

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

3rd Session (New York, 24 May to 4 June 2004)

INTRODUCTION

The third session 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** took place at the United Nations (UN) headquarters in New York from 24 May to 4 June 2004. The session was chaired by H.E. **Luis Gallegos Chiriboga** (Ecuador). Participants included member States (about 40 States made interventions, many more attended), UN agencies and over 40 disabled peoples' organisations and non-governmental organisations (NGOs). For the first time in the process, a group of **national human rights institutions** (NHRIs) from around the world grouped together to participate in discussions on the draft text and to make joint interventions.

OVERVIEW

The third session of the Ad Hoc Committee marked the start of substantive inter-governmental negotiations on the **draft text prepared by the Working Group** (A/AC.265/2004/WG.1), which met in New York from 5 to 16 January 2004. The Ad Hoc Committee conducted a first reading of Articles 1 through 24 and part of the Preamble, and addressed issues concerning international co-operation. Each article was discussed individually, beginning with interventions by governments. Delegations were invited to submit draft revisions beforehand and minor revisions of wording were entered in a large screen by the Secretariat. After representatives of States, UN agencies and NHRIs had made their interventions, NGOs had the opportunity to provide three-minute statements.

By the end of the third session, the Ad Hoc Committee had produced a compilation text (Annex II of A/AC.265/2004/5) of proposed revisions and amendments (by governments) to the draft text presented by the Working Group. This compilation text will serve as a basis for negotiations for the fourth session. At that session, to be held 23 August to 4 September 2004 in New York, the Ad Hoc Committee will consider the title, preamble, definitions (Article 3), monitoring (Article 25) and structure of the convention.

Several overarching issues discussed during the third session augured what the Ad Hoc Committee will have to address more closely in its upcoming sessions:

How to address international co-operation. The Working Group document dedicated an entire annex to this issue, including highlighting the possibility of putting the concept into a stand-alone article. With the exception of **Jordan**, there appeared to be broad support among the delegations for the creation of such an article. **Mexico** circulated the draft text, which covered international co-operation between States, between States and international organisations, and among civil society and the private sector.

How to address certain so-called "vulnerable" populations of people with disabilities, including women, people with severe and multiple disabilities, indigenous people, and people living with HIV/AIDS. Some States favour individual articles on specific populations, while others argue that reference to groups belong only in the Preamble.

Find a balance between "prescriptive" and "principled" language. Many developed countries advocate for less specific language, arguing that they do not wish to limit the State, and in particular are concerned that prescriptive international standards may be below some national standards. Alternatively, many developing countries, where 80% of the world's disabled population live, advocate for a more prescriptive convention through which States will have more concrete obligations to ensure.

How to define/elucidate positive measures. For example, States must decide whether quotas, incentives, and/or other positive measures should be prescribed or even listed in the Convention. The Ad Hoc Committee will also have to address how to handle issues such as **reasonable accommodation**, and whether to define or provide a formula for the standard.

How to ensure the full and effective participation of NGOs and disabled peoples' organisations in the substantive development of the convention. Conflicts among States over the procedure by which NGOs and disabled peoples' organisations are involved in drafting will need to be resolved¹.

How to incorporate language on progressive realisation. General support for the inclusion of progressive realisation varies from article to article. Most States argue that the convention should maintain consistency in this respect.

Whether to incorporate language on families into the text. Families many times serve as the most important and effective advocates for persons with disabilities (PWD) and can be a crucial means to ensuring that PWD are able to realise their rights. There is, however, concern that the incorporation of family and their rights could lead to abuse, since most abuse experienced by PWD comes from family members. States mostly acknowledged that if language on family is incorporated, safety provisions must be included.

The Chair of the Ad Hoc Committee, Mr **Chiriboga**, stated that he hoped to have the convention ready for signatures by September 2005.

DRAFTING OF THE PROPOSED CONVENTION

Preamble

The Chair of the Ad Hoc Committee rescinded a previous decision to postpone discussion of the Preamble till the next session. Several delegations expressed concern about the change of plans, as they were not adequately prepared to discuss the Preamble, but nevertheless agreed to move forward. During the deliberations, delegates proposed changes to the title of the convention, and discussed, among other issues, which human rights conventions and forms of multiple discrimination should be referenced in the preamble.

On behalf of the **European Union (EU)**, **Ireland** circulated a detailed proposal of amendments to the Preamble. It suggested the title of the convention read "*International Convention on the Full and Equal Enjoyment of all Human Rights and Fundamental Freedoms by Persons with Disabilities*". **Sierra Leone** and the **Republic of Korea** supported the **EU** version, while **Israel** emphasised that the word "*dignity*" needs to remain in the title.

Delegates disagreed on retaining mention of the **International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families**, alongside the mention of other human rights conventions in preamble paragraph (d): the **EU**, **Sierra Leone**, **Israel** and **Canada** supported removing it while **Morocco** argued that it should remain. In this regard, the EU argued that the Convention on Migrant Workers had not reached the same status as the others listed and is not a core human rights document.

¹ During the final days of the meeting, a heated discussion occurred over the involvement of NGOs in the process. Apparently, on the initiation of the African bloc, the Bureau decided to carry out the remaining work for this session in "informals" without NGO participation. Some delegations expressed strong disapproval for this decision, including Ireland, Canada, New Zealand and Israel, who stated that they would not participate at this juncture in closed-door proceedings that excluded NGOs, particularly given that inclusion and participation are the fundamental principles of the convention. After the Bureau conferred again on the matter, it was decided the Ad Hoc Committee would continue in a formal meeting on the final day of the meeting with a second reading of Article 1 and 2 of the "Non-paper" titled "*Consolidation of Proposals for Articles 1 and 2 of the Draft Text of the Working Group of the Ad Hoc Committee*", and that NGOs could participate in the drafting. However, on the last day, the Ad Hoc Committee decided to rescind the decision of the previous day in regard to a second reading of Article 1 and 2, and instead to continue on with a first reading of the parts of the convention that had not yet been discussed: the title, preamble, definitions, monitoring mechanisms, before beginning a second reading. The crucial question of continued NGO participation in the formation of the convention was not resolved, only postponed until the next session.

Ireland, Sierra Leone and Argentina supported replacing preamble paragraph (i) on international co-operation with the language proposed by footnote 4 in draft text of the Working Group, which includes an explicit reference to persons with disabilities in developing countries.

Ireland proposed revising preamble paragraph (n) (which emphasises the need to incorporate a gender perspective into all efforts to promote the human rights of PWD), to address discrimination and violence against women and girls and adding an additional paragraph on children, which was supported by **Sierra Leone**.

Several delegates suggested additions to the forms of multiple or aggravated discrimination listed in preamble paragraph (m): the **EU** and **Brazil** supported "*sexual orientation*", **Sierra Leone** and **Israel** supported "*age*", and **Canada** "*ethnic*".

Chile and **Cuba** supported recognising the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR). In preamble paragraph (o) relating to poverty, **Chile** proposed adding a reference to the **Millennium Development Goals** and human development indices and **Cuba** suggested an additional paragraph on the right to development.

The **Russian Federation** suggested including the obligations of PWD in the preamble. In addition, the Preamble should contain Article 2 of the International Covenant on Economic, Social and Cultural Rights, which deals with progressive realisation.

Syria, Yemen, Palestine and **Lebanon** supported adding "*foreign occupation*" to preamble paragraph (p), which expresses concern about the effect of armed conflict on the human rights of PWD.

Kenya proposed three new paragraphs. The first would address double or multiple discrimination against PWD who are children, women, refugees or internally displaced, and those living in rural areas or informal settlements. The second paragraph would address negative cultural practices and beliefs that affect the rights of PWD, and the third paragraph would recognise the negative affect of HIV/AIDS on PWD.

Article 1: Purpose

Much of the discussion on this brief article focused on alternative phrasing in footnote 8 of the Working Group's text, which reads, "*The purpose of this Convention shall be to protect and promote the rights of persons with disabilities*". Delegations supporting this alternative language included **Argentina, South Africa, Mexico, China, Japan, El Salvador, Mali** and **Eritrea**. The **Russian Federation** and **Jordan** supported the text in its present form, which reads, "*The purpose of this Convention shall be to ensure the full, effective and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities*". The **Landmine Survivors Network (LSN)**, in a legal analysis of the Working Group's text, argued that the language in footnote 8 was substantially weaker and represented a departure from formulations set forth in other human rights conventions, such as in Article 2 of the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention of the Rights of the Child.

Bahrain and **Yemen** suggested including international co-operation into Article 1, and **India, Morocco** and **Yemen** supported mention of elimination of discrimination, while **Mexico** argued that it was not necessary to incorporate these concepts into the article.

Ireland, on behalf of the EU, cautioned against using language that implies that PWD have a new, different set of rights, and therefore preferred the phrase "*ensure the full enjoyment of human rights by PWD*". **Japan** expressed the opinion that although the convention will not create additional rights, it will introduce some relatively new concepts, such as reasonable accommodation, which are not contained in other human rights conventions.

The **NHRIs** preferred a reformulation of the language in the article to ensure a focus on equality, and the **Asia Pacific Forum of National Human Rights Institutions** supported the

retention of the current text, especially the word "*effective*", which would create conditions for the enjoyment of human rights, and not just formal recognition of them.

Article 2: General Principles

In deciding what should be included in the article on general principles, **Liechtenstein** argued that States should consider how the principles should be helpful in the interpretation and the application of the specific substantive articles of the convention, and stressed that principles are not purposes of the convention.

Ireland, on behalf of the EU, suggested that Article 2 include language modelled on Article 4 of the Convention on the Rights of the Child. The proposed language reads that "*States parties shall undertake such measures to the maximum extent of their available resources and where needed within the framework of international co-operation*". This phrase would indicate that while some parts of the convention can be implemented progressively, many elements cannot. For example, **Ireland** noted that non-discrimination is never a progressive issue. **India** favoured creating a separate article or paragraph for the concept of progressive realisation. **Sierra Leone** and the **Sudan** argued that the language on progressive realisation suggested by the EU should be placed under general obligations in order to ensure specific provisions for states.

Mali and the **Sudan** suggested that a new paragraph make reference to international co-operation, while **Republic of Korea** and **Canada** suggested adding a new paragraph to recognise equality between men and women.

India recommended that special attention be paid to the situation of persons with **severe intellectual** and **multiple disabilities**. **Ireland**, on behalf of the EU, consistently expressed the view that the singling out of certain groups would be better placed in the Preamble than in the articles. *Inclusion International* (II) and the *World Network of Users and Survivors of Psychiatry* (WNUSP) commented that it is not appropriate to single out one or two disabilities, or create negative labelling by focusing on the severity of disability by using terms such as "*mild*" or "*moderate*".

Kenya proposed adding a paragraph on **accessibility and universal design**, as they are essential concepts in the convention and could help **shift the paradigm from a medical model to a social model and human rights approach**. The social model of disability includes accessibility, barrier-free environments, and addresses any circumstance that prevents a person from participating in society and living in dignity. Adding the principle of reasonable accommodation was strongly supported by the **NHRIs**.

Other suggestions made in the discussion on the general principles included **Thailand's** proposal to use the concept of **self-determination**. **Self-representation** was also a concept suggested for use by the *International Disability Convention Solidarity in Korea*, stressing that PWD should always be able to speak for themselves.

Article 3: Definitions

The Ad Hoc Committee decided to postpone discussion on Article 3 until the substantive negotiations on the text as a whole were complete.

Article 4: General Obligations

Much of the discussion was in response to the **EU's** proposal to merge most of Articles 4, 5 (**Promotion of Positive Attitudes to People with Disabilities**) and 7 (**Equality and Non-discrimination**) under a single article of "*non-discrimination*". Several countries including **Argentina, Japan, Morocco, Israel, and South Africa** (representing the African Group) opposed the **EU** merger, arguing that Article 4 is necessary because it includes an explicit obligation for the progressive realisation of economic, social and cultural rights. Responses to the EU's proposal exposed larger disagreements about the scope and purpose of the convention itself.

The **Irish** proposals reflected the EU's view that non-discrimination is one of the major principle of the treaty (as well as equality of opportunity, autonomy, and participation/inclusion). Others (**Mexico, Lebanon, Costa Rica, Jordan, New Zealand**) argued that the EU's position limited the scope of the convention, and that States must also undertake substantive obligations that go beyond non-discrimination. **Mexico** went so far as to say that if the EU proposals were to be the basis for work, it would "mutilate" the Working Group text.

The **EU** also proposed replacing the word "*mainstreaming*" with its meaning: that the needs and concerns of PWD be incorporated into economic and social development plans and policies, and not treated separately. This proposal was supported by **Liechtenstein** and **Serbia and Montenegro**. **India** and **Thailand** suggested adding international co-operation to Article 4. **New Zealand** proposed including language supporting partnership with PWD.

NHRIs and NGOs, including the *European Disability Forum* (EDF), **LSN** and *Rehabilitation International* (RI) also expressed concern with the EU's proposed merger, and supported those delegations that argued that the convention needs to go **beyond non-discrimination**. **RI** described non-discrimination as a tool to advance the enjoyment of human rights, and not an end in itself. Several NGOs pointed to the need for an explicit reference to the obligations of non-State actors. *People with Disability Australia* and *National Association for Community Legal Centres* asserted the need for an explicit reference to international obligations within Article 4, since two-thirds of PWD in the world live in developing countries. Intergovernmental aid programmes must respect the rights of PWD, and there is a need for international co-operation on trade and commerce standards with regard to accessibility, telecommunications, and copyrights. The EDF also called for a specific reference to development co-operation, which would oblige both donors and recipients of funds to take into account PWD.

The *Asian Pacific Forum* and **NHRIs** raised concern about the need for an explicit provision on judicial and other appropriate remedies within Article 4. The **WNUSP** strongly supported strengthening paragraph 2, regarding partnership with PWD, recognising their expertise and leadership. In this context, the WNUSP cautioned overemphasising the role of families in the article, explaining that families may not be working alongside PWD.

Article 5: Promotion of Positive Attitudes to People with Disabilities

Kenya and **Trinidad and Tobago** proposed including a reference to **cultural and religious practices** that discriminate against PWD. **South Africa** and **Mexico** suggested amending the title to include promoting the rights of PWD.

Save the Children International commented that the role of children should be stressed within this article. The **EDF** proposed adding a new paragraph on **families** that recognises both the negative and the positive roles that families can play in the lives of PWD. The *World Blind Union* (WBU) suggested an additional paragraph on **cultural diversity** within the disability community.

Article 6: Statistics and Data Collection

Interventions on this article included suggestions on how to effectively protect the **privacy** of PWD in the context of data collection, and the necessity of collecting statistics and data for policy implementation. Proposals were also made on which categories of **disaggregated data** to include. **Mexico** stressed that data collection should be voluntary and confidential, and should include socio-economic and biomedical information. States must also establish mechanisms to safeguard that information. The **EU** affirmed that any data collection process should comply with international norms to protect human rights and that such processes should be undertaken in collaboration with and following consultations with organisations of PWD.

Several countries suggested deleting the reference to data aggregation according to age, sex, and type of disability, including **Japan** and the **EU**. **Lebanon** supported retaining reference to age and sex, but not type of disability, which relies on a medical model of disability. **Lebanon** also suggested using national data on disability as a development indicator to show the link between poverty and disability. **Costa Rica** suggested adding urban and rural areas into categories of data, and **Bahrain** education and social status.

The **Centre for International Rehabilitation, Disabled Peoples' International (DPI)**, **People with Disability Australia**, **National Association for Community Legal Centres**, and **Australian Federation of Disability Organisations** stressed the importance of this article for policy development, implementation and evaluation. **DPI** noted that data collection is cited in **Rule 13** of the UN's **Standard Rules on the Equalisation of Opportunities for Persons with Disabilities** and in the Convention on the Rights of the Child. NGOs also supported moving the article to the end of the convention in a section on implementation. Several NGOs emphasised the need for partnership with PWD in the implementation of this article.

Article 7: Equality and Non-discrimination

Article 7 discussions included a debate on whether States, in certain circumstances, can make exceptions to the prohibition against discrimination. According to the **Irish** delegate, there can be no exceptions to the prohibition against **direct discrimination**, but that the Working Group's Article 3 would allow for this. Ireland, on behalf of the EU, however, accepted that there could be exceptions for **indirect discrimination**, but they must be limited, have an objective, legitimate purpose, and means that are appropriate and necessary. **Mexico** noted that States may establish criteria which is legitimate and justified, and therefore not discriminatory, but raised a concern about the possibility of States abusing that discretion. **RI** argued that the addition of the term "*legitimate aim*" in the article was too broad to be useful. **People with Disability Australia** and the **Australian Federation of Disability Organisations** noted that only narrow exceptions, such as for public order, should be allowed, and only with the understanding that all other human rights instruments and non-discrimination provisions apply to PWD.

Other States expressed concern about making a distinction between **direct and indirect discrimination** in practice, and urged States to avoid focusing on differences between the two. **Canada** supported **Japan** and **Yemen** in stating that the article should not distinguish between direct and indirect discrimination, because there are too many interpretations of these terms. Several NGOs called for clear definitions of direct and indirect discrimination, reasonable accommodation, and active special measures. Others, such as the **EDF**, **WBU** and **WNUSP** pointed out that the EU's definition is workable for some countries, but not for all, and stated that defining direct/indirect discrimination could cause more problems. The compromise in the Working Group was to mention, but not define these terms.

Mexico supported the **EU's** proposal to make Article 7 into two separate articles. In their view, equality and non-discrimination should be addressed separately, as in the Convention on the Elimination of All Forms of Discrimination against Women. The **LSN** countered that it supported the title in the Working Group 's draft, since equality and non-discrimination are consistent with other treaties.

The Ad Hoc Committee also discussed the use of and language on **special or positive measures**. According to **Mexico**, the principle of non-discrimination includes an obligation to provide positive measures. **Ireland**, on behalf of the EU, supported special measures aimed at accelerating *de facto* equality as they apply in other conventions. **Colombia**, **Thailand** and **Israel** favoured using the term **affirmative action** as opposed to special or positive measures, as it is a more universally accepted term. In regard to a sunset clause on special measures, some NGOs argued that while some positive action measures, such as quotas, may be short term, there are many measures which are not temporary. One example is assistive technology and respite care, which are not temporary, and lead to equality.

Reasonable accommodation was another core issue raised in the discussions. **Ireland**, on behalf of the EU, noted that although the Working Group spent an extensive amount of time discussing reasonable accommodation, a clearer definition is still needed. Also, for private institutions, there may be limited exceptions to the duty to provide reasonable accommodations, if the costs are too high. **Costa Rica** commented that if reasonable accommodation is linked to economic considerations, it may nullify protections from discrimination. The **EDF**, **WBU**, **WNUSP** and **DPI** stated that a failure of reasonable accommodation is discrimination as described in **General Comment No. 5** of the **Committee on Economic, Social and Cultural Rights**. NGOs stressed that the convention must limit the exceptions to reasonable accommodation.

Article 8: Right to Life

Government delegations either supported the current text as it is with no amendments (**China**, the **EU**, **South Africa**, **Colombia** and **Norway**) or supported the creation of an additional paragraph on the protection of PWD during **armed conflict** (**Yemen**, **Uganda**, **Nicaragua**, **Eritrea**, **Jordan** and **Kenya**).

II, the **Canadian Association of Independent Living Centres** (CAILC), **National Association for Community Legal Centres**, **People with Disability Australia** and the **Australian Federation of Disability Organisations** voiced concern about genetic engineering and the elimination of pregnancies based on potential disability. Disability is part of human diversity and PWD bring unique contributions to society. II described their message as, "*don't prevent us, include us*". The **World Federation of the Deaf-Blind** (WFDB) and **Save the Children International** supported India's proposal to incorporate the right to survival into the article. India's proposal read that "*States parties shall ensure to the maximum extent possible the survival and development of persons with disabilities*".

The **Society for the Protection of Unborn Children** (SPUC) and **National Right to Life** (NRL) supported deletion of the words in 21(a) "*including sexual and reproductive health services*". They argued that the paragraph should not single out reproductive health since PWD need a full range of health services, and also because the phrase "*reproductive health services*" includes abortion. Another suggestion by these organisations was that the article clearly articulate that a PWD shall not be denied medical treatment necessary to preserve or sustain that person's life.

Article 9: Equal Recognition as a Person before the Law

Under Article 9, States made interventions on various issues, including the meaning of legal capacity, legal guardianship and supported decision-making, and PWD's property rights.

Ireland, on behalf of the EU, stressed the need for a strong statement of equality to set the framework for subsequent discussion of legal capacity. **Canada** made a proposal supported by many States, including **Costa Rica**, **India** and **Liechtenstein** that addressed the lack of consensus among States around what is meant by legal capacity. The proposal contains new language addressing this lack of clarity of the definition of "*legal capacity*" by referring to Article 15.2 of the Convention on the Elimination of All Forms of Discrimination Against Women. Canada's proposal also includes language that states that "*only a competent, independent and impartial authority, under a standard and procedure established by law, can find an adult not to have legal capacity*".

India proposed that in exceptional circumstances, **assistance**, or the appointment of third parties as legal guardians/surrogate may be in the best interests of PWD. The **WNUSP** stressed that guardianship can be in effect a "*social and legal death*" and implored the Ad Hoc Committee to review their model on supported decision-making and issues of providing assistance without limiting rights. Other NGOs, including **People with Disability Australia**, the **National Association for Community Legal Centres** and the **Australian Federation of Disability Organisations** recommended substantial redrafting of 9(c)(i) to elaborate procedures and

safeguards necessary to support the full range of assisted and substituted decision-making. **II** added that substitute decision-making should be granted only as a last resort and on a time-limited basis. **DPI** pointed out the need to state explicitly that the full legal capacity is always with the person, and that where assistance is necessary, the underlying assumption should be still for full legal capacity.

Costa Rica, Norway, Jordan and Serbia and Montenegro commented that provisions should be added to ensure regular review of the findings of legal incapacity.

The **International Labour Organisation (ILO)** urged that the article should provide for an effective dispute, prevention, and settlement system, as well as for legal aid. The **Economic and Social Commission for Asia and the Pacific (ESCAP)** lamented the draft's lack of specific provisions for remedies, and suggested adding text which would have States parties recognise that access to effective remedies may require the provision of free legal assistance to PWD and the modification or flexible application of existing laws and practice regulating matters of procedure and evidence. **DPI** expressed support for a **Japanese** proposal to include language, which would oblige States to take effective measures to eliminate physical and communication barriers and to ensure the exercise of rights in judicial procedures according to the International Covenant on Civil and Political Rights.

Commenting that in Africa PWD often are not allowed to own or use property, **Kenya** argued for using language of the Convention on the Elimination of All Forms of Discrimination Against Women when addressing **property rights** under this article, including that States should take all appropriate and effective measures to ensure the equal rights of PWD to own, inherit, use, or otherwise dispose of property. **Liechtenstein** agreed with this concept, as did **New Zealand**, which recalled that Articles 13 and 15 of the Convention on the Elimination of All Forms of Discrimination Against Women were an effort to correct the historical presumption that women were not capable of owning property or exercising legal rights. The **World Federation of the Deaf (WFD)** commented on the importance of the property clause and on the "*interconnectedness of legal capacity and property*".

Article 10: Liberty and Security of Person

In regard to the rights set forth in this article, **Ireland**, on behalf of the EU, supported by **New Zealand** and the **LSN**, stressed that the convention should not accept a lesser standard than Article 9 of the International Covenant on Civil and Political Rights, which covers criminal detentions. **New Zealand** and **Australia** expressed uncertainty about whether Article 10 covered criminal incarceration, civil commitment or both.

On the question of institutionalisation, **Ireland**, on behalf of the EU, argued that forced institutionalisation was illegal, and that **involuntary commitment** should only be allowed in exceptional circumstances, and with clear legal safeguards. **DPI** stated that NGOs do not support anything permitting forced institutionalisation, as the definition of institutionalisation includes the separation from non-disabled people and the deprivation of liberty and/or autonomy. **II** called institutionalisation a dehumanising experience, and a very costly form of segregation.

The **Republic of Korea** urged for language that would ensure that a detained or imprisoned PWD be able to meet with a guardian, have "*assistive tools*" and be able to receive medical service. **Colombia** added that the detention facilities be made accessible and adapted to PWD's particular circumstances of disability. **Uganda**, supported by **Kenya**, urged that the article also ensure that PWD receive rehabilitation while under confinement.

Canada proposed adding the term "*solely*" to a phrase in the article so that it would read that persons with disabilities cannot be denied their liberty "*based solely on disability*". This idea was supported by **Uganda** and **Australia**. **Mexico** disagreed, pointing out that "*solely*" may imply that PWD can or should be deprived of their liberty. The **WNUSP, Support Coalition International** and **People with Disability Australia** also argued that the term "*solely*" would open the door for States to deprive PWD of their liberty based on another reason, which by itself may not be sufficient.

Article 11: Freedom from Torture or Cruel, Inhuman Treatment or Punishment

Discussions among government delegations followed proposals by the **EU** and **India**. The EU recommended deleting the language on **forced intervention and forced institutionalisation**, arguing that these issues are covered in Articles 10 (Liberty and Security of Person) and 12 (Freedom from Violence and Abuse). **Japan, China, Norway, Canada, South Africa** and **Singapore** supported the EU proposal, while **Uganda** and **Kenya** opposed it. Kenya stated that forced intervention and institutionalisation are forms of cruel and inhuman treatment and need to be addressed within article 11. **Yemen** supported India's proposal to merge Articles 11 and 12, but **Kenya, Mexico, Algeria,** and **Liechtenstein** disagreed. Kenya argued that Article 11 followed other human rights conventions and Article 12 is specific to PWD. Algeria argued that the seriousness of torture needs to be differentiated from abuse covered in Article 12. Liechtenstein stated that the two articles should remain separate because they concern different actors and types of abuse: Article 11 focuses on the public sphere and medical situations, while Article 12 focuses on the private sphere.

The **WNUSP** said that this article was one of the most crucial for people with psychosocial disabilities, who experience forms of torture, such as electroshock and forced drugging, inflicted under the guise of "medicine" or "help". The organisation also supported the comments made by **Kenya** and **Algeria**, adding that legal and procedural **safeguards** can never legitimise torture or cruel treatments.

Article 12: Freedom from Violence and Abuse

The **EU** suggested adding a paragraph stating that forced **intervention** is illegal, save for exceptional circumstances and with appropriate procedural and legal safeguards that take the best interest of the person concerned into account. **Yemen** stressed the need for including remedies within the article and **Costa Rica** emphasised the need to apply sanctions in cases of violence. **Uganda** underscored the need for language on bodily integrity and freedom from forced sterilisation and abortion. **New Zealand** suggested adding **economic exploitation** to the list, and also proposed adding language on independent monitoring in facilities and programmes for PWD, whether public or private. **New Zealand** also urged that the article contain language so that States would ensure the identification, reporting and investigation of all instances of violence, injury and abuse, and neglect of PWD.

The **National Association for Community Legal Centres, People with Disability Australia**, and the **Australian Federation of Disability Organisations** proposed adding harassment, victimisation, mental and physical abuse to the list of types of abuse specified. They also emphasised the need for anti-violence and violence relief programmes to be fully accessible to PWD.

Save the Children International stressed that child protection mechanisms need to be fully accessible to children with disabilities. The **WNUSP** cited the need for a prohibition against forced institutionalisation and intervention in both Articles 11 and 12 to cover practices by public and private actors.

Article 13: Freedom of Expression and Opinion and Access to Information

At the request of **Sierra Leone**, delegations made efforts to translate specific technical terms into the plainest language possible during discussions.

Costa Rica proposed a revision of the title to "*right to information and communication*" to make it more obvious that communication is a fundamental right. **Mexico, Kuwait,** and **Viet Nam** supported **Mexico's** title. **Israel, Thailand** and **Jordan** posited that Article 13 is a means to ensure access to information and facilitate freedom of expression.

Yemen, Namibia, Trinidad and Tobago, and **Kenya** emphasised private or **non-State actors'** obligations to make information accessible to all.

Uganda proposed adding a new paragraph on developing a **national sign language**, which **Viet Nam** supported.

The **WFDB** stressed the need to incorporate the **right to communicate** into Article 13. Many deaf blind people have no means to express themselves and to be understood by others, and therefore endure forced measures and abuse due to communication barriers. The right to express one's opinion requires access to appropriate information in order to form an opinion.

People with Disability Australia, the **National Association for Community Legal Centres** and the **Australian Federation of Disability Organisations** underlined that the article should be strengthened to recognise sign language as an official language and **extend obligations to non-State actors**, which have a large impact on the lives of people with disability.

Concerning the financial implications of implementing this article, **NHRIs** argued that governments can guarantee freedom of expression and access to information by revising and building upon existing regulating standards of communication, telecommunication, media and broadcasting systems. These measures include both the public and private sector and are low cost.

Article 14: Respect for Privacy, the Home and the Family

Discussion of this article had little to do with the rights of PWD *per se*, but rather **contentious international debates surrounding family, marriage and sexuality**. Delegations generally positioned themselves along one of two opposing sides. The **Holy See**, the **Philippines**, **India**, **Saudi Arabia**, **Iran**, **Yemen** and **Libya** proposed a narrow definition of marriage that falls within national legal, cultural or religious definitions of family and marriage. The **EU**, **Canada**, **New Zealand**, **Mexico**, **South Africa**, **Brazil** and **Costa Rica** proposed gender-neutral language and a broader definition of family to include "*family relations*" or "*couple relationships*".

Argentina suggested dividing the article into two parts, one that addresses privacy of home and family and another that addresses discrimination in marriage and family relations. **Costa Rica** supported this proposal. Several delegations stressed the importance of an explicit prohibition of forced sterilisation, including **Kenya**, **New Zealand** and **Mexico**.

People with Disability Australia, the **National Association for Community Legal Centres** and the **Australian Federation of Disability Organisations** supported a broader definition of family and an explicit prohibition of forced sterilisation. The above groups, along with the **WNUSP**, strongly opposed the proposal by the **EU** to insert the word "*solely*" in paragraph 14.2(e), so that a child would not be separated from their families "*solely*" on the basis of disability. Disability should never be a justification for separating children from their family and the insertion of "*solely*" is a loophole that could justify this practice. The **WNUSP** added that it is essential for PWD to have full legal capacity on an equal basis with others in order to challenge deprivations. A dilution of Article 9 would undermine the rights contained in Article 14.

Article 15: Living Independently and Being Included in the Community

States discussed the placement of language on institutionalisation and evaluated new paragraphs on families and progressive realisation. NGOs made forceful interventions on ceasing institutionalisation and provided information on the concept of independent living.

New Zealand argued that the focus of the article should be on community integration and supporting the autonomy, individuality, and dignity of PWD, rather than controlling them. In the proposal submitted, residential support is not listed as an option. **South Africa** emphasised the need to replace the word "*included*" in the title with "*integrated*" because PWD are not "add-on" parts of the communities. The **WNUSP**, II and **NHRIs** supported the **New Zealand** proposal.

Government delegations discussed whether to move, delete or retain the paragraph on **institutionalisation** in its current place. The **EU** and **India** supported adding reference to Article

10 (Liberty and Security of Person) in 15.1(b), which concerns children with disabilities living with their family. **Japan** preferred that the paragraph be moved to Article 10, and **Argentina, Sierra Leone, Canada, the Russian Federation and South Africa** argued that it is redundant and should be deleted. **Thailand** expressed that view that 15.1.(b) should be in any location within the convention where relevant. **People with Disability Australia, the National Association for Community Legal Centres and the Australian Federation of Disability Organisations** emphasised the need for an unequivocal obligation on State and non-State actors to **cease institutionalising** PWD. States should be required to relocate PWD currently living in institutions into communities and provide necessary supports. **II** emphasised that PWD have the opportunity to restore control over their own lives. PWD should choose who supports them and how services are delivered, especially in relation personal care support. Representatives of the **WNUSP** reiterated their right to freedom of choice and expression, and stressed that they must be able to live in communities as themselves and disclose their status and experiences without fear of being declared incompetent. Institutionalisation should not be supported.

The **International Disability Convention Solidarity in Korea** argued to replace the phrase "*living independently*" with "*independent living*" in the article's title. There has been confusion about the phrase because in some countries "*independent living*" is a service model, while in others "*independent living*" means to govern their own lives by their own will and does not always separation from families. **Thailand** noted that "*independent living*" has two separate meanings and supported the general meaning, and not the narrow application of a particular movement.

Morocco, Jordan and Yemen supported adding a new paragraph on support for **families**, while **New Zealand** expressed the opinion that benefits to families and caregivers are a natural consequence of the convention and that there is no need for additional family or caregiver provisions. The **World Union for Progressive Judaism** suggested adding accessibility to information on available support services to families and caregivers.

Japan suggested separating the paragraphs relating to civil and political rights (a, b, and e) that are to be implemented immediately from the paragraphs subject to progressive realisation, depending on financial availability.

Proposed Article 15 (bis): Women with Disabilities

The **Republic of Korea** submitted a draft for a new article with explicit reference to important issues for women with disabilities. According to the **Republic of Korea**, women with disabilities need to be accorded similar attention to that received by children with disabilities in the convention. The discussion among delegates centred around the principle of adding a separate article on the rights of women with disabilities, and not the substantive content of the article itself. An article devoted to women with disabilities received **strong support from African nations and NGOs**.

The **EU, Jordan, Yemen, India, Norway, Serbia and Montenegro, Saudi Arabia and Mexico** were opposed to a separate article on women with disabilities. Many thought that the Preamble or the General Principles was a more appropriate place to reference various groups of PWD. Others cautioned that a separate article could risk restricting the rights of women with disabilities to only those rights listed within the article. Some also cited the danger of establishing a hierarchy of people with disabilities. **Saudi Arabia** expressed the view that the rights of women could be incorporated in other places within the convention, such as the Article 12 (Freedom from Violence and Abuse).

Those who supported including a specific article on the rights of women with disabilities included the **Republic of Korea, South Africa, Namibia, Kenya, Uganda, Mali, Lebanon**, and the **Special Rapporteur on Disability** of the Commission on Social Development. **South Africa and Namibia** called for an article on women with disabilities because they are a highly marginalised group of PWD. **Uganda** emphasised that women with disabilities face discrimination on the basis of both their disability and their gender. The **Special Rapporteur on**

Disability of the Commission on Social Development said an article on women with disabilities is necessary to address the many dimensions of multiple discrimination against women with disabilities. **Sierra Leone** questioned why there is an article on children but not one on women. **Yemen** argued that, as a group, children needed a separate article because they can not meet their needs alone, a situation that differs from that of women. The **WFD** supported the inclusion of a specific article on women with disabilities. Existing human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child, do not adequately cover the rights and needs of women and children with disabilities. Apprehension of including other subgroups is insufficient grounds for not including articles on women and children. The **LSN** supported the comments made by delegations in support of a new article on women with disabilities. From its work in mine-affected countries, the **LSN** is convinced that female amputees face specific barriers and additional discrimination. The **WBU** supported the **Republic of Korea's** proposal, saying that women with disabilities are rarely recognised and are among the poorest of the poor.

Article 16: Children with Disabilities

Much of the discussion among delegates reflected opinions on whether the Convention on the Rights of the Child is adequate to protect and promote the rights of children with disabilities.

The **EU** opposed including a specific article on the rights of children with disabilities, arguing that their rights are already contained in the Convention on the Rights of the Child. An article on children would alter the Convention and would not be a positive change to existing children's rights. **New Zealand** agreed with the **EU**, but stated if an article on children is to be included, it should improve upon the Convention by addressing the extra **vulnerabilities of children** with disabilities, such as rejection and abandonment by families and reduction in opportunities, and emphasise early detection. **India** submitted a draft of Article 16 that included early detection and intervention services, the protection of children with disabilities from sexual abuse, the importance of living in a family environment, the duty of the State to protect orphaned children, and international co-operation. However, **New Zealand** felt that India's proposal would weaken the Convention. **Canada** stressed that an article on children with disabilities should not limit the rights of children with disabilities enumerated on other parts of the convention.

Uganda emphasised that there needs to be an explicit prohibition on the sterilisation of children and young people with disabilities. **Palestine** proposed an additional paragraph on the protection of children with disabilities during armed conflict or foreign occupation, in accordance with international humanitarian law.

Kenya proposed including responsibilities of both State and parents in the provision of services to children with disabilities, subject to resource availability, in paragraphs 16.3 and 16.4. **Canada** suggested including the right of children with disabilities to express their views freely.

DPI expressed concern that the draft article does not deal with important issues for children with disabilities, such as abuse and exploitation, or provide protection for groups at risk, such as refugees and orphans with disabilities. Article 16 needs to be stronger than Article 23 of the Convention on the Rights of the Child, which addresses the rights of children with disabilities.

Save the Children International, speaking on behalf of **II**, **WFD**, **WNUSP**, the **Canadian Association for Community Living** (CACL), the **West African Federation of Disabled Persons**, **WBU**, **People with Disability Australia**, the **Australian Federation of Disability Organisations** and the **National Association for Community Legal Centres**, noted that the article was adult-biased and the entire text lacked a child perspective. The coalition of NGOs was adamant that the insertion of Article 23 of the Convention on the Rights of the Child would not be adequate. Article 23 is not rights-based, and the Convention does not contain proper implementation mechanisms, nor deal with poverty, conflict, disaster nor HIV/AIDS. An

alliance led by **Save the Children International** proposed revision of Article 16 is available from <http://www.savethechildren.org.uk>.

The **WFD** also cautioned against moving components of Article 16 to the preamble because they would not be binding. **NHRIs** recommended including the concepts of nurturing, protecting and empowering families and caregivers, and commented that the draft article was negative in thrust, treating disability as a liability with escape clauses that weaken the rights of children with disabilities, such as "*subject to available resources*". **NHRIs** supported the new paragraph suggested by **Save the Children International** and urged that an additional paragraph related to Article 12 of the Convention on the Rights of the Child on participation also be adopted.

Article 17: Education

The debate sparked several different views on whether the focus on this article should be on **inclusive education** or **special education**. **People with Disability Australia** and the **National Association for Community Legal Centres** rejected some States proposed amendments to dilute States' obligations to ensure an inclusive education to PWD. **II** and the **International Disability Alliance** urged that inclusion should be the norm, as an inclusive education is a basic right. According to these NGOs, specialised education should be provided inclusively within mainstream educational systems. Furthermore, children with disabilities should have opportunities to interact with non-disabled people to develop social skills. As **Save the Children International** expressed, "*inclusive education is essential to both academic and social development*".

Ireland, on behalf of the EU, proposed language that would have States take "*appropriate measures*" to promote alternative forms of education, "*when the general education system does not yet adequately meet the needs of PWD*". **China** agreed that in these circumstances, alternative forms of education must be provided. These alternate forms must adhere to the standards in the general education system and not be a barrier for PWD to participate in general education. **Ireland**, supported by **Thailand** and **Jordan**, also suggested that the article's language allow for choice between general and special education systems. **Brazil** added that general and special education systems are not two mutually exclusive options. **Costa Rica**, supported by **Thailand**, advocated that deaf and deaf blind persons have the right to receive education in their own groups. **Morocco** suggested wording that acknowledges that the "*education of PWD in the general education system should be the rule, and the provision of specialist education services the exception*".

Kenya proposed the deletion of "*progressively*" from the chapeau of 17.1, stating that there is therefore no room for **progressive realisation** in the right to education. **Sierra Leone** agreed that "*children cannot wait for progressive realisation*". The deletion of the concept in the chapeau was also supported by **Thailand** and **Ireland**. Progressive realisation remained an element in **China's** new draft language proposed for Article 17.

Argentina, **Ireland**, the **Russian Federation**, **China**, **New Zealand**, **Bahrain**, **Uganda**, the **Republic of Korea** proposed changing "*children with disabilities*" to "*persons with disabilities*", as some people remain in secondary education beyond the age of 18. **Trinidad and Tobago** believed the reference to children should be retained.

Many States, international organisations and NGOs commented that language on training should be incorporated into the article. The **ILO** proposed language that directed that the skills taught should be relevant to the labour market, as many PWD train for years for jobs which are irrelevant or unavailable. **People with Disability Australia** and the **National Association for Community Legal Centres** supported recommendations concerning school-to-work transitional education and other vocational rehabilitation training. **Costa Rica** called for the inclusion of university education and technical training as well as primary and secondary education. **Serbia and Montenegro** countered that the concept of professional training might be better placed in the article on the "Right to Work". In keeping with the principles of

lifelong learning, **South Africa** urged that the convention provide a range of educational processes across a range of ages.

New Zealand argued that "*individualised education plans*" go beyond the rights granted to other children and are pedagogical tools that go in and out of fashion. They therefore should not be included in this legally binding treaty. **Costa Rica** proposed a paragraph that would require that the issues of disability and human rights be addressed in the curriculum of all educational programmes.

Article 18: Participation in Political and Public Life

There was disagreement among the delegates on using the word "*citizen*" or "*person*" in the article. The **EU** said that paragraph 18 (a) should refer specifically to citizens, as opposed to persons in general, in line with Article 25 of the International Covenant on Civil and Political Rights. **China** agreed that the word "*persons*" should be replaced by "*citizens*" because in most countries only citizens enjoy political rights.

Several countries supported an explicit reference to participate in international organisations, including **Namibia, Kenya, Yemen, and Serbia and Montenegro**.

New Zealand distributed a restructured version of Article 18 that draws from the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women. The draft proposal goes beyond affirming the basic right to vote and to be elected to public office, to address the rights of PWD to take part in all aspects of public life and civil society. The **New Zealand** proposal was supported by **Mexico, Canada, Thailand, Israel, Sierra Leon, Peru, and Serbia and Montenegro**. The **WNUSP** and **NHRIs** also supported **New Zealand's** proposal.

The **EU** suggested that Article 18 be moved to earlier in the convention, before Article 8, to reflect its importance. **Chile** suggested that it should be clear that assisted voting does not necessarily jeopardise the secrecy of ballots.

The **LSN** supported proposals that articulated for the right of PWD to represent their governments at the international level. A disability perspective needs to be included in development planning and decision-making, such as the accessibility of reconstruction projects in post-conflict areas. **People with Disability Australia, NHRIs** and the **Australian Federation of Disability Organisations** emphasised the need for a prohibition against denying voting rights to PWD on the basis of mental or cognitive disabilities.

Article 19: Accessibility

A major issue in discussions on Article 19 was to what extent **public and private** bodies should be required to follow access requirements. **Israel** commented that States should be encouraged to provide State-funded financial incentives and legislation that encourages accessibility in residential places and buildings. Israel added that accessibility should take into account all kinds of disabilities, and proposed that a new paragraph address accessibility through "*auxiliary aids and services*" such as interpreters, and formats for people with visual impairments. The **Philippines** supported Israel's proposals. **Japan** argued that governments can encourage or give advice to private companies, but cannot compel them. The **NHRIs** countered that private entities should not be exempt from access requirements. **Kuwait** proposed adding that "*all buildings that house key services of PWD must be made fully accessible*" and that existing public buildings progressively reduce and eliminate barriers. **People with Disability Australia** complained that the article was too focused on the "*public*" and "*built*" environment; obligations for access should apply to State and non-State actors.

The Ad Hoc Committee also discussed language concerning the use of **universal design**. **Ireland**, on behalf of the EU, proposed to add language to promote the use of universally designed goods, services, equipment and facilities "*in the most independent and natural manner possible, without the need for adaptation or specialised design solutions*".

Kuwait and **India** supported language to promote universal design. **New Zealand** recommended that if universal design appears in the final text more than once it should be defined in an article on definition. The **NHRIs** argued that "*universal design*" should be deleted unless it is defined, because without a definition this concept may be interpreted as endorsing the least access. Other NGOs, including the **RI, DPI, II, WFD, LSN, WBU** and the **EDF** were also hesitant to include the concept of universal design as it may be interpreted too flexibly.

China, Viet Nam, Mexico, Australia, Japan, India, Serbia Montenegro and **People with Disability Australia** all favoured language on progressive application in this article. **NGOs** argued that all new forms of communication and transportation should be accessible from the beginning because it is cost effective, but progressive achievement may be needed for constructs already in place.

The **Republic of Korea**, supported by the **Philippines** and **Chile**, proposed the article include language on making public transportation accessible to PWD. **Uruguay**, commenting that developing countries need technical assistance, suggested that a paragraph be added that would allow individuals with disabilities and institutions which provide services to those individuals to import "*aids, prostheses, technical assistants, specific technology*" without taxes.

Article 20: Personal Mobility

Ireland, on behalf of the EU, and **Jordan** suggested linking personal mobility to Article 19 as both are linked to issues of freedom of movement. **New Zealand** suggested deleting this article entirely because of its redundancy.

NHRIs proposed changing the **title** to "*liberty of movement*", stating that this would emphasise a more rights-based approach, adding that "*personal mobility*" may suggest the old medical model of disability. **RI, DPI, EDF, II, WFD, LSN** and the **WBU** agreed with **NHRIs** that "*liberty of movement*" was a better title.

People with Disability Australia, the **National Association for Community Legal Centres** and the **Australian Federation of Disability Organisations** argued that the convention should encourage **international co-operation** in the creation of international design standards for mobility aides. **Morocco** proposed adding that States should encourage the private sector to invest in research in this field.

Article 21: Right to Health and Rehabilitation

Discussions by States included a proposal to separate Article 21 into two articles, one on the right to health, the other on rehabilitation. It was suggested that the separation of the article into two would help reflect the paradigm shift from the medical model to a social, human rights based model.

Norway argued the article should either explicitly state its focus on medical rehabilitation, or it should be split. One article would concentrate on health and the other on rehabilitation in the broader sense, not just medical rehabilitation. **Mexico** agreed that rehabilitation should have a broad scope, covering aspects including medical health, work and education. **Israel, India, Chile, Guatemala, Kenya, South Africa, Palestine**, the **Russian Federation, Jordan, Uganda, Mexico, Peru, New Zealand, Kuwait** and **Yemen** all supported splitting the article. **Namibia** proposed that a second article on rehabilitation be titled, "*right to community-based rehabilitation (CBR)*", which is different from medical rehabilitation. **Chile** also urged that there should be an obligation to provide CBR. **Yemen** proposed changing a title for the suggested article to "*right to habilitation and rehabilitation*", which includes the concept of habilitation, which is generally applied to people who are born with a disability as compared to rehabilitation which generally applies to people who experience disability later in life.

Because there is no general right to health in international instruments, just the highest attainable standard of health, **Ireland**, on behalf of the EU, suggested that the title of the

article be changed to "*access to healthcare and medical rehabilitation*". The **EU** also proposed that language in this article be limited to issues of medical rehabilitation, and that other kinds of rehabilitation be addressed in other articles.

On other aspects of the article, **New Zealand** supported suggestions of the **Asia Pacific Forum of National Human Rights Institutions** that the new article on health should address removing health service barriers such as requirements for spousal consent, the lack of convenient and affordable transport, and the inequitable affordability of services. New Zealand also proposed that the article ensure equal access to public health programmes such as water safety and sanitation, HIV/AIDS prevention, breast and cervical screening for women. **Canada** proposed adding language that would promote education and training for health and rehabilitation professions to increase their disability-sensitive awareness and respect for rights of PWD.

In regard to prevention, **Ireland**, on behalf of the EU, stated that it did not support references to it, since the convention addresses disability, not its occurrence. **Bahrain** supported adding language to help spread knowledge and awareness of preventative services. **Cameroon** expressed that it wanted to see a new paragraph on the prevention of disabilities, since it is an important aspect of health, especially in developing countries.

Article 22: Right to Work

Discussions on this article included the prevention of discrimination in regard to PWD securing work, job training for PWD, reasonable accommodation, and private sector responsibility.

Israel noted the high levels of unemployment of PWD, and urged that the provisions of the article be as concrete and practical as possible. For example in 22(c), Israel suggested that "*promote*" be replaced with "*pursue active labour market policies with a view to promoting*", as governments need to be proactive to close the wide gaps in employment.

Many participants expressed that some PWD might need special assistance to enable them to enter the workforce, and that **positive measures** would help PWD enjoy the rights they are already entitled to under other conventions. **Chile** proposed adding a new sub-paragraph that would obligate States to protect PWD so that they can be included in the competitive employment market.

PWD find it difficult to be recruited for jobs, even when they are not explicitly being discriminated against. **Viet Nam** suggested the article make explicit mention of incentives to employers that promote the hiring of PWD through preferential policies, tax exemptions, and credit access. **Sierra Leone** pointed out that quotas and affirmative action could be a problematic issue in some States, therefore the term "*incentives*" should be used to cover these without being specific. **New Zealand** and the **ILO** also felt that listing the incentives is too specific. **Brazil** and **Thailand** favoured an enumeration of the mechanisms that encourage employers to hire PWD. **Israel** favoured the idea of allowing States to have the freedom to choose the most appropriate methods, but that references should be listed to avoid future litigation on whether affirmative action is discriminatory.

Sierra Leone and **Bahrain** urged that there should be some reference to on-the-job training. Sierra Leone suggested that the Ad Hoc Committee refer to ILO provisions. **Canada** suggested that a new paragraph be added on providing assistance to PWD in finding, obtaining, maintaining, and returning to employment through vocational and professional programmes. **Costa Rica** also suggested a new paragraph, 22(c)(bis), which would promote access to credit and necessary technical assistance to develop self-employment opportunities for PWD. **Bahrain** suggested a new sub-paragraph that would help encourage the creation of workshops for persons with disabilities to promote their production.

The **ILO**, supported by **Serbia and Montenegro**, stressed a need to discuss alternative forms of employment for people who cannot work in the open labour market. Several **NGOs** supported the ILO suggestion, but said that such forms of employment should not be permanent, but rather transitional, thereby avoiding total segregation. **II** and the **CACL**

strongly opposed sheltered workshops as they keep people excluded and foster notions that people with intellectual disabilities cannot be meaningfully employed.

Japan pointed out that **reasonable accommodation** is a new concept in the human rights context, which needs to be clarified. **Uganda** added that reasonable accommodation includes the promotion and regulation of flexible and alternative work arrangements. The **EU** considered reasonable accommodation an essential element in enabling PWD to work and proposed a revision to capture the idea that reasonable accommodation should be provided by the employer rather than by the State.

The **Republic of Korea**, supported by **Israel**, **Thailand**, as well as **Serbia and Montenegro**, proposed adding in the chapeau of the article that State parties should set a leading example in employment of PWD. The **EU** opposed this suggestion, since it implies that the private sector has no responsibility. **New Zealand** also agreed that the public sector should not be singled out. Thailand suggested adding the private sector. **Kenya** proposed incorporating the informal sector, where a majority of employment occurs in developing countries. Delegations suggested drawing on the experience of the **ILO** and provisions already in existence.

The **EDF** noted the links in this article to Article 7 (Equality and Non-discrimination) and stated that the right to work be enforced through the combination of a comprehensive, strong statements against non-discrimination and positive action measures in private and public, open and alternative settings. It also stated that failure to reasonably accommodate constitutes discrimination. **DPI** added that a lack of understanding about the duty to accommodate might lead employers to refuse to hire qualified PWD.

Article 23: Right to Social Security and Adequate Standard of Living

Part of the debate focused on the connection between the two rights in the title and the weight accorded to each of them in the article. According to **South Africa**, social security is a means to obtaining an adequate standard of living. For **Jordan**, an adequate standard of living must be secured before social security. **Liechtenstein** expressed concern that the article paid more attention to social security than the right to an adequate standard of living. Various organisations, such as **DPI**, pointed out that the two issues are addressed separately in most human rights instruments. **Kenya** proposed change in the title to "*social support and adequate standard of living*". **Jamaica** pointed out that **social security** is usually based on contributions and **social assistance** is not. **Lebanon** proposed using the term "*social securities*", claiming that this would not limit the provisions to the context of any particular organisation or system.

Issues that specifically deal with an **adequate standard of living** include the proposal to include "*access to clean water*" which was in the Working Group's draft text. **Canada**, the **EU** and **Jamaica** argued for its deletion to make the article cohere with Article 11 of the International Covenant on Economic, Social and Cultural Rights. **NHRIs** were in favour of preserving the language on the right to clean water, or placing it in a separate paragraph (**Liechtenstein**) because it is necessary to an adequate standard of living.

New Zealand pointed out the need for States to provide assistance to PWD and their families to meet the extra costs they incur because of disability. **Kenya** and **Morocco** also proposed that **families** be included in the article, since they are integral for ensuring an adequate standard of living for PWD. The **ILO** suggested provisions that would ensure that social security provisions would not create disincentives for PWD to obtain vocational training and employment, also known as the "*benefits trap*" effect.

Namibia pointed out the need to include private entities because both public and private entities have obligations under this article to ensure equitable treatment of PWD. **Thailand** commented that total denial of health insurance coverage to PWD is a large issue in some countries, with some multinational insurance companies discriminating against them.

States also discussed whether State assistance should apply to all PWD, not just those with severe or multiple disabilities. The **WNUSP** made the crucial point that "*severe*" and

"multiple" are terms based on the medical model, making distinctions between PWD on basis of severity. **Kenya, Mexico, Israel, Canada, Palestine, Cuba, NHRIs** and **DPI** also supported deletion of the descriptive terms of degrees and types of disability. **Argentina** proposed just deleting "severe" since it is more difficult to define.

Article 24: Participation in cultural life, recreation, leisure and sport

Many delegations and NGOs stressed the need to take a rights-based approach to these issues, as cultural life, recreation, leisure and sport can be **excellent tools for the integration** of PWD into society. For example, **Costa Rica** expressed support for the article as quality of life is impacted by the ability to participate in cultural life, recreational activities, leisure and sport. The **LSN** added that participation in sport is crucial for the physical fitness, mental well-being and social integration of PWD. **Save the Children International** recognised the importance of play and sports for the socialisation of children, young people and adults with disabilities.

One of the issues dealt with in this article was the provision for **equitable instruction and access to facilities**. The **EU** pointed out that instruction, training, and support are given on a voluntary basis, and therefore can only be encouraged.

Striking a **balance** between **disability-specific sport** and **integrated sport** was a key issue of contention within this article. The **Republic of Korea** noted the importance of promoting sporting activities that tailor to the needs of PWD. **II** in contrast, advocated for integrated sport, stressing the need to move beyond Special Olympics to true inclusion in sport. **New Zealand** expressed concern that the article deals primarily with the competitive nature of sports, and pointed out that other kinds of cultural activities may be pursued at **local, regional, national, and international levels** both competitively or not. **Chile** also proposed to add a section on developing the sports potential of PWD, by promoting their involvement at various levels.

South Africa raised the idea of targeting the **media** in the article, since it plays a huge role in forming the way society perceives disability. It urged that the article encourage all public media to give appropriate and equitable coverage of the achievement of persons with disabilities in sports, recreational and leisure activities.

Yemen and **South Africa** proposed splitting the article into one on cultural and intellectual life, and another on recreation and sport activities. The **LSN** as well as the **Arab Organisation of Disabled People** supported this split, as sport for PWD is not only for recreation, but also for medical and social rehabilitation. **Jordan** favoured keeping the two articles together as they "*put the mind and body together*".

Kenya proposed adding **religion** to the title of the article, changing it to "*participation in cultural life, religion, recreation, leisure, and sport*". The **Holy See** supported the proposal, thereby integrating "*mind, body and soul*" into the article. **Ireland**, on behalf of the EU, stated that the right to religion is already listed in two other human rights covenants, and that new language may actually restrict the rights of PWD. **Uganda, Namibia** and the **Philippines** countered that many places of worship are not accessible to PWD, and there should be language to address this gap.

The inclusion of **intellectual property rights** in the article was also recommended. **Thailand** pointed out that copyrights can lead to discriminatory barriers for PWD in accessing cultural materials. The **WFDB** also commented that it is increasingly difficult for people who are deaf blind to access literature and other materials due to the strengthening of copyright laws.

INTERNATIONAL CO-OPERATION

The Ad Hoc Committee focused on the essential role of international co-operation in the implementation of the convention. With the exception of **Jordan**, there was broad support among the delegations for the creation of an article on the topic. **Mexico** circulated the draft

text, which covered international co-operation between States, between States and international organisations, and among civil society and the private sector.

The delegates noted various forms that international co-operation can take, including: technology, capacity building, exchange of information and expertise, financial assistance, development, best practices, universal design and research. Co-operation should not only be North-South, but also South-South.

The **EU, Australia, Norway, Japan and Canada** – those in a position to provide aid – supported international co-operation in principle, but emphasised that implementation of the convention is a national responsibility and should in no way be conditional on receiving international aid or assistance.

Handicap International, People with Disability Australia, National Association for Community Legal Centres, II, Inter-American Institute on Disability (IID), Forum for the Human Rights of PWD Costa Rica, and the Australian National Federation of Disability Organisations, the WBU, RI, EDF and the ILO emphasised that **current aid programmes often create, rather than eliminate, barriers for PWD**. Development projects frequently build inaccessible infrastructure or create education and poverty reduction programmes that fail to include PWD. **Disability issues must be mainstreamed into all international development programmes** and activities, including those conducted by international organisations, such as the World Bank and the International Monetary Fund (IMF), and NGOs. The article on international co-operation must include a framework to facilitate **disabled peoples' organisations' involvement** in international co-operation activities, including implementation and monitoring. There is a need for developed States to co-operate on the harmonisation of standards for accessibility, the regulation of non-State actors, and the removal of structural barriers for PWD, such as international property and copyright law, telecommunications, insurance and aviation. NGOs voiced strong agreement with the **EU** and others that the obligation to implement the convention lies with national governments and is not contingent on the provision of international aid.

NHRIs suggested that they can play a positive role in international co-operation and requested the recognition of these institutions in the article.

The **LSN** described the role of international co-operation in its work, such as information sharing, co-operative research, training and awareness-raising activities. Without mechanisms for co-operation, there is risk of reinventing the wheel.