

Chair's Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities

December 2003

INTRODUCTION

1. The attached *Draft Elements for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities* is presented to the Working Group by the Chair of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons. The *Draft* is intended as a contribution to the deliberations of the Working Group in its work of elaborating a draft convention to be presented to the Ad Hoc Committee.

2. The *Draft* draws on a number of sources, in particular the contributions of the regional meetings that have considered the possible form and content of a new convention. The *Draft* limits itself to a range of substantive matters, and does not include a draft Preamble, any provisions concerning implementation or monitoring mechanisms, or the formal elements of a convention. It is not intended to be an exhaustive listing of the issues that might need to be covered in a convention.

**CHAIR'S DRAFT ELEMENTS OF A COMPREHENSIVE AND
INTEGRAL INTERNATIONAL CONVENTION ON PROTECTION
AND PROMOTION OF THE RIGHTS AND DIGNITY OF PERSONS
WITH DISABILITIES**

December 2003

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The States Parties to this Convention,

Hereby agree as follows:

PART I

GENERAL

Article 1

Objects of the Convention and underlying principles

1. The States Parties declare that the purpose of this Convention is to ensure that persons with disabilities enjoy the full range of human rights and fundamental freedoms set out or reaffirmed in this Convention in the light of the following principles and irrespective of the origin, nature, degree, cause of a person's disability:

- (a) the principles of autonomy and self-determination of persons with disabilities to lead full and independent lives;
- (b) the principle of full inclusion of persons with disabilities as equal citizens and participants in all aspects of life;
- (c) the principle of diversity and recognition of the right to be different; and
- (d) the principle of equality of women and men, girls and boys.

Article 2

Definitions

1. For the purposes of this Convention:

"Accessibility" means the measure or condition of things and services that can readily be reached or used by people including those with disabilities, which could be achieved, through inclusive and universal design or adaptation and by legal and programmatic means, in order to promote their access to the physical environment, public transportation and information and communication, including information,

communication and assistive technologies, and to societal structures and decision-and policy-making processes

“Associate” includes a family member, helper, carer, or relative, or advocate for a person with a disability

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

"Disability" is the loss or limitation of opportunities to take part in the life of the community on an equal level with others due to physical, social, attitudinal and cultural barriers encountered by persons having physical, sensory, psychological, developmental, learning, neurological or other impairments (including the presence in the body of an organism or agent causing malfunction or disease), which may be permanent, temporary, episodic or transitory in nature

“Discrimination on the ground of disability” includes:

- (1) any distinction, exclusion, restriction on the ground of disability which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field;
- (2) any act, criterion, provision, practice, policy, rule or arrangement which, although not explicitly based on disability—
 - (a) has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of their human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field; and
 - (b) cannot be objectively justified as a reasonable and proportionate means of achieving a legitimate aim;
- (3) a failure to make reasonable accommodation,
- (4) less favourable treatment of an associate of a person with a disability because of that other person’s disability or because of the association,

and a reference to disability includes a suspected, imputed, assumed or possible future disability, perceived disability, a past disability or the effects of a past disability, or the characteristics of a disability.

"Language" includes oral-aural language and sign language.

“Reasonable accommodation” means introduction of necessary and appropriate measures to enable a person with a disability fully to enjoy fundamental rights and freedoms

2. Discrimination on the ground of disability includes discrimination on the ground of multiple disabilities, discrimination on the ground of type or severity of disability, and discrimination on the basis of disability in conjunction with one or more other characteristics, such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, caste, sexuality, disability or other status.

3. Measures taken to ensure that persons with disabilities enjoy on a basis of equality human rights and fundamental freedoms and to participate fully in the life of the community, for example the provision of financial support or of assistive devices or technical aids, do not constitute discrimination but are measures necessary to ensure equality of opportunity

4. Adoption by States Parties of temporary special measures aimed at accelerating the achievement of de facto equality for persons with disabilities shall not be considered discrimination as defined in this Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality or opportunity and treatment have been achieved.

Article 3

Fundamental human rights and freedoms

1. The States Parties to this Convention affirm that all human beings, including persons with disabilities, are born free and equal in dignity and rights and are entitled to the full and equal enjoyment of all human rights and fundamental freedoms. These rights and freedoms include the rights and freedoms set out in the Universal Declaration of Human Rights recognised in the principal United Nations human rights treaties.

2. In interpreting the scope of the rights listed in paragraph 1 for the purposes of this treaty, in no case shall an interpretation of these rights under this Convention be less generous than the interpretation given to those rights under those other instruments.

Article 4

General obligations of States Parties

1. States Parties:
 - (a) condemn inequality and discrimination on the basis of disability in all its forms;
 - (b) undertake to respect, to ensure and to fulfil the rights recognized in the Convention for all individuals within its territory or subject to its jurisdiction; and

2. States Parties agree to eliminate discrimination on the ground of disability and to promote the full enjoyment of all human rights and fundamental freedoms by persons with disabilities and to this end undertake:
 - (a) to adopt legislative, administrative and other measures to give effect to the rights recognized in this Convention, and to amend or repeal any laws and regulations and to abolish customs or practices that are inconsistent with those rights;
 - (b) to embody the principles of equality and non-discrimination on the ground of disability in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of these principles;
 - (c) to refrain from engaging in any act or practice which is inconsistent with the rights recognized in this Convention and to ensure that public authorities and institutions act in conformity with the rights recognized in this Convention; and
 - (d) to take all appropriate measures to eliminate discrimination on the ground of disability by any person, organization or private enterprise.

3. In relation to the rights set forth in Part III of this Convention, States Parties undertake to give immediate effect to the aspects of those rights which are capable of immediate implementation (including, but not limited to obligations of non-discrimination in the enjoyment of those rights) and in relation to other aspects of those rights, to take steps to the maximum of their available resources with a view to achieving progressively the full realization of those rights by all appropriate means, including particularly the adoption of legislative measures.

Article 5

Obligations in relation to remedies

1. Each State Party to this Convention undertakes:
 - (a) To ensure that any person or class of persons whose rights or freedoms recognized in the Convention are violated shall have an effective remedy, whether the violation has been committed by persons or entities acting in an official capacity or by private persons or entities;
 - (b) To ensure that any person claiming such a remedy shall have his or her right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, including as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination; and
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.
2. States Parties recognize that access to effective remedies may require the provision of free legal assistance to persons with disabilities and the modification or flexible application of existing laws and practice regulating matters of procedure and evidence.

Article 6

Equality and non-discrimination

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as disability, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

Article 7

Equality of women and men with disabilities in the enjoyment of rights

States Parties recognize that women and girls with disabilities are subject to multiple discrimination and that focused, gender-specific measures (including protective measures) will be necessary to ensure that women and girls enjoy all human rights and fundamental freedoms on the basis of equality with men and boys.

Article 8

Changing attitudes to disability

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, civil society and the media, with a view to educating the community and combating prejudice, myths and stereotypes about the nature of disability and persons with disabilities.

Article 9

Rights of persons living in rural or remote areas, in small island communities or in scattered populations

States Parties shall take into account the particular problems faced by persons with disabilities living in rural or remote areas, in small island communities or in scattered populations and shall take all appropriate measures to ensure the application of the provisions of this Convention to those persons.

Article 10

Rights of persons with severe or profound disabilities

1. States Parties recognize that persons with severe or profound disabilities are at particular risk of violation of their human rights and fundamental freedoms and need special care and supportive services.
2. States Parties shall take all necessary measures to ensure that persons with such disabilities receive the special care and services they require, and are protected against abuse and neglect.

PART II

Article 11

Right to recognition as a person before the law

1. Everyone shall have the right to recognition everywhere as a person before the law, with full legal capacity. This right shall not be limited or restricted based on disability or impairment.

2. Persons with disabilities who experience difficulty in asserting their rights, understanding information presented to them or articulating or communicating their choices have a right to be provided with advocacy assistance and other reasonable accommodation with the aim of giving effect to the person's own decisions.

Article 12

Right to life

Every person with disability has the inherent right to life and survival. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.

Article 13

Right to be free from torture or cruel, inhuman or degrading treatment or punishment

1. No person with disability shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation or intervention.

2. Everyone has the right not to be subjected to forced or coerced interventions of a medical nature or otherwise, aimed at correcting, improving, or alleviating any actual or perceived impairment.

3. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect persons with disabilities, in particular, women and children with disabilities, from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

Article 14

Right to liberty and security of the person

1. Every person with disability has the right to liberty and security of person. No person shall be detained, interned or confined involuntarily on account of actual or perceived disability.

2. (a) Any person with disability who has been detained or confined shall have the right to challenge the legality and reasonableness of his or detention before an independent and impartial tribunal.

- (b) This right includes the right to seek regular review of the detention or confinement (including the existence of a continuing justification for the detention or confinement):
- (i) where no specific period of detention or confinement has been specified by law or a court, or
 - (ii) where the detention or confinement is based on the health or related status or condition of the person.
3. Every person with disability shall have the right of recognition before the law with full legal capacity until the contrary is proven.
4. Persons with disabilities, regardless of the nature or seriousness of the disability shall be equal before the courts and tribunals and shall enjoy the right to judicial procedure without any discrimination based on disability.
5. Disabled persons who are suspected, accused or convicted of crimes shall have the benefit of all national and international standards of due process, as well as accessibility rights enumerated in this convention and the right to supportive services and rehabilitation while serving a sentence.

Article 15

Freedom of opinion and expression and the right to access to information and communication

1. The freedom of expression of persons with disabilities includes the right to communicate in a language or form of communication which they consider appropriate (including Braille or other communication modes), to have that mode of communication officially recognized, and to receive information and services in alternative communication modes from government, public authorities and other institutions or persons providing essential services.
2. The right to receive information includes the right to provision, in a timely manner and without additional cost, of all information in the public domain in formats that are accessible to all persons with disabilities (in particular those who are blind, partially sighted, and those who have intellectual disability or cognitive or learning impairments).

Article 16

Right to respect for privacy, home, the protection of the family and the right to marry

1. Persons with disabilities have the right to sexuality and to form intimate relationships with others. This right includes the right of all men and women with disabilities who are of marriageable age to marry and to found a family.
2. Persons with disabilities have an equal right to decide freely and responsibly on the number and spacing of their children and to have access to the information, reproductive and family planning education and the means necessary to enable them to exercise this right.
3. Persons with disabilities shall enjoy equal rights with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation.
4. Parents with disabilities (including parents with intellectual and psychiatric disabilities) shall be entitled to ongoing and substantial social support and assistance to care for their children within the family unit. States Parties shall take all legislative and administrative measures necessary to ensure that children are not removed from parents with disability either directly or indirectly on the basis of their disability.

Article 17

Right to live in and be a part of the community

1. Persons with disabilities have the equal right to choose their own living arrangements, which may include establishing their own household, or living with their families, and to the necessary financial and other support in order to effect this choice. This right includes the right not to reside in an institutional facility.
2. States Parties recognize the right of all persons with disability to live in and be a part of the community, and shall take all necessary measures to ensure that:
 - (a) no person with disability is institutionalised;

(b) persons with disabilities have access to a range of in-home, residential, and other community support services, necessary to effectively support community living; and

(c) general community services are available and responsive to the needs of persons with disabilities living in the community.

Article 18

Rights of children with disabilities

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

2. States Parties recognize the right of children with disabilities to early detection, early intervention, special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Parents and families of children with disabilities have the right to appropriate information, referrals and counselling, and information made available in these ways should provide families with a positive view of children with disabilities and their potential and rights to live a full and inclusive life.

Article 19

Right to participate in political and public life

States Parties recognize the political rights of persons with disabilities, without discrimination based on sex, and shall take measures to ensure the full participation in political life of persons with disabilities, especially:

(a) To guarantee the enjoyment of the right of persons with disabilities to elect and be elected, and for this purpose, to include in election mechanisms the use of appropriate, accessible and easy to understand communication, special and necessary instruments and technologies for the various needs of persons with disabilities;

(b) To guarantee the equal right of participation in the activities and administration of political parties, civil organization and public administration; and

(c) To guarantee the participation of persons with disabilities and their organizations in all decision-making processes, in particular those concerning issues relating to persons with disabilities.

Article 20

Right to own and administer property

1. All persons with disabilities, particularly women with disabilities, have the right to own property alone, as well as in association with others.
2. No person with disability shall be arbitrarily deprived of his or her property.
3. Persons with disabilities shall have the equal right to bank loans and other forms of financial credit, to control their own financial affairs, and to run a business. Where a person with intellectual disability is not able to exercise this right, the legal guardian of that person shall be entitled to exercise the right on behalf of, and in the interests of, that person.
4. Persons with disabilities have the right, on the basis of equality with non-disabled persons, and without discrimination on the basis of sex, to inherit property.

PART III

Article 21

Accessibility

1. States Parties recognize the right of persons with disabilities to access the physical environment, public transportation and information and communication, including information, communication and assistive technologies, and shall take progressive measures, including through the development of detailed national standards, to ensure their freedom, independence and full participation in all aspects of life, especially in relation to access to:
 - (a) Public buildings, roads and facilities for public usage;
 - (b) Public transportation facilities and services;
 - (c) Public housing and facilities, or those built or renovated with public funds. Private sectors shall be encouraged to take accessibility into consideration when they build or renovate housing or facilities;

- (d) Public and private sector services, particularly health and education services;
 - (e) Employment and workplaces;
 - (f) Information and communication services including, for example, telecommunications, electronic banking and the mass media;
2. States Parties should encourage the research, development and promotion of new technologies to assist in the promotion of persons with disabilities in all aspects of life.

Article 22

Right to mobility

States Parties to this Convention recognize the right of all persons with disabilities to mobility, and shall take all necessary measures to ensure that:

- (a) persons with disabilities have access to high-quality mobility aids, devices and assistive technologies that will enable mobility with the greatest possible independence;
- (b) mobility aids, devices and assistive technologies are readily available to persons with disabilities at low or no cost through public subsidies and other programs designed to offset the extra costs of disability; and
- (c) the built environment is designed or adapted to facilitate the mobility of persons with disabilities with the greatest possible independence.

Article 23

Right to health and rehabilitation

1. All persons with disabilities have the right to the enjoyment of the highest attainable standards of physical, psycho-social and mental health. This means that health and rehabilitation services and care must be available, accessible, affordable and acceptable to all persons with disabilities. Persons with disabilities shall have access to the same level of health and medical care as other members of society, in addition to any specific services and care that they may require as a result of their disability.

2. Persons with disabilities and their organizations have the right to participate in decisions about the health and rehabilitation services they use. This includes taking a leading role in the formulation of legislation and policy as well as in the planning, delivery and evaluation of health and rehabilitation services.

Article 24

Right to education

1. All persons with disabilities have the right to education. Education shall be directed to the full development of the human potential and the sense of dignity, and shall strengthen respect for human rights and fundamental freedoms.
2. The right to education shall include the right of all children with disabilities to inclusive education in their own community (including access to early childhood intervention and pre-school readiness for inclusion within the general school system), and the right to any required support including accessible curriculum, medium and technologies, learning strategies, physical environment etc. to ensure full participation of students with disabilities in that system.
3. Where the general school system does not yet adequately meet the needs of persons with disabilities, special and alternative forms of learning may be made available. However, these should be aimed at preparing students for education in the general school system and the quality of education provided should reflect the same standards and objectives as that provided in the general schools system.
4. Where there is a need for specific augmentation and alternative communication modes, these should be made available within the general or the special education school.
5. Children with hearing disabilities have the right to receive education through sign language. Each State Party shall take legislative, administrative, political and other measures needed to provide quality education using sign language, by ensuring the employment of deaf teachers and hearing teachers who are fluent in sign language.
6. Persons with disabilities have the right to equal access to tertiary education, vocational training and adult education on the basis of equality with others and have the right to necessary financial or alternative support to ensure effective access.

Article 25

Right to work

Persons with disabilities have the right of access to productive resources and services and the right to work, which includes the right to gain a living by work which he or she freely chooses or accepts. Such right also includes the right of access to the workplace and to reasonable accommodation in all aspects of the recruitment and hiring process, as well as on the job, with a view to promoting equal opportunity and treatment of persons with disabilities as compared to non-disabled workers.

Article 26

Rights to social security and to an adequate standard of living

1. States Parties recognize the right of all persons with disabilities to social security, social insurance, social services and an adequate quality of life.
2. States Parties recognize the right of all persons, including persons with disabilities, to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
3. For persons with disabilities, this right shall include access to necessary services, devices and other assistance for disability-related needs.
4. States Parties recognize the right of members of the families of persons with severe and multiple disabilities living in situations of poverty, to receive assistance from the State to cover disability-related expenses (including respite care), which should not become a disincentive to develop themselves.

Article 27

Right to take part in cultural life, recreation and leisure

1. States Parties recognize the right of all persons with disabilities to take part in cultural life and shall take all necessary measures to ensure that persons with disabilities:
 - (a) have the opportunity to utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community; and
 - (b) enjoy access to literature in a range of accessible formats, including in electronic text, Braille, and on audio tape, and through the captioning of television programs, movies, theatre etc; and
 - (c) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas and libraries and the hospitality industry.
2. States Parties shall take all necessary steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

3. Persons who are deaf shall be entitled to recognition and support of their specific cultural and linguistic identity.
4. States Parties recognize the right of all persons with disabilities to take part in leisure activities, including sporting activities, and shall take all necessary measures to ensure that persons with disabilities:
 - (a) have the equal opportunity to organize and participate in sporting activities and to receive quality instruction and training as is available to other participants;
 - (b) have effective access to sporting venues, as well as to other recreational activities; and
 - (c) have access to services from those involved in the organization of sporting or leisure activities.

Article 28

Right to universal/inclusive design

States Parties to this Convention recognize the right of all persons with disability to universally/inclusively designed goods, services, equipment and facilities, which require the minimum possible adaptation and cost to meet the specific needs of an individual with disability.

PART IV

OTHER STATE OBLIGATIONS

Article 29

National implementation framework

1. States Parties shall establish a framework at the national level to monitor, promote and enforce compliance with this Convention. This should include an independent national institution:

- (a) which operates in accordance with the *Paris Principles (Paris Principles on national institutions for the promotion and protection of human rights, GA Res 48/134 (20 December 1993))*;
- (b) which has been established in consultation with persons with disabilities and organizations representing persons with disabilities; and
- (c) which is structured so as to facilitate the involvement on an ongoing basis of persons with disabilities in the formation of the national institution's policies and processes.

2. In particular, States Parties should ensure that the responsibility for matters relating to the implementation of this Convention is allocated to a specific focal point within government.

3. States Parties shall adopt a procedure which will ensure that all new legislative, policy or program proposals evaluated during their development in order to assess their impact on the position of persons with disabilities.
