

Convention Document Legal Analysis

A legal commentary on the draft convention text produced by the Working Group for the UN Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

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This document is intended to facilitate the legal analysis of the draft convention text produced by the Working Group for the UN Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. The analysis places the draft convention text and footnotes in a column on the left-hand page of the document, and provides a brief commentary on the relevant provision in the right-hand column. Specifically, the commentary provides coverage of:

- (1) references to comparable precedents in existing international treaties or other international legal instruments;
- (2) strengths of the text; and
- (3) possible omissions for consideration by the Ad Hoc Committee

In order to ensure that the document is accessible to those individuals utilizing screen readers, a non-formatted electronic version may be found at <http://www.rightsforall.org>

This document is intended to be a tool to assist those participating in the development of the convention. Its analysis is not exhaustive and the omission of any particular points or issues does not indicate an opinion regarding their value or need for inclusion in the convention.

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DRAFT COMPREHENSIVE AND INTEGRAL INTERNATIONAL CONVENTION ON THE PROTECTION AND PROMOTION OF THE RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES¹

The States Parties to this Convention,

- a) Recalling the principles proclaimed in the Charter of the United Nations which recognise the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,
- b) Recognising that the United Nations have, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,
- c) Reaffirming the universality, indivisibility and interdependence of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,
- d) Reaffirming the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,²
- e) Recognising the importance of the principles and policy guidelines contained in the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities in influencing the promotion, formulation, and evaluation of the policies, plans, programs and actions at the national, regional and international levels to further equalise opportunities for persons with disabilities,
- f) Recognising that discrimination against any person on the basis of disability is a violation of the inherent dignity of the human person,
- g) Recognising the diversity of persons with disabilities,

(Contd.)

PREAMBLE COMMENTS

The preamble is intended in part to explain the relationship between the Convention and prior developments in international law. This Convention focuses on the achievement of full and equal human rights of people with disabilities. In order to more comprehensively describe the fundamental shift in attitudes that are necessary for this Convention to be effective, the Preamble should contain language expressing the shift in the perception of disability from one focusing on the individual impairment, to one focusing on the barriers associated with any form of impairment, which result in deprivation of human rights of people with disabilities. For a thorough example of the exploration of such concepts, the Ad Hoc Committee should reference New Zealand's description of "disablement". (Cf. New Zealand's view on the Convention on the Rights of Disabled People)

Even though the preamble of a treaty is not an operative part of the treaty, the preamble provides a useful historical context and the rationale for introducing a new instrument into the body of international law. The Draft Preamble contains, in many instances, resolution-like language, with words such as "concerned", and the Ad Hoc Committee may wish to consider the appropriateness of such language.

Draft Preamble paragraphs (a) and (b) represent standard language used in human rights conventions (Cf. International Covenant on Political and Civil Rights; Covenant on Economic, Social and Cultural Rights, Convention on Elimination of All forms of Discrimination Against Women, etc.).

Draft Preamble paragraph (c) contains language that has not been introduced in previous submissions of the draft text. The reference in this paragraph is to the Vienna Declaration (1993), paragraph 5: "All human rights are universal, indivisible and interdependent and interrelated."

Draft Preamble (d) is consistent with principal human rights conventions in force. In addition, similar language can be found in the preamble to the Vienna Declaration (1993) and in the preamble to the UN Standard Rules.

Footnote 2 mentions the discussion during the Working Group meeting regarding the inclusion of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in the reference to relevant human rights documents. Taking into consideration that this is one of the core human rights treaties and has entered into force, it is

(Contd.)

PREAMBLE Contd.

h) Concerned that, despite the efforts and actions undertaken by Governments, bodies and relevant organisations, persons with disabilities continue to face barriers in their participation as equal members of society and violations to their human rights in all parts of the world,

i) Emphasising the importance of international cooperation³ to promote the full enjoyment of human rights and fundamental freedoms of persons with disabilities,⁴

j) Emphasising the existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in significant advances in the human, social and economic development of their societies and the eradication of poverty,

k) Recognising the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

l) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programs, especially those directly concerning them,

m) Concerned about the difficult conditions faced by persons with severe or multiple disabilities and of persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,⁵

n) Emphasising the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

o) Mindful of the need to alleviate the negative impact of poverty on the conditions of persons with disabilities,⁶

p) Concerned that situations of armed conflict have especially devastating consequences for the human rights of persons with disabilities

(Contd.)

(PREAMBLE COMMENTS Contd.)

Unclear why this specific treaty would not be mentioned.

Paragraph (e) references the UN Standard Rules. Given that the Standard Rules summarize the message of the UN World Programme of Action, the Ad Hoc Committee may find it appropriate to include reference to the UN World Programme of Action as well.

Draft Preamble paragraph (f) refers to the principle of non-discrimination. The Committee may find it appropriate to discuss the need for this paragraph. Paragraphs (c) and (d) refer to discrimination, thus this separate paragraph would seem redundant, especially given the fact that this is a comprehensive, not only an anti-discrimination Convention.

The operative word in the paragraph (h), “concerned” is an example of the resolution-like language that is present throughout the Draft Preamble. The European Union’s proposal for the Convention contains similar language: “Concerned that despite these various instruments and undertakings persons with disabilities continue to face barriers to the effective enjoyment of human rights and fundamental freedoms”. It would be helpful for the Committee to consider changing this word to “recognizing” for the sake of consistency with other human rights Conventions.

Paragraph (i) is especially important, because it affirms the principle of international cooperation. Footnote 4 considers alternative language, which places an emphasis on developing countries in the context of international cooperation. Even though this language stems from the Convention on the Rights of the Child, it is important to realize the comprehensive nature of international cooperation necessary for the effective implementation of the Convention (ie. not only north to south based cooperation). Thus, reference to global cooperation is sufficient for the purposes of this Convention. (Cf. Vienna Declaration Paragraph 20 and 25)

Paragraph (j) emphasizes the ongoing efforts of people with disabilities and their organizations, as well as linking the promotion of human rights of people with disabilities with other objectives, notably development. The Vienna Declaration contains reference to language of human rights and development. The reference is to past and potential future contributions of persons with disabilities and their organizations to the cause. However, because of language implying future efforts, the paragraph should read “of persons with disabilities,” not “made by.”

(Contd.)

PREAMBLE Contd.

q) Recognising the importance of accessibility to the physical, social and economic environment and to information and communication, including information and communications technologies, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

r) Convinced that a convention dealing specifically with the human rights of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economical, social and cultural spheres with equal opportunities, in both developing and developed countries,

Hereby agree as follows:

PREAMBLE FOOTNOTES:

1 Several members of the Working Group made proposals on alternative structures for the draft Convention, and also its on its title. The Ad Hoc Committee may wish to consider the structure and title of the draft further.

2 Some members of the Working Group considered that there should not be a reference to this Convention on the grounds that it did not have the same status as the other Covenants and Conventions listed. Other members pointed out that the Convention had entered into force and should therefore be listed.

3 Some members of the Working Group considered that there should not be a reference to international cooperation in the Preamble, or that it should be subject to final agreement on whether the issue of international cooperation should be addressed in the Convention, and if so where it should be included.

4 The following alternative formulation was also proposed for consideration: "Recognising the importance of international cooperation for improving the living conditions of persons with disabilities in every country, in particular in the developing countries".

5 See the footnotes to paragraph 1(c) of draft Article 23 on social security and an adequate standard of living.

6 Some members of the Working Group had reservations about the wording of this paragraph.

(PREAMBLE COMMENTS Contd.)

One of the functions of the preamble is to preliminarily identify principles and objectives of the Convention. The language in the paragraph (k) fulfills that function by referring to the "individual autonomy" and "independence" of people with disabilities. The Committee may also wish to consider including language of self-determination/autonomy expressed in the Vienna Declaration.

Paragraph (l) contains language referring to the importance of participation of people with disabilities in decision-making processes. It is noteworthy that this is a weaker formulation than that used in the Vienna Declaration, which uses the word "essential."

Footnote 5, which cites to Footnotes 101, 102, and 103, expresses the debate in the Working Group regarding the importance and feasibility of including this language, as some members were concerned with the difficulties of defining terms included. However, this language is important as it recognizes the existence of aggravated discrimination facing these disadvantaged groups in society. Again, the Committee may wish to reconsider usage of the word "concerned," as it is more resolution, rather than Convention language.

The Draft paragraph (n) invokes a gender perspective. This is a very important reference to women and is consistent with the resolutions of the Committee on Human Rights. In addition to gender, the Committee may also consider including reference to ethnic and racial minorities.

Draft paragraph (o) refers to poverty. This is also very important language, though it may be adequately covered in paragraph (j), as it appears repetitive.

Draft paragraph (q) reflects the major target areas for equal participation set forth in the UN Standard Rules, Rules 5-12. The Committee may consider using a stronger phrase than "important," because the concept of accessibility is one of the fundamental principles of the paradigmatic shift in the perception of disability in society.

Draft paragraph (r) fulfills one of the functions of the preamble, which is to reaffirm the need for the Convention, and in this case, it emphasizes the comprehensive nature of the Convention. (Cf. Convention on the Rights of the Child; Convention on the Protection of the Rights of Migrant Workers and Members of Their Families).

**Draft Article 1
PURPOSE**

The purpose⁷ of this Convention shall be to ensure the full, effective and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.⁸

DRAFT ARTICLE 1 FOOTNOTES:

7 Some members of the Working Group suggested that international cooperation should be included as one of the objectives of the Convention. Other members suggested that international cooperation was a means to achieve the objectives of the Convention, and not an objective itself. See also paragraph i) in the preamble.

8 An alternative formulation that the Ad Hoc Committee may wish to consider is: "The purpose of this Convention shall be to protect and promote the rights of persons with disabilities."

DRAFT ARTICLE 1 COMMENTS

Although the objectives of international human rights conventions are usually extrapolated from general obligations provisions found in the initial articles, prevailing international law practice in treaty drafting is to more explicitly articulate treaty objectives in a separate article. (Cf. Framework Convention on Climate Change, Article 2) By including a separate provision outlining the purpose of the convention, the Working Group text is consistent with this practice.

Footnote 7 raises the question considered in the Working Group namely whether international cooperation might be appropriate to include as an objective. Reference in this regard may be made to the inclusion of international cooperation as an objective in a number of other conventions. (Cf. Convention to Combat Desertification, Article 2) Alternatively, international cooperation may be included as a general principle of the convention. (Cf. Framework Convention on Tobacco Control, Article 4(3))

Footnote 8 provides an alternative – and substantially weaker – statement that represents a departure from formulations set forth in other international human rights conventions. (Cf. International Convention on the Elimination of All Forms of Racial Discrimination, Article 2; Convention on the Rights of the Child, Article 2)

**Draft Article 2
GENERAL PRINCIPLES**

The fundamental principles of this Convention shall be:

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

DRAFT ARTICLE 2 COMMENTS

The identification of specific principles to aid in the interpretation and implementation of a treaty is a well-recognized practice in international law. In the context of international human rights law for example, the Committee on the Rights of the Child identified four main principles (non-discrimination, best interests of the child, survival and development, and participation) through its analysis of the text of the Convention on the Rights of the Child. (Cf. Committee on the Rights of the Child, General Comment No. 5, CRC/GC/2003/5), drawing on Articles 2, 3, 6 and 12 respectively) The approach of the Working Group here is to expressly articulate the principles towards the beginning of the draft treaty text, after the section on objectives/purpose. This is an approach commonly utilized in international environmental treaties which leaves no ambiguity as to the principles to be applied. (Cf. Convention to Combat Desertification, Article 3; Framework Convention on Climate Change, Article 3)

The principles selected for inclusion in the draft text by the Working Group, are found in numerous existing human rights instruments, including the six core international human rights conventions, the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, and the ILO Convention concerning Vocational Rehabilitation and Employment (of Disabled Persons). It was also suggested that international cooperation be included as a general principle for the Convention. (Cf. Summary of the discussions held regarding the issue of international cooperation to be considered by the Ad Hoc Committee, ANNEX II A/AC.265/WG_)

The Ad Hoc Committee may wish to consider referring to "inherent dignity" in paragraph (a) instead of "dignity" (Cf. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, preambles), and in paragraph (c) the use of the term "participation," which is broader than "participants." (Cf. Convention on the Rights of the Child, Article 23(1); and UN Standard Rules para. 14) The Committee may also wish to consider whether reference to "citizens" in (c) may be too limiting, as it could have the effect of excluding coverage of people with disabilities who are resident non-citizens.

In contemplating Article 2, the Ad Hoc Committee may find it helpful to revisit the contribution of the Danish Human Rights Institute to the Second Session of the Ad Hoc Committee, which provides a "Discussion Paper on Founding Principles of a Convention on Rights of Persons with Disabilities." (A/AC.265/2003/CRP/9, available at: http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp9.htm)

**Draft Article 3
DEFINITIONS⁹**

“Accessibility”¹⁰

“Communication” includes oral-aural communication, communication using sign language, tactile communication, Braille, large print, audio, accessible multimedia, human reader and other augmentative or alternative modes of communication, including accessible information and communication technology.¹¹

“Disability”¹²

“Persons with disability”¹³

“Discrimination on the ground of disability”¹⁴

“Language” includes oral-aural language and sign language.¹⁵

“Reasonable accommodation”¹⁶

“Universal Design”, and “Inclusive design”.¹⁷

DRAFT ARTICLE 3 FOOTNOTES:

9 In the consideration of this article, the Ad Hoc Committee may wish to take into account the different proposals that were presented to the Committee and the Working Group regarding the specific definitions of the concepts herein contained.

10 The need for a definition of “accessibility” and the content of any definition will depend on the outcome of the discussion in the Ad Hoc Committee on draft Article 19 on accessibility.

11 The Ad Hoc Committee may wish to consider the need for a definition of “communication” (separate from draft Article 13 on Freedom of Expression and Opinion) and, if so, the content of that definition.

(Contd.)

DRAFT ARTICLE 3 COMMENTS

Many human rights treaties precede the substantive obligations with a definitions or “use of terms” section, clarifying how terms are to be used and aiding in the interpretation and implementation of the treaty. The Ad Hoc Committee may wish to delay consideration of the definitions section until all the treaty provisions have been finalized, at which point it will be easier to identify which terms are consistently used and should be addressed in the definitions section, and which terms should be defined in the specific article(s) in which they are used.

Footnote 10 indicates that further discussion of Draft Article 19 (Accessibility) will be needed to develop an appropriate definition. The Ad Hoc Committee may wish to take into consideration the definition of “access” used in the Bangkok Draft, as well as the coverage of Accessibility in Article 16 of that draft text.

Footnote 11 references the discussion of whether a definition of “communication” is needed. A number of Working Group members felt that defining “communication” may be too difficult, and may not in fact be necessary for the purposes of the treaty.

Footnotes 12 and 13 reference the discussions regarding the definition of “disability” and “persons with disability.” Within the context of human rights instruments that reference specific populations, it is not uncommon to include a definition of the group(s) of people to whom the treaty applies. (Cf. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO No. 169, Article 1) However, Working Group members questioned the need to include a definition of disability given the complexity of the issue. Others felt the inclusion of a definition essential, particularly for use in countries that do not include a definition of disability in their national legislation, or that utilize a definition that is not broad and inclusive of all people with disabilities. If the Ad Hoc Committee decides to include a definition of disability, it may find helpful the articulation of disability and disablement as a process included in the New Zealand proposal. (Cf. New Zealand’s View of a Convention on the Rights of Disabled People, paras. 7-9 and 23-24) In addressing the inclusion of a definition of “persons with disability,” the Ad Hoc Committee may wish to take into consideration the difficulties associated with defining personhood, and concerns that having to satisfy requirements of being a “person” before the law could act as an undue limitation on the scope of the application of the treaty.

(Contd.)

DRAFT ARTICLE 3 FOOTNOTES Contd:

12 Many members of the Working Group emphasised that a convention should protect the rights of all persons with disabilities (i.e. all different types of disabilities) and suggested that the term “disability” should be defined broadly. Some members were of the view that no definition of ‘disability’ should be included in the convention, given the complexity of disability and the risk of limiting the ambit of the convention. Other delegations pointed to existing definitions used in the international context including the World Health Organisation’s International Classification of Function, Disability and Health. There was general agreement that if a definition is included, it should be one that reflects the social model of disability, rather than the medical model.

13 Some members of the Working Group considered that it was more important to include this definition than the definition of “disability”. Other members were of the view that a definition of this term was not necessary.

14 This definition is addressed in draft Article 7 on Equality and Non-Discrimination. The Ad Hoc Committee may wish to consider the best placement for this definition.

15 Some delegations were of the view that the separate draft articles of the Convention specify that language includes sign language, and questioned the need for this definition in the present article. Others expressed the view that the definition was needed.

16 The definition of this concept was not discussed beyond the definition that is included in draft Article 7, although the Working Group considered necessary to include it.

17 These definitions were not discussed but the Working Group considered that they would be useful.

(DRAFT ARTICLE 3 COMMENTS Contd.)

Footnote 14 questions the placement of the definition of discrimination. Human rights conventions that are based on a non-discrimination framework frequently place the definition of discrimination in a definitions section towards the beginning of the treaty. (Cf. International Convention on the Elimination of All Forms of Racial Discrimination, Article 1(1); Convention on the Elimination of All Forms of Discrimination Against Women, Article 1). The structure of the Working Group text utilizes a broader and more comprehensive structure (similar to that found in the Convention on the Rights of the Child), and therefore it may be more appropriate to address the definition of discrimination in Article 7 discussing Equality and Non-Discrimination, or (if Article 7 is split) in a separate article on discrimination.

Footnote 15 addresses the inclusion of a definition of “language.” Whether or not the Ad Hoc Committee chooses to include such a definition, the coverage of linguistic rights will be an important aspect of the treaty, particularly for people with disabilities who utilize sign language and other methods of communication. (Cf. International Covenant on Civil and Political Rights, Article 27; Convention concerning Indigenous and Tribal Peoples in Independent Countries, ILO No. 169, Articles 28 & 30; and Convention on the Rights of the Child, Article 30)

Footnote 16 notes that the concept of “reasonable accommodation” is addressed further, if not completely, in Article 7, and the Ad Hoc Committee may wish to consider whether the definition of “reasonable accommodation” should be placed in the article(s) specifically addressing it.

**Draft Article 4
GENERAL OBLIGATIONS^{18, 19}**

1. States Parties undertake to ensure the full realisation of all human rights and fundamental freedoms for all individuals within their jurisdiction²⁰ without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
- (a) to adopt legislative, administrative and other measures to give effect to this Convention, and to amend, repeal or nullify any laws and regulations and to discourage customs or practices that are inconsistent with this convention;
 - (b) to embody the rights of equality and non-discrimination on the ground of disability in their national constitutions or other appropriate legislation, if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realisation of these rights;
 - (c) to mainstream disability issues into all economic and social development policies and programmes;
 - (d) to refrain from engaging in any act or practice that is inconsistent with this convention and to ensure that public authorities and institutions act in conformity with this Convention;
 - (e) to take all appropriate measures to eliminate discrimination on the ground of disability by any person, organisation or private enterprise;
 - (f) to promote²¹ the development, availability and use of universally designed goods, services, equipment and facilities. Such goods, services, equipment and facilities should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities.²²

(Contd.)

DRAFT ARTICLE 4 COMMENTS

By including a provision expressly obliging states to give effect to the rights contained in the convention, the Working Group text is reflective of the principle that implementation of international human rights is essentially a domestic issue. In addition, Draft Article 4 also includes the important prohibition against discrimination in giving effect to the rights.

Footnote 18 highlights the concern of some Working Group members over the inclusion of a paragraph on remedies because the draft text includes coverage of civil and political rights as well as economic, social and cultural rights. Although the International Covenant on Economic, Social and Cultural Rights does not include a specific provision on remedies, the Committee on Economic, Social and Cultural Rights has stated that the provision of judicial remedies is “among the measures which might be considered appropriate, in addition to legislation,” and that “the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies.” (Cf. Committee on Economic, Social and Cultural Rights, General Comment 3, para. 5) Therefore, the absence of an explicit provision on remedies in the International Covenant on Economic, Social and Cultural Rights does not preclude the Ad Hoc Committee from including such a provision in this convention, and the exclusion of such a provision re. civil and political rights would depart from human rights law. (Cf. International Covenant on Civil and Political Rights, Article 2(3))

Footnote 19 questions how the progressive realization of economic, social and cultural rights should be addressed in the treaty. As Footnote 19 highlights, the Convention on the Rights of the Child (Article 4) provides language that may be helpful, as it clearly indicates which rights in the Convention would be subject to progressive realization. It should also be noted that Article 4 of that convention also references the utility of international cooperation in implementing rights.

Footnote 20 raises the question of whether the phrase “within their jurisdiction” may be too broad and inclusive? The Ad Hoc Committee may wish to consider the alternative phrasing “within its territory and subject to its jurisdiction.” (Cf. International Covenant on Civil and Political Rights, Article 2(1))

Draft Article 4(1)(a) addresses the types of actions to be undertaken by states to “give effect to this Convention” as well as those that should be changed or discouraged because they are “inconsistent with this (Contd.)

DRAFT ARTICLE 4 Contd:

2. In the development and implementation of policies and legislation to implement this convention, States Parties shall do so in close consultation with, and include the active involvement of, persons with disabilities and their representative organisations.

DRAFT ARTICLE 4 FOOTNOTES:

18 Both the Bangkok draft and the Chair's draft included in this section a paragraph on remedies. Some members of the Working Group noted that while the Covenant on Civil and Political Rights includes such a provision, the Covenant on Economic, Social and Cultural rights does not. It may be difficult, therefore, to include such an article in a convention that elaborates the rights contained in both Covenants. The Ad Hoc Committee may wish to consider this issue further.

19 The issue of progressive realisation of economic, social and cultural rights was raised by several delegations during the Working Group's discussion. The Working Group noted that, consistent with existing international human rights law, the concept would apply to some of the rights in the Convention (the economic, social and cultural rights), but not to others (the civil and political rights). The Ad Hoc Committee will need to consider how best to incorporate this issue into the Convention, and may wish to note the precedent set in the Convention on the Rights of the Child. The debate was raised in other articles also.

20 The phrase "within their jurisdiction" will need closer examination by the Ad Hoc Committee. It is taken from Article 2 of the Convention on the Rights of the Child. It may be too inclusive and imply, for example, that rights that are not guaranteed for non-citizens could be extended to non-citizens with disabilities. Article 1(2) of the Convention on the Elimination of all Forms of Racial Discrimination may offer an alternative approach, but that may be too exclusive and imply that non-citizens with disabilities do not enjoy any of the protections of this Convention.

21 The Ad Hoc Committee may wish to consider whether a term that places stronger obligations on States Parties should replace "promote".

22 The Ad Hoc Committee may wish to consider whether the term "universal design" or its near synonym "inclusive design" should be used here and throughout the Convention. The Ad Hoc Committee may also wish to consider whether this paragraph should remain as part of draft Article 4, be incorporated into draft Article 19, or be a separate article in its own right.

(DRAFT ARTICLE 4 COMMENTS Contd.)

convention." In order to avoid ambiguity, or an overly limiting interpretation that could discourage flexibility in implementation of the convention, the Ad Hoc Committee might consider the alternative phrasing "inconsistent with the object and purpose of this convention." (Cf. Vienna Convention on the Law of Treaties, Article 18) This alternative phrasing may also be usefully incorporated in Draft Article 4(1)(d), which references acts or practices "inconsistent with this convention."

Draft Article 4(1)(c) addresses the mainstreaming of "disability issues." Reference may be made to the UN Standard Rules usage of the term "disability aspects," which is a broader and more inclusive formulation. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 14)

Draft Article 4(1)(e) is consistent with international human rights law in its coverage of private actors. (Cf. Convention on the Elimination of All Forms of Discrimination Against Women, Article 2(e); Convention on the Rights of the Child, Article 3(1)) Such coverage is particularly important given increasing privatization in the provision of goods and services once provided by public entities.

Draft Article 4(1)(f) addresses important issues of accessibility that, as indicated in Footnote 22, may perhaps be better elaborated in Draft Article 19 (Accessibility).

Draft Article 4(2) requires development of implementation measures "in close consultation with, and include the active involvement of, persons with disabilities and their representative organizations." This important concept could be further developed through incorporation of the principle of "partnership with disabled people," (Cf. New Zealand's View of a Convention on the Rights of Disabled People, para. 28) as well as measures to ensure that people with disabilities understand their rights under the convention and are able to participate in this partnership process. (Cf. Convention on the Rights of the Child, Article 42)

The Ad Hoc Committee may also wish to consider the suggestion made in the Working Group that Draft Article 4 include a paragraph addressing national-level monitoring of the implementation of the convention. Such a provision would reinforce the principle that domestic implementation is a State obligation.

<p style="text-align: center;">Draft Article 5 PROMOTION OF POSITIVE ATTITUDES TO PERSONS WITH DISABILITIES</p>	<p style="text-align: center;">DRAFT ARTICLE 5 COMMENTS</p>
<p>1. States Parties undertake to adopt immediate and effective measures to:</p> <ul style="list-style-type: none"> (a) Raise awareness throughout society regarding disability and persons with disabilities; (b) Combat stereotypes and prejudices about persons with disabilities; (c) Promote an image of persons with disabilities as capable and contributing members of society sharing the same rights and freedoms as all others and in a manner consistent with the overall purpose of this Convention. <p>2. These measures shall include, among others:</p> <ul style="list-style-type: none"> (a) initiating and maintaining an effective public awareness campaign designed to nurture receptiveness to the rights of persons with disabilities; (b) promoting awareness, including in all children from an early age and at all levels of the education system, to foster an attitude of respect for the rights of persons with disabilities; (c) encouraging all organs of the media to project an image of persons with disabilities consistent with the purpose of this Convention; (d) working in partnership with persons with disabilities and their representative organisations in all measures taken to give effect to the obligations contained in this article. 	<p>This article includes important concepts related to awareness-raising, in recognition of the fact that the process of stereotyping fuels both the development and application of discriminatory practices. This article may have greater impact if addressed later in the treaty, for example in a section addressing supporting measures. (Cf. International Convention to Combat Desertification, Article 19) In addition, the Ad Hoc Committee may wish to re-examine the title of this article in light of concerns (raised by delegates to the Americas regional consultative conference - Quito, Ecuador, 9-11 April, 2003) about the use of the word “positive.” In some instances, “positive” portrayals of people with disabilities may not be accurate, and may inadvertently contribute to societal stereotypes. An alternative title could be “Stereotyping of Groups,” or “Awareness-Raising Measures.”</p> <p>Draft Article 5(1)(c) provides an alternative formulation for “positive,” and is reflective of the UN Standard Rules provisions on awareness-raising, emphasising the need for awareness of people with disabilities as capable and contributing members of society. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, para. 4 and Rule 1)</p> <p>Draft Article 5(2)(a) promotes public awareness campaigns “designed to nurture receptiveness to the rights of persons with disabilities.” Rather than “receptiveness,” the Ad Hoc Committee may wish to consider the use of the more positive word “respect.”</p> <p>Draft Article 5(2)(b) also relates to awareness-raising, but it encompasses specific issues related to educational settings, curricula, and teacher training. It therefore seems appropriate to keep this as a separate sub-provision.</p> <p>Draft Article 5(2)(c) refers to “encouraging” the media. Given the influential role of the media in most societies, “promoting” may be the more appropriate verb.</p> <p>Draft Article 5(2)(d) echoes Draft Article 4(2) in its focus on partnership with persons with disabilities and their representative organizations with regard to implementation of the article. In further elaborating this concept the Ad Hoc Committee may find useful the discussion of the “role of organizations of persons with disabilities” in the UN Standard Rules. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rules 1 and 18(3))</p>

**Draft Article 6
STATISTICS AND DATA COLLECTION²³**

In order to formulate and implement appropriate policies to protect and promote the rights of persons with disabilities, States Parties should encourage the collection, analysis, and codification of statistics and information on disabilities and on the effective enjoyment of human rights by persons with disabilities. The process of collecting and maintaining this information should:

- (a) respect the right to privacy, the dignity and the rights of persons with disabilities, and the information collected from persons with disabilities should be on a voluntary basis;
- (b) be kept only in a statistical format without identifying individuals and should be kept secure to prevent unauthorised access or misuse of information;
- (c) ensure that the design and implementation of data collection is done in partnership with persons with disabilities, their representative organisations and all other relevant stakeholders;
- (d) be disaggregated according to the purpose of the collection of information and should include age, sex and type of disability;
- (e) include detailed information on their access to public services, rehabilitation programs, education, housing and employment;
- (f) adhere to established ethics regarding respect for anonymity and confidentiality in the collection of statistics and data.

DRAFT ARTICLE 6 FOOTNOTES:

²³ There were differing views within the Working Group regarding the inclusion of this draft Article. Some delegations strongly supported the inclusion of an article on statistics and data collection in the text of the convention for several reasons. Data collection is recommended by Rule 13 of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities. Its inclusion could allow States to respond more effectively to the needs of the persons with disabilities and to have an accurate assessment of the situation of the persons concerned so as to implement programs for their benefit. General Assembly Resolution A/58/132, in paragraphs 9 and 10, also deals with the issue of data and statistics. In this draft Article, the respect for the right to privacy is fundamental.

(Contd.)

DRAFT ARTICLE 6 COMMENTS

There is much support for data collection as an implementation measure in the UN Standard Rules. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 13) In addition, the Committee on the Rights of the Child has emphasized the need for statistical information as a means of effective implementation and monitoring. (Cf. Committee on the Rights of the Child, Reporting Guidelines to States Parties, para. 7) Inclusion in the treaty of provisions on statistics and data collection would therefore be in keeping with such recommendations. Also, given that many states will likely engage in statistics and data collection as part of the development of national legislation and programs implementing the convention, the inclusion of this article is important as a means of addressing concerns about methods used in the collection, analysis and intended use of data and statistics, particularly as regards issues of privacy.

The Ad Hoc Committee may also wish to consider the establishment of a technical body that could assist in formulating guidelines related to statistics and data collection. Where particular expertise is required to assess information relating to the implementation of a treaty, it is not uncommon for a technical body to be established by a treaty, typically consisting of individuals with particularized expertise in the topic in question. (Cf. Framework Convention on Climate Change, Article 9; Convention to Combat Desertification, Article 24)

As regards the sub-paragraphs of Draft Article 6, it may be useful to re-order the paragraphs so that those addressing issues of privacy (sub-paragraphs (a), (b) and (f)) are grouped together, or perhaps combined in order to avoid repetition and redundancies.

Draft Article 6(c) emphasizes the important need to include people with disabilities and their representative organizations in the design and implementation of data collection. Given that people with disabilities are the specific group addressed by this convention, it may be inappropriate to also reference in this paragraph "all other relevant stakeholders," as the convention is not intended to elaborate rights for those individuals.

DRAFT ARTICLE 6 FOOTNOTES Contd.:

23 contd. Other delegations opposed the inclusion of an article on statistics and data collection in the convention, for several reasons. They expressed a concern for the respect of the right to privacy and the risk of misusing the information, and considered that such an article does not belong in a human rights treaty. They considered that statistics are not useful as a policy tool, and that resources spent in data collection should be used instead in programs for persons with disabilities. There should be a mainstreaming of surveys and not just surveys for persons with disabilities.

Other delegations suggested that the draft article should be re-titled. One suggestion was "Collection and Protection of Statistics and Data". It was clearly considered that any data collected on disabilities must not infringe on the human rights of persons with disabilities.

**Draft Article 7
EQUALITY AND NON-DISCRIMINATION**

DRAFT ARTICLE 7 COMMENTS

1. States Parties recognise that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. States Parties shall prohibit any discrimination on the basis of disability, and guarantee to all persons with disabilities equal and effective protection against discrimination. States Parties shall also prohibit any discrimination and guarantee to all persons with disabilities equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, source or type of disability, age, or any other status.
2. (a) Discrimination shall mean any distinction, exclusion or restriction which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by persons with disabilities, on an equal footing, of all human rights and fundamental freedoms.

(b) Discrimination shall include all forms of discrimination, including direct, indirect²⁴ and systemic, and shall also include discrimination based on an actual or perceived²⁵ disability.
3. Discrimination does not include a provision, criterion or practice that is objectively and demonstrably justified by the State Party by a legitimate aim and the means of achieving that aim are reasonable and necessary.²⁶
4. In order to secure the right to equality for persons with disabilities, states parties undertake to take all appropriate steps, including by legislation, to provide reasonable accommodation,²⁷ defined as necessary and appropriate modification and adjustments to guarantee to persons with disabilities the enjoyment or exercise on an equal footing of all human rights and fundamental freedoms, unless such measures would impose a disproportionate burden.

(Contd.)

Equality and non-discrimination are not only core principles of this convention, they are fundamental principles relating to the protection of human rights. Given the need for the convention to clearly articulate these rights and avoid ambiguity, it may be more appropriate to elaborate them in separate articles, as has been done in other contexts. (Cf. International Covenant on Civil and Political Rights, Articles 2 & 26; Convention on the Elimination of All Forms of Discrimination Against Women, Articles 1, 2 & 15)

The articulation of what constitutes discrimination, provided in Draft Article 7(2)(a), is consistent with formulations in other treaties. (Cf. Convention on the Elimination of All Forms of Racial Discrimination, Article 1(1); and Convention on the Elimination of All Forms of Discrimination Against Women, Article 1) In describing prohibited forms of discrimination in Draft Article 7(2)(a), it may be helpful to expand the concept of “actual or perceived disability” to include, for example, “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.” (Cf. Bangkok Draft, Article 1 definition of discrimination) With regard to Footnote 24 and whether “indirect” discrimination should be specifically referenced, it is worth noting that the concept of indirect discrimination is expressly referenced in some domestic anti-discrimination legislation. (Cf. Australian Disability Discrimination Act, 1992, Part 1 (6); Canadian Human Rights Act, Part 1(7); and Irish Employment Equality Act, Part IV, S.31)

Footnote 26 references the provision in Draft Article 7(3), and notes that such a provision has never before been included in a core international human rights convention. In its General Comment on Article 26 of the ICCPR, the Human Rights Committee stated that it “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.” (Cf. Human Rights Committee, General Comment No. 23 (Article 26), 1989, para. 13) Although similar, the standard articulated by the Human Rights Committee differs from that included in Draft Article 7(3), because the Committee included the proviso that the differentiation must aim to achieve a purpose “legitimate under the Covenant.” There is no such restrictive language in Draft Article 7(3) and thus it is unclear what standard would be used to determine whether the State’s discrimination fulfilled a legitimate aim. The inclusion of such a standard is of critical importance, as is the qualifier that the means of achieving the aim are reasonable, necessary, and consistent (Contd.)

DRAFT ARTICLE 7 Contd:

5. Special measures²⁸ aimed at accelerating de facto equality of persons with disabilities shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; those measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.²⁹

DRAFT ARTICLE 7 FOOTNOTES:

24 Some members of the Working Group considered that the Convention should have a specific reference to both direct and indirect discrimination. Other members considered that the distinction between the two forms of discrimination was not sufficiently clear. They considered that both a reference to “all forms of discrimination” in paragraph 1, and the reference to the “effect” of discrimination in paragraph 2(a), would cover the concept of indirect discrimination.

25 The Ad Hoc Committee may wish to consider the scope of this term, and whether it should apply to the individual’s perception of themselves, or society’s perception of them.

26 This paragraph has not appeared in any of core international human rights treaties, although the concept has been developed in the jurisprudence of the treaty bodies. The Human Rights Committee has included it, for example, in its general comment on Article 26 of the Covenant on Civil and Political Rights. The Working Group discussed three options for the consideration of the Ad Hoc Committee: 1) The paragraph should not appear in the text at all; 2) the paragraph should be included only as an exception to the specific prohibition on indirect discrimination, and 3) the paragraph should apply to all forms of discrimination. In addition to those options, some members proposed adding the following phrase to the end of the paragraph: “...and consistent with international human rights law;”

27 The Ad Hoc Committee may wish to consider the following points when considering the term ‘reasonable accommodation’:

The Working Group considered that there was a need for a concept such as ‘reasonable accommodation’ in the Convention in order to secure compliance with the principle of non-discrimination.

(Contd.)

(DRAFT ARTICLE 7 COMMENTS Contd.)

with international human rights law. Both requirements could be addressed with language such as, “ ... by a legitimate aim consistent with international human rights law and the means of achieving that aim are reasonable and necessary and consistent with international human rights law.” One example of a permissible provision by a State Party in this regard might be the use of qualifications tests, e.g. to drive a car. (For an example of this in domestic legislation, Cf. Mexican Federal Act for the Prevention and Elimination of Discrimination, Article 5(II).)

Draft Article 7(4) addresses the provision of “reasonable accommodation,” and the understanding of that concept as expressed by members of the Working Group is accurately set forth in Footnote 27. In determining whether to specify that a denial of reasonable accommodation constitutes discrimination, the Ad Hoc Committee may wish to consider the conclusion of the Committee on Economic, Social and Cultural Rights that “For the purposes of the Covenant, ‘disability-based discrimination’ may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.” (Cf. Committee on Economic, Social and Cultural Rights, General Comment 5, “Persons with Disabilities”)

Draft Article 7(5) addresses “special measures,” the use of which is widely supported as a means to “diminish or eliminate conditions which cause or help to perpetuate discrimination.” (Cf. Human Rights Committee, General Comment No. 23 (Article 26), 1989, para. 10) As highlighted in Footnote 28, the Ad Hoc Committee may wish to consider the use of an alternative term, because in the disability context, “special” has sometimes had a derogatory meaning. An alternative term could be “positive action.” (Cf. “Prevention of Discrimination: The concept and practice of affirmative action,” Final report submitted by Mr. Marc Bossuyt, Special Rapporteur, in accordance with Sub-Commission resolution 1998/5, E/CN.4/Sub.2/2002/21, para. 5) On the issue of whether the treaty should specify that such measures be limited in time (Footnote 29), it should be noted that in the opinion of the Human Rights Committee, “as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant,” which implies that temporal restrictions need not be placed on the use of positive measures if the conditions warrant the continued use of such measures. (Cf. Human Rights Committee, General Comment No. 23 (Article 26), 1989, para. 10)

DRAFT ARTICLE 7 FOOTNOTES Contd:

27 Contd:

There was widespread agreement in the Working Group on the need to keep the notion both general and flexible in order to ensure that it could be readily adapted to different sectors (e.g., employment, education, etc.) and in order to respect the diversity of legal traditions.

There was also general agreement that the process of determining what amounted to a 'reasonable accommodation' should be both individualised (in the sense that it should consciously address the individual's specific need for accommodation) and interactive as between the individual and the relevant entity concerned. It was understood that an entity should not be allowed to compel an individual to accept any particular 'reasonable accommodation'. It was also felt, however, that in situations where a range of 'reasonable accommodations' is available – each of which is, by definition, reasonable - that an individual did not have the right to choose the one that he or she preferred.

There was general agreement that the availability of state funding should limit the use of 'disproportionate burden' as a reason by employers and service providers not to provide reasonable accommodation.

Some members of the Working Group supported the proposition that a failure to 'reasonably accommodate' should in itself constitute discrimination, some of whom highlighted General Comment 5 of the Committee on Economic, Social and Cultural Rights as supporting this view.

Other members of the Working Group considered that the Convention should not dictate the manner by which the concept of 'reasonable accommodation' should be achieved or framed under relevant domestic legislation. Specifically, they took the view that it was inappropriate for an international legal instrument designed primarily to engage State responsibility to frame a failure to 'reasonably accommodate' on the part of private entities as a violation of the non-discrimination principle.

28 The term "special measures" is used in other international human rights treaties. The Ad Hoc Committee may wish to discuss the appropriateness of using the term in the disability context, and whether alternative terms could be used.

(Contd.)

DRAFT ARTICLE 7 FOOTNOTES Contd:

29 The Ad Hoc Committee may wish to discuss whether special measures in the disability context should be limited in time or more permanent.

**Draft Article 8
RIGHT TO LIFE³⁰**

States Parties reaffirm the inherent right to life of all persons with disabilities, and shall take all necessary measures to ensure its effective enjoyment by them.³¹

DRAFT ARTICLE 8 FOOTNOTES:

30 There were different views expressed within the Working Group as to whether the Convention should include an article on the right to life, and if so, its content.

31 In the context of the discussion on this draft Article, some members of the Working Group suggested that the Convention should contain a separate draft article on the protection of the rights of persons with disabilities in armed conflict, similar to the approach taken in Article 38(4) of the Convention on the Rights of the Child. It was also suggested that such an article could deal more broadly with the protection of the rights of groups at particular risk.

DRAFT ARTICLE 8 COMMENTS

The right to life is a fundamental principle of human rights law from which no derogation is permitted. (Cf. International Covenant on Civil and Political Rights, Articles 4(2) and 6) The Committee on the Rights of the Child has designated Article 6, expressing the right to life (and using an alternative formulation that the Ad Hoc Committee may wish to consider), as a fundamental guiding principle of the convention. Based on the foregoing, the formulation as drafted is similarly fundamental and must be reflected in the convention.

The use of the word “reaffirm” is more typically found in non-binding declaration language. It may be more appropriate to use the term “recognize” (Cf. Convention on the Rights of the Child, Article 6(1)), or “shall respect.”

Footnote 31 raises the issue of people with disabilities in armed conflict. In relation to groups at risk, the reaffirmation of the right to life in a specialized convention is commonplace, and provisions in those conventions may provide useful models for the consideration of the Ad Hoc Committee. (Cf. Convention on the Rights of the Child, Article 38(4); Geneva Convention Relative to the Treatment of Prisoners of War, Article 3(1)(a))

**Draft Article 9
EQUAL RECOGNITION AS A PERSON BEFORE THE LAW**

States Parties shall:

- (a) recognise persons with disabilities as individuals with rights before the law equal to all other persons;
- (b) accept that persons with disabilities have full legal capacity on an equal basis as others,³² including in financial matters;
- (c) ensure that where assistance is necessary to exercise that legal capacity:
 - (i) the assistance is proportional to the degree of assistance required by the person concerned and tailored to their circumstances, and does not interfere with the legal capacity, rights and freedoms of the person;
 - (ii) relevant decisions are taken only in accordance with a procedure established by law and with the application of relevant legal safeguards;³³
- (d) ensure that persons with disabilities who experience difficulty in asserting their rights, in understanding information, and in communicating, have access to assistance to understand information presented to them and to express their decisions, choices and preferences, as well as to enter into binding agreements or contracts, to sign documents, and act as witnesses;³⁴
- (e) take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs, and to have equal access to bank loans, mortgage and other forms of financial credit;
- (f) ensure that persons with disabilities are not arbitrarily deprived of their property.

DRAFT ARTICLE 9 FOOTNOTES:

32 The intent of this paragraph is to acknowledge that children are not generally accepted as having full legal capacity and that neither would, therefore, children with disabilities. In terms of legal capacity, persons with disabilities should be treated without discrimination on the basis of disability. (Contd.)

DRAFT ARTICLE 9 COMMENTS

It has been stated that without the right to recognition as a person before the law, “the individual could be degraded to a mere legal object, where he or she would no longer be a person in the legal sense and thus be deprived of all other rights, including the right to life. ... Recognition of legal personality is thus a necessary ... prerequisite to all other rights of the individual.” (Cf. “UN Covenant on Civil and Political Rights: CCPR Commentary,” Manfred Nowak, p. 282) Draft Article 9 is therefore a critical component of the Working Group draft text.

Draft Article 9 recognizes people with disabilities as persons before the law, though the phrasing in the chapeau differs somewhat from that used in the Covenant on Civil and Political Rights. (Cf. International Covenant on Civil and Political Rights, Article 16) Draft Article 9(b) also confirms that people with disabilities possess legal capacity on an equal basis with others.

Footnote 33 confirms that where assistance is necessary to exercise legal capacity, the underlying assumption is that full legal capacity always remains. However, this assumption is not made explicit in the draft text. Draft Article 9(c) also does not adequately elaborate the procedural safeguards necessary to determine when and how assistance should be provided, although it notes in (c)(ii) that “relevant legal safeguards” must be applied. It is therefore unclear, for example, who determines when assistance is provided; the manner in which that assistance is provided; and what avenues for review and appeal the disabled person has. As also referenced in Footnote 33, it is important to elaborate the legal safeguards applicable in situations where the disabled person cannot exercise their legal capacity. Although the MI Principles do not reflect current thinking about disability within the context of the social model, they do outline some procedural safeguards that the Ad Hoc Committee may wish to review in this regard. Specifically, the procedures outlined in Principle 1(6) provide a helpful guideline – not to deprive a person of legal capacity (as is done in Principle 1(6)) but in situations where the person is unable to exercise their legal capacity. (Cf. Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 1(6))

Draft Article 9 provides examples of contexts in which the legal capacity of people with disabilities must be respected on an equal basis with others, e.g. financial matters, property ownership and disposition. The Ad Hoc Committee may wish to consider whether Draft Article 9 should be kept (Contd.)

DRAFT ARTICLE 9 FOOTNOTES Contd:

33 Paragraph (c) allows for the provision of assistance to a disabled person to exercise their legal capacity, and is based on the assumption of full legal capacity, even if the person needs assistance in exercising that capacity. It is intended that subparagraph (c)(ii) apply only in exceptional circumstances, for which legal safeguards must be provided. The Ad Hoc Committee may wish to consider whether the paragraph is sufficiently clear, and also how best to protect persons with disabilities who cannot exercise their legal capacity. A separate paragraph may be required for this purpose. Some members of the Working Group proposed that where others are exercising legal capacity for a person with disabilities, those decisions should not interfere with the rights and freedoms of the person concerned.

34 The first part of paragraph 4 has more general application than the equal recognition of persons with disabilities as persons before the law and the Ad Hoc Committee may wish to consider its most appropriate placement in the Convention.

(DRAFT ARTICLE 9 COMMENTS Contd.)

more general, with such matters being more fully addressed in a separate article(s). Alternatively, Draft Article 9(b),(d),(e) and (f) could be expanded to include non-exhaustive lists of other relevant areas.

**Draft Article 10
LIBERTY AND SECURITY OF THE PERSON**

1. States Parties shall ensure that persons with disabilities:
 - (a) enjoy the right to liberty and security of the person, without discrimination based on disability;
 - (b) are not deprived of their liberty³⁵ unlawfully³⁶ or arbitrarily, and that any deprivation of liberty shall be in conformity with the law, and in no case shall be based on disability.³⁷

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty, they are:
 - (a) treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs they have because of their disabilities;
 - (b) provided with adequate information in accessible formats as to the reasons for their deprivation of liberty;
 - (c) provided with prompt access to legal and other appropriate assistance to;
 - (i) challenge the lawfulness of the deprivation of their liberty before a court or other competent, independent and impartial authority (in which case, they shall be provided with a prompt decision on any such action);
 - (ii) seek regular review of the deprivation of their liberty;
 - (d) provided with compensation in the case of unlawful deprivation of liberty, or deprivation of liberty based on disability, contrary to this Convention.

(Contd.)

DRAFT ARTICLE 10 COMMENTS

Draft Article 10 is of particular significance, given the heightened exposure to deprivation of liberty (particularly in the context of institutionalization) faced by many people with disabilities. As drafted, Draft Article 10 does not adequately address the various contexts in which deprivation of liberty can occur for many people with disabilities (e.g. criminal context, civil commitment context), which will be important to highlight if (as Footnote 35 indicates) Draft Article 10 is to be interpreted with broad application.

Draft Article 10 also does not adequately set forth the procedural safeguards and standards of review to be utilized. For instance, Draft Article 10(2)(a) assumes there will be occasions on which people with disabilities are deprived of their liberty, and sets forth requirements to be observed in respect of such deprivation. Notably, the protections as drafted do not provide the level of specificity that one would expect, especially given existing procedural safeguards in other relevant international instruments. Draft Article 10(2)(a) importantly requires that people with disabilities deprived of their liberty are to be “treated with humanity” but does not provide any further elaboration on what it means to be treated with humanity. Although the MI Principles do not reflect current thinking about disability within the context of the social model, they do detail what it means to, for example, treat someone who is institutionalized with humanity. (Cf. Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 13)

Draft Article 10(2)(c) references the right to “prompt access to legal and other appropriate assistance,” but it does not explicitly grant a right to counsel, nor does it indicate who makes the determination of whether the assistance is “appropriate” or how that determination should be made. Draft Article 10(2)(c)(i) provides the right to “challenge the lawfulness of the deprivation of liberty,” but it does not provide a right of appeal from any decisions in that regard. On a related matter, as noted in Footnote 36, it is also unclear whether civil commitment is prohibited. If civil commitment (a procedure frequently utilized to deprive people with disabilities of their liberty) is permitted, it will be important to set forth the applicable procedural safeguards and standards of review. In this regard, the Ad Hoc Committee may wish to consider the increasing “criminalization” of due process standards in the civil context, and reference procedural safeguards traditionally utilized in the criminal context. (Cf. International Covenant on Civil and Political Rights, Article 9)

DRAFT ARTICLE 10 FOOTNOTES:

35 The jurisprudence of the Human Rights Committee (see, for example, General Comment number 8) notes that States interpret deprivation of liberty too narrowly, so that it applies only to the criminal justice system. The right to liberty and security of persons, however, applies to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness or intellectual disability, vagrancy, drug addiction, educational purposes, or immigration control. The Ad Hoc Committee may wish to consider: 1) whether civil and criminal cases should be dealt with separately; 2) whether the text needs further elaboration on civil cases of deprivation of liberty; and 3) whether, for criminal cases, the clauses in this text dealing with procedural matters need strengthening (see also Article 9 of the International Covenant on Civil and Political Rights).

36 The Ad Hoc Committee may wish to discuss whether the wording of paragraph 2 does or does not prohibit civil commitment, and whether it should.

37 The Ad Hoc Committee may wish to consider adding a provision that obliges states to reform laws and procedures that perpetuate the arrest and detention of persons with disabilities on the basis of disability.

**Draft Article 11
FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT**

1. States Parties shall take all effective legislative, administrative, judicial, educational or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment.
2. In particular, States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned, and shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment.³⁸

DRAFT ARTICLE 11 FOOTNOTES:

38 Members of the Working Group had differing opinions on whether forced intervention and forced institutionalisation should be dealt with under “Freedom from Torture”, or under “Freedom from Violence and Abuse”, or under both. Some members also considered that forced medical intervention and forced institutionalisation should be permitted in accordance with appropriate legal procedures and safeguards.

DRAFT ARTICLE 11 COMMENTS

Although medical experimentation has previously been addressed in the context of prohibitions against torture, cruel, inhuman or degrading treatment or punishment (Cf. International Covenant on Civil and Political Rights, Article 7), it is unusual for forced medical treatment and institutionalization to be addressed in the same context, as is done in Draft Article 11(2). In order to better elaborate protections and legal safeguards against forced treatment and institutionalization, it may be better to address these issues in a separate article, as well as to ensure that legal safeguards in related articles (such as Draft Article 10) are comprehensively addressed.

Footnote 38 indicates the desire by some members of the Working Group to permit forced treatment and forced institutionalization – a position not favored by most disability advocates. If this approach is considered by the Ad Hoc Committee it will be particularly important to address what legal safeguards to employ in such situations.

**Draft Article 12
FREEDOM FROM VIOLENCE AND ABUSE**

1. States Parties recognise that persons with disabilities are at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse. States Parties shall, therefore, take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.
2. Such measures should prohibit, and protect persons with disabilities from, forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment, and abduction.
3. States Parties shall also take all appropriate measures to prevent violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, by ensuring, inter alia, support for persons with disabilities and their families, including the provision of information.
4. States Parties shall ensure that all facilities and programmes, both public and private, where persons with disabilities are placed together, separate from others, are effectively monitored to prevent the occurrence of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.
5. Where persons with disabilities are the victim of any form of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, States Parties shall take all appropriate measures³⁹ to promote their physical and psychological recovery and social reintegration.
6. States Parties shall ensure the identification, reporting, referral, investigation, treatment and follow-up of instances of violence and abuse, and the provision of protection services and, as appropriate, judicial involvement.

(Contd.)

DRAFT ARTICLE 12 COMMENTS

The inclusion of an article explicitly addressing situations of violence and abuse is in keeping with the approach of the UN Standard Rules, as well as other treaties. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 9, para. 4; Convention on the Elimination of All Forms of Discrimination Against Women, Article 6; Convention on the Rights of the Child, Articles 34 – 39)

Although Draft Article 12(1) references “both within and outside the home,” it may be necessary to more explicitly specify the need for States to protect against abuse committed by private individuals and entities.

Draft Article 12(3) discusses the need for States Parties to take measures to prevent violence and abuse, but it does not fully elaborate the kinds of measures to be undertaken. For example, the provision states the need for provision of information to families and people with disabilities, but it does not reference the specific need to educate people with disabilities and their families about how to avoid abuse, recognize abuse and report incidents of abuse. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 9, para. 4) In addition, it would be important to reference the need to train those working with people with disabilities to identify and prevent abuse. It is also important to emphasize the need for any information on such matters to be available in accessible formats, issues that could also be addressed in Draft Article 19 (Accessibility).

Draft Article 12(4) addresses the need for monitoring of both public and private facilities and programs, but it does not discuss how such monitoring should be conducted. For example, the Ad Hoc Committee may wish to incorporate requirements that the monitoring be conducted by independent authorities, and for the reports of such bodies to be made available to the public.

Draft Article 12(5) elaborates actions to be taken by the State with regard to victims of violence and abuse. In order to ensure that such actions do not contravene the wishes, autonomy of decision-making and dignity of such people, it would be useful to include language such as “such recovery and reintegration shall take place in an environment which fosters the health, self-respect, dignity and autonomy of the person.” (Cf. Based in part on the Convention on the Rights of the Child, Article 39) It is also important to consider the coverage of this article with regards to people who were not previously disabled, but became disabled as a result of violence or abuse.

DRAFT ARTICLE 12 FOOTNOTES:

39 Some Working Group members suggested that this paragraph should include an explicit provision of legal remedies.

(DRAFT ARTICLE 12 COMMENTS Contd.)

Footnote 39 asks whether remedies should also be referenced in Article 12(6). Given that references are made in Article 10(2)(d) to the need for compensation for those unlawfully deprived of their liberty, the inclusion of a reference to remedies would seem important in Article 12 as well.

**Draft Article 13
FREEDOM OF EXPRESSION AND OPINION, AND ACCESS TO
INFORMATION**

States parties shall take appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion through Braille, sign language,⁴⁰ and other modes of communication⁴¹ of their choice, and to seek, receive and impart information, on an equal footing with others, including by:

- (a) providing public information to persons with disabilities, on request, in a timely manner and without additional cost, in accessible formats⁴² and technologies of their choice, taking into account different kinds of disability;
- (b) accepting the use of alternative modes of communication by persons with disabilities in official interactions;
- (c) educating persons with disabilities to use alternative and augmentative communication modes;
- (d) undertaking and promoting the research, development and production of new technologies, including information and communication technologies, and assistive technologies, suitable for persons with disabilities;
- (e) promoting other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;⁴³
- (f) encouraging⁴⁴ private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities;
- (g) encouraging the mass media to make their services accessible to persons with disabilities.

DRAFT ARTICLE 13 FOOTNOTES:

40 Some members of the Working Group consider that this draft Article should include a reference to sign language as the natural language of deaf people in their access to information, communication, services, participation and education.

(Contd.)

DRAFT ARTICLE 13 COMMENTS

Draft Article 13 seems to draw in part, if not completely, upon the articulation of these concepts in treaties such as the International Covenant on Civil and Political Rights (Article 19) and the Convention on the Rights of the Child (Articles 13 and 17). Although Draft Article 13 addresses many of the issues relevant to enjoyment of these rights by people with disabilities, the structure of the article is such that issues of expression of, and access to, information are sometimes mixed, making the article somewhat confusing.

The emphasis on accessibility in this article is particularly important, given the difficulties faced by many people with disabilities in obtaining information. However, it is unclear how provisions such as Draft Article 13(a) fit with principles of reasonable accommodation and universal design. The Ad Hoc Committee may also wish to consider how best to balance the need for specificity in examples of forms of assistance, with the need to ensure that references are relevant across cultures and remain relevant over time in light of changing technologies.

The concepts elaborated in Draft Article 13 draw heavily from the UN Standard Rules on the Equalization of Opportunities for Disabled Persons, in particular Rule 5 (b). As noted in Footnote 44, the Ad Hoc Committee may also wish to consider whether it is sufficient for States to “encourage” private entities and the mass media in paragraphs (f) and (g). Given the influential role of the media, and the pervasiveness of private entities that provide goods and services to the general public, it may be necessary to adopt stronger language to ensure that States adopt measures with regard to these entities.

DRAFT ARTICLE 13 FOOTNOTES Contd:

41 The Ad Hoc Committee may wish to consider the most appropriate terms to use in this draft Article. “Mode of communication”, “format” (used in paragraph (a)), and “alternative and augmentative communication modes” (used in paragraph (c)) have related, but not identical meanings.

42 The Ad Hoc Committee may wish to consider whether it should include mention of specific formats in this paragraph, such as plain language or easy-to-read formats.

43 The Ad Hoc Committee may wish to consider expanding this sub-paragraph to cover the provision and training of live assistance and intermediaries, such as Braille and caption transcribers, note-takers, sign language and tactile communication interpreters, and readers.

44 The Ad Hoc Committee may wish to consider whether ‘encourage’ is the best term to use in paragraphs (f) and (g).

Draft Article 14
RESPECT FOR PRIVACY, THE HOME AND THE FAMILY

DRAFT ARTICLE 14 COMMENTS

1. Persons with disabilities, including those living in institutions, shall not be subjected to arbitrary or unlawful interference with their privacy, and shall have the right to the protection of the law against such interference. States Parties to this Convention shall take effective measures to protect the privacy of the home, family, correspondence⁴⁵ and medical records of persons with disabilities and their choice to take decisions on personal matters.

2. States Parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage and family relations,⁴⁶ and in particular shall ensure:
 - (a) that persons with disabilities are not denied the equal opportunity to experience their sexuality, have sexual and other intimate relationships, and experience parenthood;
 - (b) the right of all men and women with disabilities who are of marriageable age to marry on the basis of free and full consent of the intending spouses, and to found a family;
 - (c) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children⁴⁷ on an equal basis with other persons⁴⁸ and to have access to information, reproductive and family planning education, and the means necessary to enable them to exercise these rights;
 - (d) the rights of persons with disabilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. For the purpose of guaranteeing these rights, States Parties shall render appropriate assistance to disabled parents in the performance of their child-rearing responsibilities;⁴⁹

Although Draft Article 14, addresses issues of privacy, paragraph 1 largely reiterates the provisions found in Article 17 of the International Covenant on Civil and Political Rights, without tailoring these rights to the specific situation of people with disabilities. For instance, policies that permit staff in institutions to enter rooms at any time without warning may not be per se unlawful, but nevertheless constitute an interference with the right to privacy. The Ad Hoc Committee may therefore wish to expand upon the provisions related to privacy and interference with family.

Draft Article 14(e) addresses the separation of a child from his/her parents. Although paragraph (e) references the “best interests of the child” standard (Cf. Convention on the Rights of the Child, Article 3(1)), no due process protections are outlined regarding who would implement this standard and how. It should also be noted that although there is an express prohibition on the removal of a child “on the basis either directly or indirectly” of the parents’ disability, there is no express provision prohibiting the removal of a child from their parents on the basis of the child’s disability.

Footnote 50 references the discussion about whether “solely” should be used in place of “either directly or indirectly.” In this regard the Ad Hoc Committee may wish to take into consideration the historic and often systemic bias of many societies against people with disabilities as parents. If the word “solely” is substituted, the provision may not offer sufficient protection against more subtle forms of discrimination against parents with disabilities.

Draft Article 14(f) relates to awareness-raising measures, but seems to employ a lower standard than expressed earlier in the Working Group text. The Ad Hoc Committee may wish to consider whether paragraph (f) should also require States Parties to “undertake to adopt immediate and effective measures,” as per Draft Article 5(1).

(Contd)

DRAFT ARTICLE 14 Contd:

- (e) that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. The child shall not however be separated from parents with disabilities on the basis either directly or indirectly of their disability,⁵⁰
- (f) the promotion of awareness and the provision of information aimed at changing negative perceptions and social prejudices towards sexuality, marriage and parenthood of persons with disabilities.

DRAFT ARTICLE 14 FOOTNOTES:

45 The Ad Hoc Committee may wish to consider whether the word “correspondence” should be replaced with the broader term “communications”.

46 The Ad Hoc Committee may wish to consider whether the phrase “marriage and family relations” might be too limiting.

47 Members of the Working Group agreed that a prohibition on the sterilisation of persons with disabilities was implicit in the right to decide on the number and spacing of their children, but some members considered that this issue was of such importance that the Ad Hoc Committee should consider making the prohibition explicit.

48 The understanding of the Working Group is that this draft Article does not deal with the national policies of States Parties on the size of families but simply stipulates that persons with disabilities should not be treated differently from the general population in this respect. The Ad Hoc Committee may therefore wish to consider whether the phrase “on an equal basis with other persons” is necessary in this paragraph.

49 The Ad Hoc Committee may wish to consider the wording of the second sentence of this sub-paragraph in the light of concerns expressed by some delegations that States Parties might find it difficult to guarantee the resources to “render appropriate assistance”.

(Contd.)

DRAFT ARTICLE 14 FOOTNOTES Contd:

50 The Ad Hoc Committee may wish to consider other formulations for the second sentence of this sub-paragraph, including the deletion of the words “either directly or indirectly” or their replacement by the word “solely”, or the substitution of a positive formulation for the sentence, such as: “States Parties shall render appropriate assistance to parents with disabilities to enable their children to live with them”.

Draft Article 15
LIVING INDEPENDENTLY⁵¹ AND BEING INCLUDED IN THE COMMUNITY

1. States Parties to this Convention shall take effective and appropriate measures to enable persons with disabilities to live independently and be fully included in the community, including by ensuring that:
- (a) persons with disabilities have the equal opportunity to choose their place of residence and living arrangements;
 - (b) persons with disabilities are not obliged to live in an institution or in a particular living arrangement;⁵²
 - (c) that persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance, necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;⁵³
 - (d) community services for the general population are available on an equal basis to persons with disabilities and are responsive to their needs;
 - (e) persons with disabilities have access to information about available support services.

DRAFT ARTICLE 15 FOOTNOTES:

51 Some members of the Working Group expressed the concern that the words “living independently” in the title and chapeau of this draft Article does not reflect the cultural norm in many countries, and that the words might suggest that persons with disabilities should be separated from their families. The Ad Hoc Committee may wish to consider an alternative formulation.

52 Some members of the Working Group, while accepting the principle, thought that States Parties would find it impossible to guarantee this obligation without exception. Other members considered that the sub-paragraph was redundant, as the issue was covered in sub-paragraph 1(a).

53 Some members of the Working Group considered that it would be difficult for States Parties to ensure the availability of the services described in sub-paragraphs 1(c) and (d), and in particular the undertaking in paragraph 1(c) to provide personal assistance

DRAFT ARTICLE 15 COMMENTS

It has been stated that, the “right to independence or an independent life embodies one (very important) aspect of the principle of autonomy. It underlines the right to live a life outside of institutions, where barriers for full social inclusion are removed and the necessary technical aids and personal assistance are provided.” (Cf. “Discussion Paper on Founding Principles of a Convention on Rights of Persons with Disabilities,” Danish Institute for Human Rights, A/AC.265/2003/CRP/9, available at: http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp9.htm) Thus, the concepts of living independently and being included in the community are related concepts of great importance for inclusion in a human rights treaty for people with disabilities.

Footnote 51 references the confusion by some Working Group members over the meaning of the term “living independently.” The Ad Hoc Committee may wish to explicitly define the term as used in this article or, as the footnote suggests, consider alternative terms, so that it is clear that the fundamental concepts encompassed are choice and autonomy, not separation from families.

Footnote 52 highlights the objections of some members of the Working Group to paragraph (b). Should this paragraph be removed (an option unlikely to be supported by most disability activists), it will be of critical importance for the Ad Hoc Committee to thoroughly review due process and other legal protections throughout the draft treaty text, in order to ensure the rights of those subject to institutionalization by their States Parties.

Footnote 53 expresses the concern of some Working Group members about the ability of some States Parties to provide the support services referenced in paragraphs (c) and (d). The concerns of these States Parties could be alleviated through the understanding that these provisions could be subject to progressive realization.

**Draft Article 16
CHILDREN WITH DISABILITIES⁵⁴**

1. States Parties undertake to ensure that each child with a disability within their jurisdiction shall enjoy, without discrimination of any kind on the basis of disability, the same rights and fundamental freedoms as other children.
2. States Parties recognise that children with disabilities should enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and autonomy, and facilitate the child's active participation in the community.
3. States Parties recognise the right of children with disabilities to inclusive care, which shall include:
 - (a) early provision of appropriate and comprehensive services;
 - (b) the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child;
4. Recognising the needs of children with disabilities, assistance extended in accordance with paragraph 3 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure that a child with a disability has effective access to and receives education, training, health care services, comprehensive [re]habilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development;

(Contd.)

DRAFT ARTICLE 16 COMMENTS

This Article is a duplication of Article 23 of the Convention on the Rights of the Child. However, Article 23 is the weakest provision of the Convention on the Rights of the Child, as it includes language "shall" as compared to the more forceful "should". Draft Article 16 of this Convention, even though it does specify rights of children, does not adequately deal with the issues that are particular to children with disabilities as a sub-group of people with disabilities, such as abuse or exploitation. For example, the Ad Hoc Committee may consider emphasizing groups at risk within this group, i.e., refugees, orphans, etc. Children with disabilities are mentioned only in two other Articles of the Convention. (Article 17-Education and 21-Rehabilitation) Thus the Committee should consider including more specificity in Draft Article 16, in order to make it stronger than Article 23 of the Convention on the Rights of the Child, and more adequately tailored toward issues and barriers facing specifically children with disabilities. For a helpful reference on formulation of an article dealing solely with children with disabilities, see Rights into Action's contribution to the Working Group. This document is available at: <http://www.un.org/esa/socdev/enable/rights/wgcontrib-riaction.htm>

Footnote 54 explains that duplication exists between this Article and Article 23 of the Convention on the Rights of the Child, which deals with Children with Disabilities. Therefore, the Committee should consider whether reference to children with disabilities should be included in every article, or if it should be dealt with exclusively within this provision. If the latter approach is adopted, then as mentioned above, the Article needs to further elaborate the issues relevant to children with disabilities.

The draft language of paragraph (5) refers to the right of participation of children with disabilities. A helpful reference in this regard would be Article 12 of the Convention on the Rights of the Child, which addresses children's right to participation.

DRAFT ARTICLE 16 Contd:

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

DRAFT ARTICLE 16 FOOTNOTES:

54 Paragraphs 2, 3 and 4 of this draft Article are based on Article 23 of the Convention on the Rights of the Child. That Article is a specific elaboration of disability issues in a Convention on children that does not otherwise deal with disabilities. Draft Article 16 of this text, however, is a specific elaboration of children's issues in a convention where the rest of the text does deal with disabilities. Duplicating Article 23 in this context, therefore, may not adequately deal with the issues faced by children with disabilities. The Ad Hoc Committee may wish to revisit this draft Article so that it instead covers issues that affect children with disabilities, but which have not been dealt with elsewhere in the Convention. Examples could include the vulnerability of children with disabilities to sexual abuse and exploitation, of refugee children with disabilities, and of orphan children with disabilities.

**Draft Article 17
EDUCATION⁵⁵**

DRAFT ARTICLE 17 COMMENTS

1. States Parties recognise the right of all persons with disabilities to education. With a view to achieving this right progressively and on the basis of equal opportunity, the education of children⁵⁶ with disabilities shall be directed to:⁵⁷
 - (a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - (b) enabling all persons with disabilities to participate effectively in a free society;
 - (c) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (d) take into account the best interests of the child, in particular by individualising education plans;
2. In realising this right, States Parties shall ensure:
 - (a) that all persons with disabilities can choose inclusive and accessible education in their own community (including access to early childhood and pre-school education);⁵⁸
 - (b) the provision of required support, including the specialised training of teachers,⁵⁹ school counsellors and psychologists, an accessible curriculum, accessible teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, accessible physical environment, or other reasonable accommodations to ensure the full participation of students with disabilities;
 - (c) that no child with disabilities is excluded from free and compulsory primary education on account of their disability.

People with disabilities frequently find themselves forced into educational settings not of their choosing and/or often not appropriate to their actual needs, which in turn limit their opportunities to develop their full potential as individuals and to participate fully in society. It is therefore important that Draft Article 17 address the range of issues related to the education of people with disabilities. (For some examples of educational issues of relevance to people with disabilities, Cf. UN Standard Rules on the Equalization of Opportunities for People with Disabilities, Rule 6)

Draft Article 17(1) specifically states that the right of all persons with disabilities to education is a right to be achieved "progressively." Although there are other draft articles in the Working Group text subject to progressive realization, those provisions are not consistently highlighted as such. The Ad Hoc Committee may wish to consider whether it is really necessary for Draft Article 17 to be subject to such treatment.

Footnote 56 notes the use of the term "children" in paragraph (1). Given that educational settings (particularly tertiary education) have relevance to adults as well, the Ad Hoc Committee may wish to examine the references to children throughout this article.

Footnote 59 and paragraph 3(d) both make reference to the "needs" of students and children with disabilities. The Ad Hoc Committee may wish to consider amending this language to instead read "rights and needs."

Footnote 61 references the discussions about different options regarding mainstream vs. specialist education services. It should be noted that the expectation is that if specialist educational settings are offered, they should not be of a lower standard than the general or mainstream settings. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 6, para. 8; UNESCO Convention Against Discrimination in Education, Article 5(1)(c))

(Contd.)

DRAFT ARTICLE 17 Contd:

3. States Parties shall ensure that where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning⁶⁰ should be made available. Any such special and alternative forms of learning should:⁶¹
 - (a) reflect the same standards and objectives provided in the general education system;
 - (b) be provided in such a manner to allow children with disabilities to participate in the general education system to the maximum extent possible;⁶²
 - (c) allow a free and informed choice between general and special systems;
 - (d) in no way limit the duty of States Parties to continue to strive to meet the needs of students with disabilities in the general education system.
4. States Parties shall ensure that children with sensory disabilities may choose to be taught sign language or Braille, as appropriate, and to receive the curriculum in sign language or Braille. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities by ensuring the employment of teachers who are fluent in sign language or Braille.⁶³
5. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning on an equal basis with others. To that end, States Parties shall render appropriate assistance to persons with disabilities.

DRAFT ARTICLE 17 FOOTNOTES:

55 The Ad Hoc Committee may wish to consider whether this draft Article should cover training more extensively, drawing together the provisions on training in other Articles.

(Contd.)

DRAFT ARTICLE 17 FOOTNOTES Contd:

56 The Ad Hoc Committee may wish to consider whether the focus of the chapeau should be solely on 'children', since other provisions of this draft Article refer to 'persons' with disabilities.

57 Paragraph 1 of this draft Article draws on Article 13(1) of the Covenant on Economic, Social and Cultural rights and Article 29(1) of the Convention on the Rights of the Child. It does not quote those sources in full, but rather selects those elements that have particular relevance to persons with disabilities. The Ad Hoc Committee may wish to give further consideration to this approach.

58 The intent of this draft Article is to provide the right to choose inclusive and accessible education. There is no intention to create an obligation on students with disabilities to attend general schools where their needs may not be adequately met. The Ad Hoc Committee may wish to consider whether the wording of this paragraph is sufficiently clear.

59 The Ad Hoc Committee may wish to consider whether this draft Article should also include the employment of teachers with disabilities in the general education system (see, for example, Article 10(d) of the Indian draft convention), the removal of legislative barriers to persons with disabilities becoming teachers, and raising awareness among teachers of the needs of children with disabilities.

60 The term 'learning' does not have the same meaning as the term 'education'. The Ad Hoc Committee may wish to consider which is the most appropriate word. An alternative word in this paragraph could be 'provision'.

61 While members of the Working Group considered that choice was an important element of this paragraph, some members considered that the right to education was more important. Other members would have liked greater emphasis on the interests of the child in this choice.

Different approaches were also identified to setting out the relationship between the provision of specialist education services and the general education system. Some members considered that education of children with disabilities in the general education system should be the rule, and the provision of specialist education services the exception. Others thought that specialist education services should be provided not only where the general education system is inadequate, but should rather be made available at all times without a presumption that one approach is more desirable than the other. Some members of the Working Group, for example, highlighted the need for deaf and blind children to be allowed to be educated in their own
(Contd.)

DRAFT ARTICLE 17 FOOTNOTES Contd:

61 Contd: groups. If the latter approach is taken, the Working Group considered that there should still be an explicit obligation on the state to make the general education system accessible to students with disabilities, without limiting the individual's ability to choose either the general system or the specialist services.

62 The intention of this sub-paragraph is to ensure that the general education system and specialist education services are not mutually exclusive options, and that there is a range of options in between that are available.

63 Some members of the Working Group preferred to keep this paragraph specific to children with sensory disabilities to allow, for example, deaf children to be taught in sign language. Other members questioned whether it should be broadened to include all children who may need alternative communication modes. In either case, there was agreement that wherever sign language, Braille, or alternative communication systems are taught and used, it should be in addition to, and not instead of, the teaching of written or spoken national languages. The Ad Hoc Committee may also consider whether this issue could be addressed in draft Article 13 on freedom of expression and opinion.

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

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

- (a) actively promote an environment in which persons with disabilities can effectively and fully participate in political and public life, directly or through freely chosen representatives, including the right and opportunity of citizens with disabilities to vote and be elected, and by ensuring that voting procedures and facilities:
- (i) are appropriate, accessible and easy to understand;
 - (ii) protect the right of citizens with disabilities to vote by secret ballot; and
 - (iii) allow, where necessary, the provision of assistance in voting to citizens with disabilities;
- (b) actively promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public administration, and shall encourage, as appropriate, their participation in public affairs, including to:⁶⁴
- (i) participate on a basis of equality in the activities and administration of political parties and civil society;
 - (ii) form and join organisations of persons with disabilities to represent persons with disabilities at national, regional and local levels;
- (c) to ensure that persons with disabilities and their organisations participate, on an equal basis to others, in all decision-making processes, in particular those concerning issues relating to persons with disabilities.⁶⁵

DRAFT ARTICLE 18 FOOTNOTES:

64 The Ad Hoc Committee may wish to consider the differing levels of obligations that are appropriate for state and non-state organs in this paragraph.
(Contd.)

DRAFT ARTICLE 18 COMMENTS

Draft Article 18 provides coverage of well-established rights of participation in political and public life (Cf. International Covenant on Civil and Political Rights, Article 25) and highlights, therefore, a fundamental right to which people with disabilities are frequently denied, not only in the voting context, but in a wide range of decision-making processes where their interests are affected. This provision is in keeping with recent developments in international human rights law in the context of participation in decision-making for particularly disadvantaged groups. (Cf. Convention on the Rights of the Child, Article 12; ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, Articles 6 & 7).

Draft Article 18 sets forth in three sub-paragraphs obligations that States are to undertake in relation to voting and holding public office, participation in political organization and, more generally, decision-making in which their interests are affected. While a level of specificity in relation to access to voting in particular is included in sub-paragraph a, the same degree of specificity is not provided in relation to other decision-making processes. The prevailing practice in relation to ensuring the participation of marginalized groups in society is to provide a level of detail that exposes and addresses potential barriers to the realization of rights of participation. In this regard, the Ad Hoc Committee may wish to pay particular attention to ILO Convention, as noted in Footnote 65. (Cf. ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, Articles 6 & 7). In particular, attention should be given to the participation of people with disabilities and their representative organizations in development decision-making at all levels. Notably absent, but covered in other human rights treaties, is the explicit recognition of the rights to represent government at the international level and to participate in the work on international organizations, (to which one could also add regional organizations.) (Cf. Convention on the Elimination of All Forms of Discrimination against Women, Article 8.)

DRAFT ARTICLE 18 FOOTNOTES Contd:

65 The Ad Hoc Committee may wish to consider paragraph (c) alongside the similar provision in draft Article 4(2) of this draft, and whether both provisions are necessary. The Ad Hoc Committee may also wish to compare both paragraphs to Article 6(b) of ILO Convention 169 and Rule 14 of the Standard Rules.

**Draft Article 19
ACCESSIBILITY**

1. States Parties to this Convention shall take appropriate⁶⁶ measures to identify and eliminate obstacles, and to ensure accessibility for persons with disabilities to the built⁶⁷ environment, to transportation, to information and communications, including information and communications technologies, and to other services,⁶⁸ in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. The focus of these measures shall include, inter alia:
 - (a) the construction and renovation of public⁶⁹ buildings, roads and other facilities for public use, including schools, housing, medical facilities, in-door and out-door facilities and publicly owned workplaces;
 - (b) the development and remodelling of public transportation facilities, communications and other services, including electronic services.

2. States Parties shall also take appropriate measures to:
 - (a) provide in public buildings and facilities signage in Braille and easy to read and understand forms;
 - (b) provide other forms of live assistance⁷⁰ and intermediaries,⁷¹ including guides, readers and sign language interpreters, to facilitate accessibility to public buildings and facilities;
 - (c) develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of public facilities and services;
 - (d) encourage private entities that provide public facilities and services to take into account all aspects of accessibility for persons with disabilities;
 - (e) undertake and promote research, development and production of new assistive technologies, giving priority to affordably priced technologies; (Contd.)

DRAFT ARTICLE 19 COMMENTS

Although issues of accessibility are addressed in places throughout the draft text, given the enormity of the issue it is logical to have a specific article focused on accessibility issues. This is also the approach taken in the UN Standard Rules. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 5)

Draft Article 19 take a comprehensive approach to accessibility, addressing both issues of physical accessibility, as well as accessibility of information and communications. Importantly, the objective if the article is independence and full inclusion of people with disabilities “in all aspects of life.”

Because of the need to maintain the relevancy of the convention over time, it may be necessary to re-examine some of the forms and methods of accessibility referenced in Draft Article 19, to ensure that the terms used have relevancy across cultures and will not quickly become outdated. As with Draft Article 6 (Statistics and Data Collection), the Ad Hoc Committee may wish to consider the establishment of a technical advisory body to harness expertise, and disseminate research on issues of accessibility.

DRAFT ARTICLE 19 Contd:

- (f) promote universal design and international cooperation in the development of standards, guidelines and assistive technologies;
- (g) ensure organisations of persons with disabilities are consulted when standards and guidelines for accessibility are being developed;
- (h) provide training for all stakeholders on accessibility issues facing persons with disabilities.

DRAFT ARTICLE 19 FOOTNOTES:

66 Some members of the Working Group preferred the word “progressive” in this paragraph and in the chapeau of paragraph 2. Other members were concerned with consistency with other articles of the Convention. The Ad Hoc Committee may wish to consider alternative formulations.

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

68 The Ad Hoc Committee may wish to consider further the issue of attempting to list comprehensively the facilities and services covered in the chapeau to this paragraph, including whether a reference to the “communications environment” is desirable.

69 The Ad Hoc Committee may wish to consider the scope of the provisions in this draft article, in particular paragraphs 1(a) and (b), and 2(a), (b), (c) and (d). The Working Group questioned whether the concept of public buildings, facilities and services should also extend to privately owned or developed buildings, facilities and services intended for public use, and what level of obligation States Parties should place on private owners or developers to ensure access to persons with disabilities. Some members of the Working Group were of the view that privately owned or developed buildings, facilities and services should be covered by the obligations in this draft Article, but other members wished to consider the implications of this further.

70 ‘Live assistance’ includes human assistance, such as guides and readers, and animal assistance, such as guide dogs. The Ad Hoc Committee may wish to consider whether there is a more self-explanatory term. The term is also used in draft Article 20(a).
(Contd.)

DRAFT ARTICLE 19 FOOTNOTES Contd:

71 'Intermediaries' means people who do not assist but who rather act as a conduit for the transmission of information to certain groups of persons with disabilities, for example, sign language interpreters for the hearing impaired. The term is also used in draft Article 20(a).

**Draft Article 20
PERSONAL MOBILITY⁷²**

States Parties to this Convention shall take effective⁷³ measures to ensure liberty of movement with the greatest possible independence for persons with disabilities, including:

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

DRAFT ARTICLE 20 FOOTNOTES:

72 This draft Article is entitled Personal Mobility to distinguish it from the broader right to liberty of movement in Article 12(1) of the International Covenant on Civil and Political Rights. The Ad Hoc Committee may wish to consider the placement of elements of this draft Article, in particular subparagraphs (a), (b) and (c).

73 Some members of the Working Group preferred the word “progressive” or “appropriate”. Other members were concerned with consistency with other articles of the Convention. The Ad Hoc Committee may wish to consider alternative formulations

DRAFT ARTICLE 20 COMMENTS

As indicated in Footnote 72, Draft Article 20 is intended to be distinguished from the broader right to liberty of movement, which is understood to mean the right of individuals to move freely within the borders of their state, as well as to leave and return to it, subject only to restrictions necessary to protect interests such as national security, public safety, health, and the prevention of crime. (Cf. International Covenant on Civil and Political Rights, Article 12; Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 2-4) Given that issues of liberty of movement in the traditional sense are not addressed in Draft Article 20, it would therefore seem appropriate that an additional article be included to more fully elaborate the right to liberty of movement as it relates to people with disabilities.

In many respects, Draft Article 20 relates to the provision of support services as understood in Rule 4 of the UN Standard Rules, though Draft Article 20 is limited in scope to support services related to mobility. The Ad Hoc Committee may wish to consider the inclusion of a specific article related to support services.

**Draft Article 21
RIGHT TO HEALTH AND REHABILITATION⁷⁴**

States Parties recognise that all persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall strive to ensure no person with a disability is deprived of that right, and shall take all appropriate measures to ensure access⁷⁵ for persons with disabilities to health and rehabilitation services. In particular, States Parties shall:

- (a) provide persons with disabilities with the same range and standard of health and rehabilitation services as provided other citizens, including sexual and reproductive health services;
- (b) strive to provide those health and rehabilitation services needed by persons with disabilities specifically because of their disabilities;
- (c) endeavour to provide these health and rehabilitation services as close as possible to people's own communities;⁷⁶
- (d) ensure that health and rehabilitation services include the provision of safe respite places, to use on a voluntary basis, and counselling and support groups, including those provided by persons with disabilities;
- (e) provide programs and services to prevent and protect against secondary disabilities, including amongst children and the elderly;⁷⁷
- (f) encourage research and the development, dissemination and application of new knowledge and technologies that benefit persons with disabilities;⁷⁸
- (g) encourage the development of sufficient numbers of health and rehabilitation professionals, including persons who have disabilities, covering all disciplines needed to meet the health and rehabilitation needs of persons with disabilities, and ensure they have adequate specialised training;
- (h) provide all health and rehabilitation professionals an appropriate education and training to increase their disability-sensitive awareness and respect for the rights, dignity and needs of persons with disabilities, in line with the principles of this Convention;⁷⁹

(Contd.)

DRAFT ARTICLE 21 COMMENTS

Draft Article 21 addresses health and rehabilitation/habilitation, and as noted in Footnote 74, these issues are of a complexity and depth such that it may be more appropriate to elaborate them in separate articles, as is done in the UN Standard Rules. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rules 2 and 3) In whatever format these rights are addressed, it will be important to place a greater emphasis on the importance of choice throughout the article(s), so that people with disabilities are empowered to accept or refuse health care and rehabilitation of their choosing.

Draft Article 21(a) makes reference to "other citizens." Given that the individual in question may not be a citizen of the relevant State Party, it may be preferable to utilize the broader term "other members of society." (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 2, para. 3)

Draft Article 21(c) relates to the proximity of services to a person's community. Given the challenges that many people with disabilities face accessing transportation, the provision of services at the local level is of great importance. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 3, para. 5)

Draft Article 21(d) references the need for "counseling and support groups, including those provided by persons with disabilities." During the Working Group meeting a number of members suggested that it would be valuable for "peer support" to be incorporated in this provision, ie. the concept of those with similar shared experiences offering each other mutual support. Although "including those provided by persons with disabilities" might encompass the concept of peer support, it might not necessarily do so. Therefore, the Ad Hoc Committee may wish to consider the explicit inclusion of that term in paragraph (d).

Draft Article 21(j) addresses issues of privacy related to the health or rehabilitation information of people with disabilities. Paragraph (j) requires health and rehabilitation professionals to inform people with disabilities of their "relevant rights." Such language is rather vague. It may be more appropriate to state "inform persons with disabilities of these rights."

Draft Article 21(l) again relates to the issue of privacy of information. This paragraph seems repetitive of issues already addressed in paragraph (j) and should perhaps be deleted.

(Contd.)

DRAFT ARTICLE 21 Contd:

- (i) ensure that a code of ethics for public and private healthcare, that promotes quality care, openness and respect for the human rights, dignity and autonomy of persons with disabilities, is put in place nationally, and ensure that the services and conditions of public and private health care and rehabilitation facilities and institutions are well monitored;
- (j) ensure that health and rehabilitation services provided to persons with disabilities, and the sharing of their personal health or rehabilitation information,⁸⁰ occur only after the person concerned has given their free and informed consent,⁸¹ and that health and rehabilitation professionals inform persons with disabilities of their relevant rights;⁸²
- (k) prevent unwanted medical and related interventions and corrective surgeries from being imposed on persons with disabilities;⁸³
- (l) protect the privacy of health and rehabilitation information of persons with disabilities on an equal basis;⁸⁴
- (m) promote the involvement of persons with disabilities and their organizations in the formulating of health and rehabilitation legislation and policy as well as in the planning, delivery and evaluation of health and rehabilitation services.⁸⁵

DRAFT ARTICLE 21 FOOTNOTES:

74 Some members of the Working Group considered that grouping 'rehabilitation' with 'health' was inappropriate, and that it would be better dealt with in a separate article, because 'rehabilitation' includes more than 'medical rehabilitation', and should not be 'medicalised'. Rehabilitation includes medical, physical, occupational, communication and psycho-social services as well as training in everyday skills and mobility. The term 'rehabilitation' as used here includes those processes sometimes called 'habilitation' (the gaining of skills that people have not previously had, rather than the re-gaining of skills lost). The Ad Hoc Committee may wish to include an explanation of this nature in draft Article 3 on definitions. Rehabilitation for the purposes of work and education may be best covered in the relevant draft Articles on work and education.

75 Some Working Group members suggested affordability, and access to health insurance by persons with disabilities without discrimination on the basis of disability, should be addressed in the Convention. (Contd.)

(DRAFT ARTICLE 21 COMMENTS Contd.)

Draft Article 21(m) addresses the involvement of people with disabilities and their organizations in the formulation and implementation of health and rehabilitation legislation and policies. These important concepts find precedent in the UN Standard Rules. (Cf. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rules 3(7) and 14(2))

DRAFT ARTICLE 21 FOOTNOTES Contd:

76 There was general agreement in the Working Group that, as far as possible, health care and rehabilitation services should be decentralised, taking into account the degree of specialisation. Some members of the Working Group also suggested that community based rehabilitation programmes should be ensured, including the working in partnership with local communities and families to continue rehabilitation.

77 There were conflicting views amongst members of the Working Group on the issue of prevention of disability. For some, the Convention is on the rights of existing people with disabilities, and should mention only the minimisation of the effects or progression of their disability, and the prevention of further, secondary, disabilities. For others, the prevention of disability per se should be included.

78 Some members of the Working Group suggested there should be a specific mention of the fields of (bio)medical, genetic, and scientific research, and its applications, and its use to advance the human rights of people with disabilities.

79 Part of the intent of this paragraph is to ensure that health and rehabilitation professionals providing services to persons with disabilities understand the on-going effect disabilities have on a person's life, as opposed to more immediate medical considerations.

80 Privacy issues have been also addressed in draft Article 14 on the right to privacy.

81 Free and informed consent has wider application in this draft Convention than this paragraph alone. The Ad Hoc Committee may wish to consider whether the following wording be included in this sub-paragraph or broadened to become a definition in draft Article 3.

“Informed decisions can be made only with knowledge of the purpose and nature, the consequences, and the risks of the treatment and rehabilitation supplied in plain language and other accessible formats”.

82 Some members of the Working Group considered that the paragraph should spell out the rights.

83 Some members of the Working Group also considered that forced medical intervention and forced institutionalisation should be permitted in accordance with appropriate legal procedures and safeguards (see also draft Article 11).
(Contd.)

DRAFT ARTICLE 21 FOOTNOTES Contd:

84 Some members of the Working Group suggested that this sub-paragraph was redundant and should be deleted.

85 The involvement of persons with disabilities in formulating legislation and policy, as well as in the planning, delivery and evaluation of services, has wider applicability than this draft Article.

Draft Article 22
RIGHT TO WORK ^{86, 87, 88}

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

- (a) promote a labour market and work environment that are open, inclusive, and accessible to all persons with disabilities;⁸⁹
- (b) enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services, assistive devices, and vocational and continuing training;
- (c) promote⁹⁰ employment opportunities and career advancement for persons with disabilities in the open labour market, including opportunities for self-employment and starting one's own business, as well as assistance in finding, obtaining and maintaining employment;
- (d) encourage employers⁹¹ to hire persons with disabilities, such as through affirmative action programs, incentives and quotas;⁹²
- (e) ensure the reasonable accommodation of persons with disabilities in the workplace and work environment;⁹³
- (f) promote the acquisition by persons with disabilities of work experience in the open labour market;
- (g) promote vocational and professional rehabilitation, job retention and return-to-work programs;
- (h) protect⁹⁴ through legislation persons with disabilities with regard to employment, continuance of employment, career advancement, working conditions, including equal remuneration for work of equal value and equal opportunities, and the redressing of grievances,⁹⁵ and to ensure persons with disabilities are able to exercise their labour and trade union rights;

(Contd.)

DRAFT ARTICLE 22 COMMENTS

Draft Article 22 addresses a number of the issues relevant to people with disabilities that wish to exercise their right to gain a living by work. It is notable though, that there are no specific provisions addressing issues such as slavery, servitude, forced labor or economic exploitation. Given the historic exploitation of people with disabilities (e.g. in some sheltered workshops) the Ad Hoc Committee may wish to include such provisions in a separate article. (Cf. International Covenant on Civil and Political Rights, Article 8)

Footnote 93 references the possible inclusion of a provision on reasonable accommodation in the employment context. If such a provision is included, it will be important to link it to the efforts in paragraph (f) to encourage the hiring of people with disabilities, because lack of understanding about the duty to accommodate may lead to employers failing to hire otherwise qualified people with disabilities and/or may lead to a failure by employers to accommodate during the hiring process. With further regard to paragraph (f) and Footnote 92, the Ad Hoc Committee may wish to consider the removal of any specific examples (e.g. quotas), and utilizing a broader term (such as "positive measures") which could, but need not necessarily, include quotas.

Draft Article 22(g) addresses the need for promotion of vocational and professional rehabilitation. The Ad Hoc Committee may find the ILO Convention (159) on Vocational Rehabilitation and Employment (of Disabled Persons) a helpful reference in this regard.

Draft Article 22(h) references the need for certain kinds of protections with regard to people with disabilities and employment. However, it does not expressly reference the important need to ensure against discrimination in the context of the hiring process. Given the discrimination against people with disabilities in this regard it would seem important to include such a provision.

Draft Article 22(i) discusses the need for equal opportunity employment in the public sector, but does not extend this need to the private sector, which will be necessary if equal opportunity to employment is to truly be achieved.

DRAFT ARTICLE 22 Contd:

- (i) ensure that persons with disabilities have equal opportunity to employment in the public sector;
- (j) promote recognition⁹⁶ of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market, and to combat stereotypes and prejudices about persons with disabilities in the workplace and the labour market.

DRAFT ARTICLE 22 FOOTNOTES:

86 The Ad Hoc Committee may wish to consider the potential role of the International Labour Organisation in implementing and monitoring the right to work under this Convention.

87 Some members of the Working Group raised the issue of a need to address the special circumstances of women with disabilities in fulfilling this right.

88 The Ad Hoc Committee may wish to consider whether broad terms in which this draft Article is expressed is consistent with the detailed provisions of other articles of the draft Convention. The Committee may also wish to consider in this context whether further thought should be given to elaborating provisions for the training of persons with disabilities.

89 The Ad Hoc Committee may wish to consider whether to spell out the meaning of this provision in practice and the further definition of the term 'inclusive' in this context. In this context, too, the Committee may wish to consider whether transportation to the workplace for persons with disabilities is covered under the provision of access to the workplace under draft Article 19.

90 The Ad Hoc Committee may wish to consider the addition of the phrase 'pursue active labour market policies', at the beginning of this sub-paragraph.

91 The Ad Hoc Committee may wish to consider the appropriateness of specifying the particular responsibility of governments as employers in this context.

92 The Ad Hoc Committee may wish to consider the appropriateness of specifically mentioning quotas as a possible measure in this draft Article.

93 Some members of the Working Group emphasised the particular importance of the obligation to make reasonable accommodation in the (Contd.)

DRAFT ARTICLE 22 FOOTNOTES Contd:

93 Contd: employment context, and considered that a more detailed paragraph on reasonable accommodation should be elaborated under the right to work, in addition to any draft article on reasonable accommodation elsewhere in the Convention.

94 The Ad Hoc Committee may wish to consider this formulation to take into account protection of persons with disabilities from disguised discrimination in the workplace, such as, stipulating unnecessary qualifications that have the effect of excluding persons with disabilities from employment.

95 The Ad Hoc Committee may wish to consider whether the listing of working conditions here may be inadvertently limiting.

96 The Ad Hoc Committee may wish to expand on the idea of recognition to encompass the formal recognition of the skills of persons with disabilities.

Draft Article 23
SOCIAL SECURITY AND AN ADEQUATE STANDARD OF LIVING^{97, 98}

DRAFT ARTICLE 23 COMMENTS

1. States Parties recognise the right of all persons with disabilities to social security, including social insurance,⁹⁹ and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures to:
- (a) ensure access by persons with disabilities to necessary services, devices and other assistance for disability-related needs;¹⁰⁰
 - (b) ensure access by persons with disabilities, particularly women and girls with disabilities and the aged with disabilities, to social security programmes and poverty reduction strategies, and to take into account the needs and perspectives of persons with disabilities in all such programmes and strategies;
 - (c) ensure access by persons with severe¹⁰¹ and multiple disabilities, and their families,¹⁰² living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;¹⁰³
 - (d) ensure access by persons with disabilities to governmental housing programs, including through earmarking percentages of governmental housing¹⁰⁴ for persons with disabilities;
 - (e) ensure access by persons with disabilities to tax exemptions and tax benefits in respect of their income;¹⁰⁵
 - (f) ensure that persons with disabilities are able to access life and health insurance without discrimination on the basis of disability.¹⁰⁶

Draft Article 23 seeks to combine coverage of two issues traditionally addressed in separate articles. (Cf. International Covenant on Economic, Social and Cultural Rights, Articles 9 and 11). In order to adequately elaborate the issues relevant to these two rights, the Ad Hoc Committee may wish to consider splitting Draft Article 23. With regard to the right to social security (as well as the acceptance of the use of that term), the Ad Hoc Committee may find ILO Convention (157) on Maintenance of Social Security Rights, as well as Rule 8 of the UN Standard Rules, of some assistance.

Draft Article 23(1)(a) addresses access to “services, devices and other assistance” related to “disability-related needs.” As noted in Footnote 100, some elements of this paragraph may be covered in Draft Article 20 (Personal Mobility). While the purpose of the provision is to detail how States should proceed in achieving the right of people with disabilities to social security, as drafted, this paragraph seems to vague to be useful. The Ad Hoc Committee will want to explore with greater depth the necessary components for realization of this right.

Draft Article 23(1)(b) makes explicit reference to ensuring access of persons with disabilities to social security programs and poverty reduction strategies. It makes important reference to particularly marginalized groups of disabled persons. The provision also significantly mentions the need to take into account “the needs and perspectives of persons with disabilities” in such programs. It could be strengthened by explicitly referencing the participation of people with disabilities in all stages of programming.

Draft Article 23(1)(c) provides important reference to particularly disadvantaged sectors of the disability community. Nonetheless, the Ad Hoc Committee will need to consider the precise objectives of the provisions in light of its drafting.

Draft Article 23(1)(d) provides important mention of access to governmental housing programs and provides a specific example of how such access might be achieved, namely, through an earmarking system. The Ad Hoc Committee may wish to consider how access to housing relates to paragraph (2) of Draft Article 23 concerning adequate standard of living. In addition, the Ad Hoc Committee may wish to consider whether the explicit mention of earmarking is appropriate given that this is the only example listed but is by no means the only way of achieving the purpose (Contd.)

(Contd.)

DRAFT ARTICLE 23 Contd:

2. States Parties recognise the right of all persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing, housing and access to clean water,¹⁰⁷ and to the continuous improvement of living conditions, and will undertake appropriate steps to safeguard and promote the realisation of this right.

DRAFT Article 23 FOOTNOTES:

97 Some members of the Working Group noted that the meaning of ‘social security’ differs widely from state to state, and that the scope of the right to an adequate standard of living is much broader than social security. The Ad Hoc Committee may wish to consider this issue further.

98 Some members of the Working Group expressed concern about the capacity of States Parties to implement these provisions. The Ad Hoc Committee may wish to consider inclusion of the concept of progressive realisation in this right if it is not addressed in a paragraph with general application elsewhere in the Convention.

99 The Ad Hoc Committee may wish to consider inclusion of the concept of ‘social assistance’.

100 Some members of the Working Group considered that this provision should be strengthened to mention explicitly technical aids to mobility, transfer, auditory or visual perception and other special devices that persons with disabilities require. The Ad Hoc Committee may wish to consider whether this issue is adequately covered in draft Article 20 on Personal Mobility.

101 Some members of the Working Group questioned the use of the word ‘severe’ on the grounds either that it was difficult to define or that it was prejudicial. The Ad Hoc Committee may wish to consider whether to omit it.

102 There was a difference of view among Working Group members as to whether the provisions of this sub-paragraph should be extended to the families of persons with disabilities, and as to how ‘family’ should be defined. The Ad Hoc Committee may wish to consider this further and with general application to the Convention.

103 The Ad Hoc Committee may wish to consider whether the provisions of this sub-paragraph should apply to persons with disabilities generally.

(Contd.)

(DRAFT ARTICLE 23 COMMENTS Contd.)

of the provision.

Draft Article 23(1)(e) addresses access to tax exemptions and tax benefits for people with disabilities in respect of their income. The provision as drafted has a level of specificity that may not take into account differences in tax systems (notably in relation to income taxation) and may indeed be unrealistic.

Draft Article 23(1)(f) introduces the important concept of non-discrimination against persons with disabilities in the context of obtaining life and health insurance. Note that Footnote 75 of the Draft Text likewise references disability discrimination in this context.

The right to an adequate standard of living is well-established in international human rights law. (Cf. Universal Declaration of Human Rights, Article 25; International Covenant on Civil and Political Rights, Article 11(1); and Convention on the Rights of the Child, Article 27)

Footnote 107 discusses the appropriateness of the inclusion of a reference to “clean water” in paragraph (2). The Committee on Economic, Social and Cultural Rights has indicated “the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.” (Cf. Committee on Economic, Social and Cultural Rights, General Comment 15, 2002, para. 1) Furthermore, the Committee has highlighted the particular relevance of this right to people with disabilities, as well as the need to protect against discrimination against people with disabilities with regard to the enjoyment of this right. (Cf. Committee on Economic, Social and Cultural Rights, General Comment 15, 2002, paras. 13, 16(h)) It would therefore seem appropriate for the Ad Hoc Committee to retain the reference to “clean water” in paragraph (2).

DRAFT Article 23 FOOTNOTES Contd:

104 The Ad Hoc Committee may wish to consider whether the phrase “including through earmarking percentages of government housing” is appropriate in the draft Convention. Some members of the Working Group expressed the view that it was too prescriptive and may limit the measures that States Parties could take to ensure access to governmental housing programmes. Some members of the Working Group also considered that non-discriminatory access to privately provided housing should also be specified.

105 Some members of the Working Group expressed the view that this sub-paragraph is too prescriptive.

106 The Ad Hoc Committee may wish to consider the extent to which States Parties can determine the provision of insurance, which in many countries is typically the domain of the private sector.

107 The Ad Hoc Committee may wish to consider the reference to ‘clean water’ further. Some members of the Working Group considered that it should be deleted on the grounds that it is not a right guaranteed under the International Covenant on Economic, Social and Cultural Rights. Other members considered that the reference was critical to the treatment and prevention of disabilities, and should be strengthened to include “basic services”.

<p style="text-align: center;">Draft Article 24 PARTICIPATION IN CULTURAL LIFE, RECREATION, LEISURE AND SPORT¹⁰⁸</p>	<p style="text-align: center;">DRAFT ARTICLE 24 COMMENTS</p>
<p>1. States Parties recognise the right of all persons with disabilities to take part in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:</p> <ul style="list-style-type: none"> (a) have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community; (b) enjoy access to literature and other cultural materials in all accessible formats, including in electronic text, sign language and Braille, and in audio and multi-media formats; (c) enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats, including captioning and sign language; (d) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and the hospitality industry, and, as far as possible, enjoy access to monuments and sites of national cultural importance; <p>2. States Parties shall take all appropriate steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.</p> <p>3. Persons who are deaf shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity.¹⁰⁹</p> <p>4. States Parties recognise the right of persons with disabilities, on an equal basis with others,¹¹⁰ to participate in recreational, leisure and sporting activities and shall take appropriate measures to:</p>	<p>Draft Article 24 incorporates many of the elements set forth in the UN Standard Rules, Rule 11, which addresses the State’s responsibilities to ensure that people with disabilities have equal opportunities for recreation and sports. Other specialized conventions have similarly recognized such rights. (Cf., Convention on the Rights of the Child, Article 31) Draft Article 24 usefully covers three separate activities that contribute to physical fitness, mental well-being, and social interaction of people with disabilities. (Cf. UN Inter-Agency Task Force on Sport for Development and Peace)</p> <p>Draft Article 24, paragraphs (1)-(3), provides coverage of the right to participate in cultural life, drawn extensively from the UN Standard Rules, Rule 10 (Culture). Draft Article 24(3) relates not to cultural life, but the right to culture.</p> <p>Draft Article 1(a) provides content to the concept of participation in cultural life, which is drawn from UN Standard Rules, Rule 10, para. 1.</p> <p>Draft Article 24(1)(b) relates to the accessibility of cultural materials via accessible formatting. The Ad Hoc Committee may wish to consider the relationship of this provision to other Draft Articles (e.g. Draft Article 13 (Freedom of Expression and Opinion, and Access to Information), and Draft Article 19 (Accessibility)) and whether its level of specificity is appropriate to meet the objectives of the provision and to ensure relevancy over time.</p> <p>Draft Article 24(1)(c) relates to accessibility in relation to other cultural media. What remains unclear is the distinction between the concept of access to “cultural materials” in sub-paragraph 1(b) and access to “cultural activities” in sub-paragraph 1(c).</p> <p>Draft Article 24(1)(d) seems to relate to access to the built or physical environment, although this is not clear.</p> <p>Draft Article 24(3) addresses a distinctly separate right under international law – the right of minorities, in this case deaf persons, to enjoy their own culture and linguistic identity, and in particular the right to use their own language. The right to use one’s own language entails the freedom to speak one’s own language without interference, a right that has been frequently violated in respect of the deaf community in many countries.</p>
<p>(Contd.)</p>	<p>(Contd.)</p>

DRAFT ARTICLE 24 Contd:

4. Contd:

- (a) encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at regional, national and international levels;¹¹¹
- (b) ensure that persons with disabilities have an opportunity to organise and participate in sporting activities and to receive the same instruction, training and resources in support that is available to other participants;
- (c) ensure that persons with disabilities have access to sporting and recreational venues, and that children with disabilities have equal access to participating in sporting activities with the education system;
- (d) ensure that persons with disabilities have access to services from those involved in the organisation of recreational, leisure and sporting activities.

DRAFT ARTICLE 24 FOOTNOTES:

108 The Ad Hoc Committee may wish to consider whether and how the concept of accessibility could be expanded under this draft Article.

109 The Ad Hoc Committee may wish to consider whether this provision would be more appropriately placed under another draft article.

110 Some members of the Working Group considered that "on an equal basis with others" should be deleted from this paragraph, and that sub-paragraphs (b), (c) and (d) should instead include an obligation on States Parties to remove discriminatory barriers, both environmental and societal, to the enjoyment of these rights. Other members expressed the view that "on an equal basis with others" should be retained, because sporting, recreational and leisure organisations and facilities are often within the private sector. The Ad Hoc Committee may wish to consider this issue further.

111 Some members of the Working Group emphasised the importance of mainstreaming sporting activities for persons with disabilities. Others indicated that this obligation would need to be balanced with the promotion of separate
(Contd.)

(DRAFT ARTICLE 24 COMMENTS Contd.)

(Cf. Convention on the Rights of the Child, Article 30; International Covenant on Civil and Political Rights, Article 27; Human Rights Committee, General Comment 23, 1994, HRI/GEN/1 Rev. 5, pp. 147-150) Given the distinction between the right to culture and the right to participate in the cultural life of a community, it may be useful to include in the convention a separate article on cultural identity.

Draft Article 24(4) (a) and (b) are complimentary provisions. Paragraph (a) refers to mainstream sporting activities and (b) speaks of the equalization of access to "instruction, training, and resources" needed for meaningful participation in the activities. In (a), the "mainstream sporting activities" may be interpreted as excluding non-mainstream activities, or activities only for and by people with disabilities. The Working Group debates over the meaning are reflected in Footnote 111, and warrant further consideration by the Ad Hoc Committee.

The language in paragraph (b) lacks the expressed goal of disability-specific programs, which should be included in the text. The language should include integrative, as well as disability-specific programming. The term "same" should be replaced by the term "necessary" as this formulation better reflects the varied context within which persons with disabilities participate in sport (again, recognizing disability specific programming). (Cf. UN Standard Rules, Rule 11, para. 4)

Paragraph (4)(c) addresses issues covered in UN Standard Rule 11 (1) and (3). The sub-paragraph merges two issues, namely accessibility and children with disabilities in sporting activities. This conflation makes the subparagraph confusing. The Ad Hoc Committee may wish to consider revision to increase clarity.

The language of paragraph 4 (d), as drafted, is somewhat vague. It would be helpful for the Ad Hoc Committee to specify the nature of the services targeted by this provision. It remains unclear how this sub-paragraph relates to sub-paragraph (b).

The importance of extending sport and recreational opportunities to particularly marginalized sectors of the disability community is reflected by the reference to children with disabilities in Draft Article 24(c), but may usefully be extended to two other groups that are at a comparative

(Contd.)

DRAFT ARTICLE 24 FOOTNOTES Contd:

111 Contd: sporting activities and organisations that are tailored to the needs and abilities of persons with disabilities, as well as disabled specific sports that may not be included in mainstream sporting events. The Ad Hoc Committee may wish to consider how best to incorporate these views.

(DRAFT ARTICLE 24 COMMENTS Contd.)

disadvantage because of their dual minority statuses, namely, women and refugees. The importance of extending sporting activities to these two disadvantaged groups has been recognized by the UN (Cf. UN Inter-Agency Task Force on Sport for Development and Peace, p. 8, 9; Convention on the Elimination of All Forms of Discrimination Against Women, Article 10(g); UNHCR REFUGEE PROTECTION: A Guide to International Refugee Law, H<http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=MEDIA&id=3d4aba564&page=publH>, UNHCR Agenda for Protection, p. 37)

**Draft Article 25
MONITORING¹¹²**

National Implementation Framework¹¹³

1. States Parties shall designate a focal point within Government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a coordination mechanism to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework¹¹⁴ to promote, protect and monitor implementation of the rights recognised in the present Convention.

DRAFT ARTICLE 25 FOOTNOTES:

112 The Working Group did not have time to consider the issue of international monitoring of the draft Convention. Some members of the Working Group indicated, however, that international monitoring was an issue of considerable importance to them. Other members, however, had reservations in this respect.

113 The Working group did not discuss in detail the wording of the draft provisions. It noted that the Ad Hoc Committee may wish to discuss the issue further and take into account the on-going review of the work of the existing UN human rights treaty monitoring bodies.

114 The Working Group did not reach agreement on a number of issues relating to the role of national human rights institutions in the process of the promoting, protecting and monitoring the implementation of the Convention but some members considered that they might perform, inter alia, the following functions: promoting awareness of the provisions of the Convention to persons with disabilities and to the general population; monitoring national legislation, policies and programmes to ensure consistency with the Convention; undertaking or facilitating research on the impact of the Convention or of national legislation; developing a system for assessing that impact on persons with disabilities; and hearing complaints about failure to observe the Convention.

DRAFT ARTICLE 25 COMMENTS

The inclusion of this provision in the Working Group text reflects the now routine treaty practice to create obligations in relation to national legal implementation. Developments in the law of treaties in this regard recognize that the primary responsibility for implementation lies with states. The article is a substantially shortened version of the original text considered for inclusion by the Working Group.

Footnote 112 references the subject of international monitoring which the Working Group did not consider in any detail and notes some disagreement among members on the subject of international monitoring. It is noteworthy that all principal international human rights conventions do create international monitoring mechanisms within the framework of the treaties. The absence of any such framework within a convention on the rights of persons with disabilities would represent a significant departure from international human rights treaty practice, and a weakening of this convention.

Footnote 113 indicates that the Working Group was unable to undertake detailed drafting of this provision, and references the on-going UN review of existing human rights treaty monitoring. Some Working Group members felt that whilst the treaty reform process should be taken into consideration, the Ad Hoc Committee should certainly not wait for that process to be completed.

Footnote 114 references possible functions for national human rights monitoring institutions, drawn from the Paris Principles which provide detailed and highly relevant guidelines on the operation of national institutions. An explicit reference to the Paris Principles was deleted from an earlier draft of Article 25. (Cf. Paris Principles on National Institutions for the Promotion and Protection of Human Rights, GA Res. 48/134 (20 December 1993); Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 17-20)