Article 5—Equality and non-discrimination

This article passed by consensus without any amendments. This article states that State parties recognise that all persons are equal under the law; prohibits discrimination on the basis of disability and takes all steps necessary to ensure these protections. Paragraph 4 allows for 'specific measures that are necessary to accelerate or achieve *de facto* equality of persons with disabilities'. In other words, programmes that advance the rights of PWD are not considered discriminatory under Article 4. In many legal systems, this is a reference to 'positive discrimination' or 'affirmative action' programs that aid PWD in achieving *de facto* equality.

Article 6—Women with disabilities

In previous sessions there was debate about whether to have a separate article regarding protection of women with disabilities. This separate article could be in addition to, or a replacement for, inclusion of gender protections in various other articles in the Convention. In the 8th session, States and the IDC supported the use of a 'twin-track' approach, where there is a separate article on women as well as gender references in other articles in the Convention. The IDC emphasised the need for this approach since it highlights gender perspectives as they apply to other articles throughout the entire Convention. The text of the separate article on women with disabilities acknowledges that women and girls are often subject to multiple forms of discrimination and thus States must take steps to ensure that women and girls with disabilities are able to enjoy their full human rights and freedoms. Furthermore, States are obliged to take steps to empower, develop and advance women for the purpose of guaranteeing them full enjoyment of their rights under the Convention.

Article 7—Children with disabilities

Similarly to the general and specific articles on women, the twin-track approach was also used in conjunction with protection of children with disabilities. In Article 7, State parties are required to take necessary steps to ensure fundamental rights for children with disabilities on an equal basis with other children. The primary consideration to factor into the implementation of this article is the best interest of the child. Additionally, Article 7 paragraph 3 requires State parties to ensure that children with disabilities have the right to express their views regarding matters that affect them and that their views be given due weight in accordance with their age and maturity.²⁶

Article 8—Awareness-raising

This article is designed to combat prejudices against PWD through awareness-raising measures. Article 8 mandates that State parties undertake to immediately adopt measures to raise awareness in society,

²⁶ Bosnia and Herzegovina, Kenya and Costa Rica submitted this language to the Secretariat for inclusion in the Compilation of amendments.

and in families²⁷, regarding PWD. Moreover, States must promote awareness about the capabilities and contributions of PWD, combat stereotypes about PWD (including those based on sex and age) and foster respect for the rights and dignity of PWD. The measures used to achieve these ends are also included in this article in paragraph 2. Measures include maintaining public awareness campaigns, using the educational system to educate children of all ages, encouraging the media to portray PWD in a light consistent with the Convention and promoting awareness-training programs.

Article 9—Accessibility

This article passed by consensus without any amendments. Article 9 strives to enable PWD to live independently and to be able to participate in all aspects of life. This requires State parties to implement measures to ensure equal access to transportation, the physical environment, communications and information technology and other facilities open to the public. Moreover, governments are called to ensure that private entities offering services open to the public also provide access for PWD. Many of the provisions in this article came at the request of the IDC during the 7th session, including the need for PWD to access information and communication technologies.

Article 10—Right to life

This article passed by consensus without any amendments. Article 10 states, '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'. At the 7th session, the IDC initially wanted to include a provision stating that life at all stages should be protected. This was intended to highlight that older people, as well as children, deserve protection. However, lack of support for the proposal as well as the possibility of opening a debate on when life begins caused the IDC to withdraw their proposal and they were content with the resulting language included in the Working Text and subsequently adopted at the 8th session.

Article 11—Situations of risk and humanitarian emergencies

This was a major stumbling block with States divided over the Arab Group's proposal to include 'foreign occupation' as an enumerated situation of risk. Many States²⁸ viewed the addition of this language as a politicisation of the Convention. Frustration grew with States unable to reach consensus and Sudan asked the Chair to establish a structured informal session on this article. The Chair declined to do so, but repeatedly stressed that this article was one that the USA, the Arab Group (particularly Sudan as the spokesman) and the European Union needed to resolve. On the last day of the session, South Africa brokered a deal (based on Bosnia and Herzegovina and the IDC's²⁹ proposals) and the Committee adopted compromise language to enumerate 'situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters' in the article. While Article 11 passed with the

²⁷ Several States proposed the idea of including family in paragraph 1, among them were Cameroon (on behalf of the African Group), Bangladesh, Egypt, Morocco, Sudan and Syria.

²⁸ States opposed to the addition of 'foreign occupation' when discussed in the plenary meeting included the USA, Japan, Australia, the EU (who proposed that no listing of situations of risk should be included), Norway and Serbia.

²⁹ The IDC supported the proposal by Bosnia and Herzegovina. In their daily newsletter, they stated that this Convention cannot solve terrible situations, 'be these armed conflict, war, civil war, occupation, or situations of natural disaster' and specified 'What this Convention needs to do is to cover expressly through article 11 the human rights of persons with disabilities who are faced with these different situations'. See <http://www.un.org/esa/socdev/enable/rights/ahc8contngos.htm> (see 'IDC views on Article 11—Situations of Risk, 24 August 2006').

consensus language, the USA forced a vote regarding preambular paragraph s bis, which contained proposed language to include 'foreign occupation'. Ultimately, enumerating 'foreign occupation' as a situation of risk made it into the preamble, but not into Article 11.

Article 12—Equal recognition before the law

Identified by the Chair as the most difficult and complex article due to the range of legal systems of member States, Article 12 resulted in compromise language entitled 'consensus proposal two' that was circulated among the member States and NGOs. The proposal retained the footnote in paragraph two of the Working Text which reads, 'In Arabic, Chinese and Russian, the term "legal capacity" refers to "legal capacity for rights", rather than "legal capacity to act".' The Chair called this footnote technical in nature, meaning that it does not affect the substantive meaning of the article but rather adds to the understanding of the article for countries where 'legal capacity' has a different connotation than that intended in this article. The IDC was deeply disappointed and concerned with this footnote and will be campaigning to challenge it. They view it as a way for certain governments to deny PWD's legal capacity to act. The IDC views China as the only Government that insisted on this footnote and is therefore troubled by the fact that the Arabic and Russian speaking States were drawn in by keeping the entire footnote. The importance of this article to PWD is the cause for the intense debate on its substance. The IDC viewed this article as one of the most significant in the entire Convention.³⁰ They argued that, 'a person who is denied legal capacity is denied control over their own life', thus Article 12 must reflect a support model rather than a model of substitute decision-making. The IDC is content that Article 12 reflects a positive change for some PWD, namely PWD who live in countries where the footnote does not apply. However, the retention of the footnote troubles the IDC as PWD in countries where Chinese, Russian or Arabic is the official language may not be given legal capacity to act on their own behalf. The IDC intends to challenge the inclusion of the footnote as the draft text goes to the drafting committee prior to its submission to the 61st session of the General Assembly.

Aside from the last-minute controversy over the retention of the footnote, the rest of Article 12 is seen as a positive paradigm shift from a substitute decision-making model to one of support. The article reaffirms that PWD have a right to recognition everywhere as persons before the law and States are charged with taking appropriate measures to provide access to PWD to the support they may require in exercising their legal capacity. Examples listed in the article include the ability of PWD to control their own financial affairs, have equal access to bank loans and inherit and own property.

Article 13—Access to justice

This article passed by consensus without any amendments. Article 13 ensures that PWD have equal access to justice, on an equal basis with others. This includes taking measures to ensure PWD can be witnesses in all legal proceedings and investigations. Measures taken by States shall include training for persons working in the justice, police or prison sectors.

Article 14—Liberty and security of the person

This article passed by consensus without any amendments. Article 14 ensures that PWD enjoy the right to liberty and security of person. This means that PWD will not be deprived of their liberty arbitrarily,

³⁰ See IDC News page for 15 August afternoon session entitled 'Legal Capacity: Core of the Convention'.

nor can disability be a justification for a deprivation of liberty. States shall ensure that PWD are entitled to guarantees in accordance with international human rights law and this Convention.

Article 15—Freedom from torture or cruel, inhuman or degrading treatment or punishment

Uruguay³¹ proposed a few minor amendments to this draft article, mainly to bring it into linguistic conformity with Article 7 of the *International Covenant on Civil and Political Rights* (ICCPR). The article prohibits a person from being 'subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Furthermore it prohibits forced medical or scientific experimentation. Implementation of this article shall be through legislative, administrative or judicial measures that effectively prevent PWD (on an equal basis with others) from being subjected to torture.

Article 16—Freedom from exploitation, violence and abuse

Article 16 remained largely unchanged from the Working Text. One slight change came in paragraph 5, where 'gender and children specific legislation' changed to 'women and children focused legislation'. This article is an example of the twin-track approach discussed in relation to Articles 6 and 7. The Article calls on States to take measures to prevent exploitation, violence and abuse by ensuring gender and age sensitivity assistance for PWD, their families and caregivers. This includes information on how to recognise instances of abuse and how to report such cases. States are also charged with implementing policies to identify, investigate and prosecute those that perpetrate violence and abuse against PWD.

Article 17—Protecting the integrity of the person

Although there was consensus on the adoption of compromise language by New Zealand on this contentious article, the Chair observed that no delegation is truly satisfied with the language. However, the other proposals were too divisive to garner consensus. States decided to use the compromise text to adopt this article with the understanding that interpretive statements and/or reservations may be made at a later date. The main disagreement was on the issue of forced (involuntary) interventions. The debate focused on whether to retain language allowing for forced intervention if justified on a basis other than disability or to have an absolute prohibition of forced intervention in all cases. The New Zealand compromise, which was adopted, states, 'Every person with a disability has a right to respect for his or her physical and mental integrity on an equal basis with others'. The IDC, which supported the absolute prohibition of forced sterilisation, agreed to the New Zealand compromise stating, ' We find the other proposals for this article unacceptable, since they do not add value to the Convention and could weaken existing rights of persons with disabilities'.³²

Article 18—Liberty of movement and nationality

This article passed by consensus without any amendments. Article 18 provides for the rights of PWD to liberty of movement, freedom to choose their residence and nationality. This article ensures that PWD

³¹ On behalf of Argentina, Brazil, Chile, Columbia, Costa Rica, Dominican Republic, Jamaica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela.

³² <http://www.un.org/esa/socdev/enable/rights/ahc8contngos.htm> (see 'IDC reaction the AHC8 Compilation of Proposals in attachment').

are not arbitrarily deprived of their nationality, the right or ability to obtain documentation of their nationality or to exercise their right to liberty of movement. Among other rights, PWD are free to leave their own country and re-enter without prejudice based on disability.

Article 19—Living independently and being included in the community

This article passed by consensus without any amendments. PWD are entitled to the same rights as others to live within the community and to enjoy full inclusion and participation in the community. This article requires States to implement policies to ensure that, inter alia, PWD have the opportunity to choose their residence and to have access to community support services. One of the main purposes behind this article is to prevent isolation and segregation of PWD from their communities.

Article 20—Personal mobility

This article passed by consensus without any amendments. Article 20 requires States to effectuate measures to ensure personal mobility for PWD. This could require such measures as facilitating access by PWD to mobility aids, assistive technologies and forms of live assistance, including making them affordable. This article is important in that it stresses the desire to allow PWD to be as independent as possible, yet supporting PWD when necessary to ensure their maximum mobility.

Article 21—Freedom of expression and opinion, and access to information

This article passed by consensus without any amendments. Article 25 states that on an equal basis with others, PWD shall have the right to exercise freedom of expression and opinion and to access information in a format of their choice (for example, Braille or sign language). Moreover, States are required to urge private entities and encourage media outlets to provide information and services in an accessible format for PWD. Furthermore States are required in sub-paragraph e to recognise and promote the use of sign language.

Article 22—Respect for privacy

This article passed by consensus without any amendments. There had been little debate on this article in the 7th session as there was wide consensus for the Chair's text from both States and the IDC. The EU pointed out during the 7th session that the language parallels that of the ICCPR and thus found it to be acceptable. Due to the consensus in the 7th session, the wording in the Working Text in the 8th session received little attention. When the Chair called for adoption, no State objected. The article deals with privacy rights of PWD. Specifically, no PWD shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence. Persons with disabilities have the right to full protection under the law in the case that such interference on his or her privacy should occur. Furthermore, the Article protects the privacy of personal, health and rehabilitation information on an equal basis with others.

Article 23—Respect for home and the family

States agreed to delete any reference to national laws in this Convention, including the reference originally made in Article 23. This reform was across the board for many of the articles, as reference to national laws was seen by the IDC as a loophole that could be used by States to subvert their international obligations under the Convention. Another controversial provision in this article related to

sexuality. Due to the personal nature of this article, which deals with marriage, family, parenthood and relationships, many States were uncomfortable with the inclusion of phrases that promote PWD 'experiencing their sexuality' or the right to 'have sexual and other intimate relationships'. Thus the language of paragraph 1, which included potential language on sexuality, was altered to read, 'the right of all 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'. Despite the controversy over this issue, States adopted a strong article calling for the elimination of discrimination against PWD in all matters relating to marriage, family, parenthood and relationships on an equal basis with others. This article includes protection for retention of fertility rights, respect for family life, spacing of children and ensuring children are not separated from their parents against their will unless in the best interests of the child and in accordance with applicable law.

Article 24—Education

The debate over inclusive education³³ proved to be divisive, with Kenya leading the opposition to mandatory inclusive education and Panama (on behalf of Latin American States) proposing compromise text. In theory, all States agreed that inclusive education is favourable. The question was whether States would be obligated to provide inclusive education solely or if they could retain the right to provide special education when inclusive education is not feasible or deemed in the best interests of the disabled person. The IDC was adamant that inclusive education must not be just one option among many for States to employ, but must be obligatory. The Panama compromise states that, 'effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion'. While the IDC initially opposed this language because it tends to make inclusive education 'a very long-term goal', they eventually agreed to the compromise and the article was adopted. Generally, the Article ensures the rights of PWD to education. The purpose of the Article is to ensure the full development of the human potential of PWD through creativity, expression and education. To this end, the Article prohibits exclusion of PWD from the general education system on the basis of their disability. While inclusion is the goal, the Article also provides for support mechanisms reasonably tailored to individual needs to foster the success of PWD within the general education system.

Article 25—Health

The bracketed language referencing sexual and reproductive health services included in the Working Text proved controversial for this and other similar articles. Despite repeated attempts by the Chairman to focus States' attention on the health-related discrimination that this article attempts to eradicate, States kept bringing the debate back to the issues of sexual services and reproductive rights in general (not just those affecting PWD). The most outspoken opponents of the language in the Working Text were the Holy See, the USA and some Arab States.³⁴ These States were concerned that cultural norms would prohibit their State from implementing any article that may implicate abortion or reproductive rights inconsistent with domestic legislation. To avoid creating any new reproductive rights in this treaty, and to ease concerns of States regarding sexual and reproductive 'services', the language was

³³ Inclusive education is an educational philosophy that shifts the paradigm from special and separate education to inclusive and general education. This would allow PWD to be part of the same educational system as all other persons, while still ensuring PWD receive support based on individual needs.

³⁴ Including Qatar, Bahrain, Kuwait, Oman, Saudi Arabia, Yemen and the United Arab Emirates.

changed to ensure quality and affordable health 'care'. The article ultimately protects the right of PWD to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. The Article also addresses the need to prohibit health insurance providers from discriminating against PWD, prevention of discriminatory denial of health care, food or fluids and providing health care services as close as possible to PWD's homes, including in rural areas.

Article 26—Habilitation and rehabilitation

Article 26 received wide support since much of the work done to revise the text was completed in the 7th session. An amendment by Uganda to include a new paragraph promoting the availability of assistive devices designed for PWD passed and States adopted the article without extensive debate. Focusing on habilitation and rehabilitation, Article 26 states that State parties shall take steps to strengthen and extend comprehensive habilitation and rehabilitation services, particularly in the health, employment, education and social services areas. Additionally, States must promote and develop training for professionals working in habilitation and rehabilitation services.

Article 27—Work and employment

Article 27 is another example where the Working Text included reference to national laws. The Ad Hoc Committee deleted this reference during its 8th session in favour of language that supports placing PWD on the same basis as others in the community or society by safeguarding the right for PWD to work. Slight modifications were made to the wording of this article, which enjoyed broad support from the majority of States. The resultant article recognises the right of PWD to work, to be included in a labour market that is open and inclusive, to receive equal opportunities, remuneration and career advancement and to exercise their labour and trade union rights on an equal basis with others. Moreover, the article ensures that reasonable accommodation be provided to PWD in the workplace.

Article 28—Adequate standard of living and social protection

During the 7th session, debate ensued over the title of this article. Many States³⁵ felt that social protection should be replaced with social security. At that time the Chair warned that social security is a more limited concept that would only apply to PWD who work. Uganda also warned that in many countries the social security system is non-existent. At the end of the 7th session, the term 'protection' was placed in brackets to be finally decided in the last session. During the 8th session, States agreed to keep the word 'protection' since it is widely applicable to more situations than the phrase social security, despite the reference to social security in other human rights conventions.³⁶ The article recognises the right of PWD to an adequate standard of living. Within this recognition is the assurance of access by PWD to clean water³⁷, social protection programs, poverty reduction programs, housing programs and retirement benefits.

Article 29—Participation in political and public life

³⁵ States supporting the term 'social security' included Canada, Columbia, El Salvador, Ethiopia, Israel, Morocco, the Libyan Arab Jamahiriya, Qatar, Serbia and Montenegro, and the Syrian Arab Republic. States supporting 'social protection' included Chile, the EU, Jamaica, Kenya, Mali, the Russian Federation, Senegal and Uganda.

³⁶ Social security is the phrase used in the ICESCR and the *Convention on the Rights of the Child* (CRC).

³⁷ Mexico provided the text for the amendment that became draft article 2 (a).

This article passed with one slight modification from the Working Text. It is another article that originally included reference to national laws. States deleted this reference to ensure international consistency in the implementation of States' obligations under the Convention. This article deals with political participation. States must guarantee that PWD have political rights and the opportunity to enjoy and exercise them. This includes the right to vote and to be elected, to be able to freely express their will by voting, participation in NGOs dealing with public life and the right to form or join organisations at the international, national and local levels.

Article 30—Participation in cultural life, recreation, leisure and sport

This article passed by consensus without any amendments. Article 30 recognises the right of PWD to take part in cultural life and enjoy access to cultural materials, films, theatres and libraries. Moreover PWD shall be allowed to develop their creative and artistic abilities. Furthermore they must be able to participate with others in recreational, leisure and sporting activities.

Article 31—Statistics and data collection

This article passed by consensus without any amendments. Under Article 31, States undertake to collect information, including statistical and research data, to enable them to implement policies to give effect to other provisions of the Convention. To protect the privacy rights of PWD, States shall comply with legally established safeguards to ensure confidentiality. Each State is responsible for the dissemination of the statistics and to ensure that PWD have access to the data.

Article 32—International cooperation

On the first day of the session, delegates debated this article in the plenary and the debate continued in informals throughout the session. Eventually, States agreed on a proposal by Tanzania whereby paragraph one would remain unchanged from the Working Text and paragraph two would be deleted and replaced by a provision stating that the provisions of this article do not prejudice States' other obligations under the Convention. This essentially retains the responsibility of individual States to fulfill their duties under the Convention, while, at the same time, obligating other States to aid countries having difficulties fulfilling their duties. States have a dual obligation to implement the Convention in their own country and to cooperate with States who are having problems implementing provisions of the Convention. The IDC strongly supported a separate article for international cooperation and insisted on inclusive international cooperation. This inclusion means that PWD are mainstreamed at all levels of planning and implementing programmes. Article 32 paragraph 1 subparagraph a is reflective of this mainstreaming. It ensures that 'international cooperation, including international development programmes, is inclusive of, and accessible to, persons with disabilities'.

Article 33—National implementation and monitoring

This article encapsulates the notion that State parties must strive to implement the obligations of the Convention at the national level by legislative and administrative means. This is in addition to the international means that are codified in Articles 34-40 for ensuring compliance with the Convention. Of particular note in this article, States are obligated to involve civil society, including PWD or their representative organisations, in the monitoring process.

International monitoring and follow-up mechanism (Articles 34-40)

The Chair identified the issue of international monitoring as one of the key articles outstanding from the 7th session³⁸ and allowed an in-depth discussion on this issue in the plenary. While all governments agreed on the need for international monitoring, there were varying degrees of support for the creation of a separate treaty body to deal with the implementation of this Convention. Some States, including Sudan, China, the Russian Federation and Australia did not support an independent monitoring body, arguing that other existing treaty bodies could take on responsibility for implementing this Convention. However, the overwhelming majority of States and NGOs favoured creating a new treaty body. Structured informal negotiation continued on this issue throughout the entire session. Finally, on the final day of negotiations, States reached consensus and adopted what was later numbered Articles 34-40 dealing with international monitoring. Each article under the monitoring scheme is described below.

Article 34—Committee on the rights of persons with disabilities

This article establishes a 12 to 18 member Committee on the Rights of Persons with Disabilities (the Committee). The Committee members serve in their personal capacity and are elected by secret ballot by State parties with consideration given to geographical distribution and gender representation. A Committee member's term shall be four years, with potential for one reelection.

Article 35—Reports by State parties

This article obligates State parties to submit a comprehensive report on measures taken by it to give effect to the Convention and to report on progress made within two years after the entry into force of the Convention. States will then submit subsequent reports every four years or when the Committee requests.

Article 36—Consideration of reports

The Committee will consider each State report and make suggestions and recommendations on the report. The State has an opportunity to respond to the recommendations if it chooses. States shall make their reports widely available to the public in their own countries.

Article 37—Cooperation between State parties and the Committee

Each State party is required to cooperate with the Committee and to assist its members in the fulfillment of their mandate. In exchange, the Committee shall give due consideration to means of enhancing national capacities for implementing the Convention, including through international cooperation.

Article 38—Relationship of the Committee with other bodies

When appropriate, the Committee shall consult with other relevant bodies instituted by international human rights treaties to avoid duplication and overlap in the performance of their functions.

Article 39—Report of the Committee

³⁸ Intercessional structured informals took place on this issue between the 7th and 8th sessions.

The Committee shall report to the GA and to the Economic and Social Council on its activities.

Article 40—Conference of State parties

State parties shall meet regularly in a Conference of States Parties (the Conference) in order to consider any matter regarding the implementation of the Convention. The Secretary-General of the UN shall convene the Conference no later than six months after the entry into force of the Convention.

Final clauses (Articles 41-50)

The delegation from Liechtenstein spearheaded the structured informals on the draft final clauses. The clauses did not meet much resistance, but were the product of many informals³⁹ and several revisions, mainly due to linguistic differences. The member States adopted the ten clauses in the final session without objection. The clauses cover the following issues: the depository (Article 41), State signatures (Article 42), consent to be bound (Article 43), regional integration organizations⁴⁰ (Article 44), entry into force (Article 45), reservations (Article 46), amendments (Article 47), denunciation (Article 48), accessible formats (Article 49) and authentic texts (Article 50).

Draft Optional Protocol to the International Convention on the Rights of Persons with Disabilities

The Optional Protocol, in its 18 articles, authorises the Committee to consider individual communications of persons who allege violations of the Convention by a State party to the Optional Protocol. One tool available to the Committee in investigating individual communications is country visits. This process may be used if the Committee deems it necessary and if the country agrees to such a visit. The IDC strongly supported a separate treaty body such as the one ultimately adopted to prevent this Convention from becoming 'second-rate'. While the IDC initially pushed for the articles in the Optional Protocol to be fully integrated into the main text, it later accepted the compromise proposed by Mexican Ambassador Juan Manuel Gomez Robledo, the facilitator of the monitoring body, whereby adoption of the Optional Protocol would be simultaneous with adoption of the main Convention.

Conclusions and future steps

In brief summary, the UN member States adopted the text of the 8th session *ad referendum* on 25 August 2006. The text will go to a drafting committee that will make linguistic changes to bring the text into conformity with other UN documents and consistent across all official UN languages. The drafting committee will not make substantive changes to the text. The text will be presented to the 61st session of the General Assembly and then be opened for States' signatures upon its adoption by the General Assembly.

³⁹ Including intersessional informals.

⁴⁰ This is the first human rights treaty to allow regional integration organizations (RIOs) to sign on. RIOs are defined as organizations constituted by sovereign States of a given region to which its members have transferred competence in respect of matters governed by the Convention.

AD HOC COMMITTEE ON A COMPREHENSIVE AND INTEGRAL CONVENTION ON THE PROTECTION AND PROMOTION OF THE RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES

8th Session (New York, 14 August to 25 August 2006)

To learn more about disability rights and to become involved, visit the websites of DPO networks like Disabled Peoples' International (DPI)⁴¹, Inclusion International (II)⁴², Rehabilitation International (RI)⁴³, the International Disability and Development Consortium (IDDC)⁴⁴, the World Federation of the Deaf-Blind (WFDB)⁴⁵, the World Network of Users and Survivors of Psychiatry (WNUSP)⁴⁶ and the Landmine Survivors Network.⁴⁷ For more information on international law relating to disabled persons, visit the UN websites of the Office of the United Nations High Commissioner for Human Rights (OHCHR)⁴⁸ and the Department of Economic and Social Affairs (DESA).⁴⁹

The International Service for Human Rights is continuing to follow the draft Convention as it goes to the General Assembly for adoption. Please continue to check the ISHR website⁵⁰ for updated information on the status of the draft Convention.

⁴¹ <http://v1.dpi.org/lang-en/>.

⁴² <http://www.inclusion-international.org/en/>.

⁴³ <http://www.rehab-international.org/>.

⁴⁴ <http://www.iddc.org.uk/>.

⁴⁵ <http://www.wfdb.org/>.

⁴⁶ <http://www.wnusp.org/>.

⁴⁷ http://www.landminesurvivors.org/what_rights_updates.php.

⁴⁸ <http://www.ohchr.org>.

⁴⁹ <http://www.un.org/esa/desa/>.

⁵⁰ <http://www.ishr.ch>.