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A HANDBOOK ON THE HUMAN RIGHTS
OF PERSONS WITH DISABILITIES

Understanding The UN Convention On The Rights Of Persons With Disabilities

Marianne Schulze

HANDICAP INTERNATIONAL

Author: Marianne Schulze

Edited by: Handicap International, Technical Resources Division, Knowledge Management Unit

Technical Support: Catherine Dixon, Knowledge Management Unit

Corrections and Editing (third version): Stéphanie Deygas, Elodie Finel, Sophie Bonifas, Knowledge Management Unit

Graphics: Catherine Artiglia

Layout: Stéphanie Bardoux

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Author: Marianne Schulze

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The contents of this report are the sole responsibility of the author and can in no way be taken to reflect the views of the organizations that provided support.

About the author: Marianne Schulze is an Australian-Austrian human rights advocate; based in Vienna, Austria she works as a free-lance consultant on a variety of human rights issues. She was a monitor, analyst, reporter and advocate in the negotiations of the Convention on the Rights of Persons with Disabilities. Since December 2008 she chairs the Austrian monitoring committee under the Convention. She studied law at the University of Sydney, Australia, the University of Vienna and – as a Fulbright scholar – at the Center for Civil & Human Rights at the University of Notre Dame du Lac. Her work is featured on **www.humanrightsconsultant.at**, where she blogs regularly.

[1] A regional project To Advocate for Rights and Equal Opportunities for Persons with Disabilities, in the Balkans, see http://www.share-see.org/hpage.htm

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Foreword

The Convention for the Rights of Persons with Disabilities (CRPD) was drafted and negotiated between 2002 – 2006. Since that time, we have entered into the important processes of ratification, implementation and monitoring. As of July 2010, 87 countries have ratified the Convention, 54 have ratified its Optional Protocol and 145 have signed the CRPD.

At the international level, the first and second Conference of States Parties (COSP) were held in New York City in November, 2008 and in September, 2009. The third Conference of States Parties is scheduled to take place in New York in early September 2010. The CRPD Committee was elected and met for the first time in Geneva in February 2009 and has held further meetings since. The Committee's function is to monitor the implementation of the CRPD at the international level through receiving and reviewing reports from state parties and reports from civil society. The COSP has to become a central place for allowing for dialog and exchange between states, civil society, UN agencies and human rights institutions for the purpose of the implementation of the Convention.

This manual is a tool for explaining the content of the CRPD and provides detailed information on what occurred during the negotiation and drafting process. It gives a comprehensive overview of the CRPD, and the positions taken by the different stakeholders involved (government delegates, UN agencies, human rights institutions and other representatives from civil society, most importantly disabled people's organizations (DPOs)).
This document also provides information on interpreting the text of the CRPD and providing further information for its implementation at the local, national, regional and international levels.

As we witness a global shift from the old individual and charity models of disability to the social model, the understanding of and hence the action taken on disability issues has changed from considering persons with disabilities as objects of pity to persons with human rights. This analysis of the text of the Convention is an important step to its promotion and understanding. It will support the movement for the realization of the paradigm change on disability issues by providing a clear framework on human rights and social development issues.

Philippe Chervin
Rhonda Neuhaus
Catherine Dixon

Presentation
Of The Manual By The Author

The purpose of this manual is to explain the Convention on the Rights of Persons with Disabilities in the context of other core human rights treaties to strengthen its place in the mainstream of human rights discourse. As has frequently been emphasized: the Convention does not create any new rights. It does, however, highlight the accessibility and inclusion angle of all human rights.

The manual goes through all the Articles of the Convention. It provides the narrative of the drafting process, whenever suitable and helpful to the general understanding of provisions. The bargaining and deals of a drafting process are a given and are therefore not dwelled on. Each Article is linked to similar provisions both in the Universal Declaration of Human Rights and the core human rights treaties. The interrelation between the various human rights treaties is spelled out in the ► Introduction.

Furthermore, most human rights have by now been subject to general explanations by expert bodies within the United Nations system. Wherever they seem helpful to gain a better understanding of the right, they have been included.

Most importantly, the manual gives a comprehensive – but by no means complete – overview of the positions taken by civil society, especially Disabled People's Organizations (DPOs), and other stakeholders in the drafting process – as perceived by observers. Many of the suggestions provided by civil society, mainly through the International Disability Caucus (IDC) – which took shape in the negotiation process – are either summarized or provided in full. The civil society proposals are mainly those provided before the finalization of the Convention, all of them are taken from public domain.

The manual was first drafted for a training of NGOs and DPOs in Belgrade, Serbia in September 2007. Dr. Damjan Tatic, who subsequently took on the translation into Serbian with much admired bravery, commented on the initial draft with most helpful suggestions. The revision of said draft was supported by very useful remarks of Dr. Muhannad Alazzeh from Handicap International (a member of the IDC) in Amman. Both gentlemen had participated in the negotiations of the Convention, Dr. Tatic representing Serbia. Throughout the process of writing, Dr. Kirsten Young, who lent her expertise to the drafting process through Landmine Survivors Network (a member of the IDC also - now SurvivorCorps), shared her valuable insights and expertise. Finally, I wish to acknowledge Stefan Tromel, from the IDC who shared an unpublished commentary of the Convention. Notwithstanding the level of expert support, all errors remain the author's.

The update of the Manual introduces a new section on "The Convention after 2006", which highlights some of the key documents adopted by United Nations bodies following the adoption of the Convention. Furthermore, the importance of the obligation to involve DPOs (Article 4 (3)) has been further elaborated, among others.

I wish to acknowledge Alexandre Cote, then Director of Handicap International South East Europe program for kick-starting this project. My profuse thanks to Philippe Chervin and Catherine Dixon, Sophie Bonifas and Stéphanie Deygas for seeing this text through to publication. Various people have lent their support to the drafting of this manual, they are too numerous to list, I would like to thank them all.

Marianne Schulze

References and Sources for this Guide

The text of the **Convention on the Rights of Persons with Disabilities** forms the obvious basis for this manual ; Convention text quotes are presented in white letters in coloured frames.
When other human rights texts are quoted, they appear in italics. When treaty bodies (committees) have issued comments or statements on one of these texts, they are presented in a frame.

There are several sources, which assist the understanding of the provisions' history and scope – also framing them as broader human rights issues. In bold letters in the text below, their references are following on the next page.

The history of the Convention text is covered in a number of summary documents, the most important ones are the text following the Third Ad Hoc Committee, referred to as the **Working Group Text** and the redrafted version of the text, which the Chair, H.E. Ambassador Don MacKay crafted after the Sixth Ad Hoc Committee, referred to as the **Working Text**. In addition the history is supported by amendments and comments provided by governments, many of which are posted on the **UN Enable web site**, also in the **Daily Summaries** and **Background Papers** from the Office of the High Commissioner for Human Rights (OHCHR), which can be found there.

Civil society, particularly DPOs, many of which became members of the International Disability Caucus (IDC) contributed enormously and tirelessly to the understanding of human rights issues in the disability context and therewith the drafting of a text strongly focused on the rights of persons with disabilities seen from a disability perspective. Particularly the IDC's suggested amendments to the Working Text are an invaluable source in understanding a few of the controversies and also some last minute compromises.

The drafting process was closely followed by the observers of the **International Service for Human Rights** New York office; the analysis of the various sessions by Marianne Schulze, Sean Marlaire, Valeria Iannitti, Bethany Sousa, Alison Graham under the editorial leadership of Michelle Evans give a thorough overview of the discussion of each article. In addition an unpublished text by IDC member Stefan Tromel provided summaries of each article's development.

The Office of the High Commissioner for Human Rights (OHCHR) published a volume on Disability and Human Rights, written an compiled by Gerard Quinn and Theresia Degener together with other experts; it covers disability in the general human rights context and served as one of the triggers for the negotiation process; obviously it makes very good background reading.

Finally, in placing the new Convention in a broader human rights context, the numerous **General Comments and General Recommendations**, which the **Treaty Bodies** have adopted over the years, are the core source in sketching out the various angles of each provision in the overall human rights discourse.

Working Group Text
http://www.un.org/esa/socdev/enable/rights/ahcwgreport.htm

Working Text:
http://www.un.org/esa/socdev/enable/rights/ahcchairletter7oct.htm

Enable web site:
http://www.un.org/disabilities

Daily Summaries and Background Papers: http://www.un.org/disabilities/default.asp?id=1423

International Service for Human Rights:
http://www.ishr.ch/content/view/401/572/

Gerard Quinn/ Theresia Degener et al, OFfice of the High Commissioner for Human Rights (Ed.), Human Rights and Disability
http://www.ohchr.org/Documents/Publications/HRDisabilityen.pdf
http://www2.ohchr.org/english/issues/disability/docs/Studydisability_en.doc

Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.7
http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ca12c3a4ea8d6c53c1256d500056e56f?Opendocument

All other General Comments and Recommendations may be found on the web site of the pertinent treaty body:
http://www.ohchr.org/english/bodies/

More Resources on the CRPD in SOURCE

SOURCE Database on Disability and Development: an International Information Resource Centre designed to strengthen the management, use and impact of information on disability, development and health. SOURCE has unique collection of over 25,000 resources.
Main website: http://www.asksource.info/

SOURCE key topic area for Disability, Inclusion and Development:
http://www.asksource.info/res_library/disability.htm

SOURCE Key List on Disability, Human Rights and the Convention :
http://asksource.ids.ac.uk/cf/keylists/keylist2.cfm?topic=dis&search=QL_CRPD08

Acronyms

AHC	Ad Hoc Committee
CAT	Convention Against Torture and other cruel, inhuman or degrading Treatment or Punishment
ICCPR	International Covenant on Civil and Political Rights, 1966
IDC	International Disability Caucus
CEDAW	Convention on the Elimination of all forms of Discrimination against Women, 1979
CERD	International Convention on the Elimination of All Forms of Racism, 1966
CESCR	International Covenant on Economic, Social & Cultural Rights, 1966
CRC	United Nations Convention on the Rights of the Child, 1989
CRMW	International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, 1990
CRPD	Convention on the Rights of Persons with Disabilities, 2006
HRC	Human Rights Committee, expert body in charge of the ICCPR
ILO	International Labour Organization
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
PP	Preambular Paragraph
STANDARD RULES	UN Standard rules on the Equalization of Opportunities for Persons with Disabilities
UDHR	Universal Declaration of Human Rights, 1948
VCT	Vienna Convention on the Law of Treaties 1966
WORLD PROGRAM OF ACTION	World Program of Action Concerning Disabled Persons

Introduction[2]

The Convention on the Rights of Persons with Disabilities spells out clearly and unconditionally that persons with disabilities have equal access and a right to full and effective enjoyment of all human rights – the removal of barriers explicitly termed as a condition for access and the enjoyment of equality.

Until December 13, 2006, when the Convention was adopted by the UN General Assembly, persons with disabilities had been tucked away in savings clauses and sidelined in a few resolutions and declarations. This contributed significantly to the invisibility of persons with disabilities in human rights discourse, which was highlighted also by the Millennium Development Goal's (MDGs) failure to mention persons with disabilities explicitly.

Human Rights Protection

Following the end of National Socialism and World War II., the international community made human rights a central feature of its mutual efforts to bring peace, stability and prosperity to the world. Article 1 of the UN Charter – which is the treaty through which States become members of the United Nations – stipulates that one of the "purposes" of the United Nations is to "promote and encourage respect for human rights and fundamental freedoms for all." The clause adds on that no distinction should be made on the grounds of "race, sex, language or religion." This short list of grounds was to be the starting point for an elaborate clause in a binding human rights treaty. The negotiations for an obligatory agreement failed and instead the Universal Declaration of Human Rights (UDHR) was adopted. It is a widely recognized text built into many constitutions and other laws around the world, but in its essence it is a morally and politically binding resolution with very little legal force. Part of the agreement to the UDHR was that negotiations would continue to agree on a binding treaty. However, overshadowed by the onset of the Cold War, the United Nations only concluded these negotiations in 1966 and – reflecting the political divide of the time – came up with two instruments: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR) respectively. Together with the UDHR, they constitute the **International Bill of Human Rights:**

<table>
<tr><td>International Covenant on Civil & Political Rights (ICCPR)</td><td>International Covenant on Economic, Social & Cultural Rights (CESCR)</td></tr>
<tr><td colspan="2">Universal Declaration of Human Rights (UDHR)</td></tr>
</table>

[2] Parts of this text are derived from Marianne Schulze, The UN Convention on the Rights of Persons with Disabilities and the Visibility of Persons with Disabilities in Human Rights, Journal for Disability and International Development, Issue 1/2007, p 13 http://www.zbdw.de/projekt01/media/pdf/2007_1.pdf

Political rights are rights such as freedom of speech, assembly, association and freedom from torture as well as the right to a fair trial, to privacy and to marry. Economic and social rights include the right to food, education, work and health services. The split between civil/political rights and economic/social rights has left its mark on human rights. The core human rights treaties adopted since 1966, against racism – International Convention on the Elimination of All Forms of Racism (CERD), on women's rights – Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), against torture – Convention Against Torture and other cruel, inhuman or degrading Treatment or Punishment, on children's rights – Convention on the Rights of the Child, and on migrant worker's rights – International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, largely reflect the split. The implementation of human rights more often than not follows the lines of this divide, making it a challenge to live up to the universal, indivisible, interrelated and interdependent nature of all human rights.

The negative effects can particularly be felt in the way that "rights" on the one hand and "development" on the other hand are separated. This leads to a lack of full recognition of the right to development and undermines efforts aimed at obliging private entities to adhere to human rights standards, particularly as public services are privatized.

The right to social development is recognized in a number of declarations and similar documents, which do not have full legal force – noticeably lacking enforcement provisions. The 1986 Declaration[3] recognizes, inter alia:

- The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
- The human person is the central subject of development and should be the active participant and beneficiary of the right to development.
- All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.
- States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.
- States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.
- The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.

[3] See for the Full Text of the Declaration: http://www2.ohchr.org/english/law/vienna.htm

- States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

Following the End of the Cold War, the international community came together to assess the status quo of human rights. Three main agreements were reached at a conference held in Vienna that resulted in the Vienna Declaration and Programme of Action (1993). The three key aspects of this Declaration are:

- All human rights are “universal, indivisible, interdependent and interrelated”, thereby bridging the division between political and social rights.
- It reiterates the right to development, stating that it is a “universal and inalienable right and an integral part of fundamental human rights.”
- Acknowledging the failure to make international human rights norms a reality on the (national) ground, States pledge to take a more serious approach to implementation, also by way of strengthening the monitoring in States.

The Convention on the Rights of Persons with Disabilities (CRPD) is the first human rights treaty to be concluded since the Vienna Declaration. It fulfils many of the pledges made in 1993, but fails on a number of them.

However, the need for increased protection of the human rights of persons with disabilities goes well beyond the promises of the Vienna Declaration:

Invisibility of Persons with Disabilities

Both the ICCPR and the CESCR reflect the wording of the anti-discrimination clause in Article 2 of the UDHR, granting rights “*without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.”

Impairment or disabilities are not specifically mentioned in the grounds of discrimination in the International Bill of Rights: compare Article 2 of the UDHR, the ICCPR & CESCR respectively. From a strictly legal point of view the savings clause “other status” at the very end of the provision affords persons with disabilities the necessary protection from discrimination. But obviously this notion has proven wholly inadequate, to say the least.

In addition to this lack of overt legal protection, persons with disabilities were for a long time perceived as objects rather than subjects and thereby rights-holders. The objectisation of disabilities resulted in a narrowing of exclusion and inaccessibility placing the emphasis solely on the impairment, also referred to as the "medical model". Caught up in that approach, persons with disabilities were looked on as objects of pity who required "help" through charity; this aspect of objectisation is also referred to as the "welfare-based approach" to disabilities. This reinforced 'specialized' schemes within social welfare programs in many – mostly industrialized – countries. It furthermore caused the creation and maintenance of separate facilities such as special schools, sheltered workshops, and other mechanisms of segregation.

Based on the premise that all human beings have inherent dignity, which entails the enjoyment of all human rights, persons with disabilities are unconditional (human) rights-holders. Subsequently the focus is not on the possible impairment(s) but rather on the constraints that the social fabric builds into accessing the enjoyment of rights. In addition to the more obvious physical barriers, this approach focuses on the manifold social, behavioral, stereotype-based barriers that lead to and potentially sustain the exclusion of persons with disabilities[4].

Approaching human rights from the accessibility angle provides the mainstream with a tool for ensuring that obstacles to the full and effective enjoyment of all human rights can be removed. More importantly – at a deeper level, it serves as a key to unlocking the various social constructs which lead to the exclusion of persons with disabilities and the denial of rights respectively. Deconstructing the various factors that perpetuate exclusion, the predominant theme is the separation, if not to say segregation, caused by stereotypes, prejudices and other presumptions about "the disabled" that lead to the denial of rights rather than potential shortcomings in legal safeguards.

Not the first, but certainly one of the earliest efforts to decrease the invisibility of persons with disabilities in the UN's human rights documents is the **1971 Declaration on the Rights of Mentally Retarded Persons, which was followed in 1975 by the Declaration on the Rights of Disabled Persons.** It stated, inter alia, that "the term 'disabled person' means any person unable to ensure himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities[5]."

The Declaration – which has no direct legal implications – proclaimed further that the rights, which persons with disabilities shall enjoy, "shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or and other situation applying either to the disabled person himself or herself or to his or her family." In addition to this anti-discrimination clause, which is broader than the abovementioned provision contained in the political and economic rights treaties respectively, also extends to the protection to family members. The Declaration also makes an unequivocal statement on all human rights applying to all:

[4] Compare, Quinn/Degener , Human Rights and Disabilities – Chapter 1 The moral authority for change: human rights values and the worldwide process of disability reform.
[5] General Assembly Resolution 2856 (XXVI), 20 December 1971 and General Assembly Resolution 3447 (XXX) 9 December 1975.

"Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and as full as possible." The first indicators of reasonable accommodation may be discerned from another Article of the Declaration: "disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible."

Also for the first time persons with disabilities were recognized in the authoritative interpretations, which the expert panels created under the UN Human Rights Treaties (ICCPR, CESCR, CERD, CEDAW, CAT, CRC, CRMW) may issue.

In 1982 the Human Rights Committee – the body constituted under the ICCPR to monitor the implementation of civil and political rights – issued a General Comment, which included a reference to persons with mental disabilities. On the right to liberty and security of the person, the Committee held that this applies to "all deprivations of liberty, whether in criminal cases or in other cases, such as, for example, mental illness, vagrancy, drug addiction, educational purposes,[6]". Note that this statement almost coincided with the 1981 International Year of Persons with Disabilities.

In 1989 the UN adopted yet another specialized human rights treaty: the Convention on the Rights of the Child (CRC), which includes the first stand-alone article referring to the rights of persons – here: children – explicitly with disabilities. Also, "disability" was added to the potential grounds of discrimination[7].

In 1982 the General Assembly adopted the **World Program of Action Concerning Disabled Persons**. As is UN custom, the thematic focus was followed by the proclamation of a Decade on Persons with Disabilities, which spanned from 1983 to 1992. At the end thereof, in 1993 the **UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities** were adopted, they spell out "*a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities.*"

The following year – 1994 – the Committee under the CESCR adopted a **General Comment** on "Persons with Disabilities[8]", which in its opening paragraph states

"disability is closely linked to economic and social factors - conditions of living in large parts of the world as so desperate that the provision of basic needs for all – food, water, shelter, health protection and education must form the cornerstone of national programmes. Even in countries which have a relatively high standard of living, persons with disabilities are very often denied the opportunity to enjoy the full range of economic, social and cultural rights recognized."

Previously, in 1991, the Committee under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) had briefly touched on the rights of women with disabilities and reiterated the need to specifically include them in State party reports[9].

[6] ICCPR General Comment 8, Liberty and security of the person.
[7] Article 2 CRC.
[8] CESCR, General Comment 5, Persons with Disabilities.
[9] CEDAW, General Comment 18, Women with Disabilities.

It is noteworthy that **regional** human rights documents increased references to persons with disabilities, too. The Additional Protocol to the American Convention on Human Rights, which builds on the 1969 American Convention on Human Rights, declared under the title of 'protection of the handicapped' in 1988: "*Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality.*" The provision, Article 18, enumerates special programs and training as well as the consideration of persons with disabilities in urban development plans. Note that neither the African nor the European regional treaties made such references at that point in time. In 1999 the Organization of American States (OAS) went further and adopted the **Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities**. Also, the European Union's 2000 Charter of Fundamental Rights includes a special provision on the rights of persons with disabilities, namely Article 26. The African human rights treaty – the **Banjul Charter on Human and Peoples**' Rights mentions "the right to special measures" in Article 18.

Brief History of the Convention on the Rights of Persons with Disabilities

The negotiations on a Comprehensive and Integral International Convention on the Rights and Dignity of Persons with Disabilities were based on a number of initiatives, including from Sweden and Italy. The latest one was instigated by Mexico: in the course of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, the delegation proposed developing a Convention protecting the rights of persons with disabilities. The then Mexican president, Vincente Fox, reiterated this proposal during the opening session of the 56th General Assembly and in response, the Assembly adopted Resolution 56/162, which established the Ad Hoc Committee on a Comprehensive and Integral International Convention Protecting the Rights and Dignity of Persons with Disabilities; its aim was outlined as followed: "*to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account recommendations of the Commission on Human Rights and the Commission for Social Development.*"

The Ad Hoc Committee's task was to develop a text that would ensure **full and effective enjoyment of all existing human rights**, ensuring accessibility to all human rights while negotiating no new rights. The text was thus to be based on the UN's Bill of Rights and its specialized treaties: the International Convention on the Elimination of All Forms of Racism (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the United Nations Convention on the Rights of the Child (CRC), and the International Convention on Protection of Rights of Migrant Workers and their Families (CRMW). Note that the Convention on the Protection of All Persons from Enforced Disappearances had not yet been concluded at the time of the negotiations.

Furthermore, according to the relevant resolution, the draft Convention was not only to cover human rights but also **social development aspects**. As mentioned above, the 1986 Declaration on the Right to Development in combination with the 1993 Vienna Declaration establishes social development as a human right. Given that some 80% of persons with disabilities live in developing countries, the notion that development is primarily to protect the poorest and the worst-off has particular relevance in the advancement of the rights of persons with disabilities. The right to development can be resumed as being "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized," Article 1 Declaration on the Right to Development.

The first two meetings of the Ad Hoc Committee produced such a vast amount of material that a Working Group of 27 governments and 12 non-governmental organizations (NGOs) met in January 2004 to prepare a draft of the convention on the basis of which member states negotiated further. Thereafter, a meeting was held in spring 2004, followed immediately by a session in summer 2004. After two further meetings, the Chair, H.E. Ambassador Don MacKay of New Zealand, produced an amended text on which negotiations were based, the Working Text, sometimes also referred to as the "Chair's Text". Shortly after its publication, the General Assembly in its Resolution 60/232 called on member states to "*participate actively and constructively in the work of the Ad Hoc Committee with the aim of concluding a draft text of a convention and submitting it to the General Assembly, as a matter of priority, for its adoption, preferably at the sixty-first session.*"

The Ad Hoc Committee reconvened for a three-week session in January 2006 and for its final session in August 2006, at the end of which the draft of the convention was adopted ad referendum. In the course of this session an optional protocol[10], which enables individual complaints to the Committee to be set up under the Convention, was drafted and adopted ad referendum. A drafting committee was subsequently set up to ensure compliance with UN human rights treaty language.

Throughout the negotiation process, civil society, particularly DPOs, were very actively involved in the drafting . The presence of DPOs was also reflected in the 800 or so persons who registered for the Ad Hoc Committee's final session, as well as in their involvement in subsequent events, such as the signing ceremony on March 30, 2007. A broad coalition of DPOs and allied NGOs from international, regional and national levels, formed the International Disability Caucus (IDC), which developed into the negotiation's strongest civil society voice.

In the course of the negotiations, the Secretary General of the United Nations, Kofi Annan, stressed the need for heightened visibility – also by way of a special international treaty – stating "*Persons with disabilities make up the world's largest minority group. They are disproportionately poor, are more likely to be unemployed, and have higher rates of mortality than the general population. All too often, they do not enjoy the full spectrum of civil, political, social, cultural and economic rights. For many years, the rights of persons with disabilities were overlooked*[11]."

[10] Optional Protocols (OP) allow, among others, for individual complaints to the expert bodies under the core human rights conventions. Note that not all core human rights treaties have that possibility and that most OPs were negotiated well after the conclusion of the Convention, compare e.g. CESCR, which was concluded in 1966, the OP was adopted in December 2008.
[11] The Secretary General, Message on the International Day of Disabled Persons, 3 December 2005.

The High Commissioner for Human Rights, Louise Arbour, highlighted both the need for and the potential of the Convention: "*This new treaty will play a key role. It will affirm the rights of persons with disabilities explicitly and spell out the action needed to implement them. It will also raise awareness about the human rights of persons with disabilities (...). We need to understand better the specific challenges that persons with disabilities face in accessing their human rights, and this treaty will serve to educate as well as to ensure that obligations are met.*[12]"

The newly adopted Convention, places the protection of full and effective enjoyment of human rights by persons with disabilities at the same level – and thus equally visible – as the other specialized human rights treaties. While it does not create any new rights, it certainly adds a set of new features, which make it a treasure trove not just for persons with disabilities, but for human rights in general. In addition to ensuring the inclusiveness and accessibility of human rights, highlighting the added value of the Convention, is certainly in place. Reaching this stage is a huge achievement and yet it is just the start: there is still much to be done.

Taking into account other specialized human rights treaties and basing them on the above mentioned Bill of Human Rights, the **Convention on the Rights of Persons with Disabilities (CRPD)** now finds itself prominently among the other core Human Rights Treaties– and thus very visible :

Rights of Migrant Workers CRMW	Rights of Children CRC	**Rights of Persons with Disabilities CRPD**
Anti-Racism Convention CERD	Women's Rights Convention CEDAW	Conv. against Torture CAT

Covenant on Civil & Political Rights	Covenant on Economic, Soc. & Cultural Rights
Universal Declaration of Human Rights	

OHCHR has published a monitoring tool entitled "Monitoring the Convention on the Rights of Persons with Disabilities – Guidance for Human Rights Monitors", which provides useful information on the CRPD's impact. [13]

[12] Statement by Louise Arbour, High Commissioner for Human Rights, General Assembly Ad Hoc Committee, Seventh Session, New York, 27 January 2006.
[13] OHCHR, Monitoring the Convention on the Rights of Persons with Disabilities, Professional Training Series Nr. 17; http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf.

The Convention after 2006

The adoption of the Convention on the Rights of Persons with Disabilities by the UN General Assembly in December 2006 set off the process of signing and ratifying by UN Member States – and entities such as the European Union – as well as subsequent application and implementation at the national level. But what has happened at the UN level since then? The following text provides a brief overview of some of the discussions that have taken place in UN fora.

Human rights issues are discussed mainly in two bodies at the UN: the Human Rights Council, which is based in Geneva and consists of an elected membership. And in New York the Third Committee, which is one of the six sub-committees of the General Assembly, with all 192 UN member states as well as observers participating. There are other pertinent bodies with broad mandates, which will be mentioned in due course. The Convention itself foresees a Conference of States Parties ► Article 40, which provides a regular forum to discuss "any matter with regard to the implementation" of the Convention. The Conference of States Parties is to convene for the third time – to elect members of the Committee and to hold discussions on implementation matters, among others – in September 2010.

Following the adoption of the Convention by the 61st General Assembly, the first relevant session of the General Assembly to discuss the Convention on a par with established Conventions was its 62nd Session: the World Programme of Action concerning Disabled Persons combined with efforts to ensure that the Millennium Development Goals are achieved for persons with disabilities were the focus of the first resolution in the Third Committee in October 2007. Based on a biannual resolution – the last one being 60/131 – the Third Committee, later confirmed by the UN General Assembly, welcomed the adoption of the Convention and discussed a number of issues in its resolution 62/127. Among them the recognition of reasonable accommodation as a means to ensure independent living, the need for increased data, and the need to apply the Convention in planning, policies and programmes.

Other resolutions in the General Assembly highlighted the Convention and the inclusion of persons with disabilities: the resolution on the rights of the child (62/141) as well as the girl child (62/140), the right to food resolution (62/164), improvement of women in rural areas (62/136), and the protection of and assistance to internally displaced persons resolution (62/153).

Importantly, the Convention itself was given a stand-alone resolution, much like the rights of the child convention and some of the thematic human rights treaties. Entitled "Convention on the Rights of Persons with Disabilities and its Optional Protocol", resolution 62/170 is the foundation setting the Convention on a par with the other human rights treaties in terms of regular discussion and affirmation by the General Assembly. The foundation resolution calls for signatures and ratifications of the Convention but also for technical support both at the UN and country level, in assisting the process of accession and implementation.

The 46th Commission for Social Development was the next to take up the Convention's adoption in its bi-annual resolution on "Mainstreaming disability in the development agenda." The resolution, subsequently adopted by the Economic and Social Council of the United Nations, stresses among others the impact of various forms of discrimination and the need for the removal of barriers in development efforts.

The Human Rights Council, much like the General Assembly's Third Committee, established a basis for its discussion of the Convention in its March 2008 session: the resolution on the Human Rights of Persons with Disabilities (7/9) highlights the impact of social barriers, among others and establishes an annual report and dialogue on Convention related issues.

One of the reports provided by the Secretary General to the 63rd session of the General Assembly – starting in September 2008 – highlights the important role the Convention plays in bridging the perceived gap between human rights and development. The Report states among others:

"As a human rights instrument with an explicit social development dimension, the Convention on the Rights of Persons with Disabilities is both a human rights treaty and a development tool. The Convention identifies disability as an issue to be considered in all programming, rather than as a stand-alone thematic issue, and requires all States Parties to implement measures ensuring full and equal participation of persons with disabilities in society."[14]

Subsequently, the Third Committee discussed the World Programme of Action resolution again: Resolution 63/150 made some inroads in aligning the World Programme of Action with the paradigm of the Convention on the Rights of Persons with Disabilities. It particularly highlighted the importance of making the Millennium Development Goals accessible to and inclusion of persons with disabilities, which is also reflected in its adapted title: "Realizing the Millennium Development Goals for persons with disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities."Traditionally, this resolution is adopted by consensus, meaning there are no votes in favour or against the text. Sadly, at this session a reference to "foreign occupation" meant that the resolution had to be voted on, denting the political standing that it has. As was the case in adopting the Convention, where the preambular paragraph (u) concerning armed conflict and foreign occupation had to be voted on.

Also in this session, the Third Committee made reference to persons with disabilities in its discussion of the World Summit for Social Development resolution (63/152), the right to development resolution (63/178), the right to food resolution (63/187), and the resolution on human rights and extreme poverty (63/175). Again, the resolution on the Convention on the Rights for Persons with Disabilities was adopted (63/192). Whilst the Third Committee session was underway, the Conference of States Parties met for the first time in October 2008, mainly to elect the members of its inaugural committee. However, the impact of having the meeting coincide with the deliberations of the General Assembly's main human rights body, i.e. the Third Committee, should not be underestimated.

[14] A/63/133 Implementation of the outcome of the World Summit for Social Development and of the twenty-forth special session of the General Assembly, Para. 61.

The 10th session of the Human Rights Council in March 2009 saw the first annual debate on the rights of persons with disabilities and the adoption of the second resolution. Entitled ''Human rights of persons with disabilities: national frameworks for the promotion and protection of the human rights of persons with disabilities'', resolution (10/7) reiterated the need for legal implementation of the Convention and set the stage for the discussion of national monitoring mechanisms for the Council's 13th session in March 2010.

The second Conference of States Parties in September 2009 preceded the opening of the 64th General Assembly. Again, the debate of the Convention proved important, however, no outcome document or resolution respectively was passed. The subsequent Third Committee moved swiftly to adopt a resolution focused on realizing the Millennium Development Goals (64/131), which states among others:

Gravely concerned **that persons with disabilities are often subject to multiple or aggravated forms of discrimination, and can be largely invisible in the implementation, monitoring and evaluation of the Millennium Development Goals,**

2. *Urges Member States*, and invites international organizations, regional organization including regional integration organization, financial institutions, the private sector and civil society, particularly organizations representing persons with disabilities, as appropriate, to promote the realization of Millennium Development Goals for persons with disabilities inta alia through explicitly including persons with disabilities in, national plans and tools designed to contribute to the full realization of the Millennium Development Goals;

4. Encourages Member States to ensure that their international cooperation, including international development programs, is inclusive of and accessible to persons with disabilities;

6. *Calls on* governments to enable persons with disabilities to participate as agents and beneficiaries of development, particularly in all efforts aimed at achieving the Millennium Development Goals, by ensuring that programs and policies, namely eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality and empowerment of women, reduction of child mortality, improvement of maternal health, combating HIV/AIDS, Malaria and other diseases, ensuring environmental sustainability, developing a global partnership for development, are inclusive of and accessible to persons with disabilities;

7. *Emphasizes* the importance of the participation of persons with disabilities at all levels of policymaking and development, which is critical to informing policymakers on the situation of persons with disabilities, the barriers they may face and ways to overcome obstacles to the full and equal enjoyment of their rights, to the achievement of the Millennium Development Goals for all, including persons with disabilities, and to their socio-economic advancement;

The resolution focusing on the Convention on the Rights of Persons with Disabilities and its Optional Protocol (64/154) was also adopted. In early November 2009, the Security Council referred to persons with disabilities explicitly in its resolution on "Protection of Civilians in Armed Conflict" (SC 1894):

> ***Stressing*** **the particular impact that armed conflict has on women and children, including as refugees and internally displaced persons, as well as on other civilians who may have specific vulnerabilities including persons with disabilities and older persons, and stressing the protection and assistance needs of all affected civilian populations,**
>
> **29. *Notes* that the excessive accumulation and destabilizing effect of small arms and light weapons pose a considerable impediment to the provision of humanitarian assistance and have a potential to exacerbate and prolong conflicts, endanger civilians and undermine security and the confidence required for a return to peace and stability, calls on parties to armed conflict to take all feasible precautions to protect the civilian population, including children, from the effects of landmines and other explosive remnants of war, and in this regard, encourages the international community to support country efforts in clearing landmines and other explosive remnants of war and to provide assistance for the care, rehabilitation and economic and social reintegration of victims, including persons with disabilities;**

At its 48th Session, the Commission for Social Development revisisted its biannual resolution on "Mainstreaming Disability in the Development Agenda" (E/CN.5/2010/L.3/Rev.1).

The Human Rights Council at its 13th session in March 2010 adopted the resolution "Human rights of persons with disabilities: national implementation and monitoring and introducing as the theme for 2011 the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities," (13/11), which reflects the focus of the resolution on national mechanisms and the theme for the debate in March 2011: international cooperation. At its 14th session, the Human Rights Council adopted a resolution on "violence against women" (14/12) with frequent references to women with disabilities:

> **5. *Urges* States to adopt and implement policies and programmes that enable women to avoid and escape situations of violence and prevent its recurrence, and that provide, inter alia, financial support and affordable access to safe housing or shelters, childcare and other social supports, legal assistance, skills training and productive resources, and to make these services accessible to women and girls with disabilities;**

The Human Rights Council also mentioned the need to address the concerns of persons with disabilities in the reformulation of the mandates of the Special Rapporteur on the human rights of internally displaced persons (14/16).

The Annual Ministerial Review of ECOSOC in early July 2010, adopted the Ministerial Declaration. Its focus was on MDG #3 – gender equality and advancement of women. It includes specific language on women with disabilities:

9. We recognize that action on a number of cross-cutting issues will positively enhance the achievement of the internationally agreed development goals and commitments, including the MDGs. Towards this end, we:

(f) Also emphasize the need for measures to ensure that women and girls with disabilities are not subject to multiple or aggravated forms of discrimination, or excluded from participation in the implementation of the internationally agreed development goals and in this regard, further emphasize the need to ensure their equal access to education at all levels, including technical and vocational training, and adequate rehabilitation programmes, health care services, and employment opportunities, to protect and promote all their human rights and to eliminate existing inequalities between women and men with disabilities;

10. Recognizing that implementation gaps in the achievement of gender equality and the empowerment of women persist, we stress the importance of implementing the following strategies across all areas so as to close those gaps:

(r) Improve and systematize the collection, analysis and dissemination of sex-, age- and disability disaggregated data; enhance capacity development in this regards, and develop gender-sensitive indicators to support legislative developments, policymaking and national systems for monitoring and reporting on progress and impacts;

Preamble

(a) Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

This language can also be found in the opening paragraphs of all other UN human rights treaties: it is a standard clause. As Article 1 of the UDHR states: "*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*"

(b) Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

This language is consistent with other human rights treaties, however, it is noteworthy that in other texts, there is an enumeration of the grounds on which distinctions are not to be made . Compare, for example, the ICCPR, which lists "*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*". This is in line with the UDHR and CESCR, as mentioned above.

Compare ► PP (p) on "multiple of aggravated forms of discrimination", which adds **ethnic** and **indigenous** origin as well as **age** as prohibited grounds of discrimination. It also contains a savings clause, "other status."

(c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

This preamble para refers to the Vienna Declaration and Programme of Action (1993), which, in Article 5, uses the above language to bridge the divide between civil & political and economic & social rights respectively.

(d) Recalling 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 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,

This is a standard reference to the human rights treaties enumerated in the ▶ Introduction.

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

This clause is important as it compliments the "non-definition" of disability in ▶ Article 1. Since the negotiators could not agree on whether, and if so how, impairment or disability respectively could and should be defined, the Convention gives an open description of disability. This non-definition enshrines the **social model**, i.e. recognizing that discrimination and therewith the disabling of access for persons with disabilities is largely due to barriers of various kinds, including the built environment, but even more so to social and attitudinal ones such as stereotypes, prejudices and other forms of paternalistic and patronizing treatment.

(f) Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

It is a standard for a specialized treaty to make a reference to relevant documents, which precede the current document, here: the World Programme of Action and the Standard Rules respectively. Compare, e.g., the ICRMW, which refers to relevant ILO Conventions (International Labour Organization).

(g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

This clause – **sustainable development** – has not been used before as part of preambular paragraph and is the result of a compromise. Very late in the negotiations, Bangladesh made a plethora of suggestions and this one was added, while all others were withdrawn. Note that the Convention hardly ever uses the term "mainstreaming", mainly because the phrase/concept is hard to translate but also because a few delegations were not convinced that, as a process for inclusion of the gender-perspective, it had been particularly effective. Finally, the term 'disability issues' is too short to capture the need for inclusion, accessibility and participation. The phrase "inclusion of persons with disabilities" is a lot clearer and thus preferable.

(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

Again a standard clause with a slight addition: the Holy See, which is not a UN Member State but a permanent observer, insisted on the phrase "and worth".

(i) Recognizing further the diversity of persons with disabilities,

A reference to **diversity** is a first in a human rights document. It is a reflection of the range of impairments and disabilities, a fact that the IDC had to stress repeatedly. Compare also the General Principle ► Article 3 (d) on "*respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.*"

(j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

This clause was demanded by the IDC and added very late in the game to ensure that there be no exceptions to and escape from ensuring that persons requiring **more intensive support** are not denied access and the full and effective enjoyment of all human rights.

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

Is a standard clause; a similar preambular paragraph can be found in CEDAW. Note – again – that the concept of barriers used in the CRPD includes not only physical but also attitudinal and social barriers ► PP (e).

(l) Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

Compare CEDAW and CRC: the latter provides an identical phrase. Given that more than 80% of persons with disabilities live in **developing countries**, there is special importance in highlighting this fact. In addition to other preambular paragraphs as well as the Declaration on the Right to Development, compare also the Article on international cooperation ► Article 32 in this context.

(m) Recognizing the valued 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 their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

There is comparable language in CEDAW, which also highlights the "contributions" of women to society at large. The IDC opposed the use of "valued existing" and "enhanced sense of belonging" as problematic, i.e. patronizing.
Note also the reference to **social development** – the second important factor in addition to human rights according to the Ad Hoc Committee Resolution (compare ► Introduction), and to the importance of eradicating poverty, which is both a cause and a consequence of disabilities. Compare the reference to accessible **poverty** reduction programmes in ► Article 28 Para 2 b.

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

This language is new and is further developed in General Principle ► Article 3 (a) on respect for individual autonomy, including the freedom to make one's own choices, and independence of persons." It is also a precursor to ► Article 19 on independent living.

(o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

Another precursor: compare, e.g. ► Article 4 (General Obligations) on **including persons with disabilities at all levels**, in all programmes; compare also the concept of inclusive development ► Article 32 (International Cooperation) as well as Article 33 (3).

(p) Concerned about the difficult conditions faced by 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, ethnic, indigenous or social origin, property, birth, age or other status,

Compare ► PP (b) and CEDAW & CRC. Note that using the term "**multiple**" is a first in a human rights treaty. The 1995 Beijing Declaration states in para. 32 "*ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people*". The term is also used in the provision on women with disabilities ► Article 6. Compare also the General Comment on non-discrimination by the CESCR Committee[15].

The term "**aggravated**" has not previously been used in a human rights treaty. Compare though Para (n) of the 1995 Beijing Declaration, which refers to 'multiple or aggravated forms of discrimination' in the context of women's discrimination. The IDC proposal to include "ethnicity" was accepted in that "**ethnic**" was added. Similarly, **age** was added. Very late in the game Venezuela, following a number of attempts by the IDC, succeeded in including **indigenous** – the imminent agreement on the Declaration on the Rights of Indigenous Peoples[16] certainly being a factor. The European Union, endorsed by, inter alia, Canada and New Zealand, sought to add "sexual orientation", also to comply with EU Directives on Equal Treatment. However, this was opposed by a significant number of States.

The phrase "**multiple or aggravated**" connotes the fact that impairments/disabilities often lead to structural discrimination, which in turn perpetuates a cycle of exclusion, disabling persons with disabilities further and sustaining this cycle rather than breaking it. The concept of **multiple and intersectional discrimination** is slowly being recognized as a social barrier.

(q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

This is a precursor mainly to the stand-alone Article on **Women with Disabilities** ► Article 6, and the result of various compromises following the discussion on stand-alone provisions for women and children respectively. The discussion on women and children was, regrettably, regularly conjoined.

[15] CESCR, General Comment 20, Non-Discrimination, Para 17.
[16] Compare General Assembly Resolution 61/295 of 13 September 2007, http://www.un.org/esa/socdev/unpfii/en/drip.html

(r) Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

► Article 7 – **Children with Disabilities** – became a stand-alone provision, largely due to the successful lobbying of the IDC member, Save the Children. The CRC contains a provision on children with disabilities, Article 23 (*States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community*).

Compare, importantly, the recent General Comment by the Child Rights Committee: "the rights of children with disabilities"[17], which covers a range of important issues, including the best interest of the child, the right to life and survival, as well as respect for the views of the child.

(s) Emphasizing 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,

Again a compromise and precursor of ► Article 6, Women with Disabilities.

(t) Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

As mentioned above ► para. (m), most persons with disabilities live in developing countries and are disabled as a result of conditions of poverty. Compare also the need for accessibility of poverty reduction programmes ► Article 28 (Adequate Standard of Living and Social Protection).

[17] CRC General Comment 9: The rights of children with disabilities
http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.GC.9.En?OpenDocument

(u) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

The only preamble para that required a vote because of the term "foreign occupation." The phrase is a "loaded" – that is connoted – term in the UN context, used as a quasi-synonym for the Israeli-Palestinian conflict. Civil society tried to distance itself from the discussion on this provision, rightly arguing that the negotiations should not be hijacked for political purposes; however, being at the United Nations, some of the world body's "standard" discussions could not be avoided.

The relevant Article on situations of risk and humanitarian emergencies ► Article 11 was inserted following the December 2005 Tsunami catastrophe. Comparable language on "international humanitarian law to protect the civilian population in armed conflicts" can be found in Article 38 (4) CRC.

(v) Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

Accessibility is a new concept in a human rights treaty. It is a precursor of various provisions, enshrining accessibility as a means of ensuring equality as well as full and equal access to the enjoyment of all human rights. Compare the General Principle in ► Article 3 (f) as well as the stand-alone provision ► Article 9.

(w) Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

Russia insisted on this provision, which raised some doubts as to its meaning and interpretation in the IDC. The language is reflective though of Article 29 UDHR, "*everyone has duties to the community in which alone the free and full development of his personality is possible.*" Compare also the final preamble paras of both ICCPR and CESCR: *Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.*

(x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

The role of the **family** was a recurring theme in the negotiations. One side held that the Convention is solely about persons with disabilities and also pointed out that not all families have the best interest of a family member with disabilities at heart. Supporters argued that in situations where a family takes care of a person with disabilities, it is often necessary to protect the rights of the care-givers to ensure access and non-discrimination. A middle-line acknowledged the role of the family, but highlighted the connotation of the term "family" and preferred **care-givers**.

Compare, also the preamble of CRC: "*Convinced that **the family**, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community*" as well as Rule 9 of the Standard Rules.

(y) Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity 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, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

The line "comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities" reflects the Ad Hoc Committee's name and the title of the draft until Ad Hoc Committee 7 – Working Text. There was some discussion on ensuring the "dignity" of persons with disabilities. Note that only rights can be guaranteed but that **dignity** is achieved by upholding rights. Compare also notes on "dignity and worth" ► PP (a) & (h).

The paragraph highlights **various areas** in which persons with disabilities shall fully and equally enjoy all human rights. It also addresses the division between developed and developing countries.

Article 1

Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

There was substantial discussion on the need for a separate article on the „purpose“ of the Convention as usually the rationale of a treaty is conveyed through its title and possibly the preamble paragraphs. Comparable text can be found in the preambles of ICCPR, CESCR, CAT and CRC. Compare the preamble of the UDHR "*… to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms" and Article 3 CESCR "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.*"

To ensure that **important concepts**, such as full and equal enjoyment as well as dignity, are clearly spelled out, it seemed both appropriate and necessary to have a special provision on the Convention's aim:
The first paragraph thus enshrines the goal of removing all barriers disabling full – that is **effective** – and equal enjoyment of all human rights and fundamental freedoms. Note that DPI (Disabled People's Int'l) motioned unsuccessfully for the insertion of "effective."

Note that the phrase "**promote, protect and ensure**" is unique. Other terms considered were 'respect' and 'fulfil', the former was too weak, the latter too strong. Here 'protect' refers mainly to civil & political rights – also called first generation rights – and the term 'promote' is linked to economic & social rights – second-generation rights. "**Ensure**" was also included at the insistence of the IDC, to make certain that **all possible State actions** would be covered and to make certain that the outcome aimed for would be achieved.
Human rights commitments oblige states to **promote, protect and fulfil** human rights.

- Promote: States through their actions have to support the upholding of rights.
- Protect: States have to ensure that no-one is denied their human rights.
- Fulfil: States have to proactively engage in actions that strengthen people's access to rights. Structures of exclusion and segregation increase the State's obligation to be pro-active.

The IDC also insisted on adding "**all**" to persons with disabilities, highlighting the need to be mindful of the diversity of persons with disabilities ► PP (i) and the needs of persons with disabilities requiring more intensive support ► PP (j).

Note also the phrase "**inherent dignity**", which, as mentioned above, is somewhat troublesome, as dignity as such cannot be guaranteed. In a compromise, the term "respect for" was inserted, also on insistence of the IDC and Liechtenstein.
The second paragraph contains an open description or **non-definition** of **disabilities**. At one stage, disability was to be "defined" under Article 2, providing for a plethora of definitions of disability and persons with disabilities respectively.

Note the language in ► Article 4 (1) "**States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability,**" as part of the general obligations under the Convention.

A special mention has to be made about so-called reservations on Article 1. As is explained in more detail in ► Article 46, it is formally possible for a State Party to make a reservation to the application of the CRPD, thereby limiting its scope and application. However, there are limits on the leverage that States have in declaring such reservations. Importantly, the object and purpose of a treaty cannot be opted out from. This is a general rule under international law, which is repeated in Article 46[18]. Therefore, the fact that the non-definition of the CRPD is covered under the "purpose" provision in Article 1 makes it formally very difficult to limit the applicability of the Convention.

On the question of a definition, some 50 national definitions were considered. Here is a selection: in Zambia the Persons with Disabilities Act states «person with disability « means a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability. In Peru the law states "Persons with disabilities are those with one or more proven impairments with a significant loss of one or more physical, mental or sensorial functions, which imply the reduction or absence of the ability to carry out an activity within the margins considered normal, by limiting them in the fulfilment of a role, function or exercise of activities and opportunities for equitable participation in society." In the Jordanian Law for the Welfare of Disabled Persons: "The Disabled Person: Any person with a permanent, partial or total impairment in any of his senses or physical, psychological or mental abilities to the extent that the ability to learn to be rehabilitated or to work, is limited in a way which renders him/her short of fulfilling his/her normal daily requirements in circumstances similar to those of able-bodied persons." Serbian law states that persons with disabilities have "inherent or acquired physical, sensory, intellectual or emotional impairments, who through social or other barriers have no or reduced opportunities to take part on social activities on an equal basis with others, regardless of whether they can realize the above-mentioned activities with the use of technical aids or with support services."

[18] The interpretation of international treaties is explained in the Vienna Convention on the Law of Treaties (VCT). The pertinent rule on reservations and the limits on the object and purpose can be found in Article 31 VCT.

In China, the Law on the Protection of Disabled Persons states: "'disabled persons' refers to those with visual, hearing, speech or physical disabilities, mental retardation, mental disorder, multiple disabilities and/ or other disabilities." In India disablity means blindness, low-vision, leprosy-cured, hearing impairment, loco motor disability, mental retardation, mental illness – according to the India Persons with Disabilites Act. Finally, the Canadian Human Rights Act stipulates: "'disability' means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug."

The discussion lead to two conclusions: there would be no consensus over a 'definition' and the wording that was developed is many things, but it is not a definition.

Obviously there are pros and cons about having a 'definition' of disability. A conclusive definition runs the risk of leaving out people in need of protection and may become outdated. Not having a definition opens the Pandora's box of who gets to define 'disability'. As was highlighted in a European Court of Justice anti-discrimination case, the legal interpretation of the scope of protection is very difficult to designate if the scope remains unclear. Also, the lack of designation of the protected persons more or less automatically leads to national legislation setting the frame: that again leads to the exclusion of many persons who should be protected by the CRPD. Attempts to have a reference to "national legislation" – to define disabilities – were successfully stalled. The China, Russia and India block– countries with a comparatively large populace – were the most adamant in demanding a narrow scope of disabilities.

Two texts were considered in trying to come up with a "definition":

1. The CESCR Committee, in its General Comment 5[19] – persons with disabilities – referred back to the approach of the 1993 Standard Rules and elaborated on that:

"There is still no internationally accepted definition of the term «disability». For present purposes, however, it is sufficient to rely on the approach adopted in the Standard Rules of 1993, which state:

«The term 'disability' summarizes a great number of different functional limitations occurring in any population ... People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature».

In accordance with the approach adopted in the Standard Rules, this General Comment uses the term «persons with disabilities» rather than the older term «disabled persons». It has been suggested that the latter term might be misinterpreted to imply that the ability of the individual to function as a person has been disabled[20]."

[19] CESCR, General Comment 5, Persons with Disabilities.
[20] CESCR, General Comment 5, Persons with Disabilities, paras 3 & 4.

Furthermore, the **social dimension** of disabilities is highlighted in the General Comment:

Both *de jure* and *de facto* discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more «subtle» forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. 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. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services[21].

2. The **Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities** also contains a definition[22]:

The term «disability» means a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment.

a. The term «discrimination against persons with disabilities» means any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms.

b. A distinction or preference adopted by a state party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the right of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference. If, under a state's internal law, a person can be declared legally incompetent, when necessary and appropriate for his or her well-being, such declaration does not constitute discrimination.[23]

[21] CESCR, General Comment 5, Persons with Disabilities, para 15.
[22] The Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, 1999, can be found at: http://www1.umn.edu/humanrts/instree/disabilitytreaty.html
[23] Article 1 Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.

Other definitions referred to were the International Classification of Functioning, Disability and Health (ICF) and the wording used by the World Health Organisation (WHO).

The IDC proposed the following wording:

*A **person with a disability** is an individual whose ability to lead an inclusive life in the community of his/her own choice is limited by the separate or concomitant impact of physical, economic, social and cultural environments and/or personal factors that interact with physical, sensory, psychosocial, neurological, medical, intellectual or other conditions that may be permanent, temporary, intermittent or imputed. If a definition of a person with a disability does not exist in a country, the definition in this convention shall be applied and any definition of disability that is applied in their countries' courts of law shall be at least as inclusive and broadly based as the definition contained in this convention.*

In establishing the scope of protection, a list of impairments of varying length was discussed both as non-exhaustive – including a savings clause – and as conclusive.

In the initial discussion "mental, physical and sensory" disabilities were proposed as the scope of protection. The IDC pointed out that the term "**mental**" was no longer used, also because it confuses very distinct forms of disabilities and does not explicitly cover psycho-social disabilities. Note in particular the cultural variations in (not) recognizing disabilities with a psycho-social, psychiatric or related dimension.

The IDC was adamant about the list being open – that is non-exhaustive – and as comprehensive as possible. The IDC proposed: "**physical, sensory, psychosocial, intellectual, neurological and medical impairments and conditions**" as well as the phrase "**imputed, perceived, temporary and intermittent.**"

The direct comparison between the IDC proposal and the final text makes the differences obvious:

IDC: physical, sensory, psychosocial, neurological, medical, intellectual or other conditions

CRPD: physical, mental, intellectual or sensory impairments

PWDA (Persons with Disabilities Australia) had argued for a broad definition to ensure that persons who sustain impairments due to illness – such as HIV/AIDS – be protected by the Convention. Note also that persons in continuous pain are safeguarded by the CRPD.

The IDC was unsuccessful in opposing the insertion of the concept of "long-term", which is vague and not defined. However, the IDC was successful in having terms such as 'persistent' and 'permanent' removed from the non-definition.

The term '**various**' in the second half of the second paragraph bridges the paragraph to ► PP (e), which provides for the legal anchoring of the paradigm shift to the **social model** and connotes the evolving concept of disabilities. There were suggestions to describe the barriers as 'social' or 'environmental and attitudinal', as no consensus was reached on either terms, the word 'various' was used.
The European Union (EU) suggested the insertion of '**may**' to avoid a too close linkage between the impairment and the barrier(s).

The relevant PP (e) and the second part of Article 1 CRPD should be read in conjunction:

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Obviously the breadth of the non-definition has implications on the level of protection under the Convention, most notably the Equal recognition before the law ► Article 12. It also has implications for the collection of data and statistics, compare ► Article 31.

Article 2

Definitions

For the purposes of the present Convention:

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

"Language" includes spoken and signed languages and other forms of non spoken languages;

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

As mentioned earlier, any definition within the Convention was discussed with regard to two essential risks: creating so-called "**shopping-lists**" that could leave someone or something out, or not having a definition and being so open that the target is unclear and the aims of the Convention in danger of remaining unfulfilled because a lack of applicability is construed.

Communication & Language

Communication and language were discussed simultaneously at some length to ensure that the plural of **sign language(s)** would be included in the draft, thus reflecting the fact that sign language shares the same characteristics as spoken language, i.e. varying locally. Note that in the Ad Hoc Committee draft before the drafting Committee the phrase read "communication includes *spoken and signed languages*". The IDC had broadened this further to read "*spoken and signed languages and other forms of non-spoken languages*."

Allegedly for the sake of clarity this phrase was removed by the drafting Committee, which means there is now a need to specifically highlight facilitated communication for persons who do not use either sign language or Braille. With regard to the term **Braille** there was some discussion of whether technological developments could render Braille far less used. It was agreed that for the time being, Braille continues to be an essential means of communication and that future developments should be covered under this definition.

The IDC successfully insisted on the insertion of '**augmentative and alternative modes, means and formats**'.

The practical meaning of accessible documents was highlighted by the World Blind Union circulating a proposal in Braille and – in keeping with a UN custom of making translations in the official UN language available the next day – assuring delegates that a 'translation' would be offered the next morning. Subsequently the daily documents were made available on CD-Rom, a Braille printer was later donated to DESA.

The discussion on '**accessible formats**' lead to the insertion of ► Article 49 (accessible formats of the Convention text) comparatively late in the drafting process.

Discrimination on the basis of disability

This definition draws on a number of sources:

CERD defines 'racial discrimination' (Article 1)[24] and CEDAW clarifies the meaning of 'discrimination against women' (Article 1)[25]. Most important though is the definition provided in para 15 of General Comment 5 of CESCR on persons with disabilities:

> ***Both de jure* and *de facto* discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more «subtle» forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. 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. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.[26]**

[24] Article 1 CERD reads: In this Convention, the term «racial discrimination» shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

[25] Article 1 CEDAW reads: For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

[26] CESCR, General Comment 5, Persons with Disabilities, para 15.

Note that the definition does not include the term '**preference**' as used in CERD (Article 1) and in the CESCR General Comment.

The last phrase of the definition – '**denial of reasonable accommodation**' – stirred some debate. For starters, the concept of 'reasonable accommodation' had to be clarified. Some delegates did not understand the difference between the **individual** applicability of reasonable accommodation as a separate concept from **general** accessibility. The fact that the denial of reasonable accommodation is included in the definition used by the CESCR was helpful. Surprisingly, the EU opposed the insertion for quite some time despite EU legislation that incorporates the concept.

In line with EU legislation, there was explicit mention of **direct and indirect discrimination**. At one point, however, Japan successfully argued that these concepts are unknown in their legal system and therefore the terms '**purpose or effect**' are to be read in place of these; also, the phrase 'includes **all** forms of discrimination' can be read and interpreted accordingly.

Reasonable accommodation

The debate on 'discrimination on the basis of disability' was strongly linked to the concept of 'reasonable accommodation'. Most States, particularly industrialized ones, supported this linkage; India was specifically opposed to it.

Reasonable accommodation was first introduced in national legislation in the United States of America, in the 1968 United States Civil Rights Act, demanding that employees' religious observance and practice be reasonably accommodated by their employers. It was then applied in the 1973 United States Rehabilitation Act and finally in the Americans with Disabilities Act, acronymed ADA. Adopted in 1990 it provides for reasonable accommodation as any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to enjoy equal employment opportunities. Such adjustments shall be offered unless they constitute an undue hardship, i.e. the accommodation is disproportionately costly, extensive, substantial or disruptive or it would fundamentally alter the nature of the entity's operation. Note that comparable legislation in the United Kingdom, adopted in 1995 – DDA, the Disability Discrimination Act – uses the term reasonable adjustment.

Further information on reasonable accommodation may be found in a Background Conference Document prepared for the AHC by the Department for Economic & Social Affairs.[27]

The IDC made the following proposal: *"reasonable accommodation" means necessary and appropriate modification and adjustments that is interactive, individualized and subject to the person's consent to ensure to persons with disabilities the enjoyment and exercise of all human rights and fundamental freedoms on a basis of equality with others.*

[27] Department of Economic and Social Affairs, Background conference document, The Concept of Reasonable Accommodation in Selected National Disability Legislation http://www.un.org/esa/socdev/enable/rights/ahc7bkgrndra.htm

In the discussion, it was agreed that the denial of reasonable accommodation could be qualified if it were a 'disproportionate or undue burden'. The concept was discussed under varying terms, including 'undue hardship' or 'unjustifiable hardship'. The IDC had a clear preference for '**hardship**' as 'burden' has a negative connotation. Also, it was not sufficiently clear **who was to determine such 'disproportionate burden**'. Delegates found 'disproportionate burden' too low as a standard and 'undue hardship' too high.

Universal design

Universal design is a new concept in a core human rights treaty. There were proposals to use 'inclusive design', which can be used interchangeably. The definition discussed at the last session was successfully amended at the insistence of the IDC to broaden the scope to **assistive devices** for particular groups, where needed.

Compare this wording with ► Article 4 (1) (f) (i) – universally designed goods, services, equipments, etc.

The IDC suggested **inclusion be defined as**: "the full and equal participation in public social and private life of a person with disabilities with a focus removal of social and physical barriers and with support and service including respect for human diversity;" this proposal was rejected.

The Working text also contained a definition of **national laws**, as some States feared that provisions would run counter to culture- or faith-based regulations. Other States and the IDC opposed such a definition vehemently, fearing that it could potentially be used as a loophole and serve to undermine the scope and spirit of the Convention. A guarantee that persons with disabilities are not given more protection than others in a Member State is provided with the phrase "on an equal basis with others."

Article 3

General Principles

The principles of the present Convention shall be:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) Non-discrimination;

c) Full and effective participation and inclusion in society;

(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) Equality of opportunity;

(f) Accessibility;

(g) Equality between men and women;

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

General Principles are new to a core human rights treaty. They are the founding root that spreads through all the Convention's provisions and connects the various branches – to continue the metaphor. In a General Comment[28] the CRC Committee has enumerated a series of general principles[29] .To date there is no other usage of General Principles in a human rights context.

The General Principles are a legal treasure trove, if utilized fully, they form the basis of changes to legislation, policy and practice without referring to the Convention. Each one forms a corner stone of the mosaic that ensures that persons with disabilities are equal and meaningful participants in the mainstream. The General Principles are closely connected or inter-linked to each other and, overall, to every provision in the Convention. Their impact is overtly and covertly evident in every Article .

[28] CRC, General Comment 5, General measures of implementation of the Convention on the Rights of the Child.
[29] The general principles according to the CRC Committee are: 1. The obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind; 2. The best interest of the child as the primary consideration of all actions concerning children, 3. The child' inherent right to life and State Parties' obligation to ensure to the maximum extent possible the survival and development of the child, 4. The child' right to express his or her view freely in "all matter affecting the child", those views being given due weight.

Making the general principles applicable in national legislation is therefore a paramount goal.

Of the eight principles, the first five emerged as early as the Working Group text in 2004. They were largely undisputed and only slightly modified.

The subsequent provisions emerged at the initiative of Thailand and later Japan – accessibility. Accessibility is primarily a means ensuring equal opportunities. Put the other way round: lack of access will directly or indirectly amount to discrimination.

The principles on equality between men and women, as well as on children, should be seen in light of the discussion on stand-alone provisions for women and children respectively.

(a) Dignity

As is highlighted under ► Article 1, dignity is not a right or enforceable principle as such, but rather a state of being to be aimed for. Subsequently, the principle that is enshrined is "respect" for the **dignity** of an individual, compare PP 1 ICCPR: '*recognition of the inherent dignity and* ..'. The qualification of 'inherent' as such is unproblematic, but has to be viewed critically for the connotation it takes on in some human rights debates, particularly those revolving around abortion. The term '**autonomy**' should be read as another word for **self-determination**; note that certain terms have a connotation of their own within the UN and are therefore no-goes. Self-determination is used within the context of the rights of tribal and indigenous peoples – compare Article 1 ICCPR "*all peoples have the right to self determination*" – addressed at groups rather than individuals. Even the suggestion of Chile to add 'personal self-determination' could not resolve this problem. Equally, efforts at the last session to include 'individual autonomy' failed, as it has no precedent in international law.

The **freedom to make one's own choices** is to be seen in the context of patronizing behaviour and more so of substitute decision making processes which bar persons with disabilities from making their own choices and decisions. Also, **the independence of persons** as being an individual rather than part of a group – of persons with disabilities or member of a family that gives assistance – is underlined in the first principle.

(b) Non-Discrimination

A legal corner-stone of human rights treaties, including the Convention. Care should be taken to ensure that the 'comprehensive' nature of the CRPD is given due weight, ensuring that it is not limited to being an international anti-discrimination bill. Discrimination under the Convention ► Article 2 encompasses all forms of discrimination, including (in)direct discrimination and the denial of reasonable accommodation. Note that efforts to insert '**equality**' before 'non-discrimination' – as proposed by Jamaica and supported by the IDC – did not prevail.

There is a stand-alone provision on non-discrimination ► Article 5.

(c) Full and effective participation in society

In an earlier version this paragraph read '*full inclusion of persons with disabilities as equal citizens and participants in all aspects of life*'. One suggested addition, proposed by Japan, read 'realisation of a barrier-free environment'. The Working Text was only slightly changed; note the use of the qualifier '**effective**'.

(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity

This provision is unique and is also reflected in ► PP (i) – 'diversity of persons with disabilities'. When modifications were demanded during AHC 7, the IDC asked that the paragraph remain unchanged as it enshrines the **paradigm shift** that the Convention enshrines.

(e) Equality of opportunity

The General Principle is a stark reminder of the opening paragraph of the UDHR: "*All human beings are born free and equal in dignity and rights.*" It is also a reference and reinforcement of the Standard Rules on the **Equalization of Opportunities** for Persons with Disabilities, which state in the introductory part that "*the term '**equalization of opportunities**' means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly persons with disabilities.*" The Standard Rules proceed to prescribe the notion of equal rights, which implies "*that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation.*"

This General Principle has a particularly strong connection to ► Article 5, Equality and non-discrimination.

(f) Accessibility

Thailand originally suggested this principle, which was later also supported by Japan. As mentioned above, it is not one of the core human rights principles but reflects the paradigm shift that the CRPD enshrines. It has the potential to become one of the core human rights principles, highlighting the multiple dimensions of accessibility, including the removal of physical, communication, intellectual and social barriers. For the latter see also ► PP (e). The range of issues is also highlighted in the stand-alone provision on accessibility, ► Article 9.

The various dimensions of accessibility may be enumerated as follows:

- Social/attitudinal accessibility: removing the stigma and other negative behaviour against persons with disabilities and their families/caretakers
- Intellectual accessibility: providing reading formats and speaking in a way that is accessible to people with intellectual/learning impairments
- Communication accessibility: ensure accessible formats in alternative modes and means of communication, compare ► Article 2 definition of "language".

- Institutional accessibility: ensuring that legislation, policies and particularly practice do not contribute to the exclusion and discrimination of persons with disabilities, compare the obligations under ► Article 4 (1)
- Physical accessibility: the removal of barriers in the physical environment
- Economic accessibility: also referred to as “affordability”, this aspect of “accessibility” has been established as part of the core requirements of social and economic rights.[30]

The comprehensive Rule on Accessibility contained in the Standard Rules states:

Rule 5. Accessibility

States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should
(a) introduce programmes of action to make the physical environment accessible; and
(b) undertake measures to provide access to information and communication.

(a) Access to the physical environment
1. States should initiate measures to remove the obstacles to participation in the physical environment. Such measures should be to develop standards and guidelines and to consider enacting legislation to ensure accessibility to various areas in society, such as housing, buildings, public transport services and other means of transportation, streets and other outdoor environments.

2. States should ensure that architects, construction engineers and others who are professionally involved in the design and construction of the physical environment have access to adequate information on disability policy and measures to achieve accessibility.

3. Accessibility requirements should be included in the design and construction of the physical environment from the beginning of the designing process.

4. Organizations of persons with disabilities should be consulted when standards and norms for accessibility are being developed. They should also be involved locally from the initial planning stage when public construction projects are being designed, thus ensuring maximum accessibility.

(b) Access to information and communication
5. Persons with disabilities and, where appropriate, their families and advocates should have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information should be presented in forms accessible to persons with disabilities.

[30] Compare CESCR, General Comment 12, The right to adequate food, Para 6.

6. States should develop strategies to make information services and documentation accessible for different groups of persons with disabilities. Braille, tape services, large print and other appropriate technologies should be used to provide access to written information and documentation for persons with visual impairments. Similarly, appropriate technologies should be used to provide access to spoken information for persons with auditory impairments or comprehension difficulties.

7. Consideration should be given to the use of sign language in the education of deaf children, in their families and communities. Sign language interpretation services should also be provided to facilitate the communication between deaf persons and others.

8. Consideration should also be given to the needs of people with other communication disabilities.

9. States should encourage the media, especially television, radio and newspapers, to make their services accessible.

10. States should ensure that new computerized information and service systems offered to the general public are either made initially accessible or are adapted to be made accessible to persons with disabilities.

11. Organizations of persons with disabilities should be consulted when measures to make information services accessible are being developed.

(g) Equality between men and women

This provision also emerged in the debate over a possible stand-alone Article on women with disabilities ► Article 6; once proposed it was largely undisputed. A suggestion by Costa Rica to include the phrase 'gender perspective' was supported by IDC but did not prevail.

In a comprehensive General Comment on equality between men and women, the CESCR Committee has observed, inter alia :

The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both de facto and de jure equality. De jure (or formal) equality and de facto (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.[31]

[31] CESCR, General Comment 16, Equal right of men and women, Para. 7.

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

The IDC drafted this paragraph, which was endorsed and introduced by the EU. It incorporates language on the '**evolving capacities of children**' derived from Articles 5 & 14 CRC, signaling that in the absence of such a principle, children would be excluded from protection because they do not have legal capacity, and thus autonomy, until a certain age. The IDC pointed out that this principle needs to be applied throughout the Convention, also in relation to questions of medical consent. It is obviously linked to the stand-alone provision on children with disabilities, ► Article 7.

The concept of '**identities**' is enshrined in Article 8 CRC, which includes nationality, name and family relations.

Article 4

General Obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

A general clause on obligations is standard for all human rights treaties, this Convention goes slightly further in that it does not call for 'universal respect (CERD, PP) or 'all appropriate measures' (CEDAW, Article 3) but rather for '**full realization**'. The only treaty that comes close to being as strongly worded is the CRC, which states 'States Parties shall respect and ensure' (Article 2), note the wording also in ► Article 1. The phrase '**and promote**' was supported by the African Group and inserted at the last session.

At one point in the discussion, the full language of Article 4 CRC which also mentions social and economic rights was considered for the chapeau. This issue is now covered in ► para 2. Also, moves to limit the scope by inserting 'within their jurisdiction' were curtailed.

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

The enumeration of acts by **public entities**, which may constitute **discrimination** may also be found in other Conventions. Compare, e.g. CERD, which states in Article 2 'effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating [racial] discrimination wherever it exists'. Note that CAT also enumerates 'judicial' measures in its Article 2.

The final wording of (b) resembles that of Article 2 (f) of CEDAW, which uses the phrase 'modify or abolish existing laws, regulations, customs and practices'. Note that CEDAW's provision is a lot broader, as it also includes obligations to repeal discriminatory provisions in penal codes, as well as the inclusion of equality principles in 'national constitutions' (para (a) Article 2 CEDAW). The phrase referring to **national constitutions** was quietly removed at AHC VII at the request of Costa Rica, supported by Jordan, on claims that multi-national treaties could not and therefore should not attempt to supersede national constitutions.

Paragraphs (a) and (b) were split at AHC VII, in the course of which the phrase in (b) was also changed from 'inconsistent with the present Convention'. Note that State Parties in the negotiations were strongly in favour of these two provisions being modelled after CEDAW and CRC.

The close linkage between the General Principles ► Article 3 and the General Obligations should be evident. It may still be worthwhile underlining the importance of the General Principles in the context of Article 4, particularly with regard to the impact that inclusion, participation, accessibility and the other General Principles shall have on "legislative, administrative and other measures of implementation."

In interpreting States Parties obligations under CERD, Article 2, the Committee, in its General Comment 3[32], stated that:

'other measures which may also be considered 'appropriate' for the purposes of Article 2 (1) include, but are not limited to, administrative, financial, educational and social measures'.

Various countries, including Ethiopia and Thailand, as well as the IDC, supported a reference to **remedies**, including the specific mention of **legal** remedies. However, New Zealand opposed such language, citing lack of consensus in the international community. Such a provision is enshrined in the ICCPR: 'any person whose rights or freedoms herein recognized are violated shall have an effective remedy' (Article 2 (3) (a) ICCPR).

[32] CESCR, General Comment 3, The nature of States Parties obligations.

In the context of economic and social rights, the CESCR Committee has stated the following about **legal remedies**:

The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. By the same token, there are some obligations, such as (but by no means limited to) those concerning non-discrimination, 3 in relation to which the provision of some form of judicial remedy would seem indispensable in order to satisfy the requirements of the Covenant. In other words, whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary[33].

Compare also, the provision on **remedies** generally in Article 83 CRMW:

Each State Party to the present Convention undertakes:
a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by a person acting in an official capacity;
b. To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities , or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
c. To ensure that the competent authorities shall enforce such remedies when granted.

The IDC adapted this wording for a proposal on remedies, see also below ► Para 2.

[33] CESCR, General Comment 9, The domestic application of the Covenant, para 9.

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

Without actually using the term '**mainstreaming**', which is hard to translate, this provision enshrines the concept. A link has to be made to ► Article 1 to add the term 'ensure'.

Following the example of CRC, Article 4, there were plans to place a provision on **international cooperation** among the general obligations. Before ► Article 32 on international cooperation was agreed, rather late in the game, language suggestions covered mainstreaming disability issues into 'all economic and social development policies and programmes' reflecting the assignment of the General Assembly that the Ad Hoc Committee cover human rights and **social development** aspects[34]. The ILO suggested that such programmes should be '**adequately planned and resourced**'. The IDC supported these efforts, highlighting the need to ensure **accessibility**.

In a new proposal the IDC underlined the need to '*ensure that any use of public funds and public procurement should be consistent with the purpose and obligations of this Convention*'. The proposal was rejected.

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

This is a standard clause. Note that CERD is slightly more detailed in listing '**all** *public authorities and public institutions, national and local*' (Article 2).

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

CEDAW, in Article 2(e) contains a similar provision: 'organization or enterprise'. The term 'private enterprise' could be seen as constituting a loop-hole for publicly-owned entities, particularly public-private partnerships. Compare, however, General Comment 5 CESCR – persons with disabilities – on 'private enterprises', which states:

"in a context in which arrangements for the provision of public services are increasingly privatized and in which the free market is being relied on to an even greater extent, it is essential that private employers, private suppliers of goods and services, and other non-public entities be subjected to both non-discrimination and equality norms in relation to persons with disabilities[35]."

[34] General Assembly Resolution 56/168 states that the General Assembly "Decides to establish an Ad Hoc Committee, open to the participation of all Member States and observers of the United Nations, to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development."

[35] CESCR, General Comment 5, Persons with Disabilities, para 11.

The IDC specifically raised concerns over the **rights** of persons with disabilities **attained in public enterprises that are handed over to private entities**: 'States Parties undertake to ensure that the rights and provisions previously enjoyed by persons with disabilities are maintained when their responsibilities for services and activities are delegated to private entities'. This sentiment is reflected in a pertinent General Comment by CESCR:

"Obligations to protect include, inter alia, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties." [36].

'**Organization**' is obviously to be read and interpreted broadly.

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

Generally an important addition, the IDC regretted the insertion of 'least cost' as opposed to 'affordable cost'. In the discussion, the IDC succeeded in explaining the **difference between accessibility and reasonable accommodation**, especially the fact that the former could be realized progressively, whereas the latter had to be ensured immediately.

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

Assistive technologies had originally been covered in (f) but were split up at the last session. Note the use of '**affordable cost**'.

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

This provision was part of ► Article 20 on personal mobility and was moved to general obligations. It may be read in line with earlier discussions on adaptations necessary to ensure full inclusion, which had garnered vast support.

[36] Compare the Declaration of Commitment on HIV/AIDS adopted by the General Assembly: http://www.un.org/ga/aids/coverage/FinalDeclarationHIVAIDS.html

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

The provision reflects the general need for training, which is one of the leitmotifs in the Convention's text. It was included at the initiative of Mexico to enshrine the overall nature of the obligation.

Another proposal, by the African Group, to place a reference to **HIV/AIDS** among the provisions in Article 4 was supposed to be considered further for 'placement' but received no further attention[37]. The link between HIV/AIDS and impairments is one of growing importance. It is estimated that the increase in impairments/disabilities will be due to illnesses caused by the breakdown in the immune system and the side-effects of medication. See further the Policy Brief by UN-AIDS[38].

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

The language on progressive realization is taken from both CESCR Article 2 and Article 4 CRC. The IDC suggested language that tried to bridge the gap but basically followed the split between immediately enforceable rights – such as non-discrimination – and progressively achievable rights such as social and economic rights.

The IDC proposal read:

In relation to economic, social and cultural rights, States Parties undertake:

(a) to give immediate effect to the aspects of those rights which are capable of immediate implementation including, but not limited to obligations of non-discrimination in the enjoyment of those rights; and

(b) in relation to other aspects of those rights, to take steps to the maximum of their available resources with a view to achieving progressively the full realization of those rights by all appropriate means.

[37] Compare the Declaration of Commitment on HIV/AIDS adopted by the General Assembly: http://www.un.org/ga/aids/coverage/FinalDeclarationHIVAIDS.html.
[38] Disability and HIV Policy Brief, http://data.unaids.org/pub/Manual/2009/jc1632_policy_brief_disability_en.pdf

As also mentioned above in the ► Introduction, the debate on "**the big divide**" between civil/political and economic/social rights and how to bridge it is never-ending within the UN, and also spilled over into the Ad Hoc Committee. The division is also described in terms of 'generations' of rights, whereby civil/political rights constitute the first generation, economic/social rights the second and group/development rights the third. However, this separation is not a chronological, but rather a deeply political development. All rights were to be included in a single, legally-binding UN treaty, to be concluded in the aftermath of WW II. Instead, the non-binding Universal Declaration of Human Rights was adopted and the two Covenants – ICCPR and CESCR – were drafted and adopted in 1966. The division between the two – one enshrining individual rights (ICCPR) and the other merely State obligations (CESCR) – has widened further over the years; this is highlighted by the fact that the optional protocol to the ICCPR is in full swing whilst CESCR-OP was only adopted in December 2008.

Initially, the 1968 Proclamation of Tehran[39] tried to bridge the gap between the two "tiers" of rights. It was reinforced in the 1993 Vienna Declaration and Programme of Action: 'all human rights are universal, indivisible and interdependent and interrelated' (Para 5). Compare also the language in ► PP (c).

The CESCR-Committee interprets the obligation to fulfil economic and social rights progressively as follows:

> **The principal obligation under Article 2 (1): "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. The term "progressive realization" is often used to describe the intent of this phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant, which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.[40]**

[39] Proclamation of Tehran, 13 May 1968, http://www1.umn.edu/humanrts/instree/l2ptichr.htm
[40] CESCR, General Comment 3, The nature of States Parties' obligations, para 9.

Note that the African human rights treaty, the Banjul Charter on Human and Peoples' Rights, does not draw a distinction between any 'groups' or 'generations' of rights. In its interpretation, the African Commission held that "all rights – both civil/political and social/economic – generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights[41]."

Compare the European Social Charter, which enumerates 30 rights connected to economic and social progress; among them Article 15 on the right of persons with disabilities to independence, social integration and participation in the life of the community.

Note also that in one of its most recent advisory opinions, the International Court of Justice has utilized the rights set out in the CESCR in a hitherto unknown extent.[42] The Court, in discussing the construction of a wall in the Occupied Palestinian territory, considered that the rules of international humanitarian law and human rights law were applicable in the Occupied Palestinian Territory and that the rights set out in both Covenants, the ICCPR as well as CESCR should be adhered to. The Court observed that "the restrictions on the enjoyment by the Palestinians living in the territory occupied by Israel of their economic, social and cultural rights, resulting from Israel's construction of the wall, fail to meet a condition laid down in Article 4 CESCR, namely that their implementation must be 'solely for the purpose of promoting the general welfare in a democratic society.'" The Courts usage of CESCR is a further step toward closing the gap between civil/political and economic/social rights.

In the context of this provision, **remedies** were again discussed, compare ► Article 4 (1)(b). Suggestions were also made to recognize the justiciability[43] of some economic and social rights.

The IDC made a proposal regarding remedies:

(a) *To ensure that any person or class of persons whose rights or freedoms recognized in the Convention are violated shall have, individually or with the support of representative organizations, an effective and appropriate remedy, whether the violation has been committed by persons or entities acting in an official capacity or by private persons or entities;*

(b) *To ensure that any person claiming such a remedy shall have his or her right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State; and*

(c) *To ensure that the competent authorities shall enforce such remedies when granted.*

[41] African Commission on Human and Peoples' Rights, The Social and Economic Rights Action Center for Economic and Social Rights v Nigeria (also known as the Ogoni People Case), Communication No. 155/96, para 45.
See also http://www1.umn.edu/humanrts/africa/comcases/155-96b.html

[42] International Court of Justice, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, July 9, 2003;
http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4

[43] Justiciability refers to the fact that some countries believe that social and economic rights cannot be attained through legal processes the same way as political and civil rights can be.

States Parties recognize that access to effective remedies may require the provision of free legal assistance to persons with disabilities, including sign language interpreters and communication assistance, the provision of information in Braille and other means and modes of communication and the modification or flexible application of existing laws and practice regulating matters of procedure and evidence.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes, concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

The provision is close to Article 42 of CRMW, which also enshrines consultation. Other human rights treaties use the verb 'to implement' – compare CERD and CEDAW – rather than the noun. Compare also Article 32 (2) CRC, which requires States Parties to 'take legislative, administrative, social and educational measures to ensure the implementation'.

The reference to 'decision-making processes' and the specific mention of children with disabilities were added in the final stage, also at the insistence of the IDC, compare also ► Article 7.

This provision is a reflection of the progress made in the Member States' engagement with civil society, illustrated by the unprecedented involvement of NGOs in the AHC.

It is a **crucial** provision for the implementation of the Convention, ensuring participation for persons with disabilities through involvement in all relevant processes. It is **paramount** that persons with disabilities and their representative organizations are actively involved in policy and policy related processes, particularly from the start – planning accessibly avoids having to make – sometimes costly – changes afterward. This provision – as an **obligation** by the State to involve persons with disabilities and their representative organizations and therewith a corresponding **right** of persons with disabilities and their representative organizations to participate – is a key tool to achieve conformity with the Convention. Highlighting the duty of States to involve persons with disabilities and their representative organizations should therefore top the list of demands made by and DPO – and NGO – in the ratification and particularly implementation process.

Compare also, the new General Comment by the Child Rights Committee, on the right of the child to be heard - General Comment 12.[44]

An additional provision for civil society involvement is placed in the section on national monitoring, ► Article 33(3). See also the provision on participation in political processes ► Article 29.

Compare also Rule 18 of the Standard Rules on Organisations of Persons with Disabilities, which prescribes, inter alia, *"States should also recognize the advisory role of organizations of persons with disabilities in decision-making on disability matters."*

[44] CRC Committee, General Comment 12, Right of the child to be heard, http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.doc.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

Put in less legal terms: if national legislation provides for better regulation, it should be maintained. This is a standard provision, which is usually placed toward the end of treaties, compare Article 23 CEDAW, Article 41 CRC, Article l81 CRMW, Article 50 ICCPR, Article 28 CESCR.

5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

Canada and Russia proposed this reference at the last Ad Hoc Committee meeting. It can also be found in Article 50 ICCPR and 28 CESCR.

Note that various proposals, a central one made by Australia, to make reference to specific population groups, were rejected. In addition to elderly persons, which El Salvador had specifically mentioned, there were references to people from **rural areas and remote islands**. The IDC also supported the inclusion of **indigenous people** ; now compare ► PP (p) and the comment regarding cultural life ► Article 30.

Article 5

Equality And Non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

This language is in line with various human rights treaties, and also with the UDHR, Article 7, which reads: '*all are equal before the law and are entitled without any discrimination to equal protection under the law*'. Compare also Article 5 CERD, Article 3 ICCPR, Article 3 CEDAW. Note the addition of "before" and "under" the law.

Earlier versions of the draft did not contain a definition of discrimination and reasonable accommodation, which are important to the concept and are now included in ► Article 2. There were also substantial discussions on the difference between equality and non-discrimination, concepts which Mexico explained repeatedly: "it is important to distinguish between equality under the law, achieved through strict respect for non-discrimination, and equality as a social goal, referring to equal opportunities."

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

Such a provision is standard in human rights treaties, compare, e.g. Article 2 ICCPR, Article 26 ICCPR, Article 2 CESCR, Article 2 CEDAW, Article 2 CRC. Note that rather than 'all discrimination' other treaties use 'distinction/discrimination of any kind'. 'Legal protection' may also be found in Article 2 (c) CEDAW.

'All grounds' – compare the wording in Article 26 ICCPR, which does not include impairments or disabilities respectively: ''*all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*"
The EU, under the pretext of 'streamlining', wanted to remove the second part of the provision on 'effective legal protection'; Liechtenstein in particular opposed these attempts.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

This provision should be read in conjunction with the definition of reasonable accommodation in Article 2. Again, the IDC had to explain repeatedly the difference between accessibility and reasonable accommodation, particularly the immediate realization potential of the latter.

As the Office of the High Commissioner for Human Rights points out, the concept of 'take all appropriate steps' is well established in various human rights treaties. Varying formulations are used, particularly with or without "all". Compare in particular with CEDAW, which uses the concept of 'all appropriate measures'.

While one could argue that the provision could have been stronger – enshrining an entitlement for the individual by using "everyone has the right to reasonable accommodation", it is still a powerful stipulation, given that States Parties have to "ensure", which is another word for "guarantee."

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

The debate over the term 'specific measures' was notable, also because of its length, particularly during AHC V. Other treaties refer to 'special measures' such as Article 1 CERD or 'temporary special measures' as in Article 4 CEDAW. Given its connotation in the disabilities context, the term 'special' was widely rejected; the IDC feared that it could be used to maintain discriminatory standards. Canada proposed 'positive' instead, which the African Group supported. Another alternative was proposed by Jordan: 'appropriate measures'. The IDC finally proposed additional language : 'if they are accepted by persons with disabilities and are in compliance with the principles and rights included in the Convention' because measures aimed at assisting and supporting persons with disabilities can be perceived as paternalistic and patronizing.

In response to the lengthy debate, the Office of the High Commissioner for Human Rights prepared a Background Conference Document on special measures. It states, inter alia, that "*the key in legal analysis of 'special' measures is to determine 'whether the individual right not to be discriminated against yields to the right of the disadvantaged group to be compensated for past discrimination*[45]." It further recounted comments made by the CEDAW Committee[46] that temporary special measures are not an exception to the norm of non-discrimination,

"but rather an emphasis that temporary special measures are part of a necessary strategy by States parties directed towards the achievement of de facto and substantive equality for women with men in the enjoyment of their human rights and fundamental freedoms."

[45] Office of the High Commissioner for Human Rights, Background Conference Document, The concept of 'special measures' in international human rights law, see http://www.un.org/esa/socdev/enable/rights/documents/ahc6ohchrspmeasures.doc
[46] CEDAW, General Comment 25, Temporary Special Measures.

As stated above, all provisions should be read in close conjunction with the General Principles, ► Article 3 as well as the General Obligations, ► Article 4. This is particularly true of "specific measures".

Positive discrimination, or affirmative action as it is sometimes called, has been used as a viable means of ensuring the inclusion of persons who were previously excluded. Most notably women have been allocated quotas in some countries to enhance equality between women and men. In a comment, the CEDAW Committee explains the various forms of positive discrimination a bit further.

States parties often equate "special measures" in its corrective, compensatory and promotional sense with the terms "affirmative action", "positive action", "positive measures", "reverse discrimination", and "positive discrimination". These terms emerge from the discussions and varied practices found in different national contexts. In the present general recommendation, and in accordance with its practice in the consideration of reports of States parties, the Committee uses solely the term "temporary special measures", as called for in article 4, paragraph 1[47].

The term "special", though being in conformity with human rights discourse, also needs to be carefully explained. Its use sometimes casts women and other groups who are subject to discrimination as weak, vulnerable and in need of extra or "special" measures in order to participate or compete in society. However, the real meaning of "special" in the formulation of article 4, paragraph 1, is that the measures are designed to serve a specific goal[48].

States parties should provide adequate explanations with regard to any failure to adopt temporary special measures. Such failures may not be justified simply by averring powerlessness, or by explaining inaction through predominant market or political forces, such as those inherent in the private sector, private organizations, or political parties. States parties are reminded that article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors[49].

Note that in the last paragraph the CEDAW Committee highlights the issue of market forces and privatisation respectively. This is an issue of increasing importance worldwide. Several treaty bodies have made similar comments on this issue. CESCR used the General Comment on Persons with Disabilities[50] for this purpose, and the CRC devoted a day of general discussion to the theme[51] and discussed the effects of privatisation on the enjoyment of human rights in several of its General Comments.

[47] CEDAW, General recommendation 25, Article 4 paragraph 1 of the Convention (temporary special measures) para 17.
[48] CEDAW, General recommendation 25, para 21.
[49] CEDAW, General recommendation 25, para 29.
[50] CESCR, General Comment 5, Persons with Disabilities, Paras 10 & 11.
[51] Compare http://www.unhchr.ch/html/menu2/6/crc/doc/days/service.pdf

The IDC also suggested an explicit reference to the denial of entry to public places for persons with disabilities, which delegations considered to be covered by Article 5. The IDC would have nevertheless favoured its explicit mention.

Note that provisions such as Article 4 (1) CEDAW, '*but shall in no way entail as a consequence the maintenance of unequal or separate standards*', address discrimination based on prejudice rather than on a perceived difference in ability.

Women With Disabilities

Article 6

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

The IDC insisted vehemently on a stand-alone provision on women with disabilities.

Women with disabilities experience gross violations of their human rights as victims of rape, forced sterilization and multiple discrimination due to being a woman and a person with disabilities. Their parenting abilities are frequently questioned and their children taken from them against their will. Their right to marry and found a family is often limited to the point of complete denial – as is the case for men with disabilities.

High rates of violence both at the hands of family members and care–givers prevail among women with disabilities. The dependence on care-givers, personal assistants and family members makes it generally difficult for persons with disabilities to seek redress for such violations. Discrimination against women in the labour market is widely prevalent, hitting women with disabilities even harder and frequently making it impossible for them to earn a living. According to UN statistics only 25% of women with disabilities are part of the workforce; they are twice as unlikely to find a job than men with disabilities.

Women with disabilities living in institutions are at twice as much risk of becoming victims of physical and sexual abuse than those living in the community.
Women with disabilities are more likely to be illiterate and generally have very low rates of school attendance. Among many other factors, this also means that they are very unlikely to have information on reproductive health.

This is hardly surprising given the lack of attention given to the exclusion of women with disabilities. Compare the CEDAW Committee's General recommendation on women with disabilities, which, based on Article 3 CEDAW – on taking appropriate measures in all fields, in particular political, social, economic and cultural – stated rather briefly that women with disabilities "*can participate in all areas of social and cultural life*[52]."

[52] CEDAW, General recommendation 18, Disabled women.

Note the CEDAW-Committee's reference to women with disabilities in the following General recommendation:

While biological differences between women and men may lead to differences in health status, there are societal factors that are determinative of the health status of women and men and can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities[53].

The Republic of Korea supported the IDC's efforts for a stand-alone provision and suggested wording during AHC III. In support of its proposal, the delegation stated during AHC VI: "the plight of women with disabilities is not simply the sum of the barriers faced by persons with disabilities and the barriers faced by women; it goes beyond to utter neglect. Women with disabilities remain invisible and are without anchor in either the prevailing disability discourse or women's rights discourse. The aim of the Ad Hoc Committee should be to lift women with disabilities out of invisibility[54]."

For the IDC, the aim was a **twin-track-approach**: to have a stand-alone provision on women with disabilities as well as a specific reference to women with disabilities throughout the Convention text, wherever appropriate. Opposition to the provision was at first comparatively wide and included the EU, New Zealand, Australia, Serbia (and Montenegro), Mexico, Japan, Norway, and Jordan, mainly based on the inadequacy of the proposed wording. There were three additional reasons for the resistance: no groups should be specifically mentioned because of the risk of leaving 'someone' out ; secondly, mainly the EU argued that including women with disabilities separately would weaken the text and distract from general provisions such as those on abuse; and thirdly, it was held that such a provision would create legal uncertainty vis-à-vis the provisions in CEDAW, which, however, does not mention disability.

Canada made specific reference to the twin-track approach, highlighting the need to include a specific mention of women with disabilities in the articles on equality, freedom from violence and abuse, home and family, education, right to health, right to habilitation and rehabilitation, and the right to work.

The IDC was particularly opposed to the argument that it would be creating "groups", a notion which hardly applies to more than half of the world's population. The IDC also stressed that the discussion should not refer to 'women's issues' but rather include the concept of gender. The National Human Rights Institutions (NHRI) highlighted the need to specifically include women with disabilities in provisions on data and statistics, as well as on monitoring.

[53] General recommendation 24, Article 12 of the Convention (women and health), para 11.
[54] As quoted by International Service for Human Rights, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Sixth session.

The final text is similar to the provisions in Article 1 & 2 CEDAW. The concept of '**multiple discrimination**' is not included in any other human rights treaty to date; however, compare the 1995 Beijing Declaration, which states that States Parties express a determination to 'ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers' (Para 32) and also refers to 'multiple or aggravated forms of discrimination' (PP (n)). See also ►PP (p).

There was some discussion at AHC VII on the consistency between para 2 and the CEDAW provisions, as well as on the potential to limit the application of the provision to the Convention only: this was remedied.

As for the **twin-track approach**, the following provisions also specifically refer to girls and women with disabilities:

PP (q) recognizes that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation;

PP (s) emphasizes 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;

Furthermore, General Principle (g) in ► Article 3 calls for "equality between men and women."

► Article 16, Freedom from exploitation, violence and abuse contains a number of references to women and gender-sensitive measures.

Fittingly, the provision on Health, ► Article 25 highlights the need for gender-sensitive health services. Equally, the need to ensure the inclusion of women and girls with disabilities in social protection programmes is specifically highlighted, ► Article 28 Para 2 Sub b.

To complete the picture, the Committee to be set up to monitor the implementation of the Convention requires a balanced gender representation, ► Article 34 Para 4.

At AHC VII the IDC made a proposal for the stand-alone provision, which at the time was still heatedly discussed. An important aspect was to ensure that the provision be included at the beginning of the Convention to make clear that it applies to all articles and aspects of the text. The IDC proposal read:

1. States Parties shall eliminate the multiple and intersectional discriminations of women and girls with disabilities and take gender specific measures to ensure that women and girls with disabilities enjoy all human rights and fundamental freedoms on the basis of equality with others.

2. State Parties shall implement the obligations set forth in this Convention with a gender perspective in mind. To that end States Parties shall:

a. adopt appropriate legislative and other measures prohibiting all forms of discrimination against women and girls with disabilities;
b. take effective measures to ensure freedom, safety and autonomy of women and girls with disabilities and eliminate obstacles to economic and personal development;
c. undertake necessary measures concerning the increased risk of sexual exploitation, violence and abuse of women and girls with disabilities;
d. recognize the particular disadvantage of women with disabilities associated with health care and motherhood and ensure to women with disabilities appropriate and free services where necessary in connection with pregnancy, childbirth and post-natal period as well as adequate nutrition during pregnancy and lactation;
e. develop national mainstreamed policies and programs pertaining to women and girls with disabilities.

Article 7

Children With Disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

The CRC includes a stand-alone provision on children with disabilities in its Article 23. Because of this, many delegations originally opposed a separate article. However, during AHC VI the Chair of the CRC-Committee came down in favour of such an Article, arguing that there would be no conflict with Article 23 CRC. Furthermore, during AHC VII children with disabilities were given the floor to speak for themselves, highlighting their needs and the shortcomings of current provisions.

The opposition to the Article was based on the argument that the issues should be mainstreamed throughout the Convention. At the same time there were opinions in favour, stating that in fact some issues were child-related only and could not be covered in provisions that focus on adults.

Based also on a discussion paper by the Chair of the CRC-Committee, J. E. Doek, the IDC highlighted the following concerns pertaining to the rights of children with disabilities:

The need for **birth registration**: often children with disabilities do not 'exist' officially because they are not registered at birth. Secondly, children with disabilities need **additional protection from violence and threats to life**, as they are more prone to experience violence. Thirdly, children with disabilities are rarely informed about their rights and thus unable to participate fully and effectively in decisions concerning them.

Other proposals worth mentioning are an Israeli text that included references to a child's right to self-determination, informed consent, legal representation and capacity based on age and maturity. Also, the Philippines and the Holy See proposed protection for the rights of the child "before and after birth," a phrase stemming from the preambular section of the CRC.

The IDC also made a proposal.[55]

Note the General Principle, ► Article 3 (h), "respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities."

The final text incorporates a lot of CRC language, in particular the concept of 'best interest of the child', Article 3 CRC. The right to express views freely, which derives from Article 12 CRC, is included. Language from Article 23 CRC was also used.

Again, reflecting the twin-track approach, there are several references to children with disabilities throughout the text, e.g.:

PP (r) ''Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child'';

The General Obligations, ► Article 4 Para 3 refers to the need to consult children with disabilities in the development and implementation of legislation and policies implementing the Convention. Freedom from exploitation, violence and abuse, ► Article 16, highlights the need for child-focused legislation and policies. ► Article 18 on liberty of movement and nationality underscores the need for children with disabilities to be registered immediately after birth, and reinforces the right to have a name from birth, acquire a nationality and the right to know and be cared for by their parents.

A number of specifications in ensuring respect for home and the family, ► Article 23, pertain to children with disabilities, most notably the right of children with disabilities to retain their fertility and the right to equal respect of family life. This provision includes the right to adopt children. Another important aspect is that children are not to be separated from parents with disabilities against their will, ► Article 23 Para 4. Another provision directly related to the rights of children with disabilities is education, ► Article 24 para 2 sub a states that children with disabilities shall not be excluded from free and compulsory primary education, or from secondary education on the basis of disability. There is a reference in the health provision, ► Article 25 and importantly in the Article on participation in cultural life, recreation, leisure and sport, ► Article 30: ensuring that "children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system."

The need to raise awareness and foster among children respect for the rights and dignity of persons with disabilities, particularly within the education system, is covered in ► Article 8.

[55] The IDC proposal on children with disabilities:
1. States Parties shall take all appropriate measures to ensure that, in fulfilling their obligations under both the Convention on the Rights of the Child, and the present Convention, all rights shall be implemented fully in respect of children with disabilities.
2. States Parties shall ensure that reports provided to the relevant treaty body, under the terms of the Convention on the Rights of the Child and the present Convention, shall address fully measures taken to implement all rights in respect of children with disabilities.

With regard to early childhood the Committee has stated in a General Comment:

Early childhood is the period during which disabilities are usually identified and the impact on children's well-being and development recognized. Young children should never be institutionalized solely on the grounds of disability. It is a priority to ensure that they have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realization of their rights. Young disabled children are entitled to appropriate specialist assistance, including support for their parents (or other caregivers). Disabled children should at all times be treated with dignity and in ways that encourage their self-reliance.[56]

Note also the comprehensive General Comment of the CRC-Committee on 'children with disabilities', which covers a broad range of issues, including violence against children with disabilities, institutions, health and inclusive quality education.[57]

The Committee states, inter alia, with regard to respect for the views of the child:

More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. It is essential that children with disabilities are heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. This should include their representation in various bodies such as parliament, committees and other forums where they voice views and participate in making the decisions that affect them as children in general and as children with disabilities specifically. Engaging them in such a process not only ensures that the policies are targeted to their needs and desires, it is also a valuable tool of inclusion since it ensures that the decision making process is a participatory one. Children should be equipped with whatever mode of communication to facilitate expressing their views. Furthermore, States parties should support the development of training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives.[58]

With regard to registration at birth the Committee states:

Children with disabilities are disproportionately vulnerable to non-registration at birth. Without birth registration they are not recognized in law and they become invisible in government statistics. Non-registration has profound consequences for the enjoyment of their human rights, including the lack of citizenship and access to social and health services and education. Children with disabilities who are not registered at birth are at greater risk of neglect, institutionalization, and even death.[59]

[56] CRC General Comment 4, Implementing rights in early childhood, Para 36. .
[57] CRC, General Comment 9, The rights of children with disabilities, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.GC.9.En?OpenDocument
[58] CRC, General comment 9, The rights of children with disabilities, para 36.
[59] CRC, General comment 9, The rights of children with disabilities, para 36.

With regard to accessibility the Committee states:

The physical inaccessibility to public transportation and other facilities including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of children with disabilities as well as markedly compromising their access to services, including health and education. And although this provision is mostly realized in developed countries, it remains largely un-addressed in the developing world. All States parties are urged to set out appropriate policies and procedures that make public transportation safe, easily accessible and free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, to children with disabilities.[60]

[60] CRC, General comment 9, The rights of children with disabilities, para 39.

Article 8

Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

(c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns designed:

(i) To nurture receptiveness to the rights of persons with disabilities;
(ii) To promote positive perceptions and greater social awareness towards persons with disabilities;
(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Article 8 is unique and aims high. The only elements taken from other human rights treaties are 'appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women', Article 5 CEDAW; and 'adopt immediate and effective measures … with a view to combating prejudices which lead to .. discrimination', Article 7 CERD.

In the course of the negotiations, the Article had a number of working titles that demonstrate the constant battle to minimize the appearance of paternalistic or patronizing language: ‘promotion of positive attitudes to persons with disabilities’ and ‘raising awareness regarding disability’ – which the IDC opposed because disability is made into an ‘object’. Mexico proposed ‘creation of a culture of respect and inclusion’ at AHC IV, which did not garner support.

Another example of the language difficulties in this provision was the original wording for ‘promote awareness of the capabilities and contributions of persons with disabilities’, which originally read ‘promote an image of persons with disabilities as capable and contributing members of society.’

The chapeau: ‘immediate, effective and appropriate’ is an extension of the language in Article 5 CEDAW, which came about after lengthy discussions during which the IDC opposed the replacement of immediate with appropriate – as a consequence both terms are included.

As for para 1, the reference to family was added at the insistence of the Arab Group. There was also quite a debate over the usage of stereotypes based on gender, which was replaced with sex.

The Working Text on Para 2 (a) (ii) read ‘change negative perceptions and social prejudices towards persons with disabilities in all matters of **sexuality, marriage, parenthood and family** relations of persons with disabilities.’ The IDC opposed the latter part of the wording, stating that while it supported the need to change negative perceptions and social prejudices, this should cover all areas of life, including those mentioned in the second part of the paragraph. The Holy See opposed the language – compare the debate on ‘sexual and reproductive health services/ programmes’ in ► Article 25 (right to health) – and suggested ‘promoting positive perceptions’, which is far more patronizing than other proposals. Note that intermediary wording such as ‘family and **personal relations**’ was opposed by some States, stating that even the phrase ‘personal relations’ carries a connotation that could be considered problematic.

Encouragement of **media** is a new provision among core human rights treaties, save the comparable intention of Article 17 CRC, which recognizes the important function performed by the mass media. In particular ► Article 4 (1) (e) on eliminating discrimination by private enterprises and organizations is of vital importance in the context of media responsibility.

Article 9

Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

(a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

(c) Provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 9 enshrines the **right to access**. A basic provision since the Working Group text, the placement and strength of accessibility varied throughout the drafting process. Conjoining parts of the Article with other provisions or placing close(r) to related provisions included the non-discrimination Article, the general provisions' Article as well as the general principles section, which stipulates accessibility in ► Article 3 (f). An overarching principle and prerequisite to ensure the inclusiveness of all human rights – the number one goal of the Convention – Article 9 has to be seen as a complementary provision and condition to all other provisions as well as a right in itself.

The right **to access** is also recognized in Article 5 (f) CERD, which stipulates among the anti-discrimination provisions '*the right of access to any place or services intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.*' Similarly, the anti-discrimination provision in Article 7 CEDAW contains relevant language. Article 9, however, goes further, enshrining an encompassing concept of access.

The term '**physical environment**' stems from the Standard Rules, which outline '*various areas in society, such as housing, buildings, public transportation services and other means of transportation, streets and other outdoor environments*' in rule 5 (a).

The debate over Article 9 revolved mainly around the scope in the public and private sphere and the hybrid nature of the provision in relation to anti-discrimination.

The discussion over the public and private sphere resulted in the chapeau's phrase 'open or provided to the public'. Note, however, that the scope is somewhat limited in relation to private entities in para 2 (b), which only necessitates 'taking into account all aspects of accessibility.' Jordan rightly pointed out that 'what is important is not who **owns** the building but who **uses** it.' There was also substantial debate on whether accessibility should only apply to new buildings or whether existing ones should also fall under the obligation. There was significant opposition, in parts arguing that historic buildings and sites could not be made accessible. Equally, limitations in the natural landscape were pointed to as a potential obstacle. The African Group supported **the concept of eliminating barriers**; the IDC argued for the building of suitable venues **from the beginning**. The concept of initial accessibility is partly reflected in para 2 (h), which refers to '**early stages**', however, it was not possible to include a similar reference in the chapeau, which would have strengthened efforts to prevent the building of new barriers. Note, however, the language on 'identification'. This particular issue can be linked up with ► Article 4 (f) on universal design. Substantial urging was necessary to ensure that accessibility would not be limited to 'physical' but also other forms of access, particularly communication and related issues. Finally, note the important reference to accessible '**services**' in the chapeau.

The IDC stated that limitations in accessibility amount to **unequal treatment**. It also suggested linking the issue of accessibility directly to **reasonable accommodation**. It was acknowledged that accessibility is a 'hybrid' in that it is interlinked with equality standards.

Note that some States view the provision as a social economic right, which would only have to be implemented in a progressive fashion, whereas discrimination provisions are viewed as political rights, which become immediately effective. Provisions aimed at granting measures that ensure equal participation and require a certain level of "investment" of public monies are also referred to as "hybrid" rights as they are somewhere between the perceived distinction of civil/political and economic/social rights. See further on the gap between these two "sets" of rights, ► Article 4.

The addition of 'emergency services' was included at a relatively late stage and is also the result of a fire drill conducted at the UN during AHC VI.

Suggestions to move parts of the copyright provisions, compare ► Article 30, to Article 9 did not garner sufficient support, also because it was argued that the scope of copyright application would be too broad.

Note that para (h) uses 'minimum cost' rather than 'affordable cost' at the suggestion of the African Group.

Rule 5 of the Standard Rules on Accessibility:

States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.

(a) Access to the physical environment
1. States should initiate measures to remove the obstacles to participation in the physical environment. Such measures should be to develop standards and guidelines and to consider enacting legislation to ensure accessibility to various areas in society, such as housing, buildings, public transport services and other means of transportation, streets and other outdoor environments.
2. States should ensure that architects, construction engineers and others who are professionally involved in the design and construction of the physical environment have access to adequate information on disability policy and measures to achieve accessibility.
3. Accessibility requirements should be included in the design and construction of the physical environment from the beginning of the designing process.
4. Organizations of persons with disabilities should be consulted when standards and norms for accessibility are being developed. They should also be involved locally from the initial planning stage when public construction projects are being designed, thus ensuring maximum accessibility.

(b) Access to information and communication

5. Persons with disabilities and, where appropriate, their families and advocates should have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information should be presented in forms accessible to persons with disabilities.

6. States should develop strategies to make information services and documentation accessible for different groups of persons with disabilities. Braille, tape services, large print and other appropriate technologies should be used to provide access to written information and documentation for persons with visual impairments. Similarly, appropriate technologies should be used to provide access to spoken information for persons with auditory impairments or comprehension difficulties.

7. Consideration should be given to the use of sign language in the education of deaf children, in their families and communities. Sign language interpretation services should also be provided to facilitate the communication between deaf persons and others.

8. Consideration should also be given to the needs of people with other communication disabilities.

9. States should encourage the media, especially television, radio and newspapers, to make their services accessible.

10. States should ensure that new computerized information and service systems offered to the general public are either made initially accessible or are adapted to be made accessible to persons with disabilities.

11. Organizations of persons with disabilities should be consulted when measures to make information services accessible are being developed.

The IDC made substantial suggestions for amendments for Article 9 in its entirety:

1. States Parties to this Convention shall require that all entities open to the public or providing services or information to the public, take appropriate measures to ensure full accessibility for persons with disabilities by preventing eliminating new and existing barriers in all facilities and services. These measures shall apply to, inter alia:

(a) all forms of information, communications and other services, including information and communications technologies and electronic services;

(b) the production and provision of all types of public materials, information and documents in understandable, accessible and usable formats, languages and scripts,in a timely manner, and without additional cost to persons with disabilities;

(c) the development and remodeling of existing and new public transportation facilities;

(d) construction and renovation of existing and new buildings and other facilities providing services to the public, including schools, housing, workplaces, medical facilities, roads, indoor and outdoor facilities;

(e) mass media, including providers of information through Internet.

2. States Parties shall develop, implement and monitor accessibility standards which will be compulsory for all new facilities and services, and for the renovation of existing facilities and services and ensure that

(a) non compliance with these standards will be considered discrimination;

(b) standards are comprehensive, including health and safety requirements taking into account persons with disabilities;

(c) Standards require easy to read and understand signage, including comprehensible formats modes and means, and Braille and tactile signage; and

(d) where States set standards for private facilities and services through planning, building and other regulations, States will ensure these regulations contain accessibility standards for people with disabilities and ensure these standards are applied when renovation or change of use takes place.

IDC JUSTIFICATION: Accessibility needs to be defined through the establishment of accessibility standards, which need to be compulsory. If a new or renovated service or facility does not meet these standards, it cannot be considered accessible and it therefore will discriminate against persons with disabilities. It is also important that standards are comprehensive.

3. States shall promote the development, availability and use of inclusive and universally designed goods and services, equipment and facilities, standards and guidelines, that require no adaptation or the minimum possible adaptation, at the least cost, to meet the specific needs of a person with disability.

IDC JUSTIFICATION: The development, availability and use of new products in an accessible way using inclusive and universal design principles to meet the specific needs of persons with disabilities, is better placed in the article on accessibility than in Article 4 on General Obligations.

4. States shall promote the development, availability and use of communication and mobility aids, devices, assistive technologies, designed for persons with disabilities, giving priority to affordably priced technologies. States shall provide accessible information to persons with disabilities about communication and mobility aids, devices, and assistive technologies including new technologies, as well as other forms of assistance, support services and facilities.

IDC JUSTIFICATION: Apart from making services, facilities and mainstream products accessible, many persons with disabilities require assistive technologies, which need to be affordable.

5. States Parties shall ensure that laws protecting copyright do not constitute a discriminatory barrier to access by persons with disabilities to any published material and shall establish legitimate means to enable persons with a reading related disability to gain access to material that technological and other protection measures might otherwise exclude.

IDC JUSTIFICATION: Copyright exceptions are of greatest importance for PWD with print disabilities. This has been reworded and moved here from article 30 of the Chair's text.

6. States Parties shall also take appropriate measures to:

(a) provide professional sign language interpreters, forms of live assistance and intermediaries, including guides and readers to facilitate accessibility to public entities, buildings and facilities;

(b) provide appropriate forms of assistance, support and service to persons with disabilities to ensure access to and understanding of information and services;

(c) provide training for all stakeholders on accessibility issues, including service providers, building owners, designers and managers;

(d) ensure that professionals who consult, design and implement services in matters related to accessibility are appropriately qualified and involve people with disabilities and their representative organizations at all stages;

(e) provide free postal services for use by blind and partially sighted persons to carry literature, in whatever format, and equipment produced or adapted for the use of blind and partially sighted persons.

IDC JUSTIFICATION: Postal services in many countries are becoming fully liberalised placing at risk the provision of free post for articles for the Blind. Heavy Braille books and bulky equipment is often only available from national centres, so postal costs would prohibit their availability to blind persons.

7. States Parties shall ensure through legislation that no person with a disability is denied access on the ground of disability to any facility or service open to the public.

IDC JUSTIFICATION: In most of the cases, the problem of access is related to lack of accessibility, but sometimes also people with disabilities are denied access to restaurants, hotels, cinemas, etc. on the basis of disability or because they use a guide dog, etc.

Article 10

Right To Life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

The text is consistent with core human rights treaties – compare Article 3 UDHR, 6 (1) ICCPR, 6 CRC and 9 CRMW – save the opening phrase 'reaffirm'. This verb is usually used in preambular language rather than body text. The CRC for example uses 'recognize'. The IDC suggested using 'reaffirm and shall recognize' to strengthen the text and to make clear that the 'right to life' also includes the 'right to survive'.

The term "ensure its effective enjoyment" deviates from the standard clauses on the right to life. This may be interpreted broadly, the main cause for the formulation is the fact that regularly the lives of persons with disabilities are under threat because others think their lives are not "worth living." It thus reinforces General Principle (a), ► Article 3 on "respect for inherent dignity of persons." The notion of "effective enjoyment" expands from maintaining life by securing basic physical survival to ensuring "real" that is participatory and inclusive life.

Earlier versions of the Article referred to the 'right to live', also the IDC proposed at AHC IV to cover the 'right to life, survival and development' under this Article. Some of these issues are now covered in ► Article 11, Situations of risk and ► 28, Adequate Standard of Living.

The reference to 'on an equal basis with others' had to be inserted is again a caveat to ensure that persons with disabilities do not have "more" rights than others, i.e. some countries still have the death penalty.

There was some debate over the scope of the Article in relation to the question of when life begins. It was one of the rare discussions when classic UN "debates" spilled over into the AHC, providing for a heated exchange of views. The trigger is the preamble of CRC, which refers to the 1959 Declaration on the Rights of Children, aiming at affording legal protection "before as well as after birth". Note that the CRC Committee believes that the determination of when life begins is a national concern.

The IDC did not want to expand upon the question of when life begins and highlighted instead that the right to live and survive had to be guaranteed to all persons with disabilities, including children, the elderly and transsexuals. Furthermore, the IDC suggested language on disability not being a justification to terminate life, which the Convention should have addressed as it is still a reality that people think it better to end life rather than live with a disability.

In this context, compare the statement of the CRC Committee on the right to life of children with disabilities:

The inherent right to life, survival and development is a right that warrants particular attention where children with disabilities are concerned. In many countries of the world children with disabilities are subject to a variety of practices that completely or partially compromise this right. In addition to being more vulnerable to infanticide, some cultures view a child with any form of disability as a bad omen that may "tarnish the family pedigree" accordingly a certain designated individual from the community systematically kills children with disabilities. These crimes often go unpunished or perpetrators receive reduced sentences. States parties are urged to undertake all necessary measures that are required to put an end to these practices including raising public awareness, setting up appropriate legislation, and enforcing the law that ensures appropriate punishment of all those that directly or indirectly violate the right to life, survival and development of children with disabilities.[61]

Also, the ICCPR Committee in a General Comment noted:

"the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics[62]**."**

[61] CRC, General Comment 9, The rights of children with disabilities, para 31.
[62] ICCPR, General Comment 6, Right to Life, Para 5.

Article 11

Situations Of Risk And Humanitarian Emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Costa Rica was the first to suggest a separate provision on 'special situations' as the issue emerged in the debate over the right to life. The discussion at the AHC V was supportive as the session took place only four weeks after the December 2004 tsunami. The Facilitator for the right to life – then draft Article 8 – suggested a new Article, which referred to 'situations of risk to the general population' and persons with disabilities being 'especially vulnerable'; it used language from Article 38 (4) CRC on 'all feasible measures'. There was some discussion on whether situations of risk should be specified. Again, the reference to 'armed conflict' triggered a 'classic' UN human rights debate over a possible reference to 'foreign occupation' – in UN terms a codeword for the Israeli/Palestinian conflict. Compare the explanations provided under ► PP (u).

No other core human rights treaty refers to 'situations of risk', save the aforementioned Article 38 CRC, which covers children in armed conflict.

Earlier versions included references to 'vulnerable', to which the IDC objected and suggested 'neglected' instead as, regrettably, this is a more accurate reflection of reality. The IDC proposal to add 'protection of their human rights' did not gain momentum.

During AHC VII, the Inter-American Institute of Disability highlighted the fact that other situations of risk included fires, floods, and accidents, which require preventive and emergency services. Note also the reference to 'emergency services' in the accessibility provision ► Article (9)(1) (b).

In relation to situations of risk and humanitarian emergencies, the treaty bodies have observed the following:

The right to food – CESCR

Violations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States. These include: the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food; denial of access to food to particular individuals or groups, whether the discrimination is based on legislation or is proactive; the prevention of access to humanitarian food aid in internal conflicts or other emergency situations; adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to the right to food; and failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others, or the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.[63]

The right to prevention and control of diseases – CESCR

''The prevention, treatment and control of epidemic, endemic, occupational and other diseases" (art. 12.2 (c)) requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as environmental safety, education, economic development and gender equity. The right to treatment includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations. The control of diseases refers to States' individual and joint efforts to, inter alia, make available relevant technologies, using and improving epidemiological surveillance and data collection on a disaggregated basis, the implementation or enhancement of immunization programmes and other strategies of infectious disease control.[64]

The right to water – CESCR

The Committee notes that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law. This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.[65]

Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required.

[63] CESCR, General comment 12, The right to adequate food, para 19.
[64] CESCR, General comment 14, The right to the highest attainable standard of health, para 16.
[65] CESCR, General comment 15, The right to water, para 22.

In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.[66]

The right to education – CRC

The values embodied in article 29 (1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes, it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict. Education about international humanitarian law also constitutes an important, but all too often neglected, dimension of efforts to give effect to article 29 (1).[67]

[66] CESCR, General comment 15, The right to water, para 34.
[67] CRC General comment 1, The aims of education, para 16.

Article 12

Equal Recognition Before The Law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall 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, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

The provision enshrines a **central paradigm shift** and is the result of tedious, detailed and sometimes excruciating discussions. In the end, the shift from **substituted decision-making** to supported decision-making was achieved. It embodies the legal aspects of living independently, exercising autonomy and having the freedom to make one's own choices and is particularly closely linked with ► Article 19.

Much of the debate was spent on whether persons with disabilities have legal capacity as well as the capacity to exercise this right – or not. Linked to this debate proposals for various forms of guardianship were made. Suggestions were also made here that (c)overtly nullified rights of persons with disabilities and therewith the recognition of persons with disabilities as rights holders; some delegates refused to appreciate that such limitations would render the entire Convention pretty much meaningless. Some of the debate on varying forms of guardianship was placed in the context of common law system versus civil law system.

Sadly, even delegations recognised as representing progressive countries used hurtful language or at the very least paternalistic wording during the debate, leaving one to wonder whose alleged (in)competence was under scrutiny. Many of the countries in favour of maintaining some sort of guardianship model tried to justify this need by pointing to 'extreme' cases and/or persons in extended coma, which in their view required full 'substitution' in decision-making. It was one of the major challenges to make clear that while support can vary from 0 to 100%, the higher end of the spectrum is rare when an adequate support system is actually put in place.

In an attempt to illustrate the struggle over Article 12, here are two proposals. The first one was made by Canada, which garnered significant support during the debate. It was made during AHC III and reiterated during AHC IV:

1. States Parties shall recognize that, ~~in civil matters, adults~~ persons with disabilities have a legal capacity ~~identical~~ equal to that of other ~~adults~~ persons and shall accord them equal opportunities to exercise that capacity. In particular, they shall recognize that adults persons with disabilities have equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
2. States Parties shall ensure that where ~~adults~~ persons with disabilities need support to exercise their legal capacity, including assistance to understand information and to express their decisions, choices and wishes, the assistance is proportional to the degree of support required and tailored to the ~~adult's~~ person's individual circumstances.
3. Only a competent, independent and impartial authority, under a standard and procedure established by law, including provision for review, can find a ~~adult~~ person ~~not to have legal capacity~~ unable to exercise their legal capacity with support. States Parties shall provide by law for a procedure with appropriate safeguards, including provision for review, for the appointment of a personal representative to exercise legal capacity on the ~~adult's~~ person's behalf. Such an appointment should be guided by principles consistent with this Convention and international human rights law, including:
(a) ensuring that the appointment is proportional to the ~~adult's~~ person's d~~egree of legal incapacity~~ inability to exercise their legal capacity with support and tailored to the ~~adult's~~ person's individual circumstances; and,
(b) ensuring that personal representatives take into account, to the maximum extent possible, the adult's person's decisions, choices and wishes.

In his working text presented after AHC VI, H.E.Ambassador McKay reflected significant parts of the debate; crucial and also disputed parts were placed in brackets which denotes contentious points in UN drafting processes.

Article 12 Equal recognition before the law
1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

OR: alternative:
[2. States Parties shall recognize that persons with disabilities have [legal capacity] on an equal basis with others in all fields and shall ensure that where support is required to exercise that capacity:
(a) The assistance provided is proportional to the degree of support required and tailored to the person's circumstances, that such support does not undermine the legal rights of the person, respects the will and preferences of the person and is free from conflict of interest and undue influence. Such support shall be subject to regular and independent review;
(b) Where States Parties provide for a procedure, which shall be established by law, for the appointment of personal representation as a matter of last resort, such a law shall provide appropriate safeguards, including regular review of the appointment of and decisions made by the personal representative by a competent, impartial and independent tribunal. The appointment and conduct of the personal representative shall be guided by principles consistent with the present Convention and international human rights law.]

In his explanations[68], H.E. Ambassador MacKay made the following observations: "guardianship or substitute decision-making for persons with disabilities has led to many injustices in the past. I hope it will be possible to resolve this matter by distinguishing between (a) the possession of legal capacity by all persons, and (b) the exercise of that capacity, which may require the provision of assistance in some circumstances. I note that the Convention on the Elimination of All Forms of Discrimination against Women in article 15 (2), for example, uses the term "legal capacity" and in the same paragraph refers to "exercising" that capacity; it does not refer to "capacity to act". I therefore suggest that we stick to the term "legal capacity" as used in that Convention."

> The Canadian 'response', which utilized the IDC's suggestions again garnered support:
> 1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
> 2. States Parties shall recognize that persons with disabilities ENJOY [delete: have] legal capacity on an equal basis with others in all ASPECTS OF LIFE. [DEL: fields, and shall ensure, to the extent possible, that where support is required to exercise [that capacity] [the capacity to act:]]
> [DEL paras. (a) and (b)]
> 2bis [Based on IDC proposal]. STATES PARTIES SHALL TAKE APPROPRIATE LEGISLATIVE AND OTHER MEASURES TO FACILITATE ACCESS BY PERSONS WITH DISABILITIES TO ANY SUPPORT THEY MAY REQUIRE IN EXERCISING THEIR LEGAL CAPACITY, AS WELL AS TO PROVIDE APPROPRIATE SAFEGUARDS TO PREVENT ABUSES IN THE PROVISION OF SUPPORT.
> 3. States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities, INTER ALIA, to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Extensive information on legal capacity in human rights law may be found in the background conference paper prepared by the OHCHR during the negotiations.[69]

As can be seen in the Interim Report of the AHC, adopted at the end of negotiations but before the formal end of the AHC in August 2006[70], a footnote was placed after "legal capacity", which stated that "in Arabic, Chinese and Russian, the term "legal capacity" refers to "legal capacity for rights", rather than "legal capacity to act." There was understandable dismay over this last minute change to the text, which would have meant a significant limitation of the entire Convention. However, in addition to the lobbying work of civil society, particularly DPOs, the legal and diplomatic forces also worked against such a footnote. A footnote is an unheard of feature in an international agreement of this kind. Allowing it to remain would have created a string of legal complications, the implications of which were inestimable. The damage would have first and foremost affected persons with disabilities but the waves would have hit the shores of many other areas under international law.

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[68] Letter dated October 7 2005 from the Chairman to all members of the Committee, http://www.un.org/esa/socdev/enable/rights/ahcchairletter7oct.htm
[69] OHCHR, Background Conference Document, A/AC.265/2005/CRP.5.
[70] Compare Interim Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Rights and Dignity of Persons with Disabilities, 1 September 2005, http://www.un.org/esa/socdev/enable/rights/ahc8intreporte.htm

A lingering concern is that State Parties will make a **reservation** – in line with ► Article 46 on the implementation of the Convention.[71] Without wanting to delve into the depths of international law, such reservations are both possible and common.

The rules for what a treaty is, how it applies to whom, are set out in the Vienna Convention on the Law of Treaties. With regard to reservations, it states that "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of a certain provision of the treaty in their application to that State," Article 2 Para 1 Sub d Vienna Convention.

The Committee under the ICCPR has dedicated an entire General Comment[72] to the issues surrounding reservations. The Committee sets out standards on the "object and purpose" of the Covenant, which may not be undermined by the reservations. It may be expected that the Committee under the CRPD will take a similar view as ► Article 46 states that "reservations incompatible with the object and purpose of the present Convention shall not be permitted." Compare also comments under ► Article 1 that no reservations may be made on that particular provision, entitled "purpose".

Note that international law also allows for "**interpretative declarations,**" which States may make to explain a specific interpretation of a treaty's provision. Contrary to reservations, declarations have the purpose of clarifying a State's position and do not imply a modification or exclusion of the legal effect of a treaty or particular provision. Granted, the distinction between reservation and declaration can at times be unclear. However, the Secretary-General, as the depositary of signatures and reservations for the sake of legal clarity and consistency, tries to make sure that declarations do not amount to reservations.

As to the different paragraphs:

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

The language in **para (1)** is largely consistent with core human rights treaties. Compare Articles 6 UDHR, 5 CERD, 16 ICCPR, 24 CRMW and – most importantly – 15 CEDAW. Note that '**reaffirm**' is not as strong as 'recognize', which is usually used in this context; the IDC suggested its inclusion to strengthen the obligatory nature. Also, some texts refer to the individual – compare Article 24 CRMW 'every migrant worker ..' – whereas others refer to a collective or group such as CEDAW 'women' or in this case: 'persons with disabilities'.

[71] Compare also the notes on ► Article 1.
[72] ICCPR General Comment 24, Issues relating to reservations upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under Article 41 of the Covenant.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

This language can also be found in Article 15 CEDAW, note however, that CEDAW only refers to **civil matters**: 'State Parties shall accord women, in civil matters, a legal capacity identical to that of men …'. The IDC suggested that a direct link be made in this paragraph to the right to exercise legal capacity. This is now covered in the next – (3) – paragraph, the rationale being that legal capacity has to be understood to mean legal autonomy – the right to make one's own choices. The draft language used the term 'all fields' and the IDC successfully suggested 'all aspects of life', arguing that it would be easier to understand in plain language.

Note that Article 15 CEDAW – also by way of ► Article 4 Para 4 on more conducive regulations, supports the case for legal capacity of women with disabilities, whereas men with disabilities do not have such a provision to refer to.

Legal capacity covers all aspects of the capacity to act: the fact that as a person one has rights (and obligations), the right to exercise this capacity in all aspects: civil, criminal, as well as public.

As this language is taken from CEDAW, it might be useful to look at the interpretation the CEDAW Committee has applied to Article 15 and related issues:
General Comment 21 on equality in marriage and family relations refers to legal autonomy:

'When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman's ability to provide for herself and her dependants.

A woman's right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman's right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women's ability to provide for themselves and their dependants'[73].

General Comment 23 of the CEDAW Committee, which deals with the free choice of marriage, is noteworthy in that it discusses the related issue of consent and criteria to ensure informed and non-coerced decisions, see also below para (4).

[73] CEDAW, General Comment 21, Equality in marriage and family relations, paras 7 & 8.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

The IDC made a major proposal on the issue of 'support' required to exercise legal capacity. It was very specific in ensuring that there be no loop-hole that would undermine the right as such and the exercising of it through any form of guardianship or other substitute decision making.

The IDC also called for a specific paragraph on legislation to 'devise suitable procedures to facilitate access to supported decision making'. This has to be read into the phrase 'take appropriate measures', which is not as proactive.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

As part of its proposal the IDC suggested that persons with disabilities should be 'entitled to use support to exercise legal capacity and such support should meet the person's requirements, should not undermine the rights or freedoms of the person, respect the will and preferences of the person and should be free from conflict of interest and undue influence,' which is reflected in the para. A key point here is that the **person makes the choice** himself/herself over whether support is required and who will be involved in making choices. The IDC objected particularly strongly to paternalistic and quasi-guardianship language such as 'degree of support required' and 'tailored to the person's circumstances' as the implication could easily be that a third person would be making such assessments. Also, the term 'proportional' in this context has a limiting effect. In other words: quasi-substituted decision-making language in supported decision-making guise.

The reference to an 'impartial authority' was inserted at the request of Russia. In the European context, any such procedures will have to be in compliance with the fair trial standards set out in Article 6 European Convention on Human Rights and the relevant case law of the Court.

In a 2008 report[74] to the Human Rights Council, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[75] held "*given the particular vulnerability of women with disabilities, forced abortions and sterilizations of [women with disabilities], if they are the result of a lawful process by which decisions are made by their "legal guardians" against their will, may constitute torture or ill-treatment.*[76]"

[74] Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to development, Report to the Human Rights Council, A/HRC/7/3; http://daccessdds.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement
[75] Web site of the Special Rapporteur: http://www2.ohchr.org/english/issues/torture/rapporteur/index.htm
[76] Promotion and Protection of all Human Rights, Report to the Human Rights Council, Para 38.

5. Subject to the provisions of this article, States Parties shall 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, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

The IDC objected to this language stating that it is a reflection of the effects substituted decision-making has on the rights of persons with disabilities, particularly their property. The IDC read this para as endorsing substituted decision-making, particularly through the final phrase on not being arbitrarily deprived.

Access to a personal bank account is of vital importance to persons with disabilities around the world, particularly in developing countries. There are significant restrictions on opening a bank account, but equally in managing it on a daily basis. Restrictions also frequently apply to the availability of loans.

Compare ► Article 25 (e) on the specific issue of **health insurance**.

Compare here again comments made by the CEDAW Committee in relation to the equal recognition of women:

The right of everyone under article 16 to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.[77]

Also, in interpreting Article 15 CEDAW, the Committee has stated:

Article 15 (1) guarantees women equality with men before the law. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.[78]

[77] CEDAW, General Comment 28, Equal rights between men and women, para. 19.
[78] CEDAW, General Comment 21, Equality in marriage and family relations, para 26.

The IDC made proposals to highlight special issues of **children and women with disabilities** in the context of legal capacity:

As for children, the IDC called for measures to ensure 'that children with disabilities shall be registered immediately after birth, and shall have the right to a name and the right to acquire a nationality'. While this right is enshrined in the CRC, children with disabilities are disproportionately affected by denial of registration, which in turn means denial of citizenship and thus access to basic services such as health care and education, compare ► Article 7, children with disabilities.

As regards women with disabilities, the IDC also made a proposal: 'States Parties shall recognize that women with disabilities have a legal capacity equal to that of other adult persons, and shall ensure that women with disabilities have equal opportunities to exercise that capacity. In particular, States Parties shall ensure that women with disabilities have the right to conclude contracts, to administer property and to sign legal documents, and shall treat them equally with all other adult persons in all stages of procedure in courts and tribunals.' Compare ► Article 6, women with disabilities.

Article 13

Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Core human rights treaties refer to 'equal treatment before the tribunals and all other organs administering justice' – as CERD puts it in Article 5. The ICCPR refers to 'court and tribunals' in Article 14 (1). CEDAW makes reference to equal treatment 'in all stages of procedure in courts and tribunals' in Article 15 (2). To 'ensure effective access to' is a unique phrase, the only other may be found in Article 23 CRC, which enshrines access to education in para (3).

The Article is a split-off of an earlier version of 'Equal recognition as a Person before the Law', which, after some resistance was endorsed by all delegations. Essentially a provision on ensuring accessibility, the Article highlights issues specific to court proceedings and confinement.
Chile and Mexico – compare also Mexico's interventions on the difference between non-discrimination, equality and access – pushed for the separation of the provision and Chile facilitated meetings to draft the text. The IDC was in favour of the separation and through its member, the Israeli NGO Bizchut, best practice was shared to help explain the issues at stake.

The IDC would have favoured more detail, as the Article limits itself to highlighting the needs of children – age-appropriate accommodation – and refers also to the preliminary stages of court proceedings to ensure that not just 'trials' are accessible. Para (2) on necessary training is a late addition and essentially a "mainstreaming" feature of the Convention.

As for the details, the IDC would have liked, firstly, to clarify the scope of access to 'all justice and law enforcement agencies', and secondly, to clarify the breadth of accommodation in communication: such as the use of sign language interpreters, communication assistants as well as devices, and utilizing experts to enhance the communication as well as advice on the implications of the disability on the process. The IDC suggested that such detail would be necessary to ensure adequate questioning and collection of testimony.

An important aspect that is not as explicitly covered as it should have been, is the reasonable accommodation of persons with disabilities in detention. This concerns the built environment in prisons and other places of confinement, the accessibility of communication with prisoners with disabilities as well as the necessary adaptation in possible work and leisure facilities provided there.

Details on the administration of justice may be found in the comprehensive General Comment 13 of the Human Rights Committee on Article 14 ICCPR:

If the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence.[79]

[79] HRC, General Comment 13, Article 14 (Administration of justice), para 13.

Article 14

Liberty And Security Of The Person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

A similar provision may be found in core human rights texts, such as Articles 3 & 9 UDHR, 5 CERD, 9 ICCPR, 37 CRC, 16 CRMW. Note that these texts – save Article 37 CRC – refer to the individual's right rather than the State's assurance. Compare Article 3 UDHR: 'Everyone has the right to life, liberty and security of the person.'

The provision in para (2) may be found in a range of other core human rights texts. However, they are far more detailed, covering elements such as **information on the reasons for arrest, being brought before a judge promptly, the right to have a proceeding before a court as well as the enforceable right to compensation**. Furthermore, **there is the right to be treated with humanity and respect for the inherent dignity of the human person, a fair public hearing and the right to review of a sentence**. Compare particularly Articles 9 & 10 ICCPR; related provisions may be found in Article 14 ICCPR, 37 & 40 CRC, 16 – 18 CRMW. Some of these guarantees were set out in a draft version of the article and are now covered through the phrase 'in accordance with international human rights law'.

Note that the usage of 'if' in the opening phrase of para (2) is a departure from common language, which states 'anyone who is deprived of liberty' – Article 9 ICCPR.

This is a crucial provision as firstly it deals with the very delicate questions surrounding the deprivation based on the **perceived danger of a person to themselves or others**. Secondly, the need to ensure that nobody **shall be deprived of her or his liberty based on disability** is one of the core 'musts' in ensuring meaningful equality of persons with disabilities.

The IDC proposed substantial amendments to para (a), particularly to delete the phrases 'and that any deprivation of liberty is in conformity with the law' as well as 'the existence of a (disability)'. Also, rather than 'justify' the IDC supported 'be a factor in' a deprivation of liberty. Other phrases used in this context were 'solely' and 'exclusively', which the IDC opposed strongly, given the discriminatory nature of such phrases.

In its reasoning the IDC rightly pointed out that the phrase 'in conforming with the law' justifies the deprivation of liberty for most persons held under mental health laws or similar provisions. Furthermore, the phrase 'in no case shall the existence of a disability justify a deprivation of liberty' is not sufficient safeguard from deprivations of liberty that are solely directed at persons with disabilities, particularly persons who are suspected of some psychiatric diagnosis.

Furthermore, the IDC pointed out that in addition to assurances of equal treatment, provisions have to be made for **reasonable accommodation**, particularly in terms **of information, communication, services, procedures and facilities.**

For reference purposes here are the two most relevant provisions from the ICCPR related to guarantees in case of deprivation of liberty:

Article 9 ICCPR

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10 ICCPR

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

The General Comment related to this Article makes the following observations:

Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment. Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[80]

As noted in the ► Introduction, the grounds of discrimination in the ICCPR does not cover disabilities or impairment respectively.

Article 14 is the opening provision of a series of very closely related Articles, 14-17, which should be read in conjunction.

[80] HRC, General comment 21, Article 10 (Humane treatment of persons deprived of their liberty.)

Article 15

Freedom From Torture Or Cruel, Inhuman Or Degrading Treatment Or Punishment

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

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Based on historic and also ongoing human rights violations experienced by persons with disabilities, which amount to torture, cruel, inhuman or degrading treatment, a more detailed draft was discussed. Particularly the issue of **medical and scientific experimentation** had to be explicitly included. Linked thereto is the issue of **free and informed consent**, which triggered debates over a more detailed paragraph ensuring accessible information and the assurance of reasonable accommodation. However, there seemed to be agreement on the elements of free and informed consent. Note that this debate reappeared in the drafting of the Article on the right to health ► Article 25.

The language of Article 15 can be found in other core human rights treaties, particularly Article 5 UDHR but more importantly Article 7 ICCPR and Articles 1, 2 & 16 CAT. The justification for not making the provision more detailed was primarily based on the danger of undermining – and therewith potentially weakening – the **core provision on torture** in the relevant Convention. Article 1 CAT defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

Note that the title of the Article departs from core human rights treaties: rather than freedom from torture **or** cruel, inhuman or degrading treatment or punishment CAT refers to 'torture and other cruel, inhuman or degrading treatment or punishment.'

As regards **medical or scientific experimentation**, the only other provision in international law is Article 8 of the Rome Statute on the International Criminal Court, which defines war crimes and includes the crime of 'torture or inhuman treatment, including biological experiments'.

The IDC wanted more substantiated language on forced interventions, adding 'medical or scientific experimentation' to the phrase 'interventions aimed at correcting, improving or alleviating any actual or perceived impairment.'

Compare the Human Rights Committee's General Comment cited above ► Article 14 on the issue of **humane treatment**.

Informed consent is described as both a concept and a process of communication in ensuring that every person is given full and accurate information relevant to exercising her/his decision-making rights. It includes the following elements:

- Provision of information: persons should have explanation in understandable language on the nature of the ailment/condition/research, the nature of the proposed diagnostic/research steps or treatment(s) and the probability of their effect/success; the existence and nature of the risks involved, as well as the existence of potential benefits and risks of recommended alternative treatments, including the choice not to be treated.

- Assessment that the person has understood the information.

- Assurance, insofar as possible, that the person has the freedom to choose among the medical alternatives without coercion or manipulation.

Furthermore, the issue of **forced institutionalizations** should have been covered explicitly under this provision, but this was strongly opposed by a number of influential delegations.

There was also substantial debate on linking this provision with explicit language on **integrity**, which is now covered in ► Article 17. This cornerstone of the right to humane treatment is usually part and parcel of such provisions, as can also be seen in Article 5 of the American Convention on Human Rights – the Right to Humane Treatment:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

The IDC wanted such a provision and suggested that 'every person with a disability has the right to have his or her physical, mental and moral integrity respected' be added to the Article as para (3).

The CAT Committee has issued a comprehensive General Comment on Article 2, which focuses on torture. It states, inter alia :

The Convention imposes obligations on States parties and not on individuals. States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. Accordingly, each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.[81]

The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection.[82]

[81] CAT, Genereal Comment 2, Implementation of Article 2, Para 15.
[82] CAT, General Comment 2, Implementation of Article 2, Para 21.

Article 16

Freedom From Exploitation, Violence And Abuse

1. States Parties shall 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 exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 16 is linked to the overall issue of prohibiting any form of cruel or inhuman or degrading treatment or punishment. However, in international human rights law a – disputed – distinction has developed between public and private forms of violence – torture and other forms, vis-à-vis domestic violence. Therefore, this provision makes frequent references to the main victims of domestic violence, namely children and women. As previously mentioned, the reference to families, ► compare PP (x), stirred some debate.

For a contrary view to the distinction between public and private violence, compare the General Comment of the Human Rights Committee relating to Article 7 ICCPR, which reads:

> **'No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation': 'The aim of the provision is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.'** [83]

'All forms of exploitation, violence and abuse' covers a wide range of violations; Mexico made a proposal to detail this by adding '**such as physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual and economic exploitation and abuse, abandonment and harassment**.' This and other aspects of exploitation are covered in para (1) under '**all forms of exploitation**', as it was agreed that this phrase would be preferable to a 'shopping list', ie a long listing that could leave out a crucial aspect. The IDC suggested an amendment to the phrase 'exploitation, violence and abuse', adding 'threat of violence'.

Exploitation is also detailed in the CRC, which lists '**all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse**' – compare Article 19 (1) CRC. **Economic exploitation**, which New Zealand wanted to include in the draft, is mentioned in Article 32 CRC. Furthermore, Article 36 CRC enshrines that 'State Parties shall protect the child **against all other forms of exploitation prejudicial to any aspects of the child's welfare**.'

[83] HRC, General Comment 20, Article 7 (Prohibition of torture, ..,) para 2.

Compare in this context also the General Comment 4 of the CRC Committee, regarding all forms of violence, exploitation and abuse:

States parties must take effective measures to ensure that adolescents are protected from all forms of violence, abuse, neglect and exploitation (arts. 19, 32-36 and 38), paying increased attention to the specific forms of abuse, neglect, violence and exploitation that affects this age group. In particular, they should adopt special measures to ensure the physical, sexual and mental integrity of adolescents with disabilities, who are particularly vulnerable to abuse and neglect. States parties should also ensure that adolescents affected by poverty who are socially marginalized are not criminalized. In this regard, financial and human resources need to be allocated to promote research that would inform the adoption of effective local and national laws, policies and programmes. Policies and strategies should be reviewed regularly and revised accordingly. In taking these measures, States parties have to take into account the evolving capacities of adolescents and involve them in an appropriate manner in developing measures, including programmes, designed to protect them. In this context, the Committee emphasizes the positive impact that peer education can have, and the positive influence of proper role models, especially those in the worlds of arts, entertainment and sports.[84]

[84] CRC, General Comment 4, Adolescent health para 8.

The measures to be taken according to (1) – legislative, administrative, social and educational – have been extended, with a savings **clause 'and other measures**'.

The IDC pointed out that women with disabilities are twice as likely to be victims of gender-based violence. The Article highlights this fact repeatedly. The IDC proposed language that included an explicit mention of 'neglect' as used in the **Declaration on the Elimination of Violence Against Women**. Also, the proposal did not refer to 'within and outside the home' but rather 'private and public settings'. Furthermore, it also listed '**forced sterilisation, abortion and traditional practices like genital mutilation**' as forms of violence.

The **Declaration on the Elimination of Violence Against Women**[85] states that «violence against women» means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The Declaration's Article 2 states that violence against women encompasses:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

'**Traditional practices harmful to women**' would be a more general term used in relation to violence that is justified on cultural practices.

Para (2) outlines prevention measures and details the necessary accommodations for children, women and persons with disabilities generally. A comparable text may be found in Article 19 CRC. In the context of the AHC discussion on the role of the family – and possible abuse or other violence committed by a family member – the IDC suggested language reflecting the self-determination – that is autonomy – of persons with disabilities vis-à-vis their families and caregivers; information and education should aim to empower persons with disabilities and ensure respect for their independence from families and caregivers.

Public efforts on prevention – para (3) – could have been strengthened by adding a guarantee on **remedies** – which would again have to be age- and gender-sensitive – as well as ensuring that the authorities are not just independent but also **competent**.

[85] Full text of the Declaration: http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En

That said, this provision, seemingly tucked away, has vast impact on the question of monitoring, which is basically covered in ► Article 33 (2). Given the anti-torture and violence context, the provision is closely linked to CAT, particularly the **National Preventive Mechanisms**, which are to be established under CAT's Optional Protocol.

An excerpt from the OP-CAT：

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:
(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Para (4) follows in parts Article 39 CRC, which, however, goes further by explicitly including situations of armed conflict. As regards the **services** to be provided to victims of violence, exploitation or abuse, the IDC highlighted that these need to be **accessible, acceptable and affordable** for persons with disabilities. Again, children and women with disabilities have particular needs, which are recognized in the para.

Legislative protection – para (5) – is modelled on Article 19 (2) CRC. Note that rather than 'instances of exploitation, violence and abuse', Article 19 CRC refers to '*prevention, identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment*'.

In light of the disproportionate vulnerability of children with disabilities, the IDC suggested specific references to age and disability and appropriate protection services for children with disabilities.

In a 2008 report[86] to the Human Rights Council, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[87]"stated that domestic violence, as well as torture, tends to escalate over time, sometimes resulting in death or leaving women's bodies permanently mutilated or disfigured. Women who experience such violence, whether in their homes or in prison, suffer depression, anxiety, loss of self-esteem and a feeling of isolation. Indeed, battered women may suffer from intense symptoms resembling those of post-traumatic stress disorder identified in victims of official torture and rape victims. Another parallel between domestic violence and torture, again linked to the aspect of powerlessness, is the intention to keep the victim in a permanent state of fear based on unpredictable violence by seeking to reduce the person to a state of submission and destroy his/her capacity for resistance and autonomy, with the ultimate aim of achieving total control.[88]

[86] Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to development, Report to the Human Rights Council, A/HRC/7/3;
http://daccessdds.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement
[87] Web site of the Special Rapporteur: http://www2.ohchr.org/english/issues/torture/rapporteur/index.htm
[88] Promotion and Protection of all Human Rights, Para. 45.

Article 17

Protecting The Integrity Of The Person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

This is the first time a stand-alone reference to integrity has been included in a core human rights document. Compare various regional human rights instruments such as the African Charter of Human and Peoples' Rights, Article 4: '*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right*.' Also, Standard Rule 9 refers to the right of persons with disabilities 'to personal integrity': "*[States] should promote the [right of persons with disabilities] to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood,*" echoing the overall theme of Rule 9 on Family Life and Personal Integrity.

Compare also the European Union's Charter of Fundamental Rights, Article 3 – Right to the integrity of the person: '*everyone has the right to respect for his or her physical and mental integrity*'. This provision was also the first basis for a draft, assembled by Liechtenstein, which left out the questionable qualifications of 'physical and mental' and read: 'State Parties shall take all appropriate measures to protect the integrity of persons with disabilities on an equal basis with others.'

The stand-alone provision is aimed at issues related to **involuntary treatment**. The Working text of Article 17 was far more detailed and covered 'forced interventions or forced institutionalization aimed at correcting, improving or alleviating any actual or perceived impairment,' equal treatment in case of 'involuntary interventions' in cases of emergencies and limitations on 'involuntary treatment'. The IDC was strongly opposed to most of the text; the singling out of persons with disabilities in medical emergencies – something, which is not covered in other core human rights treaties – would have been particularly problematic, as some disabilities are treated as medical emergencies.

The discussion concluded that it was possible either to have the entire Article with the problematic language or to retain the first paragraph only. The IDC was of the opinion that the issues of forced interventions and institutionalisation, which were explicitly covered in the deleted para (2), were sufficiently covered by taking Article 12 (legal capacity) and Article 25 (health, including informed consent) in conjunction with Article 17.

The redraft the IDC proposed for the first para – now the only para of the Article – read 'every person with a disability has the right to have his or her physical, mental and moral integrity respected.' This is identical to Article 5 of the American Convention on Human Rights. As stated above, the IDC wanted to move this para to ►Article 15 above.

Article 18

Liberty Of Movement And Nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

The practical need for this provision was demonstrated throughout the negotiations, with regular accounts of airports denying access and airlines refusing transportation of participants to the AHC or related meetings.

The choice of residence and the right to nationality are usually dealt with separately; at one point Russia reflected that fact by splitting up the provision. Compare, for example, CEDAW, which covers nationality in Article 9 and the choice of residence in Article 15. Various other core human rights treaties cover the right to freedom of movement and the choice of residence: Article 5 UDHR, Article 5 CERD, Article 12 ICCPR, Article 15 CEDAW, and Article 39 CRMW. As with other Articles, this provision is also phrased in the more direct form of ‘everyone has the right’. The phrase ‘shall recognize’ is less common. The IDC, in its suggestions for amendments, included a phrase on the recognition of the right to liberty of movement.

The right to acquire a nationality also includes the right to **change** and to **retain** the nationality, as is stated in Article 9 CEDAW. Compare also the CEDAW Committee's statement on Article 9:

> **Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.**[89]

Para (b) highlights **documentation** and **immigration** issues, which were also emphasized in this context, triggering the inclusion of a separate provision on liberty of movement and immigration.

The right to **leave** the country is usually referred to as a **right to enter** – and re-enter – a country; compare in particular Article 12 (4) ICCPR. The IDC made a proposal to that effect. The Human Rights Committee has detailed the meaning of Article 12 (4) ICCPR as follows:

> **The right of a person to enter his or her own country recognizes the special relationship of a person to that country. The right has various facets. It implies the right to remain in one's own country. It includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality). The right to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries.**
>
> **The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country." The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence. Since other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country, States parties should include in their reports information on the rights of permanent residents to return to their country of residence.**

[89] CEDAW General Comment 21, Equality in marriage and family relations, para 6.

In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.[90]

Para (2) follows Article 7 (1) CRC. As mentioned above ► Article 7, children with disabilities are disproportionately affected by non-registration and the grave consequences of such inaction and denial. Compare in this context the CRC Committee on the need for birth registration:

The Committee wishes to emphasize the critical implications of proof of identity for children affected by HIV/AIDS, as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as to making children less vulnerable to abuse and exploitation, particularly if separated from their families due to illness or death. In this respect, birth registration is critical to ensure the rights of the child and is also necessary to minimize the impact of HIV/AIDS on the lives of affected children. States parties are therefore reminded of their obligation under article 7 of the Convention to ensure that systems are in place for the registration of every child at or shortly after birth.[91]

[90] HRC, General Comment 21, Freedom of Movement, para 20 ff, references there.
[91] CRC, General Comment 3, Rights of children with HIV/AIDS, para 29.

Article 19

Living Independently And Being Included In The Community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) 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;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

The full and effective inclusion of persons with disabilities is the central objective of the Convention. The elimination of barriers that exclude persons with disabilities encompasses the **guarantee to choose where and with whom to live** and to do away with institutions or other forms of living that separate and segregate persons with disabilities from the community. As a result the **right to live in the community** is enshrined.

A brief overview of the three concepts covered in this Article:

- **Independent Living:**

Independent Living can be described as both a principle and a movement of people with disabilities who work for self-determination, equal opportunities and self-respect: “Independent Living does not mean that we want to do everything by ourselves and do not need anybody or that we want to live in isolation. Independent Living means that we demand the same choices and control in our everyday lives that our non-disabled brothers and sisters, neighbors and friends take for granted. We want to grow up in our families, go to the neighborhood school, use the same bus as our neighbors, work in jobs that are in line with our education and abilities, start families of our own. Just as everybody else, we need to be in charge of our lives, think and speak for ourselves.

[92] See www.independentliving.org, quote attributed to Professor Adolf Ratzka.

To this end we need to support and learn from each other, organize ourselves and work for political changes that lead to the legal protection of our human and civil rights.''[92]

- **Personal Assistance:**

Personal Assistance provides support for tasks and activities, which the person would do by herself or himself, if she or he did not have an impairment. The assistance is provided for all tasks and activities necessary to lead an independent life. Thus, the individual user exercises maximum control over the services provided, having control over her/his needs and aspirations. The person receiving assistance decides who does what tasks at which time at which place and how.

- **Community-based Services:**

Community-based Services prescribes a comprehensive strategy, which involves persons with disabilities in their community. It seeks to ensure that persons with disabilities participate equally in the different aspects of community life. Services cover a wide range, including rehabilitation, education, training, political participation and awareness-raising for the community at large.

The Article follows the **twin-track-approach**: ensuring services that focus on persons with disabilities as well as provision of access to mainstream facilities.

The focus is the guarantee that **persons with disabilities** can make their own choices, including on their living arrangements. Note that many States, particularly those considered more “conservative” were opposed to the choice-concept, stating that in line with their culture a clause on compliance with national laws and customs should be inserted. There was also some debate about whether there should be an individual right to choose one’s residence or living arrangements in a community as opposed to recognizing a choice that States Parties would be obliged to facilitate.

The phrase ‘**live independently**’ caused discussion, some delegations arguing that not every person with disabilities wants to live in a community, and a few countries – particularly Israel – fearing that it could be misinterpreted to mainly apply to persons with disabilities capable of living in the community independently and without support and assistance. The IDC proposed to change the language to ‘live in the community, with equal choices to others’.

The explicit reference to institutions or ‘particular living arrangements’ for that matter was removed because it would have been unclear what an **institution** is and the addition of a definition would have only opened a Pandora’s box. The IDC suggested that particular reference be made to prohibiting forced institutionalization of children in para (a).

The practical cornerstone of Article 19 is the listing in para (b), which foresees community- based support services, including **personal assistance**, which will be a new feature in most countries. The IDC would have liked to add ‘assistive technologies and peer support’ among the options listed. Note also that segregation or isolation have to be prevented – read: take positive action to ensure compliance.

Compare also the Standard Rules on the provision of personal assistance schemes:

Rule 4. Support services
States should ensure the development and supply of support services, including assistive devices for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights.

1. States should ensure the provision of assistive devices and equipment, personal assistance and interpreter services, according to the needs of persons with disabilities, as important measures to achieve the equalization of opportunities.
6. States should support the development and provision of personal assistance programmes and interpretation services, especially for persons with severe and/or multiple disabilities. Such programmes would increase the level of participation of persons with disabilities in everyday life at home, at work, in school and during leisure-time activities.
7. Personal assistance programmes should be designed in such a way that the persons with disabilities using the programmes have a decisive influence on the way in which the programmes are delivered.

Highlighting the need for self-determined **choices**, the IDC suggested that **the right of the individual** be strengthened, adding 'are provided by States Parties in a manner that respects the autonomy, individuality and dignity of persons with disabilities.'

Community services are also of relevance in the context of CBR – community-based (re) habilitation – compare ► Article 26.

The IDC amendments focused on strengthening the **mainstream aspects** of the twin-track-approach, i.e. ensuring equal access to the services and facilities available to the general public rather than special services. This applies particularly to children, who under Article 23 CRC already have guarantees for specific services, but not mainstream facilities. This way full and effective inclusion can start earlier and be sustained more easily.

The IDC also wished to include a reference **to the resources** necessary for independent living.

Note that the CESCR Committee has linked the issue of independent living with the need for anti-discrimination provisions:

Both *de jure* and *de facto* discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more "subtle" forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. 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. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.

Despite some progress in terms of legislation over the past decade, the legal situation of persons with disabilities remains precarious. In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem to be indispensable in virtually all States parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social policy programmes, which enable persons with disabilities to live an integrated, self-determined and independent life. [93]

[93] CESCR, General Comment 5, Persons with Disabilities, para 15.

Article 20

Personal Mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

Article 20 enshrines the difference between the right of an individual to movement – covered in Article 19 – and an accessible environment. There was some discussion on the link with Article 19 and also Article 12 ICCPR, which is the only core human rights treaty to include some aspects of this provision: "*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his (her) residence*."

Kenya made a substantive proposal on personal mobility during AHC VI. It included a more detailed provision for (a) 'ensuring that personal mobility programmes are designed in such a way that persons with disabilities using the programmes have a decisive influence on the way in which the programmes are delivered'.

In (b) the quality of mobility aids and other measures was qualified as '**high-quality**'. Also, while it is positive that the availability should be at **affordable cost** – rather than 'low-cost' – an earlier draft had also included the phrase 'where possible free of charge'.

Related to the issue of **training**, both Kenya and IDC suggested more detailed provisions on 'providing **information** to persons with disabilities about mobility aids, devices, assistive technologies and other forms of assistance and services' as well as awareness: Kenya suggested 'promoting **awareness** about mobility issues for persons with disabilities' and the IDC wanted 'publicising the range of aids and equipment, assistive technologies used be people with disabilities to facilitate safe and effective mobility and the facilities needed to optimise their use.'

Personal mobility aids and their production are also linked to **universal design**, which Kenya highlighted by suggesting the promotion of universal design for mobility aids, devices and assistive technologies and **encouraging private entities** that produce these to take into account all aspects of mobility for persons with disabilities. Another aspect that was lost in the process was the encouragement for the **research, development and production** of new mobility aids, devices and assistive technologies.

On the responsibility of private entities, see ► Article 4 (1) (e).

Article 21

Freedom Of Expression And Opinion, And Access To Information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages.

Freedom of expression and opinion, as a core civil right and element of democracy is enshrined in various UN Conventions. Starting with Article 19 UDHR and reaffirmed in Article 5 (d) CERD, the central provision is Article 19 ICCPR. Articles 12 & 13 CRC also enshrine this freedom.

The chapeau's phrase 'seek, receive and impart' is consistent with Article 19 ICCPR. Note that Article 13 CRC goes further by adding a savings clause 'of all kinds' and the guarantee 'regardless of frontiers'.

Clearly, the Article is linked to the general issue of **accessibility**, therewith ► Article 9. Also, there is a link to the definition of communication contained in ► Article 2. It is also prominently linked with the right to participation in political and public life, ► Article 29. Various proposals were made to detail the **modes and means of communication** but in an effort to streamline the Convention, the reference to Article 2 was included, which reads:

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.

The discussion surrounding para (a) was dominated by the desire to ensure that all information generated by and made available by public entities would be accessible. In addition to concerns that not all 'official' information was in fact 'available' there were general concerns on the limitations and implications of 'public information' with regard to private entities performing public services. The agreement was 'information intended for the public'.

In this context one may wish to recall the critical question **of responsibilities for privatized public services**, which the CESCR Committee has already discussed in the context of persons with disabilities:

Given the increasing commitment of Governments around the world to market-based policies, it is appropriate in that context to emphasize certain aspects of States parties' obligations. One is the need to ensure that not only the public sphere, but also the private sphere, are, within appropriate limits, subject to regulation to ensure the equitable treatment of persons with disabilities. In a context in which arrangements for the provision of public services are increasingly being privatized and in which the free market is being relied on to an ever greater extent, it is essential that private employers, private suppliers of goods and services, and other non-public entities be subject to both non-discrimination and equality norms in relation to persons with disabilities. In circumstances where such protection does not extend beyond the public domain, the ability of persons with disabilities to participate in the mainstream of community activities and to realize their full potential as active members of society will be severely and often arbitrarily constrained. This is not to imply that legislative measures will always be the most effective means of seeking to eliminate discrimination within the private sphere. Thus, for example, the Standard Rules place particular emphasis on the need for States to "take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution". [94]

This crucial issue arises again in para (c), which deals with private entities, as well as para (d) in relation to the 'encouragement' for mass media to be more accessible. See also ► Article 4 (1) (e).

The **role of the mass media** is highlighted also in Article 17 CRC

[94] CESCR, General Comment 5, Persons with Disabilities, para 11.

Given the resistance to listing modes and means of communication in (a), it is interesting to note that para (b) was finalized with just such an enumeration. Given the lengthy debate it is worth noting that sign languages were both included in the listing and specifically mentioned in para (e). The IDC would have liked to add a number of sub-paras. The first one would have recognized Braille as the official script for visually impaired and blind persons and ensured that technology does not exclude Braille as a viable alternative solution.

The IDC further highlighted the need for **training** of both persons with disabilities and interpreters, assistants and intermediaries in communication and language skills, including sign languages, tactile communication interpretation, note taking, reading and augmentative and alternative modes and means of communication to ensure that persons with disabilities can make use of their freedom of expression and opinion in their preferred language or mean and mode of communication.

The IDC argued for the inclusion of another link to accessibility in a separate para that, would have highlighted access to 'high-quality communication aids, devices, assistive technologies, interpreters and forms of live assistance at affordable cost.' Compare this proposal with the wording in ► Article 20 (b).

Finally, the IDC broached the important issue of **opinion and belief** in relation to services for persons with disabilities provided by religious or belief groups. The IDC called for a clear prohibition of any coercion of persons with disabilities regarding their freedom to choose a religion or belief regardless of the background of the support provided.

Freedom of thought, conscience and religion is not specifically mentioned in the Convention, but compare **Standard Rule 12**:

States will encourage measures for equal participation by persons with disabilities in the religious life of their communities.

1. States should encourage, in consultation with religious authorities, measures to eliminate discrimination and make religious activities accessible to persons with disabilities.
2. States should encourage the distribution of information on disability matters to religious institutions and organizations. States should also encourage religious authorities to include information on disability policies in the training for religious professions, as well as in religious education programmes.
3. They should also encourage the accessibility of religious literature to persons with sensory impairments.
4. States and/or religious organizations should consult with organizations of persons with disabilities when developing measures for equal participation in religious activities.

Compare, from a human rights perspective, **Article 18 ICCPR**:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

An excerpt of the Human Rights Committee's interpretation of Article 18:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.[95]

Article 21 has further links with themes such as training, awareness-raising and education. There is also a strong link to provisions related to informed consent, as obtaining information is dependent on access to information.

[95] HRC, General Comment 22, Article 18 (Freedom of thought, conscience or religion), para 1.

Article 22

Respect For Privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

The **right to privacy** is most prominently enshrined in Article 17 ICCPR, but was already recognized in Article 12 UDHR and is further reflected in Article 16 CRC and Article 16 CRMW respectively. The Convention, through para (2), highlights the particular relevance of privacy for persons with disabilities in the context of confidential information. This para was moved from ► Article 24 (health).

The Article is a split-off of Article 23 – which covers the remaining aspects of Article 17 ICCPR, namely '*privacy, family, home or correspondence, .. honour and reputation*'.

Intended to cover mostly issues of privacy and confidentiality in 'institutions', the Article now refers to '**living arrangements**' as both a discussion of the admissibility and the intertwined question of defining institutions had to be circumvented. Compare, however, ► Article 19.

The language of the 1966 ICCPR was slightly adapted to update it, with the addition of '**other types of communication**' instead of the old-fashioned term 'correspondence' at the suggestion of Liechtenstein; compare also Article 14 CRMW.

The provision has crucial to protecting the confidentiality of medical and other records related to the person's impairment. Frequently, this information is shared more widely than necessary and without regard for the person's privacy in applications and public procedures.

There was little discussion about this Article; the IDC did not make any suggestions for amendment.

Compare the General Comment of the Human Rights Committee regarding Article 17 ICCPR[96]:

As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant.

Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis. Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed *de jure* and *de facto*.

Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.

States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.

The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law.

Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.

[96] HRC, General Comment 16, Article 17 (Right to privacy), para 7 ff.

Privacy relates to adequate housing:

''Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost"[97].

Privacy is also a particular concern in upholding women's rights:

States parties must provide information to enable the Committee to assess the effect of any laws and practices that may interfere with women's right to enjoy privacy and other rights protected by article 17 ICCPR on the basis of equality with men. An example of such interference arises where the sexual life of a woman is taken into consideration in deciding the extent of her legal rights and protections, including protection against rape. Another area where States may fail to respect women's privacy relates to their reproductive functions, for example, where there is a requirement for the husband's authorization to make a decision in regard to sterilization; where general requirements are imposed for the sterilization of women, such as having a certain number of children or being of a certain age, or where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion. In these instances, other rights in the Covenant, such as those of articles 6 and 7, might also be at stake. Women's privacy may also be interfered with by private actors, such as employers who request a pregnancy test before hiring a woman. States parties should report on any laws and public or private actions that interfere with the equal enjoyment by women of the rights under article 17, and on the measures taken to eliminate such interference and to afford women protection from any such interference. [98]

[97] CESCR, General comment 4, Right to adequate housing, para 7.
[98] HRC, General comment 28, Article 3 (The equality of rights between men and women), para 20.

Article 23

Respect For Home And The Family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure 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. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

The Article reflects issues related to the protection of the home and family as enshrined in other core human rights treaties. There was substantial discussion about this Article due to the degree of detail, which, according to the Holy See, was 'creating too many problems'. The cause of the trouble for the Vatican and a number of states was the phrase 'that persons with disabilities are not denied the equal opportunity to experience their sexuality, have sexual and other intimate relationships, and experience parenthood'. As in the discussion over including 'sexual and reproductive health services' in ► Article 24, health, grave concern was voiced over the implications of such references and their inclusion was objected to for fear of interference with national laws, culture and customs, stating that there was no such thing as a right to sexuality.

Compare, however, the observation of the CESCR Committee on the perceived "genderlessness" of persons with disabilities:

Persons with disabilities are sometimes treated as genderless human beings. As a result, the double discrimination suffered by women with disabilities is often neglected. Despite frequent calls by the international community for particular emphasis to be placed upon their situation, very few efforts have been undertaken during the Decade. The neglect of women with disabilities is mentioned several times in the report of the Secretary-General on the implementation of the World Programme of Action.[99]

A reference to increasing awareness and raising positive attitudes towards the sexuality of persons with disabilities was originally moved to ► Article 8 (Awareness-raising) and then disappeared entirely. Equally, an explicit mention of forced sterilization in the context of family relations was removed.

Compare, however, the wording of the Standard Rules on this issue:

Rule 9. Family life and personal integrity

States should promote the full participation of persons with disabilities in family life. They should promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood.

1. Persons with disabilities should be enabled to live with their families. States should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families, which include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities.

2. Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. Taking into account that persons with disabilities may experience difficulties in getting married and setting up a family, States should encourage the availability of appropriate counselling. Persons with disabilities must have the same access as others to family-planning methods, as well as to information in accessible form on the sexual functioning of their bodies.

[99] CESCR, General Comment 5 Persons with disabilities, para 19.

3. States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society. The media should be encouraged to play an important role in removing such negative attitudes.
4. Persons with disabilities and their families need to be fully informed about taking precautions against sexual and other forms of abuse. Persons with disabilities are particularly vulnerable to abuse in the family, community or institutions and need to be educated on how to avoid the occurrence of abuse, recognize when abuse has occurred and report on such acts.

Para (1) reflects language in Article 16 (1) CEDAW, save that the Women's Rights Convention specifies that '**all** appropriate' measures should be taken.

Before AHC VII, para (a) read: that persons with disabilities are not denied the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships and experience parenthood [in accordance with national laws, customs and traditions of general application].'

The right to marry and found a family is enshrined in Article 16 UDHR, Article 5 (d) (iv) CERD and Article 23 ICCPR. CESCR in Article 10 (1) states that '*marriage must be entered into with the free consent of the intending spouses*' and CEDAW Article 16 details both marriage related rights as well as family planning. The CEDAW Committee has detailed **the right to enter into marriage** as follows:

A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. (…) there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on a woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law. [100]

Para (b) is in line with language of CEDAW, which enshrines the right to decide the number and spacing of children in Article 16 (1) (e) and refers to family planning services in Articles 12 (1) as well as 14 (2) (b).

The IDC demanded that **the right to retain fertility** and the prohibition of involuntary sterilization be explicitly mentioned in a separate para, compare, para (c).

The para now includes an important last-minute change – it refers to persons with disabilities rather than 'men and women'. While some delegations were unhappy with the change in light of discussions on marriage regardless of sex, the term 'person' is also preferable in relation to hermaphrodites or transsexual people in particular.

[100] CEDAW General comment 21, Equality in marriage and family relations, Article 16, para 16.

With regard to **number and spacing of children**, the CEDAW Committee has observed:

The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women's lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children. (…) coercive practices (…) have serious consequences for women, such as forced pregnancies, abortions or sterilization. Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government. In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention.
There is general agreement that where there are freely available appropriate measures for the voluntary regulation of fertility, the health, development and well-being of all members of the family improve. Moreover, such services improve the general quality of life and health of the population, and the voluntary regulation of population growth helps preserve the environment and achieve sustainable economic and social development.[101]

With regard to the right to the **highest attainable standard of health**, the CESCR Committee stated that the right to maternal, child and reproductive health would comprise:

"The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" (art. 12.2 (a)) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.[102]

[101] CEDAW General comment 21, Equality in marriage and family relations, Article 16, para 21 ff.
[102] CESCR, General comment 14, Right to highest attainable standard of health, Article 12, para 14.

The Committee continues elsewhere:

> **Obligations to protect include, inter alia, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties; and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct. States are also obliged to ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence. States should also ensure that third parties do not limit people's access to health-related information and services.**[103]

Para (c) covers the IDC demand with regard to the need to mention retaining fertility.

Note that the CEDAW Committee has briefly touched on the issue of fertility in relation to women's rights:

> **States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control.**[104]

Para (2) is a reflection of Article 16 (1)(f) CEDAW and adds the primary consideration of the child's best interest in accordance with Article 3 (1) CRC. Also, it explicitly covers the issue of accessibility and self-determination in the last sentence, which highlights assistance to persons with disabilities in performing child-rearing responsibilities, at the suggestion of the IDC. Note that it is one of the few provisions with an explicit reference to national legislation, as some countries do not acknowledge the concept of formal adoption.

[103] CESCR, General comment 14, right to health, Article 12, para 35.
[104] CEDAW, General comment 19, para 24 (m).

Para (3) builds on Article 19 (1) CRC in parts. Note that the reference to '*family life*' in the first sentence is derived from Rule 9 of the Standard Rules, which stipulates the promotion of '*the full participation of persons with disabilities in family life*'. The listing in CRC also differs slightly, as Article 19 (1) covers the protection from '*all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.*' Compare also the assessment of the CESCR Committee in relation to discrimination against persons with disabilities:

> **'through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with [others].'**[105]

The second sentence of para (4), basically an anti-discrimination provision, made it into the Convention all the way from the Working Group text. The first sentence is based on a similar provision in Article 9 (1) CRC on separating children from their parents. The IDC opposed the language fearing that what is applicable to children could also be made to apply to persons with disabilities regardless of age. The language on competent authorities was refined to ensure fair trial standards. Note again the reference to the best interest of the child, viewed as a core principle of the CRC, enshrined in Article 3 (1) thereof.

Furthermore, Article 20 CRC enshrines '*a child temporary or permanently deprived of his or her family environment, or in whose best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*' This is partly reflected in para (5).

In its proposals the IDC also highlighted the need for **comprehensive information**, services and support to children with disabilities and their families and other care-givers. Furthermore, in line with the right of a child to family life, the IDC underscored the need to provide **care within the wider family** should the immediate family be unable to provide it. Finally, education and support in promotion of **positive attitudes**, as well as **awareness** on concealment, abandonment and neglect of children were highlighted by the IDC.

[105] CESCR, General comment 5, Persons with Disabilities, para 15.

Article 24

Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an **inclusive education** system at all levels and life long learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

The Article caused controversy right up to the last day of the AHC because of a potential loop-hole on inclusive education, i.e. not ensuring that persons with disabilities are fully and effectively included in mainstream education and doing away with any form of segregated education. Recognising that learning is a life-long process and also reflective of the fact that not everyone receives primary and secondary education as a child or adolescent, the Article refers to persons with disabilities rather than just children. An important feature is the reference to learning life and social development skills; there is also an explicit reference to sign languages and Braille.

Para (1) enshrines the right to education, which is also recognized in core human rights documents, starting with Article 26 (1) UDHR, Article 5 (e) (v) CERD, 13 (1) CESCR, 10 CEDAW, 28 (1) CRC, and Article 30 CRMW. The provision most closely resembles Article 28 CRC, however, Article 24 goes further in that it requires an **inclusive** education system.

Inclusive education, as enshrined in the **Salamanca Declaration**[106], connotes that education is provided for all within the regular education system. Focused on children and young people the Declaration calls on States to ensure that children with "special educational" needs must have access to regular – that is mainstream – schools. The Declaration underlines that inclusion is the most effective means of combating discriminatory attitudes and achieving education for all.

[106] The Salamanca Declaration was adopted at the World Conference on Special Needs Education, it can be found on the UNESCO web site: http://www.unesco.org

Full inclusion is closely linked with ensuring **non-discrimination**, and successful implementation hinges on the provision of **reasonable accommodation**, these issues are explicitly covered in paras (2) (c) & (5) of the Article. Compare the observations made by the CRC Committee on discrimination in the context of education:

> **Discrimination on the basis of any of the grounds listed in article 2 of the (Child Rights) Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home.**[107]

In a comprehensive general comment the CESCR Committee highlighted the potential of the right to education in the context of the pertinent Article 13 CESCR as follows:

> **Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.**[108]

[107] CRC, General Comment 1, The aims of education, para 10.
[108] CESCR, General comment 13, The right to education, Article 13, para 1.

The Committee goes on to outline the basic features on the right to receive education:

- **Availability – educational institutions providing quality education have to be available in sufficient quantity.**
- **Accessibility – available to everyone without discrimination:**
  - **– Non-discrimination**
  - **– Physical accessibility**
  - **– Economic accessibility**
- **Acceptability – the form and substance, including method of teaching have to be relevant, culturally appropriate and of good quality.**
- **Adaptability – flexible so as to adapt to the needs of changing societies.**[109]

"*The full development of the human personality*" is enshrined in Article 26 (2) UDHR and reflected in Article 13 CESCR above. Para (a) refers to "*potential*" and adds "*self worth*" and "*human diversity*", concepts which are of great importance in the context of inclusion. However, it should be noted that they have a slightly different meaning outside the disability context, particularly the term "diversity" is a code-word in the UN human rights debate for sexual orientation.

Paras (b) and (c) are taken from Article 29 CRC and Article 13 CESCR respectively. Note that Article 13 CESCR also refers to the promotion of "*understanding, tolerance and friendship among nationals and all racial, ethnic or religious groups*".

Para (2) is the Article's cornerstone and enshrines **inclusive education** by ensuring that persons with disabilities are not excluded from mainstream education. Such provisions are also enshrined in Article 13 (2) CESCR and Article 28 CRC. Note that in (a) and (b) a distinction is drawn between primary and secondary education because many States do not have free and compulsory education beyond the primary level. The IDC was successful in asking that a resource related qualification – referring to progressive realization[110] – be removed.

Reasonable accommodation as defined in ► Article 2 is enshrined in para (c).

Paras (d) and (e) were originally one and were separated in the course of the debate that revolved around the loop-hole-sentence "in exceptional circumstances where the general education system can not adequately meet the support needs of persons with disabilities, States Parties shall ensure that effective alternative support measures are provided, consistent with the goal of full inclusion." The IDC and others objected to this wording because it was not clear what "exceptional circumstances" could and would be. Obviously, the goal of full and effective inclusion cannot be met, if "some" are left out. As a result (d) covers the necessary support to ensure full and effective inclusion within mainstream education and (e) enshrines the support necessary to ensure that in case of non-inclusive settings the same standards of academic and social development are upheld. Read in conjunction with para (3) (c) it is clearer that deaf, blind and deaf-blind persons in particular should benefit from this provision.

[109] CESCR, General Comment 13, The right to education, Article 13, para 6.
[110] See further on progressive realization, ► Article 4 (2).

Compare the wording with **Standard Rule 6 on Education**:

States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system.

1. General educational authorities are responsible for the education of persons with disabilities in integrated settings. Education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization.

2. Education in mainstream schools presupposes the provision of interpreter and other appropriate support services. Adequate accessibility and support services, designed to meet the needs of persons with different disabilities, should be provided.
(...)

6. To accommodate educational provisions for persons with disabilities in the mainstream, States should:

(a) Have a clearly stated policy, understood and accepted at the school level and by the wider community;

(b) Allow for curriculum flexibility, addition and adaptation;

(c) Provide for quality materials, ongoing teacher training and support teachers.
(...)

8. In situations where the general school system does not yet adequately meet the needs of all persons with disabilities, special education may be considered. It should be aimed at preparing students for education in the general school system. The quality of such education should reflect the same standards and ambitions as general education and should be closely linked to it. At a minimum, students with disabilities should be afforded the same portion of educational resources as students without disabilities. States should aim for the gradual integration of special education services into mainstream education. It is acknowledged that in some instances special education may currently be considered to be the most appropriate form of education for some students with disabilities.

With regard to the cost involved in providing accessible and inclusive education, it might be appropriate to recall the notion of progressive implementation, compare ► Article 4 Para 2.

The IDC proposed an additional sub para on ensuring that educational materials are accessible and appropriate for persons with disabilities.

The addition of para (3) on **life and social development skills** is a good addition. The IDC did, however, object to the way the issue is phrased, pointing out that the wording implies that persons with disabilities lack such skills on the ground of being disabled. The IDC would have preferred the wording "States Parties shall provide access to daily life skills and habilitation to children with disabilities in the general education system to facilitate their full and equal participation in education and as members of a community."

The sub paras of (3) detail the skills that should be taught. The modes and means of communication are now more consistent with the definition for communication in Article 2, as the IDC succeeded in bringing the language closer to the definition. Note in particular the reference to "linguistic identity" in para (b). The reference to "most appropriate languages" in (c) does not explicitly refer to sign languages, which should be added though.

Para (4) is important in that it calls for training and awareness for **all** teachers, not just those who work with persons with disabilities. Para (5), as is mentioned above, includes a specific reference to **reasonable accommodation**.

Article 25

Health

States Parties recognize that 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 take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

The right to the highest attainable standard of health is laid out in Article 25 UDHR and enshrined in Article 12 CESCR. Both CEDAW – Article 12 – and the CRC – Article 24 – also contain a specific right to health. Note that the phrase "physical and mental", which carries a connotation, is not used in Article 25.

The CESCR Committee in its encompassing comment on the right to health has said, inter alia:

Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.[111]

Article 12 does not enshrine the WHO definition, which conceptualizes health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". However, the reference in article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.[112]

Toward the end of the negotiations, it was decided to split off (re)habilitation issues and cover those in a stand-alone article, now ► Article 26. However, on the insistence of the World Health Organization (WHO), a number of **(re)habilitation**-related issues were retained in this provision.

In the debate over the right to health, **privacy-related matters** were also discussed: a dominant theme was the question of consent and whether additional safeguards could and should be included to ensure free and informed consent in any procedure undertaken on a person with disabilities. It was decided that '**free and informed consent**'[113] is a standard principle with clear guidelines and that additional caveats could prove counterproductive. Privacy also touches on the **confidentiality** of medical and health-related records and other information. Equally, access to and accessibility of such records is an area where persons with disabilities are frequently confronted with patronizing and often discriminatory treatment.

Discrimination against persons with disabilities is also prevalent in the field of **health insurance**, and a special paragraph deals with this issue.

[111] CESCR, General comment 14, The right to the highest attainable standard of health, paras 1 & 3.
[112] CESCR, General Comment 14, The right to the highest attainable standard of health, para 4.
[113] See also above, ► Article 23.

The cause for lengthy – and truly heated – debates over this Article was a reference to sexual and reproductive health. Persons with disabilities are frequently treated as **genderless and asexual** human beings, with their sexual functions called into question. The IDC and others therefore deemed it crucial that the issue be explicitly mentioned to substantiate efforts aimed at abolishing such discrimination. The range of interpretations for the phrase "sexual and reproductive health services" put forward in the debate certainly outdid the possibilities that those who are victims of discrimination could think of. One intervention alleged that this phrase would "legitimize abortion at an international level."

Extensive comments on the AHC debate over sexual and reproductive rights can be found under ► Article 23. One may wish to recall in particular Standard Rule 9 on Family Life and Integrity, which states, inter alia, "*persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships;*" and that "*persons with disabilities must have the same access as others to family—planning methods, as well as to information in accessible form on the sexual functioning of their bodies.*"

Again, the CESCR Committee has commented on these issues:

The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable level of health.[114]

Women's health issues more broadly are the focus of a CEDAW Committee General Comment:

(a) Biological factors that differ for women in comparison with men, such as their menstrual cycle, their reproductive function and menopause. Another example is the higher risk of exposure to sexually transmitted diseases that women face;

(b) Socio-economic factors that vary for women in general and some groups of women in particular. For example, unequal power relationships between women and men in the home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability;

(c) Psychosocial factors that vary between women and men include depression in general and post-partum depression in particular as well as other psychological conditions, such as those that lead to eating disorders such as anorexia and bulimia;

[114] CESCR, General Comment 14, The right to the highest attainable standard of health, para 8.

(d) While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.[115]

Another issue, which is linked to the right to health is the right to food and water, which the Convention covers in Article 28. Compare, however, the CESCR Committee's comment on the link between the right to health and the right to water and food respectively:

The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels. [116]

A cornerstone of the right to health in the context of rights of persons with disabilities is of course accessibility. Again this is something the CESCR Committee has commented on more generally, stating that health service should have the following features:

(a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs;

(b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

1. Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds;

[115] CEDAW, General Comment 24, Women and health, para 12.
[116] CESCR, General comment 14, Right to health, para 11.

2. Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, **persons with disabilities** and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. **Accessibility further includes adequate access to buildings for persons with disabilities**;

3. Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households;

4. Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality;

(c) ***Acceptability***. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned;

(d) ***Quality***. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.[117]

Highlighting economic accessibility, especially for impoverished and poor people, the importance of providing medication and health services free of charge was stressed. Again, the CESCR Committee has commented on this approach to the right to health:

With respect to the right to health, equality of access to health care and health services has to be emphasized. States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health. Inappropriate health resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive curative health services, which are often accessible only to a small, privileged fraction of the population, rather than primary and preventive health care benefiting a far larger part of the population.[118]

[117] CESCR, General Comment 14, Right to health, para 12.
[118] CESCR, General Comment 14, Right to health, para 19.

The chapeau – opening paragraph – of Article 25 follows Article 25 UDHR and more specifically Article 12 CESCR. As explained above, the reference to "physical and mental" was kept out. Note the addition of the gender-sensitive qualification, which is a reflection of the twin-track approach for highlighting women's issues in a special ► Article 6, as well as highlighting multiple discrimination in relevant articles, such as this one. The term "gender-sensitive" is not to be found in any other core human rights documents. Also, the bridge to (re)habilitation is inserted in the chapeau. Note that the reference to discrimination is slightly stronger in CEDAW's health provision, Article 12 (1), which uses "eliminate discrimination" rather than "without discrimination".

Para (a) calls for "free or affordable" health care and programmes on an equal basis with others. As has been highlighted elsewhere, affordable accommodates the individual income rather than the term "low cost". Population-based public health programmes refers to vaccination programmes, for example, which need to reach out and include persons with disabilities, particularly in rural areas. Note that Article 12 (2) (c) CESCR refers to prevention, treatment and control of epidemic, endemic, occupational and other diseases. The IDC wanted a specific reference to accessibility to such programmes.

"**Prevention**" is mentioned in para (b) in the context of minimizing further disabilities, particularly among children and elderly persons. The IDC remained critical of this language given past and ongoing injustices aimed at "curing" persons with disabilities. The only area where "prevention" was discussed at some length is **HIV/AIDS**, which has several inter-linkages with impairments/ disabilities.[119]

Compare also the wording in the introduction of the Standard Rules: *The term «prevention» means action aimed at preventing the occurrence of physical, intellectual, psychiatric or sensory impairments (primary prevention) or at preventing impairments from causing a permanent functional limitation or disability (secondary prevention). Prevention may include many different types of action, such as primary health care, prenatal and postnatal care, education in nutrition, immunization campaigns against communicable diseases, measures to control endemic diseases, safety regulations, programmes for the prevention of accidents in different environments, including adaptation of workplaces to prevent occupational disabilities and diseases, and prevention of disability resulting from pollution of the environment or armed conflict.*[120]

The CESCR Committee's discussion of the right to health is a most helpful tool in determining the **boundaries between curative prevention and measures that counter-act the spirit of the Convention and therewith the rights of persons with disabilities.**[121]

Para (c) enshrines the concept of **community-based rehabilitation**, i.e. that health services, including (re)habilitation should be delivered as closely as possible to the community of the person with disabilities. See further ► Article 26.

[119] See above for further references on HIV, ► Article 4.
[120] Standard Rules, Introduction, Para 22.
[121] CESCR, General Comment 14, Right to health.

Para (d) covers the **non-discrimination** by healthcare professionals and the issue of free and informed consent. Furthermore, the recurring issue of **training** to raise awareness is covered in this para.

The IDC suggested two additions following para (d) to cover alternative choices in terms of treatment and therapy as well as peer support. Another paragraph should have included a reference to forced sterilization or interventions aimed at “mental corrections”:

(d) bis “ensure that choices among different treatment options are available for persons with disabilities, including but not limited to paramedic, alternative health services, second opinions, counselling, therapies, peer support, including health service provided by organizations of persons with disabilities”;

(d) ter “informed consent of persons with disabilities, is required prior to and during course of medicinal, surgical, therapeutic, or other interventions and modalities; informed consent requires disclosure of the experimental nature of any intervention and all other available information about the nature, adverse effects and benefits of the intervention. No child shall be sterilised or undergo any forced correcting surgery or medication on the ground of disability;

(d) quater “ensure that persons with disabilities have access to their unedited health and medical records, and are entitled to give or withhold consent to disclosure of this information to third parties.”

The denial of health care and particularly life insurance is covered in (e). The IDC would have liked to delete the reference to national law, but the prohibition of life insurance in some countries, made this reference necessary. The reference to food and fluids in (f) is also a response to a number of interventions on the death of Tery Shiavo, following a Court ruling in Florida, USA that caused considerable public debate, which was also noted by the AHC.

Article 26

Habilitation And Rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

Recognizing that (re)habilitation is only partly a medical process and that it is multifaceted, a separate provision was enshrined. It is now nicely placed between two of the core aspects – medical, covered in the ► Article 25, Health and ► Employment, Article 27 and ► social protection, Article 28. Habilitation covers all efforts aimed at increasing the self-determination of a person born with a disability, whereas rehabilitation refers to such efforts in relation to disabilities/ impairments acquired later in life.

Para (1) covers important features such as **peer support** and the concept of **inclusion**. The IDC made a number of suggestions, also an explicit reference to "**gender, culture, age, all stages of life**", which was rejected, however, despite significant support for the gender qualification. Arguing that (re)habilitation is not a process where "one fits all", the IDC maintained that the **individual's choice** and right of decision needed to be strengthened. This idea did not make it into the final text.

The sub-paras contain an important caveat in (b) – the voluntary nature of any (re)habilitation effort. Yemen's proposal, which was supported by the IDC, to make an explicit reference to "**free and informed consent**" did not fly. On privacy issues, the IDC proposed a sub-para on the issue of confidentiality of patient and health-related information. (b) also makes a reference to close proximity to the individual's community, highlighting CBR – **community-based rehabilitation**, compare also ► Article 25.

ILO, UNESCO and WHO have embarked on a joint strategy for community-based rehabilitation. A joint position paper was issued in 2004[122], and the **ILO WHO UNESCO CBR guidelines** should be published in the course of 2009.

Compare also the following description by E. Helander ("Prejudice and Dignity"):

Community-based rehabilitation (CBR) is a strategy for enhancing the quality of life of disabled people by improving service delivery, by providing more equitable opportunities and by promoting and protecting their human rights. It calls for the full and co-ordinated involvement of all levels of society: community, intermediate and national. It seeks the integration of the interventions of all relevant sectors - educational, health, legislative, social and vocational - and aims at the full representation and empowerment of disabled people. It also aims at promoting such interventions in the general systems of society, as well as adaptations of the physical and psychological environment that will facilitate the social integration and the self-actualisation of disabled people. Its goal is to bring about a change; to develop a system capable of reaching all disabled people in need and to educate and involve governments and the public. CBR should be sustained in each country by using a level of resources that is realistic and maintainable.

At the community level, CBR is seen as a component of an integrated community development programme. It should be based on decisions taken by its members. It will rely as much as possible on the mobilisation of local resources. The family of the disabled person is the most important resource. Its skills and knowledge should be promoted by adequate training and supervision, using a technology closely related to local experience. The community should support the basic necessities of life and help the families who carry out rehabilitation at home. It should further open up all local opportunities for education, functional and vocational training, jobs, etc. The community needs to protect its disabled members to ensure that they are not deprived of their human rights. Disabled community members and their families should be involved in all discussions and decisions regarding services and opportunities provided for them. The community will need to select one or more of its members to undergo training in order to implement the programme. A community structure (committee) should be set up to provide the local management.

At the intermediate level, a network of professional support services should be provided by the government. Its personnel should be involved in the training and technical supervision of community personnel, should provide services and managerial support, and should liaise with referral services.

[122] The joint position paper may be accessed at: http://whqlibdoc.who.int/publications/2004/9241592389_eng.pdf

Referral services are needed to receive those disabled people who need more specialised interventions than the community can provide. The CBR system should seek to draw on the resources available both in the governmental and non-governmental sectors.

At the national level, CBR seeks the involvement of the government in the leading managerial role. This concerns planning, implementing, co-ordinating, and evaluating the CBR system. This should be done in co-operation with the communities, the intermediate level and the non-governmental sector, including organisations of disabled people.

Because independence and self-determination and control of the (re)habilitation plan are an integral part of (re)habilitation programs, the IDC made a specific proposal for a sub-para to cover this issue of individual capacity building: (b) bis "habilitation and rehabilitation plans and courses aim to reach and sustain the independence and self-determination of persons with disabilities, and that persons with disabilities have the right to design, direct, change or reassess the plans over the period of life".

Para (2) covers the recurring issue of training, here in relation to (re)habilitation.

Para (3) is an important last-minute addition, based on an IDC proposal regarding **assistive devices**.

Finally, compare the Standard Rules, which not only contain a definition of rehabilitation but also a **rule on rehabilitation – Number 3**:

States should ensure the provision of rehabilitation services to persons with disabilities in order for them to reach and sustain their optimum level of independence and functioning.

1. States should develop national rehabilitation programmes for all groups of persons with disabilities. Such programmes should be based on the actual individual needs of persons with disabilities and on the principles of full participation and equality.

2. Such programmes should include a wide range of activities, such as basic skills training to improve or compensate for an affected function, counselling of persons with disabilities and their families, developing self-reliance, and occasional services such as assessment and guidance.

3. All persons with disabilities, including persons with severe and/or multiple disabilities, who require rehabilitation should have access to it.

4. Persons with disabilities and their families should be able to participate in the design and organization of rehabilitation services concerning themselves.

5. All rehabilitation services should be available in the local community where the person with disabilities lives. However, in some instances, in order to attain a certain training objective, special time-limited rehabilitation courses may be organized, where appropriate, in residential form.

6. Persons with disabilities and their families should be encouraged to involve themselves in rehabilitation, for instance as trained teachers, instructors or counsellors.

7. States should draw upon the expertise of organizations of persons with disabilities when formulating or evaluating rehabilitation programmes.

Article 27

Work And Employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Employment for persons with disabilities is essentially a non-discrimination and an accessibility issue. The CESCR Committee, in its comment on persons with disabilities, did not only stress that employment is one of the fields where disability-related discrimination is particularly prevalent, it also made the following observations on the right to work for persons with disabilities:

The field of employment is one in which disability-based discrimination has been prominent and persistent. In most countries the unemployment rate among persons with disabilities is two to three times higher than the unemployment rate for persons without disabilities. Where persons with disabilities are employed, they are mostly engaged in low-paid jobs with little social and legal security and are often segregated from the mainstream of the labour market. The integration of persons with disabilities into the regular labour market should be actively supported by States.

The "right of everyone to the opportunity to gain his living by work which he freely chooses or accepts" (art. 6 (1)) is not realized where the only real opportunity open to disabled workers is to work in so-called "sheltered" facilities under sub-standard conditions. Arrangements whereby persons with a certain category of disability are effectively confined to certain occupations or to the production of certain goods may violate this right. Similarly, in the light of principle 13 (3) of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, "therapeutical treatment" in institutions which amounts to forced labour is also incompatible with the Covenant. In this regard, the prohibition on forced labour contained in the International Covenant on Civil and Political Rights is also of potential relevance.

According to the Standard Rules, persons with disabilities, whether in rural or urban areas, must have equal opportunities for productive and gainful employment in the labour market. For this to happen it is particularly important that artificial barriers to integration in general, and to employment in particular, be removed. As the International Labour Organization has noted, it is very often the physical barriers that society has erected in areas such as transport, housing and the workplace, which are then cited as the reason why persons with disabilities cannot be employed.

For example, as long as workplaces are designed and built in ways that make them inaccessible to wheelchairs, employers will be able to "justify" their failure to employ wheelchair users. Governments should also develop policies, which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers.

Similarly, the failure of Governments to ensure that modes of transportation are accessible to persons with disabilities greatly reduces the chances of such persons finding suitable, integrated jobs, taking advantage of educational and vocational training, or commuting to facilities of all types. Indeed, the provision of access to appropriate and, where necessary, specially tailored forms of transportation is crucial to the realization by persons with disabilities of virtually all the rights recognized in the Covenant.

The "technical and vocational guidance and training programmes" required under article 6 (2) of the Covenant should reflect the needs of all persons with disabilities, take place in integrated settings, and be planned and implemented with the full involvement of representatives of persons with disabilities.
The right to "the enjoyment of just and favourable conditions of work" (art. 7) applies to all disabled workers, whether they work in sheltered facilities or in the open labour market. Disabled workers may not be discriminated against with respect to wages or other conditions if their work is equal to that of non-disabled workers. States parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labour protection or for paying below minimum wages.

Trade union-related rights (art. 8) apply equally to workers with disabilities and regardless of whether they work in special work facilities or in the open labour market. In addition, article 8, read in conjunction with other rights such as the right to freedom of association, serves to emphasize the importance of the right of persons with disabilities to form their own organizations. If these organizations are to be effective in "the promotion and protection of [the] economic and social interests" (art. 8 (1) (a)) of such persons, they should be consulted regularly by government bodies and others in relation to all matters affecting them; it may also be necessary that they be supported financially and otherwise so as to ensure their viability.[123]

The International Labour Organization has developed valuable and comprehensive instruments with respect to the work-related rights of persons with disabilities. The ILO's most relevant documents are the Convention concerning vocational rehabilitation and employment, C 159[124] and the recommendation concerning vocational rehabilitation and employment, R 168.[125]

[123] CESCR, General Comment 5, Persons with Disabilities, Paras 20-26.
[124] For the Convention text: http://www.ilo.org/ilolex/cgi-lex/convde.pl?C159
[125] For the Recommendation text: http://www.ilo.org/ilolex/cgi-lex/convde.pl?R168

The ILO Convention on Rehabilitation and Vocational Training of Persons with Disabilities of 1983 was – until the CRPD came into force – the only internationally-binding multi-lateral treaty solely devoted to persons with disabilities. It is also relevant in the context of employment because it provides for positive discrimination. As stated under ► Article 5 Para 4, this means that persons with disabilities may be given preferential treatment to ensure that effective equality of opportunity is reached. Article 4 of ILO Convention 159 states: "*special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers.*" One form of positive measure is **quotas**.

Another important reference is Rule 7 of the **Standard Rules** regarding **employment**:

States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labour market.
Laws and regulations in the employment field must not discriminate against persons with disabilities and must not raise obstacles to their employment.
States should actively support the integration of persons with disabilities into open employment. This active support could occur through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. States should also encourage employers to make reasonable adjustments to accommodate persons with disabilities.
States' action programmes should include:
- Measures to design and adapt workplaces and work premises in such a way that they become accessible to persons with different disabilities;
- Support for the use of new technologies and the development and production of assistive devices, tools and equipment and measures to facilitate access to such devices and equipment for persons with disabilities to enable them to gain and maintain employment;
- Provision of appropriate training and placement and ongoing support such as personal assistance and interpreter services.
States should initiate and support public awareness-raising campaigns designed to overcome negative attitudes and prejudices concerning workers with disabilities.
In their capacity as employers, States should create favourable conditions for the employment of persons with disabilities in the public sector.
States, workers' organizations and employers should cooperate to ensure equitable recruitment and promotion policies, employment conditions, rates of pay, measures to improve the work environment in order to prevent injuries and impairments and measures for the rehabilitation of employees who have sustained employment-related injuries.

The aim should always be for persons with disabilities to obtain employment in the open labour market. For persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be assessed in terms of their relevance and sufficiency in providing opportunities for persons with disabilities to gain employment in the labour market.
Measures should be taken to include persons with disabilities in training and employment programmes in the private and informal sectors.

States, workers' organizations and employers should cooperate with organizations of persons with disabilities concerning all measures to create training and employment opportunities, including flexible hours, part-time work, job-sharing, self-employment and attendant care for persons with disabilities.

Two main themes of the debate on Article 27 were the use of **positive discrimination** through quota systems and a loop-hole for comprehensive inclusion: **sheltered workshops** or other forms of "alternative" employment.

"*Everyone has the right to work*" according to Article 23 UDHR, which is reflected in Article 6 CESCR and in Article 11 CEDAW. The wording "States Parties recognize" in Article 27 is not as strong as in preceding texts, which "guarantee" the right to work, as does Article 5 CERD. However, in Article 6 CESCR also uses this wording. The phrase "*the opportunity to gain a living by work freely chosen or accepted in a labour market*" is new, compared to Article 11 CEDAW, which states "*the right to work as an inalienable right of all human beings*" and "*the right to free choice of profession and employment.*"

The IDC wanted to strengthen the obligation to employ persons with disabilities in public services and it opposed the wording "including for those who acquire a disability during the course of employment" as being unnecessary.

Paras (a) & (b) are a blend of various non-discrimination provisions found in core human rights texts. "*Just and favourable conditions of work*" are also laid down in Article 23 UDHR, Article 5 CERD and Article 7 CESCR. "*Equal remuneration for work of equal value*" is to be found in Article 11 CEDAW. However, "*protection against unemployment*" as prescribed by Article 23 UDHR, is not included. "Career advancement" in para (a) is phrased differently in Article 7 (c) CESCR: "*equal opportunity for everyone to be promoted in his employment to an appropriate higher level.*"

Labour and trade union rights, compare para (c), are also covered in other core human rights treaties, see para (4) of Article 23 UDHR, Article 5 CERD and Article 8 CESCR. Note also the broader right of freedom of association protected in Article 22 ICCPR, which includes "*the right to form and join trade unions for the protection (of one's) interests*."
"Technical and vocational guidance" – para (d) – is also protected under Article 6 CESCR and Article 11 CEDAW, however it does not formulate a right – as does CEDAW- Article 27 - "enabling" persons with disabilities to have effective access. There is also a difference in the "general" nature of technical and vocational guidance programs compared to Article 6 CESCR, which does not qualify the nature. Note also that CEDAW explicitly refers to apprenticeships. Article 43 CRMW highlights access to "*retraining facilities and institutions.*"

The provision in (e) on **maintaining** employment may be read as protection against unemployment. The ILO suggested the term "retraining" instead. As for opportunities for **self-employment**, the ILO was vocal on the issue of cooperatives. The IDC suggested a different wording : "offer micro-enterprise opportunities for self-employment initiatives and development of own businesses for persons with disabilities, facilitating access to subsidized credit and technical advice."

With regard to employment of persons with disabilities, the IDC would have preferred a qualification ensuring the provision of special equipment, **personal assistance**, income support and adaptations to the work place. While the concept of personal assistance was not included, there is now an explicit reference to "**reasonable accommodation**" in para (i). Employment of persons with disabilities in the private sector should also be escalated by "**affirmative action**". No other core human rights treaty uses this concept of positive discrimination. Compare the wording in CEDAW, Article 4, which refers to "*temporary special measures aimed at accelerating de facto equality between men and women (that) shall not be considered discrimination as defined in (CEDAW)*". For a reference to "special measures" compare ► Article 5 (4). Note also that Rule 15 of the Standard Rules suggests a variety of measures to ensure the legal basis to achieve full inclusion of persons with disabilities, among them also "*affirmative action.*"

The prohibition of forced labour – para (2) – is also enshrined in Article 8 ICCPR: "*no one shall be held in slavery, .. no one shall be held in servitude, no on shall be required to perform forced or compulsory labour.*" Compare also the text of the UDHR, Article 4. The formulation "shall ensure" is strong, but the "no one shall" used in the other core texts is slightly stronger. Compare the quote from the CESCR Committee's General Comment above, regarding persons with disabilities and forced labour. Note also the relevant ILO Conventions, particularly the Forced Labour Convention, C 29[126], as well as the Abolition of Forced Labour Convention, C 105.[127]

[126] For the Convention text: http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029
[127] For the Convention text: http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105

Article 28

Adequate Standard Of Living And Social Protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by persons with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Social security and an **adequate standard of living** are two distinct human rights; at one point the suggestion was made to split the issue in two Articles, however, at a stage where the envisioned "short" treaty already featured more than 40 provisions, the idea was not pursued further. Note that there was substantial discussion over the wording "**social security**" vis-à-vis "**social protection.**" The debate decided upon the wording used in ECOSOC, however, the core human rights treaties refer to "social security."

Social security is enshrined in Article 22 UDHR and is further reflected in Article 23 CERD, but more importantly in Article 9 CESCR. It has also been placed in Article 11 CEDAW, Article 26 CRC and Article 27 CRMW.

An adequate standard of living is prescribed in the UDHR, Article 25, which states that "everyone has the right to a standard of living adequate for the health and well-being of himself (herself) and of his (her) family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his (her) control." The provision was enshrined in Article 11 CESCR, which expounds the "right of everyone to an adequate standard of living." This provision is further reflected in Article 27 CRC and Article 43 CRMW.

The CESCR Committee has commented on the importance of both social security and an adequate standard of living for persons with disabilities:

Social security and income-maintenance schemes are of particular importance for persons with disabilities. As stated in the Standard Rules, "States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities". Such support should reflect the special needs for assistance and other expenses often associated with disability. In addition, as far as possible, the support provided should also cover individuals (who are overwhelmingly female) who undertake the care of a person with disabilities. Such persons, including members of the families of persons with disabilities, are often in urgent need of financial support because of their assistance role.[128]

In addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that "support services, including assistive devices" are available "for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights". The right to adequate clothing also assumes a special significance in the context of persons with disabilities who have particular clothing needs, so as to enable them to function fully and effectively in society. Wherever possible, appropriate personal assistance should also be provided in this connection. Such assistance should be undertaken in a manner and spirit, which fully respect the human rights of the person(s) concerned. Similarly, as already noted by the Committee in paragraph 8 of general comment No. 4 (Sixth session, 1991), the right to adequate housing includes the right to accessible housing for persons with disabilities.[129]

In the context of the rights of older persons, the CESCR Committee has elaborated on the scope of social security:

The Covenant provides generally that States parties "recognize the right of everyone to social security", without specifying the type or level of protection to be guaranteed. However, the term "social security" implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control.[130]

[128] CESCR, General Comment 5, Persons with Disabilities, para 24.
[129] CESCR, General Comment 5, Persons with Disabilities, para 33.
[130] CESCR, General Comment 6, Economic & Social Rights of Older Persons, Para 26.

In February 2008, the CESCR Committee adopted a General Comment (No. 19) on the Right to Social Security, which elaborates the various aspects of social security. Reference to persons with disabilities and their needs is made throughout the General Comment.

Para (1): **social security** is enshrined in Article 22 UDHR, whereas **social protection** is covered in Articles 23 (3) and 25 respectively. The CERD provision on social security is contained in Article 5. The most important regulation though is Article 9 CESCR on "*the right of everyone to social security, including social insurance.*" Compare also Article 11 CEDAW and Article 26 CRC, as well as Article 27 CRMW.

The General Comment[131] of CESCR on social security emphasizes that the right to social security is to be enjoyed without discrimination. It enumerates the prohibited grounds of discrimination as follows:

race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security.

As with other rights, the basic elements are sketched out as follows:

- Availability of the social security system(s) to provide sustainable income security;
- Adequacy of social security in terms of amount and duration, guided by the principle of dignity;
- Accessibility in terms of environment, coverage (everyone safeguarded) but also in terms of economic accessibility, i.e. affordability. Furthermore, the information provided has to be accessible and participatory;

An **adequate standard of living** is enshrined in Article 11 CESCR: "*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.*" Article 27 CRC, lists "*nutrition, clothing and housing*" as elements. Furthermore, Article 43 CRMW, details "*access to housing, including social housing schemes, and protection against exploitation in respect of rents.*"

There are various elements to an adequate standard of living, which include food – plus water – clothing, housing, as well as the continuous improvement of living conditions. Note, importantly, that CESCR recognizes the "*right to be free from hunger.*"

Adequate clothing has been discussed in the context of the rights of persons with disabilities:

The right to adequate clothing also assumes a special significance in the context of persons with disabilities who have particular clothing needs, so as to enable them to function fully and effectively in society. Wherever possible, appropriate personal assistance should also be provided in this connection.[132]

[131] CESCR, General Comment 20, The Right to Social Security.
[132] CESCR, General Comment 5, Persons with Disabilities, para 33.

Housing is strongly linked to the General Principle of Accessibility, ► Article 3, provision of reasonable accommodation, ► Article 2, as well as consideration of respect for privacy, ► Article 22.

With respect to **housing**, the CESCR Committee has stated, inter alia:

> **In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".**[133]

With respect to **adequate food**, the CESCR Committee has said, inter alia:

> **The Committee considers that the core content of the right to adequate food implies: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.**
>
> ***Dietary needs* implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.**
>
> ***Free from adverse substances* sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.**

[133] CESCR, General Comment 4, The right to adequate housing, para 7.

Cultural or consumer acceptability **implies the need also to take into account, as far as possible, perceived non-nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.**

Availability **refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.**

Accessibility **encompasses both economic and physical accessibility: Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.**

Physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.[134]

Compare also the General Comment related to the **right to water**:

Water is a limited natural resource and a public good fundamental for life and health. The human right to water is essential for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been continually confronted with the widespread denial of the right to water in both developing and developed countries.[135]

The reference in (a) to "clean water services" is the result of a compromise regarding the **right to water** that some delegations wanted placed in Article 25, right to health. As an explicit reference to the "right" to water could not be achieved, this reference has to suffice. The IDC succeeded in amending the draft to make explicit reference to "services, devices and other needs for their disability-related needs." Note again the qualification of "affordable."

[134] CESCR, General Comment 12, The right to adequate food, paras 7-13.
[135] CESCR, General Comment 15, The right to water, para 1.

Para (b) reflects the principle of **accessibility** and highlights the need to specifically include children and women with disabilities in poverty-reduction development efforts. It underscores the need to ensure the inclusion of persons with disabilities in programs aimed at achieving the Millennium Development Goals, particularly goal 1, that of halving poverty by ensuring the accessibility of **poverty reduction programmes**. As most statistics show, persons with disabilities are disproportionately poor and due to social barriers, including discrimination and other forms of structural marginalization, are frequently trapped in a cycle of poverty.

The IDC would have preferred a clearer separation between assistance granted for disability-related expenses and support granted due to poverty.

Poverty is not just a deprivation in low-income – or developing – countries, it is a world-wide problem. In connection with para (c) one may also wish to recall the description of poverty given by the CESCR Committee:

> **In the recent past, poverty was often defined as insufficient income to buy a minimum basket of goods and services. Today, the term is usually understood more broadly as the lack of basic capabilities to live in dignity. This definition recognizes poverty's broader features, such as hunger, poor education, discrimination, vulnerability and social exclusion. The Committee notes that this understanding of poverty corresponds with numerous provisions of the Covenant.**
>
> **In the light of the International Bill of Rights, poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. While acknowledging that there is no universally accepted definition, the Committee endorses this multi-dimensional understanding of poverty, which reflects the indivisible and interdependent nature of all human rights.**[136]

In the context of the provision on an adequate standard of living, particularly the obligation to continuously improve living conditions, one may wish to recall the importance of inclusive development, ► Article 32, and the right to development as enshrined in the relevant Declaration, compare ►Introduction.

[136] Poverty and the International Covenant on Economic, Social and Cultural Rights, 10/05/2001. E/C.12/2001/10; http://www.acpp.org/RBAVer1_0/archives/CESCR%20Statement%20on%20Poverty.htm

Article 29

Participation In Political And Public Life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

In addition to Articles 20 & 21 UDHR, political rights are the focus of the ICCPR, particularly Article 25. CEDAW covers them in Articles 7 & 8. As observed earlier, the wording is usually more direct than “shall guarantee”: compare “”guarantee the right”. Note that provisions on “universal and equal suffrage” and “genuine periodic elections”, which may be found in Article 5 (c) CERD and Article 25 (b) ICCPR respectively, are not included in the Convention.

The Human Rights Committee has outlined the scope of **participation in public affairs** and the right to vote in a comprehensive General Comment[137]:

Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25.

Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

The conduct of public affairs, referred to in paragraph (a), is a broad concept, which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.

[137] HRC, General Comment 25, Article 25 Participation in Public Affairs and the Right to Vote.

Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them.

Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

The right to vote at elections and referendums must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.[138]

To complete the picture, here is a description made by the CEDAW Committee on political and public life

"[which is] a broad concept. It refers to the exercising of political power, in particular the exercising of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life."[139]

[138] HRC, General Comment 25, Article 25 Participation in Public Affairs and the Right to Vote.
[139] CEDAW, General Comment 23, Political and Public Life, Para 5.

The first issue in Article 29 is the participation in elections, including the right to vote with assistance by a person of choice. The degree of assistance was the subject of heated debates over the danger(s) of manipulation. The principle of accessibility is explicitly mentioned, as are assistive technologies.

Secondly, the Article covers general political participation. Para (b) qualifies participation as "fully and effectively" for the first time in a core human rights document. Chile highlighted the lack of accessibility of election campaigns and suggested adding this aspect explicitly. The Chair, H.E. Ambassador MacKay, was sceptical about the broadness of application.

Para (a) is now a non-exhaustive list of participation, as the IDC managed to place an important "inter alia" into the chapeau – the opening paragraph. It enshrines both the right to vote and to be elected, the active and passive right to vote respectively.

Para (a)(i) qualifies voting procedures as having to provide appropriate facilities and materials that are accessible and easy to understand and use. The next para qualifies the holding of office as having to be "effective" to ensure that persons with disabilities are not mere figure-heads. Also note that assistive technologies are specifically mentioned. A crucial provision is also (a)(iii), which allows (!) "assistance in voting by a person of choice."

The second part of Article 29 concerns the full and effective participation of persons with disabilities in public affairs. The right to join and form unions or association is an essential element of political participation. Its importance for persons with disabilities was underlined in the relevant General Comment by the CESCR Committee:

> **Trade union-related rights (art. 8 CESCR) apply equally to workers with disabilities and regardless of whether they work in special work facilities or in the open labour market. In addition, article 8, read in conjunction with other rights such as the right to freedom of association, serves to emphasize the importance of the right of persons with disabilities to form their own organizations. If these organizations are to be effective in "the promotion and protection of [the] economic and social interests" (art. 8 (1) (a)) of such persons, they should be consulted regularly by government bodies and others in relation to all matters affecting them; it may also be necessary that they be supported financially and otherwise so as to ensure their viability.**[140]

[140] CESCR, General comment 5, Persons with Disabilities, Para. 26.

For the trade union specific right, see also the provision in the Right to Employment, ► Article 27 Para 1 c.

Note that the Human Rights Committee has called for **positive measures** to ensure that obstacles and barriers excluding persons from participation can be overcome:

Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. **Positive measures** should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement that prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.[141]

In a proposal the IDC highlighted the need to ensure that persons with disabilities are consulted in policy-making and decision-making process to include a disability perspective in public decision-making. The General Obligation to involve persons with disabilities in the development and implementation of legislation and policies, ► Article 4 Para 3, applies particularly.

[141] HRC, General Comment 25, Article 25 Participation in Public Affairs and the Right to Vote.

Article 30

Participation In Cultural Life, Recreation, Leisure And Sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, 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.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Cultural life

The right to participate in cultural life is enshrined in Article 27 UDHR, as well as in Article 5 CERD, 15 CESCR, 13 CEDAW and 31 CRC.

The CESCR Committee elaborated the need for non-discrimination in access to social and cultural rights in its June 2009 General Comment (No. 20). Importantly, a General Comment adopted in late 2009 (No. 21) discusses access to the right to cultural life and states, inter alia.

30. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities provide that "States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas ... States should promote the accessibility to and availability of places for cultural performances and services ... ."

31. In order to facilitate participation of persons with disabilities in cultural life, States parties should, inter alia, recognize these persons' right to access cultural material, television programmes, films, theatre and other cultural activities in accessible forms; to access places where cultural performances or services are offered, such as theatres, museums, cinemas, libraries and tourist services and, to the extent possible, to access monuments and places of national cultural importance; to recognition of their specific cultural and linguistic identity, including sign language and the culture of the deaf; and to encouragement and promotion of their participation to the extent possible in recreational, leisure and sporting activities.

Regarding discrimination of persons with disabilities in their enjoyment of the right to take part in cultural life in conformity with Article 15 CESCR, the Committee has noted:

The Standard Rules provide that "States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas. ... States should promote the accessibility to and availability of places for cultural performances and services ...". The same applies to places for recreation, sports and tourism.
The right to full participation in cultural and recreational life for persons with disabilities further requires that communication barriers be eliminated to the greatest extent possible. Useful measures in this regard might include "the use of talking books, papers written in simple language and with clear format and colours for persons with mental disability, [and] adapted television and theatre for deaf persons".
In order to facilitate the equal participation in cultural life of persons with disabilities, Governments should inform and educate the general public about disability. In particular, measures must be taken to dispel prejudices or superstitious beliefs against persons with disabilities, for example those that view epilepsy as a form of spirit possession or a child with disabilities as a form of punishment visited upon the family. Similarly, the general public should be educated to accept that persons with disabilities have as much right as any other person to make use of restaurants, hotels, recreation centres and cultural venues.[142]

Para (1) and sub-paras ensure equal access to the various aspects of cultural life. Note that "accessible formats" in (b) could have been described in more detail or at least qualified with "all accessible formats". Alternatively "including audio description, captioning and sign language, electronic text, in audio and multi-media formats" could have been inserted, based on the IDC proposal. Such demands may be based on the General Principle of Accessibility, ► Article 3 (f).

Para (2) is a split-off of (1) because developing "creative, artistic and intellectual potential" is something that States Parties cannot recognize but wanted to "enable". Thus, a new chapeau was necessary and the wording moved to (2).

Intellectual property is another tricky term. There was lots of debate over the use of "copyright", which is the narrower term. While all sorts of assurances were given about staying within the limits of "international law" on intellectual property, the Chair, H.E. Ambassador MacKay was very effective in pointing to the barriers contained in World Trade Organization (WTO) agreements, particularly TRIPS – Trade Related Aspects of Intellectual Property Rights. The IDC wanted this placed in ► Article 9 – Accessibility. Compare the protection granted in Article 27 UDHR – "*right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which s/he is author*", as well as article 15 CESCR.

[132] CESCR, General Comment 5, Persons with Disabilities, para 36 ff.

"**Linguistic identity**" and "**deaf culture**" were also subject to substantial debate as some countries wanted to see a qualification on national dependence. Some telling statements over minorities, minority rights and the (non)existence of subcultures were made in the context of this debate. However, the deaf members of IDC were very effective in their interventions and the two references are now part of the Convention.

In the context of culture and minorities an important proposal by the IDC needs to be highlighted: the **rights of indigenous persons with disabilities**. The "compromise" was a reference in PP (p) on grounds of discrimination[143]. Compare in this context, the General Recommendation of the CERD Committee:

The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.

The Committee calls in particular upon States parties to:

(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.[144]

[143] See the reference to the 2007 Declaration on Indigenous Peoples.
[144] CERD, General Recommendation XXIII on the rights of indigenous peoples, para 3 ff.

Compare also Article 27 ICCPR[145], as well as the ILO Indigenous and Tribal Peoples Convention, C 169. The IDC proposal read: 'States Parties recognise the right of indigenous persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that indigenous persons with disabilities have the same cultural rights and access as non disabled indigenous people to their cultural and spiritual activities and practices'.

Recreation, Leisure and Sport

The second part of the Article follows the so-called **twin-track approach**: ensuring access to mainstream venues and facilities and highlighting the need for activities in venues and facilities where persons with disabilities – based on their own choice – can be among themselves.

Note that CERD contains a full list in Article 5: "*access to any place or service intended for use by the general public, such as* ***transport, hotels, restaurants, cafes, theatres and parks***." The wording in para (5) makes explicit reference to "tourism" as it was felt that this would be an area that should be mentioned specifically. Note that (a) only refers to "sporting activities", but it should also apply to recreational and leisure activities. Para (b) could have been made stronger by inserting "equal opportunity" to organize activities. Para (d) is the result of the debate over the rights of children with disabilities ► Article 7.

[145] Article 27 ICCPR reads: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 31

Statistics And Data Collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

There is no precedent for such a provision in core human rights treaties. While access to statistics and statistical information is considered a fundamental right it has largely been dealt with as part of freedom of information, which is part and parcel of freedom of speech.

The Committees under the various Conventions have repeatedly called for statistics and data collection, most notably the CEDAW committee:

The Committee on the Elimination of Discrimination against Women,
Considering that statistical information is absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention,
Having observed that many of the States parties that present their reports for consideration by the Committee do not provide statistics,
Recommends that States parties should make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested.[146]

[146] CEDAW, General Recommendation 9, Statistical data concerning the situation of women.

The draft had originally been placed in the rights-section of the Convention, which – given its also unique nature – caused a considerable stir: there is no such thing as a "right" to statistics and data. The move to the **implementation** part of the text resolved this problem. The main debate was then to ensure that the provision comply with general **data protection** and privacy rules. Given the historical injustices persons with disabilities have endured, any appearance of "selection" or "special listing" has to be steered clear of. It is important that such data are not used to perpetuate stigma and therewith exclusion and potential discrimination.

The main purpose of Article 31 is the creation of tools assisting the assessment of the Convention's implementation. The provision of **dissemination** – para (3) – was included on suggestion of the IDC, but proposals to have a specific reference to gender and to ensure integration into "general" statistics were dropped.

The challenge in implementing Article 31 is who gets to define the factors or statistical indicators for collecting data. The risk of an inaccurate picture is high. For example, if the definition of impairment or disabilities is very narrow, this has significant effects on the outcome. Also, if the recipients of benefits and allowances are counted, those who may not be entitled or who do not wish to receive such payments out of shame, fear of stigma or other considerations, will not be included in the figures.

The Washington Group on Disability Statistics has developed the following questions for census based on the Fundamental Principles of Official Statistics in line with the WHO's International Classification of Functioning, Disability and Health (ICF).

The questions cover six core functional domains or basic actions: seeing, hearing, walking, cognition, self care and communication.

The next questions are about difficulties you may have doing certain activities because of a health problem.

1. *Do you have difficulty seeing, even if wearing glasses?*
2. *Do you have difficulty hearing, even when using a hearing aid?*
3. *Do you have difficulty walking or climbing steps?*
4. *Do you have difficulty remembering or concentrating?*
5. *Do you have difficulty (with self-care as such) washing all over or dressing?*
6. *Using your usual customary language, do you have difficulty communicating (for example understanding or being understood by others)?*[147]

A brief note also on the independence of statistical bodies. To ensure that the collected data has some meaning, it has to be gathered by an institution that adheres to standards of professionalism, including independence from government and government related bodies. The UN Statistics division has prepared the Fundamental Principles of Official Statistics[148]. These should, among other things, assist in ensuring that the concept of confidentiality of data is not abused to serve interests other than the public interest, guarantee that they are interpretated in such a way as to serve democratically-based intentions and that dissemination takes place.

[147] Washington Group on Disability Statistics: Monitoring the UN Convention on the Rights of Persons with Disabilities.
[148] Fundamental Principles of Official Statistics: http://unstats.un.org/unsd/dnss/gp/fundprinciples.aspx

Article 32

International Cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

International cooperation is mentioned in relation to specific rights in most core human rights treaties, c.f. Article 28 CRC on education or Article 11 CESCR. CESCR, in Article 2 (1), is the only text with a general reference to international cooperation, but there is no stand-alone provision on this issue in any of the core texts. There are manifold reasons for this, among them that State Parties do not want to be under an obligation to have to provide international assistance of any sort and that if they do so, they want to decide the criteria themselves and not be bound to follow a third party's suggestions. See also the explanations under para (2).

Because more than 80% of persons with disabilities live in low-income – also called developing – countries, and only some 4% are estimated to benefit from international cooperation programmes, this Article has particular significance for the Convention's implementation. It is important to note though that cooperation should not be understood as only applying in a North-South dimension, but also South-North, South-South and North-North. Obviously, the Declaration on the Right to Development, compare ► introduction, is hugely relevant to this provision.

Article 32 enshrines the concept of **inclusive development**: persons with disabilities are to be included in all phases of development programs: planning, design, implementation, evaluation, etc. Such programmes have to be rights-based and therefore also accessible. The provision's core is also contained in the general obligations ► Article 4; most notably in the obligation to take the protection and promotion of the human rights of persons with disabilities into account in all policies and programmes (Article 4 (1) (c)), and include DPOs (Article 4 (3). As a consequence, no development money shall be spent to create further barriers, e.g. no schools with stairs, and every programme will have a special focus on ensuring inclusion of all persons, also persons with disabilities.

For a detailed explanation of inclusive development, see also the Handicap International / International Disability & Development Consortium Paper disseminated at the Fifth AHC.[149]

The phrase "relevant international and regional organizations" was a compromise as the enumeration of actors included started to look like a shopping list and risked excluding potential partners. Obviously, all UN agencies, as well as the World Bank and the IMF, fall under this formulation.

There was substantial debate over **para (2)**, which reflects the problem of some countries apparently making their compliance with human rights treaties dependent on receiving international cooperation, particularly monies. A number of donor countries wanted to make sure that State Parties are under obligation to fulfil the Convention, regardless of whether they receive international support.

The IDC proposal highlighted marginalization due to **poverty**, which is highlighted in PP (t) – the majority of persons with disabilities living in poverty – and in PP (m) on the need to eradicate poverty. Furthermore, PP (g) highlights sustainable development and PP (l) underlines the importance of international cooperation. In this context, note ► Article 28 (2)(b) on the accessibility of poverty reduction programmes.

It should be noted that the implementation of this provision is part and parcel of national programmes and policies which fall under the monitoring authority of the national body to be set up in accordance with ► Article 33 (2).

[149] IDDC Inclusive Development: http://www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5idcaucus.doc

Article 33

National Implementation And Monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

This is a unique provision on national implementation of a UN human rights treaty[150]. It foresees three implementation and monitoring bodies:

- Focal points within government
- Coordination mechanism within government
- Independent mechanism based on Paris Principles

To understand the historic nature of this provision we need to dwell for a while on recent human rights history. During the Cold War era, human rights were largely treated as international norms. Nationally, the reference was usually to "fundamental rights" or "constitutional rights." This distinction is closely connected to the divide described above in ► Article 4 Para 3 between civil/political rights as a stronghold of "the West" and economic/social rights as a stronghold of "the East." With the collapse of Soviet-style socialism in 1989, the use of human rights as another "weapon" in the Cold War became obsolete.

In 1993 States met in Vienna for the World Conference on human rights. They agreed on two major points: firstly, international human rights are real and applicable at the national level and secondly, there should be no distinction(s) made between civil/political and social/economic rights. The notion that all human rights are universal, indivisible, interdependent and interrelated is a central part of the so-called Vienna Declaration. It is also reflected in the Convention, ► PP (c).

[150] The Optional Protocol under the Convention Against Torture (OP-CAT) foresees a national preventive mechanism in its Article 17, however, this is not part of the core treaty.

Part of the understanding that human rights are not made for international political sparring but to ensure the rights of real people on the ground in nation states is that they need not only to be monitored at the international – that is United Nations – level, but also in the Member States themselves. This is why a national institution is foreseen by the Vienna Declaration and Programme of Action, and subsequently in the first core human rights treaty negotiated since then: the present Convention. The **Paris Principles**[151] provide a framework under which every Member State should have its own national human rights institution in charge of monitoring, evaluating, protecting and promoting human rights at the national level.[152]

As for Para (1): The **focal points** within government are a comparatively straightforward affair: every State Party's administration shall include a body that sees to the legal and practical implementation of the Convention's rights. Such a body has to take into account the federalist structure of a country – compare ► Article 4 (5). In addition to ensuring the effective involvement of civil society, effective exchange with other bodies concerned with human rights issues[148] – including the coordination mechanism and the independent mechanism respectively – should also be insured. Regular exchange with parliament should be explicitly foreseen.[153]

The **coordination mechanism** should be included in all relevant policy-making decisions, be they legislative or national action plans. The flow of information has to include the coordination mechanism in conjunction with civil society representatives, particularly DPOs.

The **independent mechanism** is basically a National Human Rights Institution (NHRI) as foreseen in the Paris Principles. Apart from the strong emphasis on independence, this mechanism also guarantees the rights of persons with disabilities to be treated as mainstream human rights issues rather than as a specialized and potentially segregated theme.

The **Paris Principles** foresee, inter alia:

- Based on a qualified majority law to ensure financial, content and other independence
- Mandate: Promotion and protection of all national human rights
- Mission:
  - – Advising government and other public institutions
  - – Monitoring of administration
  - – Independent inquiry into alleged human rights violations
  - – Thematic inquiries and studies
  - – Dissemination of information
  - – Human rights trainings, particularly anti-discrimination
  - – Possibility for complaints – plus procedure
  - – International Cooperation

[151] The Office of the High Commissioner for Human Rights has provided a Fact Sheet on the Paris Principles: http://www.ohchr.org/english/about/publications/docs/fs19.htm; in charge of monitoring, evaluating, protecting and promoting human rights at the national level.
[152] There is an umbrella organization for National Human Rights Organizations, NHRI, the web site: www.nhri.net
[153] Compare the Handbook for Parliamentarians by the International Parliamentary Union: http://www.ipu.org/english/handbks.htm#disabilities

- Rights:
  - Right of initiative: start and conduct inquiries on own initiative
  - Right to cooperate and coordinate with other authorities
  - Right to submit opinions and recommendations
  - Right to self-government
  - Right to publication
  - Right to information
  - Right to inquire
- Members: Appointment and dismissal in a process that ensure actual as well as the appearance of independence
- Legal status: comprehensive independence

Most of the features of the Paris Principles – and therewith the independent mechanism – are pretty straightforward. It is frequently a challenge to secure adequate independence for national institutions. It is not just a matter of stating in legislation that the mechanism is "independent," i.e. securing independence de *jure*. The body has to have de facto independence. Its position within public structures has to be maintained separately, preferably by being responsible only to the Parliament. Equally, the funding of the independent mechanism has to be set up in such a way that there is no interference with the amount and its payment from third parties.

Clearly, the aim is that the responsibilities of the independent mechanism be an integral part of the national human rights institution. It is not advisable to create a separate institution, as this would only perpetuate the notion of a different standard for persons with disabilities. The Convention guaranteeing all human rights to all persons with disabilities on an equal basis with others means that their promotion, protection, monitoring and evaluation are on a par with mainstream conditions.

For further information there is an umbrella organization for National Human Rights Institutions: http:/www.nhri.net

The IDC made a substantive proposal on a national implementation and monitoring mechanism, which included the following features:

- Extension of the mandate in such countries, where a NHRI already exists;
- Establishment of NHRI in consultation with persons with disabilities and their representative organizations;
- Functional independence and independence of personnel;
- Majority representation of persons with disabilities among experts;
- Equal number of male and female representatives;
- Adequate representation of national ethnic, indigenous and minority groups;
- Ensure the necessary resources;
- Ensure coordination and dialogue with relevant state authorities;
- National mechanism shall have the right to adopt its own rules of procedure;
- Liaison with relevant UN agencies and other international bodies;
- Capacity building;
- Complaints procedure.

As mentioned in ► Article 16 (3), it remains to be seen what the relationship will be between the body foreseen there and the independent mechanism foreseen here. As pointed out above, countries that have ratified the Optional Protocol to CAT will need to address possible overlaps with the National Preventive Mechanism.

OHCHR has published a monitoring tool entitled "Monitoring the Convention on the Rights of Persons with Disabilities – Guidance for Human Rights Monitors", which provides useful information on how to monitor the implementation of the CRPD'.[154]

[154] OHCHR, Monitoring the Convention on the Rights of Persons with Disabilities, Professional Training Series Nr. 17; http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf.

Article 34

Committee On The Rights Of Persons With Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as «the Committee»), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Every core human rights treaty foresees an expert body. Compare Article 8 CERD – Committee on the Elimination of Racial Discrimination, Article 28 ICCPR – Human Rights Committee, Article 17 CEDAW – Committee on the Elimination of Discrimination against Women, Article 17 CAT – Committee against Torture, Article 72 CRMW – Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families.

The Committee will ultimately consist of 18 members, who will be elected by State Parties with due regard to equitable geographic distribution, representation of different forms of civilization and the principle legal systems, balanced gender representation and – importantly – participation of **experts with disabilities**. DPOs therefore need to engage with their governments to make sure that, once the Convention is ratified in their country, they put forward a national expert to be a member of the Committee.

The Committee members are elected for four years at the State Parties Conference, ► Article 40.

The Committee has established its own rules of procedure.

Each State Party has to submit a **report** to the Committee two years after ratification, outlining the measures taken to give effect to the rights foreseen by the Convention. Thereafter, a report has to be filed every four years.

The Committee may consider these **reports** and shall make suggestions and recommendations on the report. The Committee may request further information from the State Party.

Importantly, the Committee may also consider reports submitted by civil society representatives. These are usually referred to as "**civil society reports**", highlighting shortcomings in a State Party's fulfilment of Convention obligations, ► Article 35, Reports by State Parties.

The Committee may make **suggestions and general recommendations** on the State Party's report. These are also of great importance to civil society, as they provide a very good basis for follow up on demands on the government. It is also a document that should be circulated widely to assure civil society, and DPOs in particular, that the government is being held accountable at the political level and that the world community cares about the potential violations of their rights.

The Committee may also make general recommendations – compare the General Comments from various treaty bodies used in this manual.

Article 35

Reports By States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, states Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Member States to human rights treaties have to regularly report to the relevant body under each Convention. Compare CERD – Article 9, ICCPR – Article 40, CEDAW – Article 18, CAT – Article 19, CRC – Article 44, and CRMW – Article 73.

The first such report is due two years after the entry into force of the Convention in the country. Thereafter, the government should report on achievements, progress and shortcomings every four years.

In line with ► Article 4 Para 3, this Article demands – in Para 5 – that persons with disabilities and their representative organizations be involved in the drafting and compiling of the report. Para (5) demands an “open and transparent process” which “gives due consideration” to DPOs. Obviously, the interpretation of “due consideration” also depends on NGO and DPO demands.

Not surprisingly, some State Party’s reports under all core human rights treaties have caused civil society representatives to wonder whether the country that is being described by the government in the report is actually the country in which they reside.

Governments do try to make their achievements look good, diplomatically skimming over gaps and possible shortcomings. Overall, State Party reports can describe a reality that does not necessarily correspond to the civil society perspective.

All human rights bodies accept an additional report – or reports – compiled and written by civil society. This provides civil society with a unique and high-level opportunity to highlight insufficient legal protection, shortcomings in implementation, issues that have been played down or that the government has completely omitted.

Civil Society Reports: Shadow & Alternative Report

If the government is interested in showing itself to be a 'state of the art' human rights country, it will engage civil society ahead of finalizing its report. At the very least, it will provide a copy of its report to a representative – or representatives – of civil society. If this is the case, NGOs/DPOs can compile and write a **civil society report, which is also referred to as shadow report**. Working through the government's account, organizations can point to gaps and whenever possible highlight possible solutions to the challenges and problems civil society faces.

If the government is not that cooperative, organizations can write an alternative report: in the absence of the government's view, organizations provide the Committee with civil society's take on the situation in their country.

There are various ways of doing this:

- Organizations can work through the Convention Article by Article and highlight shortcomings in legal provisions and in implementation.

- Organizations may wish to create a forum among NGOs/DPOs in their country and share the burden of this tedious task, which ideally involves a review of existing – and inexistent – legislation, an analysis of data and giving brief but instructive examples of shortcomings.

- Organizations may however choose to concentrate on those issues that are of greatest concern to them. Again, the viewpoint ideally needs to be based on an analysis of existing legislation and to highlight gaps in implementation as covered in other reports or news coverage.

The challenge is to be comprehensive and short as the Committee members have piles of paper to read . It is therefore important to be as short and concise as possible.

One should not be just negative, as that makes the report look lop-sided. If the government has amended legislation, it should be given credit for that. A shadow or alternative report is not a government-bashing forum. Its aim is to provide the Committee with a balanced view on the human rights of persons with disabilities in the country under scrutiny.

Wherever possible reasonable suggestions for improvement should be made. While how the CRPD Committee will proceed is not yet known, other treaty bodies are grateful for suggestions – realistic and adequate in their aim – to be put to governments in concluding comments.

Dissemination & Follow-Up:

The compilation of a civil society report is a very powerful empowerment exercise. It is also a very solid basis for engaging with the local government on improving the implementation of the rights of persons with disabilities. Obviously, it should be widely disseminated.

Presentation of the Report to the Committee:

It will depend on the Committee whether there will be opportunities to brief Committee Members on the civil society report or even to present the report in the Committee session.

Article 36

Consideration Of Reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

"Instructions" for the relevant body of a human rights treaty on how to deal with, i.e. how to respond to, reports from Member States can be found in every core human rights treaty. Compare Article 19 CAT, Article 44 CRC, Article 73 CRMW, Article 18 CEDAW.

Delays in submitting reports – as described in "overdue" reports in Para 2 – are not uncommon. The fact that the Committee may notify countries and proceed with an assessment three months later will hopefully prove to be an effective incentive for delivering on time.

Para 3 provides a good entry point for civil society, particularly DPOs, to demand access to State Party reports – in accessible format – and to the Committee's suggestions and general recommendations to the government.

Article 37

Cooperation Between States Parties And The Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.

2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

Article 38

Relationship Of The Committee With Other Bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Coordination among the various human rights bodies is a standard provision, compare Article 45 CRC. One important aspect is the coordination with UN agencies to ensure that the Convention is being implemented everywhere according to the same standards. The Committee will be regarded as the body best qualified to interpret the Convention and will thus be the entity that institutions and people turn to if they seek clarification on the meaning of its provisions.

The second paragraph serves to ensure, among other things, that the general comments or recommendations issued by the core human rights bodies are consistent and – as far as possible – cross-cutting.

Article 39

Report Of The Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

The Committee is instituted – and funded! – by the United Nations, therefore it is responsible to the UN's highest body, the General Assembly. Just like other committees - compare Article 21 CEDAW – it therefore has to report to the General Assembly on its work on a regular basis.

Article 40

Conference Of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.

2. No later than six months after the entry into force of the present Convention, the Conference of States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General biennially or upon the decision of the Conference of States Parties.

No other core human rights treaty provides for a Conference of State Parties.

The Convention foresees a regular meeting of States Parties to consider any matter relative to the implementation of the Convention, a feature which will hopefully be used frequently.

Final Clauses

Every UN Convention contains final clauses on the signature and coming into force of a treaty. The CRPD has two innovative features: its Article 44 provides for the accession of a **regional integration organization** – such as the European Union.

Also, in light of the discussion on accessible communication, the Convention's Article 49 ensures that the text is made available in **accessible format**.

Article 41

Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 42

Signature

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

Article 43

Consent To Be Bound

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

Article 44

Regional Integration Organizations

1. «Regional integration organization» shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to «States Parties» in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, of the present Convention, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Compare Article 25 CAT, which only allows “States” to be Members of that Convention. There are several potential regional organizations that may develop the legal capacity to become members of multi-lateral treaties, such as the AU and OAS. The EU has already signed the Convention.

The European Union is, legally speaking, not a State. It is referred to as a supra-national state. As such it has split the competencies of legal regulation between the European Union as a legal body and the member states in their national capacity. One area where the European Union holds authority to regulate matters EU-wide is anti-discrimination. There is a plethora of regulations – called directives – which requires EU Member States to pass legislation on anti-discrimination. Note that the directives make disability an explicit ground of prohibited discrimination. That said, the EU had a vital interest in being able to join the CRPD as a Member – entity. The term “regional integration organization” may become applicable to other co-operations of nation states in other regions, too.

Article 45

Entry Into Force

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

The 20th ratification was deposited by Ecuador on April 3, 2008 – just a year after the CRPD was opened for signature. The CRPD has been in force since May 3, 2008. Only the CRC came into force any faster.

Reservations

Article 46

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

As is explained in ► Articles 1 & 12, States can make reservations to international treaties. A recap of what is already mentioned in the explanations to Article 12:

Reservations are both possible and common. They are laid down in the Vienna Convention on the Law of Treaties (VCT). This international agreement – as the title implies – gives rules on how international treaties are made, interpreted, and amended. In Article 2 the Vienna Convention defines reservations as: "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of a certain provision of the treaty in their application to that State."

The Committee under the ICCPR has dedicated an entire General Comment[155] to the issues surrounding reservations, which focuses on the "object and purpose" of the treaty, which may not be undermined through a reservation. That notion is incorporated in Article 46, reflecting the same rule in Article 19 VCT.
Note that international law also allows for "**interpretative declarations**," which States may make to explain a specific interpretation of a treaty's provision. Contrary to reservations, declarations have the purpose of clarifying a State's position and do not imply a modification or exclusion of the legal effect of a treaty. Granted, the line between reservation and declaration can at times be blurred. However, the Secretary-General, as the depositary of signatures and reservations for the sake of legal clarity and consistency, tries to make sure that declarations do not amount to reservations.

[155] ICCPR General Comment 24, Issues relating to reservations upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under Article 41 of the Covenant.

Article 47

Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 48

Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 49

Accessible Format

The text of the present Convention shall be made available in accessible formats.

Article 50

Authentic Texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.
In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

This is a standard clause, which also reflects general rules of treaty interpretation. Unfortunately it does not protect against frequent errors or misconceptions in translations into national languages. These should be highlighted both in discussions with national governments and in civil society reports to the CRPD Committee.

Optional Protocol

Many human rights treaties provide an optional protocol, which – once signed and ratified by the State Party – allows communications from or on behalf of individuals or groups of individuals of that country claiming a violation by the State Party of a Convention provision.

The Committee may deem the following communications inadmissible:

- Anonymous communications
- If not all domestic remedies (possibilities for appeal) have been exhausted however, if this would unreasonably prolong the process or be unlikely to provide effective relief, the Committee may consider communications which have not exhausted all national remedies
- Communications constitute an abuse of the right to submission or are incompatible with the provisions of the Convention
- The communication has already been examined by the Committee
- The communication is manifestly ill-founded or not sufficiently substantiated
- The communication refers to facts that took place prior to the entry into force of the Optional Protocol in the relevant country

Any communication has to be brought to the attention of the State Party concerned, which may submit written explanations within six months, clarifying the matter and outlining possible remedies that may have been taken.

If necessary, the Committee may order interim measures after receiving a communication.

After examining the communication, the Committee will forward **suggestions and recommendations** to the State Party and the petitioner.

Furthermore, the Optional Protocol provides that should the Committee receive "reliable information indicating **grave or systematic violations** by a State Party of rights set forth in the Convention, the Committee shall invite the State Party to cooperate in the examination of the information to this and submit observations with regard to information concerned." The Committee may designate one or more members of its panel to conduct an inquiry and report back to the Committee. This includes the possibility of a visit to the State concerned.

The Committee may transmit its findings, together with potential comments and recommendations to the State Party concerned.

The Human Rights Committee has issued a comprehensive General Comment on the Optional Protocol to the ICCPR. [156]

[156] Compare, HRC, General Comment 33.

Article 1

1. A State Party to the present Protocol («State Party») recognizes the competence of the Committee on the Rights of Persons with Disabilities («the Committee») to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.

2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol

Article 2

The Committee shall consider a communication inadmissible when:

a. The communication is anonymous;

b. The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;

c. The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

d. All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;

e. It is manifestly ill-founded or not sufficiently substantiated; or when

f. The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 3

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 4

1.At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2.Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

Article 5

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

Article 6

1.If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2.Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3.After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4.The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5.Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 7

1.The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.

2.The Committee may, if necessary, after the end of the period of six months referred to in article 6, paragraph 4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 8

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

Article 9

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

Article 10

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

Article 11

The present Protocol shall be subject to ratification by signatory States of the present Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of the present Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

Article 12

1.«Regional integration organization» shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and the present Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and the present Protocol. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2.References to «States Parties» in the present Protocol shall apply to such organizations within the limits of their competence.

3.For the purposes of article 13, paragraph 1, and article 15, paragraph 2, of the present Protocol, any instrument deposited by a regional integration organization shall not be counted.

4.Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 13

1.Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2.For each State or regional integration organization ratifying, formally confirming or acceding to the present Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 14

1.Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2.Reservations may be withdrawn at any time.

Article 15

1.Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2.An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 16

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 17

The text of the present Protocol shall be made available in accessible formats.

Article 18

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Appendix 1: Convention on the Rights of Persons with Disabilities

Downloadable in pdf format on http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf

On line version http://www.un.org/disabilities/default.asp?id=259

Appendix 2: Core Human Rights Treaties

Direct links to English texts :

International Convention on the Elimination of All Forms of Racial Discrimination:

http://www2.ohchr.org/english/law/cerd.htm

International Covenant on Civil and Political Rights: http://www2.ohchr.org/english/law/ccpr.htm

International Covenant on Economic, Social and Cultural Rights:

http://www2.ohchr.org/english/law/cescr.htm

Convention on the Elimination of All Forms of Discrimination against Women:

http://www2.ohchr.org/english/law/cedaw.htm

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

http://www2.ohchr.org/english/law/cat.htm

Convention on the Rights of the Child: http://www2.ohchr.org/english/law/crc.htm

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: http://www2.ohchr.org/english/law/cmw.htm

International Convention for the Protection of All Persons from Enforced Disappearance:

http://www2.ohchr.org/english/law/disappearance-convention.htm

Texts are available:

In Arabic on http://www2.ohchr.org/arabic/law/

In Chinese on http://www2.ohchr.org/english/about/publications/docs/CoreTreaties_ch.pdf

http://www.un.org/chinese/documents/instruments/docs_ch.asp?type=conven

In English on http://www2.ohchr.org/english/law/index.htm

In French on http://www2.ohchr.org/french/law/

In Russian on http://www2.ohchr.org/english/about/publications/docs/CoreTreaties_ru.pdf

http://www.un.org/russian/documen/convents/hr.htm

In Spanish on http://www2.ohchr.org/spanish/law/

Appendix 3: Recent Pertinent Resolutions

Resolution from The General Assembly of the United Nations, 64th session, 6 November 2009:

Sixty-fourth session
General Assembly
Agenda item 61

Realizing the Millennium Development Goals for Persons with Disabilities.

The General Assembly,

Recalling the World Programme of Action concerning Disabled Persons,[157] the Standard Rules on the Equalization of Opportunities for Persons with Disabilities[158] and the Convention on the Rights of Persons with Disabilities,[159] which recognize persons with disabilities as both development agents and beneficiaries in all aspects of development,

Recalling also its previous resolutions on internationally agreed development goals, including the Millennium Development Goals, which recognized the collective responsibility of Governments to uphold the principles of human dignity, equality and equity, as well as a duty to all the world's people, especially persons with disabilities,

Gravely concerned that persons with disabilities are often subject to multiple or aggravated forms of discrimination, and can be largely invisible in the implementation, monitoring and evaluation of the Millennium Development Goals,

Noting that the entry into force of the Convention on the Rights of Persons with Disabilities, which is both a human rights treaty and a development tool, provides an opportunity to strengthen the policies and implementation of the Millennium Development Goals thereby contributing to the realization of a "society for all" in the twenty-first century,

Noting also that persons with disabilities make up an estimated 10 per cent of the world's population, of whom 80 per cent live in developing countries, and recognizing the importance of international cooperation and its promotion in support of national efforts, in particular developing countries,

Concerned that the lack of data and information on disability and the situation of persons with disabilities at the national level contributes to the invisibility of persons with disabilities in official statistics, presenting an obstacle to achieving development planning and implementation that is inclusive of persons with disabilities,

[157] A/37/351/Add.1 and Corr.1, annex, sect. VIII, recommendation I (IV).
[158] Resolution 48/96, annex.
[159] Resolution 61/106, annex I.

Recognizing that the upcoming High level Plenary Meeting to review the implementation of the Millennium Development Goals in 2010 is an important opportunity to enhance efforts to realize the Millennium development Goals for all, in particular persons with disabilities

1. *Takes note* of the report of the Secretary-General on realizing the Millennium Development Goals for persons with disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities;[160]

2. *Urges Member States*, and invites international organizations, regional organization including regional integration organization, financial institutions, the private sector and civil society, particularly organizations representing persons with disabilities, as appropriate, to promote the realization of Millennium Development Goals for persons with disabilities inta alia through explicitly including persons with disabilities in, national plans and tools designed to contribute to the full realization of the Millennium Development Goals;

3. *Urges* the United Nations system to make a concerted effort to integrate disability issues in its work and in this regard, encourages the Inter-Agency Support Group for the Convention on the Rights of Persons with Disabilities to continue working to ensure that development programs, including MDG policies, processes and mechanisms, are inclusive of and accessible to persons with disabilities

4. *Encourages* Member States to ensure that their international cooperation, including international development programs, is inclusive of and accessible to persons with disabilities;

5. *Calls on* Governments and UN bodies and agencies to include disability issues and persons with disabilities in reviewing progress to achieve the Millennium Development Goals, and to step up efforts to include in their assessment the extent to which persons with disabilities are able to benefit from efforts to achieve the goals.

6. *Calls on* Governments to enable persons with disabilities to participate as agents and beneficiaries of development, particularly in all efforts aimed at achieving the Millennium Development Goals, by ensuring that programs and policies, namely eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality and empowerment of women, reduction of child mortality, improvement of maternal health, combating HIV/AIDS, Malaria and other diseases, ensuring environmental sustainability, developing a global partnership for development, are inclusive of and accessible to persons with disabilities;

7. *Emphasizes* the importance of the participation of persons with disabilities at all levels of policymaking and development, which is critical to informing policymakers on the situation of persons with disabilities, the barriers they may face and ways to overcome obstacles to the full and equal enjoyment of their rights, to the achievement of the Millennium Development Goals for all, including persons with disabilities, and to their socio-economic advancement;

8. *Encourages* international cooperation in the implementation of the Millennium Development Goals, including through global partnerships for development, which are crucial for the realization of the Goals for all, in particular for persons with disabilities;

[160] A/64/180.

9. *Encourages* Governments to develop and accelerate exchange of information, guidelines and standards, best practices, legislative measures as well as government policies regarding the situation of persons with disabilities and disability issues, in particular as they relate to inclusion and accessibility;

10. *Calls upon* Governments to build a knowledge base of data and information about the situation of persons with disabilities that could be used to enable development policy planning monitoring and evaluation and implementation to be disability-sensitive, particularly in the realization of the Millennium Development Goals for persons with disabilities and in this regard:

a. *Requests* the Secretary General to disseminate widely and promote the use of the Guidelines and Principles for the Development of Disability Statistics1 and the Principles and Recommendations for Population and Housing Census and to facilitate technical assistance, within existing resources, including the provision of assistance for capacity building of member states, particularly developing countries, in this regard; and

b. *Encourages* Member States to make use of statistics, to the extent possible, to integrate a disability perspective in reviewing their progress towards realizing the Millennium Development Goals for all.

11. *Requests* the Secretary-General to include information on the implementation of the present resolution during the sixty-fifth session of the General Assembly within the report requested by the Assembly in paragraph 13 (b) of its resolution 63/150.

Resolution from The Economic and Social Council of The United Nations,

12 February 2010

Commission for Social Development
Forty-eighth session
3-12 February 2010
Agenda item 3 (b)

Follow-up to the World Summit for Social Development and the twenty-fourth special session of the General Assembly: review of relevant United Nations plans and programmes of action pertaining to the situation of social groups

"Mainstreaming disability in the development agenda

"*The Economic and Social Council,*

"*Reaffirming* that the Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development[161] and the further initiatives for social development adopted by the General Assembly at its twenty-fourth special session,[162] as well as a continued global dialogue on social development issues, constitute the basic framework for the promotion of social development for all at the national and international levels,

"*Noting* that the entry into force of the Convention on the Rights of Persons with Disabilities, which is both a human rights treaty and a development tool, provides an opportunity to strengthen the policies related to and implementation of the Millennium Development Goals, thereby contributing to the realization of a "society for all" in the twenty-first century,

"*Recalling* the World Programme of Action concerning Disabled Persons, the Standard Rules on the Equalization of Opportunities for Persons with Disablilties and the Convention on the Rights of Persons with Disabilities which recognize persons with disabilities as both development agents and beneficiaries in all aspects of development,

"*Recalling* its previous resolutions concerning persons with disabilities and the relevant resolutions adopted by the General Assembly,

"*Acknowledging* the fact that the majority of persons with disabilities in the world live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

"*Noting* that persons with disabilities make up an estimated 10 per cent of the world's population, of whom 80 per cent live in developing countries, and recognizing the importance of international cooperation and its promotion in support of national efforts, in particular for developing countries,

"*Convinced* that addressing the profound social, cultural and economic disadvantage experienced by many persons with disabilities and that promoting the use of universal design, as appropriate, as well as, the progressive removal of barriers to their full and effective participation in all aspects of development and promoting their enjoyment of economic, social, and cultural rights will further the equalization of opportunities and contribute to the realization of a 'society for all' in the twenty-first century,

"*Bearing in mind* that the Convention on the Rights of Persons with Disabilities,[163] provides a comprehensive normative framework, as well as specific guidance, for mainstreaming disability,

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[161] Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995 (United Nations publication, Sales No. E.96.IV.8), chap. I, resolution 1, annexes I and II.
[162] General Assembly resolution S-24/2, annex.
[163] General Assembly resolution 61/106, annex I.

"*Underlining* the importance of mobilizing resources at all levels for the successful implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities, and recognizing the importance of international cooperation and its promotion in support of national efforts, in particular in developing countries,

"*Recognizing* that the achievement of mainstreaming of disability at all levels remains a major challenge, therefore further efforts are required to give practical meaning to the concept of mainstreaming and its realization in United Nations activities in the development agenda,

"*Welcoming* the fact that since the opening for signature on 30 March 2007 of the Convention and the Optional Protocol thereto,[164] one hundred and forty-four States have signed and seventy-nine States have ratified the Convention and eighty-eight States have signed and fifty States have ratified the Optional Protocol, and one regional integration organization has signed the Convention,

"*Noting* that the report of the Secretary-General stated that information on and experience in the implementation of disability mainstreaming in the development agenda is limited, and acknowledging that international, regional, subregional and national efforts to mainstream disability in the development agenda is relatively new and ongoing and urges further progress in this regard,

"Taking note of the progress made by the Inter-Agency Support Group for the Convention on the Rights of Persons with Disabilities and the United Nations Development Group Task Team on Disability in mainstreaming disability in the development agenda, including in the work of the United Nations agencies, funds and programmes, and urging further progress towards mainstreaming disability into their development agenda,

"*Recognizing* that the upcoming high-level plenary meeting to review the implementation of the Millennium Development Goals in 2010 is an important opportunity for enhancing efforts to realize the Millennium Development Goals for all, including persons with disabilities,

"*Recognizing* that the annual ministerial review, which is to focus on "implementing the internationally agreed goals and commitments in regard to gender equality and the empowerment of women," provides an opportunity to highlight the situation of women and girls with disabilities,

1. "*Takes note* of the report of the Secretary-General on mainstreaming disability in the development agenda;[165]

2. "*Calls upon* those States that have not yet done so to consider signing and ratifying the Convention on the Rights of Persons with Disabilities[163] and the Optional Protocol[164] thereto as a matter of priority;

[164] Ibid., annex II.
[165] E/CN.5/2010/6.

3. "*Calls on* Member States to enable persons with disabilities to participate as agents and beneficiaries of development, in particular in all efforts aimed at achieving the Millennium Development Goals, by ensuring that programme and policies, namely eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality and empowerment of women, reducing child mortality, improving maternal health, combating HIV/AIDS, malaria, and other diseases, ensuring environmental sustainability and developing a global partnership for development, are inclusive and accessible to persons with disabilities;

4. "*Encourages* international cooperation in the implementation of all Millennium Development Goals, including through global partnerships for development, which are crucial for the realization of the Goals for all, in including persons with disabilities;

5. "*Recognizes* the need to promote participation, consultation, inclusion and integration of persons with disabilities and their representative organizations in mainstreaming disability in the development agenda;

6. "*Recognizes* the need to promote accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, to the inclusion of persons with disabilities in all aspects of development, and of undertaking measures to make, inter alia, the environment and transport accessible to all persons with disabilities, and to provide accessible information and communications technologies;

7. "*Urges* Member States:

(a) to mainstream disability, including the perspective of persons with disabilities, into the design, implementation, and monitoring of national development policies, programs and strategies, and in this regard calls upon the United Nations system to support, as appropriate, national and regional efforts and plans to develop methodologies and tools and to promote capacity-building, and evaluation;

(b) to conduct reviews and assessments, analyzing the extent to which disability is mainstreamed effectively in the development agenda, with a view to identifying best practices and eliminating gaps between policy and implementation;

(c) to conduct disability education, awareness-raising campaigns, and training for all those involved in the development agenda in order to promote the inclusion of persons with disabilities;

8. "*Encourages* the United Nations system, including relevant agencies, funds and programmes, in accordance with their respective mandates:

(a) to share their best practices, information, tools and methodologies on the mainstreaming of disability in their activities, through appropriate means, and review them periodically, in order to take a coherent and coordinated approach in disability issues in the United Nations operational framework;

"(b) to conduct disability education and awareness-raising campaigns, step up efforts to recruit persons with disabilities at all levels, including in field positions;

"(c) to enhance their accountability, including at the highest levels of decision-making, in the work of mainstreaming disability in the development agenda, including in the assessment of the impact of development efforts on the situation of persons with disabilities;

9. "*Encourages* all Member States, concerned intergovernmental organizations and international and regional organizations, civil society, in particular organizations of persons with disabilities, and the private sector to engage in cooperative arrangements that aim at providing the necessary technical and expert assistance to enhance capacities in mainstreaming disability, including the perspective of persons with disabilities, in the development agenda, and in this regard encourages the United Nations Secretariat and other relevant bodies to find improved ways to enhance international technical cooperation;

10. "*Urges* Member States and relevant entities of the United Nations system, including the agencies, funds and programmes, and invites international and regional organizations, including, regional integration organisations, as appropriate, and financial institutions to take concrete measures to mainstream disability, including the perspective of persons with disabilities, and accessibility requirements into development cooperation and development finance activities;

11. "*Stresses* the need to enhance the accountability in the work of mainstreaming disability in the development agenda, including in the assessment of the impact of development efforts on the situation of persons with disabilities;

12. "*Welcomes* the appointment of a new Special Rapporteur on disability of the Commission for Social Development for the period 2009-2011;

13. "*Requests* the Secretary-General to prepare a report on the implementation of the present resolution, including on the coordination of the United Nations for mainstreaming disabilities into all their policies and activities, for submission to the Commission for Social Development at its fiftieth session."

Editor: Handicap International, 14, avenue Berthelot, 69361 Lyon cedex 07, France

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New York, NY 10019-3703

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HANDICAP INTERNATIONAL NETWORK

FEDERATION
14, avenue Berthelot
69361 Lyon Cedex 07
Tel.: + 33 (0) 4 78 69 79 79
Fax: + 33 (0) 4 78 69 79 94
contact@handicap-international.org
www.handicap-international.org

BELGIUM
67, rue de Spa
1000 Bruxelles
Tel.: + 32 (0) 2 280 16 01
Fax: + 32 (0) 2 230 60 30
headoffice@handicap.be
www.handicap-international.be

CANADA
1819, boulevard René-Lévesque Ouest
Bureau 401
Montréal (Québec) H3H 2P5
Tel.: + 1 514 908 2813
Fax: + 1 514 937 6685
info@handicap-international.ca
www.handicap-international.ca

FRANCE
16, rue Étienne Rognon
69363 Lyon Cedex 07
Tel.: + 33 (0) 4 72 72 08 08
Fax: + 33 (0) 4 26 68 75 25
info@handicap-international.fr
www.handicap-international.fr

GERMANY
Ganghofer Str. 19
80339 München
Tel.: + 49 (0) 89 54 76 06 00
Fax: + 49 (0) 89 54 76 06 20
info@handicap-international.de
www.handicap-international.de

SWITZERLAND
Avenue de la Paix 11
1202 Genève
Tel.: + 41 (0) 22 788 70 33
Fax: + 41 (0) 22 788 70 35
contact@handicap-international.ch
www.handicap-international.ch

UNITED KINGDOM
CAN Mezzanine
32-36 Loman Street
Southwark
London SE1 0EH
Tel.: + 44 (0) 870 774 37 37
Fax: + 44 (0) 870 774 37 38
hi-uk@hi-uk.org
www.handicap-international.org.uk

UNITED STATES
6930 Carroll Avenue – Suite 240
Takoma Park, MD 20912
Tel.: + 1 301 891 2138
Fax: + 1 301 891 9193
info@handicap-international.us
www.handicap-international.us

www.handicap-international.org

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