

**Comments on Important Articles of Draft Convention
Prepared by the Working Group**

Prepared by Preparatory Committee for Japan Disability Forum (JDF), which is an alliance of 11 Japanese disability NGOs, consisting of: Japanese Federation of Organizations of Physically Disabled Persons, Japan Council on Disability, Japan National Assembly of Disabled Peoples' International, Japan Federation of the Blind, Japanese Federation of the Deaf, Inclusion Japan, Japan Federation of Family Organizations for Persons with Psychiatric Disabilities, Japan Federation of the Deaf-Blind, Japan National Group of Mentally Disabled People, Japanese Society for Rehabilitation of Persons with Disabilities, and National Council of Social Welfare.

<Introduction>

Based on the “Comments on the Draft Text of UN Working Group for the Convention on Rights of Persons with Disabilities” submitted to the Minister of Foreign Affairs of Japan by the Preparatory Committee of Japan Disability Forum on April 28, 2004, this discussion paper is to present our comments for modification to important articles contained in the Draft of the UN Working Group (hereinafter, called “Draft”).

< Preamble>

Original Text of the Draft

(d) Reaffirming also 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 Against Women, the Convention Against Torture and Other Cruel, Inhumane 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,

JDF's Comment to this part

A view that “the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families” should not be referred to was expressed by some of members of the Working Group. As the Convention on rights of migrants has also entered into force, it should be referred to together with other effective international human rights conventions and covenants. (See Footnote 2)

Original Text of the Draft

(g) Recognising further the diversity of persons with disabilities,

JDF’s Comment to this part

This paragraph is to recognize “the diversity of persons with disabilities.” In addition to these words, it is worth examining whether the terms “human diversity” prescribed in the Draft Article 2-d could be also referred to in this paragraph. In other words, whether the paragraph should read; “Recognising further the human diversity and the diversity of persons with disabilities,” or not.

However, as preconditions for such discussion, it should be clarified how the concepts of “diversity of persons with disabilities” and “human diversity” are different from each other.

Original Text of the Draft

(i) Emphasising the importance of international cooperations³ to promote the full enjoyment of human rights and fundamental freedoms of persons with disabilities,

JDF’s Comment to this part

Some members of the Working Group expressed an opinion stating that there should not be a reference to international cooperation in the Preamble. (see Footnote 3) Referring to the preamble of the Convention on the Rights of the Child (CRC), this opinion is not reasonable, and we consider it important to refer to international cooperation here. Paragraph 13 of the preamble of the CRC stipulates that “Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries.”

As a similar stipulation to the paragraph 13 of the preamble of the CRC, an alternative formulation was proposed in the Working Group stating “Recognising the importance of international cooperation for improving the living conditions of persons with disabilities in every country, in particular in the developing countries.” (See Footnote 4 of the Draft)

It should be further considered to decide on any one of the following three options: 1) to

maintain the current Preamble i) as in the Draft; 2) to adopt the alternative as stated in Footnote 4 in the Draft; or 3) to stipulate the both.

In the light of the purposes of this Convention on Rights of Persons with Disabilities, we consider it more appropriate to maintain the current i) than 2), i.e. adopting the alternative. Yet, it could also be appropriate to decide on 3), i.e. to stipulate the both. That is; “Emphasising the importance of international cooperation to promote the full enjoyment of human rights and fundamental freedoms of persons with disabilities as well as to improve the living conditions of persons with disabilities in every country, in particular in the developing countries.”

Original Text of the Draft

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

JDF’s Comment to this part

As it relates to Article 2 (a) of the Draft in terms of “self-determination,” we are not giving our comments here. (See our comment on Article 2 (a) below.

<Article 1> Purpose

Original Text of the Draft

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

JDF’s Comment to this part

For draft Article 1, two alternatives were suggested. One is to include “international cooperation in the article. (See Footnote 7) This alternative is also related to the question about where in the Convention the term “international cooperation” should be put. (See Annex II: Summary of the discussions held regarding the issue of international cooperation to be considered by the Ad Hoc Committee) Obviously, international cooperation is very important. However, considering that international cooperation is not an objective of the Convention for the protection of human rights of persons with disabilities, but it is a means to achieve it, it is appropriate to refer to international cooperation somewhere in the Convention other than Article 1 of the draft.

As an alternative to Article 1 of the draft, it is also suggested to have a brief formulation stating; “The purpose of this Convention shall be to protect and promote the rights of persons with disabilities.” (See Footnote 8) We consider that the present formulation in the draft is more specific and appropriate than this alternative. Therefore, unless a

new alternative is proposed, the present formulation in the draft should remain as Article 1 of the Convention.

<Article 2> General Principles

Original Text of the Draft

(a) Dignity, individual autonomy including the freedom to make one's own choices, and independence of persons

JDF's Comment to this part

It should be noted that the Working Group has pointed out that the term "self-determination" may be confusedly understood as the one for national "self-determination" when used in the context of international convention. While "self-determination" is an essential concept for human rights of persons with disabilities, we consider it necessary to examine again the inclusion of this concept in the general principles of the Convention.

If the term "self-determination" is to be included in Article 2, it could be formulated as "individual autonomy and self-determination including..." or "individual autonomy including the freedom to make one's own choices and self-determination."

On the other hand, it could also be a possible argument whether the term "autonomy" is replaced with the term "self-determination." Or, the term "autonomy" could implicitly include the concept of "self-determination," thus no need to add the term "self-determination."

In relation to this, it could be possible to interpret that the term "individual autonomy including the freedom to make one's own choices" already includes the concept of "self-determination." Further, it will be necessary to consider whether actors who practice "individual autonomy" and "self-determination" may include not only individuals with disabilities but also groups of persons with disabilities. In addition, it will be also necessary to consider whether the terms "self-realization" and "self-governing or self-governance" should be added.

Original Text of the Draft

(c) Full inclusion of persons with disabilities as equal citizens and participants in all aspects of life

JDF's Comment to this part

For Article 2-(c), it needs to be considered whether the term “citizens” may or may not lead to a possible exclusion of non-national persons with disabilities. Also, it needs to be clarified what the phrase “in all aspect of life” means. In case that these two words have negative implications, they must be deleted and replaced with new words.

JDF’s Comment

Other than the above, regarding draft Article 2, it needs to be considered whether “international cooperation” should be included in draft Article 2, and whether the term “equality of opportunity” should be replaced with the term “substantial equality” or “substantial equality of opportunity.”

<Article 3> Definition

Original Text of the Draft

Disability

Footnote 12

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

JDF’s Comment to this part (1)

It is crucially important that the Working Group has reached a consensus that the definition of “disability” should be the one that reflects the social model of disability, rather than the medical model. (See Footnote 12). This consensus should be a presupposition for further discussion.

It should be noted that if factors of social barriers are to be included in the definition of “disability” in addition to individual impairments under the social model, definitions of each “disability,” “person with disabilities” and “discrimination on the ground of disability” may after all overlap in their meanings.

JDF’s Comment to this part (2)

On the other hand, if only actual impairment is defined as “disability,” it may result in an absence of the viewpoint of “social model.” Further, such a definition may exclude “unique faces” (a self-help group of people whose faces have troubles or external wounds), HIV positives who do not show symptoms of AIDS or those who had

disabilities before. Therefore, in case that “disability” is to be defined as actual impairments, it must be ensured that people with “unique faces” and others also fall under the scope of the convention. For this end, taking the “social model” into consideration, it is necessary to include the provisions such as “a record of an impairment”, “being regarded as having an impairment” and “a disability perceived” into the definition of “disability”. (See Americans With Disabilities Act (ADA), draft Article 7-2 (b).)

Reference: ADA

The term “disability” means, with respect to an individual –

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

Reference: Draft Article 7-2 (b)

Discrimination shall include all forms of discrimination, including direct, indirect and systemic, and shall also include discrimination based on an actual or perceived disability.

JDF’s Comment to this part (3)

In discussing about the definition of “disability,” the following three should be taken into considerations: 1) to bear the viewpoint of social model in mind, 2) to give the term “disability” a broad definition, and 3) not to limit to actual impairments.

Also, notice should be given to correlation and conformity among three definitions of “disability,” “person with disabilities” and “discrimination on the ground of disability.”

Original Text of the Draft

Discrimination on the ground of disability

JDF’s Comment to this part

While the definition of “reasonable accommodation” is articulated in draft Article 7-4, it is not necessarily clear why it is defined in Article 7-4. It is appropriate to include the definition of “reasonable accommodation” in draft Article 3 which includes all relevant definitions. With that, it should be specified that a denial of “reasonable accommodation” constitutes discrimination on the ground of disability.

Original Text of the Draft

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

JDF’s Comment to this part

Regarding the definition of “language” (in relation to Article 3), with the recognition that sign language is language, it must be considered as an official language from the viewpoint of guaranteeing the right to use one’s own language and in reference to Article 27 of the ICCPR.

Reference: Article 27 of the International Covenant on Civil and Political Rights (Rights of Minorities)

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 practise their own religion, or to use their own language.

Original Text of the Draft

Reasonable accommodation

JDF’s Comment to this part (1)

“Reasonable accommodation” is a concept that is not included in any of six major international human rights instruments. As in the Americans With Disabilities Act of 1990 and EU Directives on Equal Treatment (2000), the concept is being widely accepted in the international community as indispensable to legislation concerning persons with disabilities. Therefore, it is indispensable to specify “reasonable accommodation” in the Convention.

JDF’s Comment to this part (2)

The term “reasonable accommodation” is specified in Article 3 (Definition), Article 7 (Equality and non-discrimination), Article 17 (Education) and Article 22 (Right to work) of the draft text of the Working Group. At least, these four specifications of “reasonable accommodation” should not be deleted.

JDF’s Comment to this part (3)

The definition of “reasonable accommodation” is stipulated in draft Article 7-4. However, it is not necessarily clear why the definition is given there. As it is a concept relating to the substantial stipulations in general, it is appropriate to include the definition in draft Article 3 that lists all relevant definitions or to articulate the definition of “reasonable accommodation” in draft Article 4 stipulating general obligations of State Parties.

< Draft Article 4 > General Obligations

* As same as the JDF's Comment 3 for Article 3.

* It is necessary to add a new paragraph stipulating the relevance to reasonable accommodation.

JDF's Comment to this part (1)

While acknowledging that a denial of “reasonable accommodation” constitutes discrimination on the ground of disability whether it takes place in the public sector or the private sector, it should be stipulated in the provisions that State Parties bear the obligation to provide “reasonable accommodation” both in the public and private sectors.

JDF's Comment to this part (2)

The provision that conventional obligations are applicable to both the public and private sectors should be included either in “Definition” or “Obligations of State Parties” rather than stipulating it in every relevant provision.

Reference: International Convention on the Elimination of All Forms of Racial Discrimination: Article 1-1 (Definition)

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.

Reference: The Convention on the Elimination of All Forms of Discrimination against Women: Article 2 Policy Measures (obligations of state parties)

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*
- (g) To repeal all national penal provisions which constitute discrimination against women.*

< Draft Article 5> Promotion of positive attitudes to persons with disabilities

JDF's proposed Amendment

The title of this article should be changed to “Awareness-raising concerning rights of persons with disabilities.”

Reason

“Awareness-raising” is used in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Rule 1).

<Draft Article 6> Statistics and data collection

Original Text of the Draft

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

JDF's proposed Amendment

Delete the words “statistics and information on disabilities” (the 3rd line)

We do not totally deny statistics and data collection, but “statistics and information on disabilities” should be deleted.

Reason

In 1983 in Japan, the survey to find out actual conditions of mental hygiene was virtually blocked as it faced strong opposition from persons with mental illness, mental health workers and others. As one of the reasons of opposition, people claimed that the survey had to be done on actual conditions of mental hospital, not on persons with mental illness. In fact, in the same year, the brutal killing of the patient in *Utsunomiya Hospital* by nurses was disclosed. It developed into the reveal of many other cases of

human rights abuses against patients practiced in the hospital, and finally the Mental Hygiene Law was revised.

It is meaningful to collect information about how rights of persons with disabilities stipulated in the Convention are guaranteed, but not data on “disabilities.” Collection of data on “disabilities” facilitates classification of “disabilities” according to the medical model, making it possible to misuse for some undesirable purposes such as introduction of measures supported by eugenics.

Data collection that benefits persons with disabilities could be the one that focuses on their human rights conditions.

<Draft Article 7> Equality and non-discrimination

* 7-2 (b): Please refer to the above Comment 2 on Article 3.

JDF’s proposed Amendment

Addition of (c) to 7-2:

Noting General Comment 5 on the International Covenant on Economic, Social and Cultural Rights (ICESCR) made in 1993, it should be clearly stipulated that “a denial of ‘reasonable accommodation’ constitutes discrimination on the ground of disability.” (See the comment on draft Article 3 “Discrimination on the ground of disability”)

<General Comment 5 (para. 15) on the ICESCR>

“... 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....”

Original Text of the Draft

3 Discrimination does not include a provision, criterion or practice that is objectively and demonstrably justified by the State Party by a legitimate aim and the means of achieving that aim are reasonable and necessary.

JDF’s proposed Amendment

Delete Article 7-3

Reason

In draft Article 7-3, reasons for justification of discrimination are specified in general terms. It is feared that this provision may water down the Convention itself that aims at prohibiting discrimination against and guaranteeing rights of persons with disabilities. With our judgment that absence of this provision does not cause any harm, we suggest not to include it in the Convention.

Original Text of the Draft

4 In order to secure the right to equality for persons with disabilities, States Parties undertake to take all appropriate steps, including by legislation, to provide reasonable accommodation, defined as necessary and appropriate modification and adjustments to guarantee to persons with disabilities the enjoyment or exercise on an equal footing of all human rights and fundamental freedoms, unless such measures would impose a disproportionate burden.

JDF's proposed Amendment

the 6th line should read: “provided that when such measures would impose a disproportionate burden, a provider of such measures shall demonstrate that it cannot bear the disproportionate burden, to persons with disabilities as well as to a third party that is responsible for examining its disproportionateness.”

Reason

While draft Article 7-4 stipulates, “to take all appropriate steps, including by legislation, to provide reasonable accommodation...” it also stipulates, “unless such measures would impose a disproportionate burden.” It is feared that it may lead to approval of disadvantageous consequences against persons with disabilities or discriminations, as they are. In case that concerned parties cannot appropriately cope with “disproportionate burden,” they are accountable for demonstrating the disproportionateness of such measures. Also, the lack of provision of reasonable accommodations, including the lack of proof of disproportionate burden, should be defined as discrimination.

Original Text of the Draft

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

JDF's Comment to this part

As stated in Footnote 29, it should be “limited in time”.

Reference: Draft text Footnote 29

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

<Draft Article 10> Liberty and Security of Person

Original Text of the Draft

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

JDF's proposed amendment

Include the (d) into the chapeau of Article 10-2

“States Parties shall ensure that if persons with disabilities are unlawfully deprived of their liberty, or deprived of their liberty based on disability, contrary to this Convention, they are:”

Reason

As Draft Article 10-2 may lead to misperception and misunderstanding that deprivation of liberty of persons with disabilities is unavoidable, we suggest to delete the provision and replace it with a new provision based on a radically modified provision of Article 9 of the ICCPR taking specific needs of persons with disabilities into account. Naturally, such a new provision should never fall below the currently effective international human rights standards.

JDF's Comment to para (a)

It is so ambiguously specified that it can be used in any form for any purpose. Its wording about needs of persons with disabilities is ambiguous. It is also uncertain that how such needs are determined or who determine such needs. Regarding Article 10-2 (b), as it only supposes the situation of arrest and detention, provision of information about court proceedings and imprisonment should also be referred to.

Standards should be that; general accessibility to detention facilities, and comprehensive programs and disability-related services in detention centers are provided for the purpose of securing welfare of persons with disabilities under detention, and reasonable accommodation to satisfy individual needs should be provided under the condition that no one shall be compelled to receive reasonable accommodation. In this regard, further discussions will be needed on the basis of the proposal from the Chair of the Ad Hoc Committee (Article 14-4 and -5), Bangkok Draft (Article 13-4 and -5) and Mexico Draft(Article 10).

JDF's Comment to para (c)

The provision under the i) allows to challenge the lawfulness of the deprivation of liberty before a court or other competent, independent and impartial authority, whereas Article 9-4 of the ICCPR sets out that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Thus, the provision in the draft is far below the standards set out in Article 9-4.

The provision under the ii) is based on the assumption of irregular detention. The regular review is made because of irregular detention based on disability, thus representing a contradiction to what is provided in Article 10-1-(b).

<Draft Article 11> Freedom from torture or cruel, inhumane or degrading treatment or punishment

Original Text of the Draft

2 In particular, States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned, and shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment.

JDF's Comment to this part

In Article 11-2, the obligatory provision for the prohibition of “medical or scientific experimentation” and “forced interventions or forced institutionalization” as well as the obligatory provision for the protection of persons with disabilities from these should be kept.

<Draft Article 12> Freedom from violence and abuse

Original Text of the Draft

2 Such measures should prohibit, and protect persons with disabilities from, forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment, and abduction.

JDF’s Comment to this part

In 12-2, the obligatory provision for the prohibition of “forced intervention or forced institutionalisation” as well as the obligatory provision for protection of persons with disabilities from these should be kept.

Original Text of the Draft

4 States Parties shall ensure that all facilities and programmes, both public and private, where persons with disabilities are placed together, separate from others, are effectively monitored to prevent the occurrence of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.

JDF’s proposed Amendment

Add the underlined part to para 4

State Parties shall to prevent the occurrence of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, against persons with disabilities.

<Article 13> Freedom of expression and opinion, and access to Information

Original Text of the Draft

(b) Accepting the use of alternative modes of communication by persons with disabilities in official interactions.

(c) Educating persons with disabilities to use alternative and augmentative communication modes;

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

JDF supports the WFD’s proposals:

- b) **accepting the use of alternative modes of communication by persons with disabilities in official interactions, and of sign language by Deaf people;**
- c) **educating persons with disabilities to use alternative and augmentative communication modes; for Deaf people, education in their national sign language(s) should be available;**
- e) **promoting other appropriate forms of assistance and support to persons with disabilities to ensure their access to information, including provision of appropriate training to live assistance workers, intermediaries and sign language interpreters;**

<Article 15>Living independently and being included in the community

Original Text of the Draft

(b) Persons with disabilities are not obliged to live in an institution or in a particular living arrangement.

JDF’s Comment to this part

This provision should be retained.

<Article 16>Children with disabilities

Original Text of the Draft

3. States Parties recognize the right of children with disabilities to inclusive care, which shall include:

(b) The extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

JDF’s proposed Amendment

- 1. The term “subject to available resources” shall be deleted on the premise of the significance of the care for children with disabilities.**
- 2. Based upon Draft Footnote 54, Paragraph 6 as follows shall be added.**
Paragraph 6

State Parties undertake to ensure protection of children with disabilities from sexual abuse and exploitation. State Parties also undertake to ensure the rights of refugee children with disabilities, orphan children with disabilities or those who are in other vulnerable situations.

<Article 17>Education

Footnote 55

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

JDF's Comment

Article 17 shall focus upon education, while issue of the training shall be covered by Article 22 (Rights to Work) and other appropriate provisions.

Original Text of the Draft

1 States Parties undertake to ensure that each child with a disability within their jurisdiction shall enjoy, without discrimination of any kind on the basis of disability, the same rights and fundamental freedoms as other children.

Footnote 56

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

JDF's proposed Amendment

The term “progressively” in Draft Article 17(1) shall be deleted. With regard to Footnote 56, the term “children with disabilities” in Article 17(1) shall be replaced by “persons with disabilities” provided that education may include higher education.

Original Text of the Draft

2. In realizing this right, States Parties shall ensure:

(a) That all persons with disabilities can choose inclusive and accessible education in their own community (including access to early childhood and pre-school education)

JDF's Comment to this part

The phrase in Paragraph 2(a) “that all persons with disabilities can choose inclusive and accessible education” must not be omitted.

Original Text of the Draft

3. States Parties shall ensure that where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning should be made available. Any such special and alternative forms of learning should:

- (a) Reflect the same standards and objectives provided in the general education system;
- (b) Be provided in such a manner as to allow children with disabilities to participate in the general education system to the maximum extent possible;
- (c) Allow a free and informed choice between general and special systems;
- (d) In no way limit the duty of States Parties to continue to strive to meet the needs of students with disabilities in the general education system.

Footnote 61

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

Different approaches were also identified with respect to setting out the relationship between the provision of specialist education services and the general education system. Some members considered that education of children with disabilities in the general education system should be the rule, and the provision of specialist education services the exception. Others thought that specialist education services should be provided not only where the general education system was inadequate, but should rather be made available at all times without a presumption that one approach was more desirable than the other. Some members of the Working Group, for example, highlighted the need for deaf and blind children to be allowed to be educated in their own groups. If the latter approach were to be taken, the Working Group considered that there should still be an explicit obligation on the State to make the general education system accessible to students with disabilities, without limiting the individual's ability to choose either the general system or the specialist services.

JDF's Comment to this part (1)

As to the comparison between the choice and the right to education made in Draft Footnote 61, the essential element of the right to education is “the provision of educational environment in which choice can be made .” (See the underlined portion)

Adequate and appropriate information as to the specialist education services shall be provided to the persons with disabilities and their guardians. Blind students and their guardians should be informed of the services available at schools for the blind, that have blind teachers who can teach Braille. Deaf students and their guardians should be informed of the services available at schools for the deaf, that have deaf teachers who can sign languages.

In addition, schools for the blind as a system should support blind children who are in general schools.

JDF's Comment to this part (2)

“A free and informed choice (Paragraph (c))” is essential. Since no footnote is provided as to this provision, there should be no controversy. We support the incorporation of this provision in the Convention without any amendment.

Original Text of the Draft

4. States Parties shall ensure that children with sensory disabilities may choose to be taught sign language or Braille, as appropriate, and to receive the curriculum in sign language or Braille. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities by ensuring the employment of teachers who are fluent in sign language or Braille.

JDF supports the WFD's proposal, stating:

Deaf children have the right to receive education in their own groups and to become bilingual in sign language and their national spoken and written language. They also have the right to learn additional foreign languages, both signed and spoken/written. Each state Party shall take legislative, administrative, political and other measures needed to provide quality education using sign language, by ensuring the employment of Deaf teachers and also hearing teachers who are fluent in sign language.

JDF's Comment to this part (1)

Paragraph 4 lacks accuracy since it covers blindness and deafness, different sort of sensory disabilities, in one provision. Given the characteristic difference between Braille and sign language, they shall be covered by separate provisions.

JDF's Comment to this part (2)

As to education of deaf children, a bilingual education of both national sign language and spoken/written language. As to education of blind children, it shall be noted that freedom or opportunity of people with low eyesight to use ordinary prints should not be ignored because of an excessive emphasis of the importance of Braille.

Original Text of the Draft

5. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning on an equal basis with others. To that end, States Parties shall render appropriate assistance to persons with disabilities.

JDF's proposed Amendment

As to Paragraph 5, the term “vocational training” shall be replaced by “vocational education” with regard to the point that vocational education is needed in latter half of the education period.

<Article 19>Accessibility

Original Text of the Draft

2. States Parties shall also take appropriate measures to:

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

JDF Supports the WFD’s proposal:

(b) 1: provide other forms of live assistance including guides, readers and captioning, to facilitate accessibility to public buildings, facilities and information;

(b) 2: provide sign language interpreters as intermediaries to interpret information from spoken language into sign language and from sign language into spoken language for access to public services, education and participation.

<Article 21>Right to health and rehabilitation

Original Text of the Draft

(a) Provide persons with disabilities with the same range and standard of health and rehabilitation services as provided to other citizens, including sexual and reproductive health services

JDF’s proposed Amendment

The term “other citizens” shall be replaced by “other members of society.”

Reason

The proposed amendment is based upon the terminology used in “The Standard Rules on the Equalization of Opportunities for Persons with Disabilities” Article 2(3).

Original Text of the Draft

(k) Prevent unwanted medical and related interventions and corrective surgeries from being

imposed on persons with disabilities

JDF's proposal

Integrate Paragraph (k) to amended Paragraph (d).

Amendment of (d)

State Parties recognize the rights of persons with disabilities to determine by themselves whether or not to receive particular health and rehabilitation services after sufficient explanation and opportunities for questions. State Parties shall keep persons with disabilities, families and providers of such services well informed of such rights. Medical care, intervention by medical care and corrective surgery, which are not based upon self-determination made by persons with disabilities, shall be prohibited.

Reason

Health and rehabilitation services shall be provided, based upon self-determination made by persons with disabilities, for which the provision of adequate and appropriate information is very important. Since this revised text overlaps Paragraph (k), it shall be integrated into the amended Paragraph (d).

JDF's proposed Amendment

Add new Paragraph (h).

Ensure to provide all health and rehabilitation professionals with the accurate and latest knowledge on disabilities and related technologies.

Reason

In the present situation, not only medical professionals but also health and rehabilitation professionals lack adequate knowledge on disabilities, which shall be improved.

<Draft Article 22>Right to Work

Original Text of the Draft

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

JDF's proposed Amendment

Add the underlined portion as follows.

States Parties recognize ...poverty. The representative organizations of employers and workers and the representative organizations of and for persons with disabilities shall be consulted on the implementation of the said measures. States Parties shall take appropriate steps to safeguard and promote the realization of this right, including measures to:

Reason

It is essential for effective promotion of vocational rehabilitation and employment measures that the representative organizations of employers and workers and the representative organizations of and for persons with disabilities are consulted. Its significance has been recognized in International Labor Organization Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons Article 5.

Original Text of the Draft

(a) promote a labour market and work environment that are open, inclusive, and accessible to all persons with disabilities;

JDF's proposed Amendment

Add the underlined portion.

promote ... with disabilities; State Parties also compile statistical data such as employment rate (percentage of employed persons with disabilities as a portion of the total population of persons with disabilities who are in the labor force) as essential indicators of measuring employment status of persons with disabilities in the labor market.

Reason

Although health statistics, (i) such as the number of persons with disabilities, are compiled, few countries collect employment statistics of persons with disabilities. In order to improve their current employment situations, it is very important to keep abreast of their actual employment conditions. The employment strategy of European Union in recent years aims to raise employment rate in addition to the existing goal of diminishing unemployment rate. Its idea is to integrate as many persons as possible who are not in the labor forces for various reasons, including persons with disabilities, into the labor market. It also intends to include every person into the community through work. As an essential indicator of the goal, EU employs "employment rate" and publishes the data.

Original Text of the Draft

d: encourage employers to hire persons with disabilities, such as through affirmative action programs, incentives and quotas

JDF's proposed Amendment

Add the underlined portion.

d: encourage employers to hire persons with disabilities through positive measures to ensure effective equal opportunity and treatment between disabled workers and workers generally

Reason

It is better to employ broader terminology, since there are arguments for and against such specific measures as quotas. As similar phrase is already adopted in Article 4 of the ILO Convention No. 159, it will enable State Parties to reach international consensus.

Original Text of the Draft

e. ensure the reasonable accommodation of persons with disabilities in the workplace and work environment

JDF's comment to this part

Add the following portion.

Though the definition of “the reasonable accommodation” is provided under Article 3, its concrete contents are not given in this draft Article. Therefore, the following provisions under Americans with Disabilities Act (ADA) shall be referred.

ADA Sec. 101 (9)

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities.

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Original Text of the Draft

g. promote vocational and professional rehabilitation, job retention and return-to-work programs.

JDF's proposed Amendment

Add the underlined portion.

g. promote...programs. State Parties undertakes positive measures to create employment opportunity for persons with most severe disabilities.

Reason

In order to promote employment of persons with most severe disabilities, governments must undertake () leading and positive measures in creating employment opportunity.

Original Text of the Draft

h. protect through legislation persons with disabilities with regard to employment, continuance of employment, career advancement, working conditions, including equal remuneration for work of equal value and equal opportunities, and the redressing of grievances, and to ensure that persons with disabilities are able to exercise their labour and trade union rights;

JDF's proposed Amendment

Protectthe redressing of grievances, the prohibition of disability related harassment recognizing such act as discrimination, and to ensure that persons with disabilities are able to exercise their labor and trade union rights.

Reason

Since a significant number of persons with disabilities suffer from disability related harassment, a provision shall be needed in order to protect them from such disturbance.

<Draft Article 23>Social Security And An Adequate Standard Of Living

Original Text of the Draft

Paragraph 1

a. ensure access by persons with disabilities to necessary services, devices and other assistance for disability-related needs

JDF's proposed Amendment

Add the underlined portion.

Ensure access by persons with disabilities to necessary daily care, living support and other appropriate service for independent living, devices, and other assistance for disability related needs.

Reason

The original expression is ambiguous and thus ineffective. In order to plan and

evaluate policies, it should be more helpful to have as many examples as possible.

Original Text of the Draft

(c) Ensure access by persons with severe and multiple disabilities, and their families, living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves.

JDF’s proposed Amendment

Ensure the access by persons with disabilities and their families to cover disability-related expenses (including adequate training, counseling, financial assistance, respite care, disability-related devices and transportation expense), which should not become a disincentive to develop themselves. State Parties shall ensure immediate access by persons with severe and multiple disabilities and their families, living in situations of poverty to such assistance.

Reason

Such assistance shall be available not only to particular persons with disabilities and their families but also to all the persons with disabilities and their families. However, it is appropriate to add that immediate steps shall be undertaken for persons with severe and multiple disabilities and their families.

Original Text of the Draft

(d) Ensure access by persons with disabilities to governmental housing programmes, including through earmarking percentages of governmental housing for persons with disabilities.

JDF’s proposed Amendment

Add “financial assistance for housing rent and renovation” to the listing.

Reason

It is because many persons with disabilities suffer in their daily life from unavailability of appropriate housing since they cannot afford to pay more than a certain amount of housing rent, as well as from inappropriate housing structure.

Original Text of the Draft

(e) Ensure access by persons with disabilities to tax exemptions and tax benefits in respect of their income.

JDF's proposed Amendment

Delete the original clause and replace it with the following sentence.

Ensure access by persons with disabilities who need support, regardless of their causes and kinds of disabilities, to the improvement of the social security system which provides minimum living expenses.

Reason

Many countries make distinction by causes and kinds of disabilities when they provide social security. For example, in some countries, their social security system covers only persons with disabilities which were incurred in the line of war, labor and official duty. In other countries, while their social security system covers persons with disabilities caused by general decease or accident, the causes of disability makes a large difference; or while persons with a visual disability are easily covered by their social security system, those with mental disabilities and others are disadvantaged.

<Article 25>Monitoring

JDF's Comment (1)

We are aware that reform of treaty bodies is under discussion at the international level and recognize, to some extent, streamlining of monitoring is necessary in order to achieve purposes of various international conventions. However, resources should be reinforced and political will should be expanded in order to achieve the goal of conventions. In any event, streamlining of treaty bodies should not lead to lack of monitoring mechanism of this Convention. Neither should it result in the lack of effective human rights treaty bodies. In view of promoting both effectiveness of human rights treaty bodies and its streamlining (efficiency), international monitoring should be provided for this Convention.

JDF's Comment 2

The essential problem is the lack of political will to comply with treaties and to strengthen their support system. The most practical and effective means of a structural reform is to increase budget and raise political will. Giving efficiency the priority is essentially incompatible with the effective monitoring, of which core concept is the protection of individual rights.

JDF's Comment 3

It is also important to decide who implements the monitoring. A monitoring Committee will not work if it lacks diverse points of view and participation of persons with disabilities. Promoting efficiency and uniformity may frustrate recourse for remedy. It is necessary to operate this Convention together with other human rights

treaties and to enhance participation of people with disabilities by establishing a special Committee under implementation clauses of this Convention as well as by providing necessary resources.

Discussions of international monitoring should not be delayed by discussion on the reform of treaty bodies. The new Convention should provide periodical governmental report system as existing convention do. In addition, this new Convention should involve stakeholders as a matter of priority.

JDF's Comment 4

All international human rights treaties provide periodical government report system. The State Parties to such instruments are obliged to submit reports. However, in reality, many States do not meet the deadline. Committees are not able to manage evaluation of reports. Several reasons have been cited and they include the lack of human resources in Office for High Commissioner for Human Rights or inability of hiring sufficient number of professionals because of under-financed United Nations budget. Most important reason is that the independence of committees has been questioned. This has occurred since the appointment process of committee members has not transparent and also it is not certain whether all the committee members are independent from governments.

JDF's Comment 5

In view of the point that providing a convention committee is the most desirable for effective implementation of this Convention, under implementation clauses of this Convention, several points shall be proposed.

1. It shall be expressly provided in this Convention that NGOs and related organizations shall be involved in evaluation process of State reports.
2. With regard to nomination of committee members who are involved with the State reports evaluation, the selection of the members, who are people with disabilities, shall be essential.
3. Support system to committee members is necessary. It is also important that the committee shall not be separated from other human rights committees, whether or not it is to be under Office for High Commissioner for Human Rights. Financial resource to promote this system is required.
4. The methodology of information dissemination about this Convention shall be expressly provided in this Convention.
5. International commitment is important in actual and technical support and establishing financial support if it is necessary after report evaluation (See International Cooperation Clause).

JDF's Comment 6

It is necessary to provide an individual communication procedure and inquiry.

Optional Protocol of Convention on the Elimination of All Forms of Discrimination provides such an individual communication procedure and inquiry system. When a State ratifies this Protocol, it allows either individuals or groups of individuals to complain to the Committee to seek remedy and the Committee makes a recommendation. In addition, under the inquiry system provided in this Protocol, if the Committee receives reliable information indicating grave or systematic violation of rights, the Committee may designate State Parties to conduct an inquiry and to report urgently to the Committee.

Original Text

National implementation framework

1. States Parties shall designate a focal point within government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a coordination mechanism to facilitate related action in different sectors and at different levels.

JDF's Comment 1

The focal point on disability and this Convention should be clearly identified. Views of people with disabilities should be reflected in this responsible agency.

Original Text of the Draft

2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework to promote, protect and monitor implementation of the rights recognized in the present Convention.

JDF's comment 1

National monitoring institution, of which independence from administrative branch and participation by stakeholders are ensured, shall monitor the implementation of the said rights. It shall also clarify its system and role in order to reflect the views of people with disabilities. First, as to the domestic monitoring institution, independence from administrative branch and participation of concerned parties (for example, active participation of NGOs of persons with disabilities in the composition of the institution) shall be secured, based upon Paris Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (1993).

Second, in order to allow the institution effective mandate and role, establishment act for such a monitoring committee, where its mandate to provide recourse for violation of rights is clearly set forth, shall be prepared.

JDF's Comment 2

The following points are important with regard to the role of national monitoring institution:

- 1. The institution monitors national legislation, policy and planning.**
- 2. The institution undertakes and promotes research as to the effect on national legislation.**
- 3. The institution accepts complaints against non-compliance with the Convention.**
- 4. The institution, when it accepts complaints against non-compliance with the Convention, undertakes discretionary investigation. When discretionary investigation does not solve the situation and when further investigation is necessary, it undertakes mandatory investigation.**
- 5. The institution undertakes mediation in order to let the complainants recover from the damage, when it is decided that violation of the Convention has taken place.**
- 6. When the mediation turns to be unsuccessful and discrimination or violation of the rights is recognized, the institution shall make provisional measure, warning, publication, recommendation or request, depending on the significance and emergency of the matter.**
- 7. The institution shall investigate and monitor the implementation situation of the Convention, periodically submit the report of such investigation, and submit to Cabinet Office proposals of amendment and enactment of related acts.**
- 8. The institution shall prepare the reports which the State is required to submit to international monitoring committee pursuant to the implementation of the Convention when commissioned by the government.**

<INTERNATIONAL COOPERATION >(ANNEX II)

JDF's Comment 1

Inclusion of international cooperation in this Convention is important. Without it, meaningful discussions about the needs for international cooperation in disability field do not occur.

JDF's Comment 2

It is necessary to take into account international cooperation provision under International Covenant on Economic and Social Rights Article 2(1) and Convention on the Rights of the Child Article 4, and as to the monitoring, Convention on the Rights of the Child Article 45.

Related Provision: International Covenant for Economic and Social Rights Article 2

- 1. Each State Party to the present Covenant undertakes to take steps, individually and**

through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Related Provision: Convention on the Rights of the Child Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

JDF's Comment 3

As to the international cooperation, implementation by ILO of Convention Concerning the Prohibition and Immediate Action for The Elimination of the Worst Forms of Child Labor (ILO Convention No. 182. Such worst forms of child labor include sexual slavery and compulsory recruitment for use in armed conflict) and (ILO Convention No. 138) shall be referred. State Parties are to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency (No. 182 Convention). In order to prohibit and eliminate such worst forms of child labor within "five years," especially in developing countries, technical cooperation has been in effect financed by governments of developed countries and by bodies of employers and workers. (Accordingly, methods adopted by ILO may be referred in terms of international cooperation in eliminating discrimination against persons with disabilities in developing countries.)

JDF's Comment 4

Current official development assistance presents a problem that the projects are separated to those for only persons with disabilities and those for general population, of which latter lacks consideration to persons with disabilities. Not only international cooperation projects solely for persons with disabilities, but also projects for general population should benefit persons with disabilities. Therefore, establishment of a guideline for disability inclusive development cooperation and is compliance by donor and recipient countries should be the principle of international cooperation.