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Draft comprehensive and integral international Convention on the protection and promotion of the rights and dignity of persons with disabilities

The ILO

- welcomes the draft Convention and congratulates the Working Group for its excellent work.
- welcomes the underscoring of consultation with and involvement of people with disabilities and hopes that this will take place as part of broader process of social dialogue, involving the social partners (employers' and workers' organizations).
- agrees that the Convention should apply to people with all types of disability; welcomes the recognition of the need for equal attention to be paid to women as well as men with disabilities and to others facing multiple discrimination, as well as disabled persons living in poverty and those with HIV/AIDS; is of the view that the needs of people with disabilities living in rural and remote areas should also be specifically addressed throughout the Convention.
- welcomes the emphasis on inclusion of people with disabilities in general services, yet is concerned that, particularly in provisions dealing with vocational training and work, the need of some persons with disabilities for alternative forms of service has been overlooked in the draft text.
- welcoming the manner in which the draft builds on existing instruments, calls for an emphasis in the text that the provisions of the Convention should not conflict with existing provisions either of national law or international instruments and should be regarded as minima, which States party may go beyond in national law.

- draws attention to the particular relevance of ILO Conventions in further deliberations on the draft text.¹

Draft Article 1 Purpose

The ILO welcomes the human rights emphasis in the draft text and recognizes the importance of international cooperation as a means to promote the full enjoyment of the human rights and fundamental freedoms of persons with disabilities, particularly in developing countries where an estimated 80 per cent of disabled people live.

Draft Article 2 General Principles

The ILO welcomes the underlying principles of dignity, individual autonomy, non-discrimination, inclusion, respect for difference and equality of opportunity underlying the draft text.

Draft Article 3 Definitions

Accessibility

Accessibility is understood to refer to the build environment and also, to signage in use, printed materials, information conveyed by sound, electronic information and communications.

Disability

The ILO

- agrees that, if disability is to be defined in the Convention, the definition should reflect the social dimensions of disability.
- while recognizing the diversity of definitions of disability used in national legislation and policy throughout the world, and the achievement of the World Health Organization in promoting a standardized classification for the purposes of diagnosis, is concerned that the ambit of the convention may be limited if disability is defined specifically.

¹ Primarily the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); Human Resources Development Convention, 1975 (No. 142); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); Social Security (Minimum Standards) Convention, 1952 (No. 102); Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); and related ILO instruments, such as the ILO Code of Practice on Managing Disability at the Workplace.

- suggests that, rather than including a definition of disability, the Convention should include a definition of a disabled person, as is the practice in ILO international labour standards concerning persons with disabilities. The ILO Code of Practice on Managing Disability in the Workplace agreed by a Committee of Experts comprising 27 government, employer and trade union representatives from developing and industrialized countries defines a disabled person as: “...**an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical, sensory, intellectual or mental impairment**”. This definition has proven to be universally acceptable, in the context of vocational rehabilitation, vocational training and employment, while allowing for variation in national interpretations of disability. While dealing specifically with employment, the ILO suggests this definition could form the basis of a more generally applicable definition for the purposes of the proposed UN Convention. The use of such a definition in the Convention would offer scope to national authorities to define disability and disabled persons according to the needs of national policy and legislation and in conformity with national practice and understanding.

Discrimination on the ground of disability

The ILO suggests the following definition:

Any distinction, exclusion or preference based on disability which nullifies or impairs equality of opportunity or treatment. General standards that establish distinctions based on actual or perceived disability constitute discrimination in law. The specific attitude of a public authority or a private individual that treats unequally persons with disabilities constitutes discrimination in practice. Indirect discrimination refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with disabilities. Distinction or preferences that result from application of special measures of protection and assistance taken to meet the particular requirements of disabled persons are not considered discriminatory.

Reasonable Accommodation

The ILO suggests the following definition:

Adaptations and modifications required to facilitate the equal enjoyment by persons with disabilities of all human rights and fundamental freedoms, without imposing a disproportionate burden.

Draft Article 4 General Obligations

- Welcoming the call for States Parties to undertake to mainstream disability issues into all economic and social development policies and programmes, the ILO underlines that such mainstreaming needs to be based on effective practice, so that people with disabilities can benefit rather than becoming more disadvantaged than before.
- Welcomes the emphasis on consultation with and active involvement of people with disabilities in the development and implementation of policies and legislation, and strongly recommends that the social partners and other stakeholders be also involved and be specifically mentioned in article 4.2.
- Referring to footnote 19, the ILO would welcome an emphasis on progressive realization of economic, social and cultural rights, since some countries may face difficulties in immediately implementing some of the draft Convention provisions, given the significant development effort which will be required in order to make these rights a reality.

Draft Article 6 Statistics and Data Collection

- The ILO suggests that the existing draft text of this article should be revised in the following ways:
 - o The introduction should call on States Parties to ensure, to the extent possible, that national population censuses, labour force and other household surveys, household panel surveys and other data collection exercises at the national level should gather information on people with disabilities, in the same way as on the general population. The introduction should also include provision for the dissemination of the statistics.

- Sections (a), (b) and (f) should be amalgamated, as they are closely interrelated. Respect for anonymity and confidentiality should refer not only to data collection but also to dissemination.
- The second phrase of section (a) should be deleted, since participation in censuses and related data collection exercises is compulsory for the population falling within the scope of the exercise.
- Section (d) should refer to internationally comparable categories
- Incorporating the above suggestions, the draft article could be amended to read as follows:
 - In order to formulate and implement appropriate policies to protect and promote the rights of persons with disabilities, States Parties encourage the collection, ~~codification~~ classification, dissemination and analysis of statistics and information on disabilities and on the effective enjoyment of human rights by persons with disabilities. They should ensure that, to the extent possible, national population censuses, labour force and other household surveys, household panel surveys and other national data collection exercises gather information on people with disabilities in the same way as on the general population. The process of collecting, maintaining and disseminating information on persons with disabilities should:
 - a. respect the right to privacy, the dignity and the rights of persons with disabilities and adhere to established ethics regarding respect for anonymity and confidentiality, by for example, releasing the information only in a statistical format that does not permit the identification of individuals and keeping information secure to prevent unauthorized access or misuse of individual data.
 - b. ensure that the design and implementation of data collection is done in partnership with persons with disabilities, their representative organizations and all other relevant stakeholders;
 - c. be disaggregated according to the purpose of the collection of information and should include age, sex and type of disability, using internationally comparable categories;

- d. include detailed information on the access of persons with disabilities to public services, rehabilitation programs, education, housing and employment.

Draft Article 7

Equality and Non-Discrimination

- The ILO welcomes the emphasis in this draft article on equal opportunity, equal treatment and non-discrimination, and the provision for reasonable accommodation and affirmative action in the form of special measures.
- Suggests that guidance on reasonable accommodation and affirmative action be provided either in a form of an annex to the Convention or in guidelines to be drawn up to accompany the Convention.

Draft Article 9

Equal recognition as a person before the law

- The ILO welcomes the draft Text's call for assistance where required to people with disabilities to exercise their legal capacity, in proportion to the degree of assistance required without interfering with the person's legal capacity, rights and freedoms.
- It suggests that the Convention should specify that such assistance in accessing justice should include access to an effective dispute prevention and settlement system, and to legal aid.

Draft Article 13

Freedom of expression and opinion, and access to information

- The ILO welcomes emphasis in the draft text on the importance of accessible information, since rights can only be properly exercised and protected if people are aware of their existence.

Draft Article 17 Education

- The ILO would welcome a focused coverage of vocational training in this article and suggests that the heading be amended to 'Education and Vocational Training'

- The current provision concerning equal access to general education and vocational training services and programmes is welcome. One amendment is suggested, however:
 - o 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~~. develop equal opportunity strategies, measures and programmes to promote and implement training for persons with disabilities, with the objective of reducing inequalities.
- Additional provisions are required to ensure that men and women with all types of disabilities, whether congenital or acquired later in life, and particularly those living in remote communities and rural areas, can also benefit from skills development. The ILO suggests the addition of the following provisions:
 - o States Parties shall ensure that, where the general vocational training system does not adequately meet the needs of persons with disabilities, alternative forms of vocational training, including workplace learning and other forms of non-formal training, shall be made available that provide opportunities for the development, recognition and certification of skills relevant to the labour market and the national qualifications framework.
 - o States Parties shall ensure that training instructors are adequately qualified to cater to people with disabilities, whether in general or alternative vocational training programmes.
 - o States Parties shall ensure provision of vocational, labour market and career information and guidance and employment counselling to persons with disabilities, supplemented by information on rights and obligations under labour-related law and other forms of labour regulation.
 - o States Parties shall ensure that vocational rehabilitation and training/retraining opportunities are open to people who acquire a disability in the course of their working lives.

Draft Article 22 Right to Work

- The ILO welcomes the recognition of the right of persons with disabilities to gain a living by work which they freely choose or

- accept, based the principles of equal opportunity and equal treatment and the provision for protection of this right through legislation, including the right of disabled persons to join trade unions.
- Welcoming the provision to encourage employers to hire persons with disabilities, the ILO proposes that for the Convention should call for the provision of strong incentives and advisory services to employers who recruit people with disabilities and retain workers who acquire a disability while in employment. The following additional provisions are suggested:
 - o States Parties shall make available technical supports, wage subsidies, and other incentives to promote or facilitate employment opportunities and job retention for persons with disabilities.
 - o States Parties should facilitate the recruitment, retention and return to work of people with disabilities by assisting employers to identify high quality placement, technical advisory, rehabilitation and other support services, both public and private.
 - The ILO welcomes the specific mention of reasonable accommodation here and would support the idea of having more detail, while recognizing that reasonable accommodation needs to be specifically defined at national level. The following provisions are suggested:
 - o To facilitate the recruitment of persons with disabilities and the retention of workers who acquire a disability, States Parties should encourage employers to take steps to improve the accessibility of the work premises and to make adaptations to the workstations, tools and equipment, job description and work schedules, if required, unless these involve disproportionate burden.
 - o States Parties should set out criteria determining what is reasonable for the purposes of adjustment or accommodation in accordance with national law and practice.
 - While welcoming the emphasis on open employment in the draft Convention, the ILO is concerned at the lack of provision for alternative forms of work for people who may be unable to work in the open labour market. The ILO calls for the Convention to provide for alternative forms of work for persons with disabilities who are unable to do so, in conditions which ensure that the work carried out

- is useful and remunerative, providing opportunities for vocational advancement and where possible, transfer to open employment.
- In light of the point made by some members of the Working Group that the broad measures in which this draft article is expressed are inconsistent with the detailed provisions of other articles of the draft Convention (footnote 88), the ILO suggests that guidelines might be drawn up to accompany the UN Convention, providing greater explanatory detail.
 - The ILO welcomes the Working Group suggestion that the Ad Hoc Committee may wish to consider the potential role of the ILO in implementing and monitoring the right to work under this Convention (footnote 86).

Draft Article 23

Social Security and an Adequate Standard of Living

- The ILO welcomes the provision for income replacement and social security benefits for persons with disabilities.
- In regard to paragraph 1(a), “ensure access by persons with disabilities to necessary health care and rehabilitation benefits and services, devices and other assistance for disability-related needs”.
- The ILO emphasizes the importance of ensuring that social security provisions do not constitute a disincentive to vocational rehabilitation, vocational training or employment (‘Benefits trap’) for persons with disabilities. The following wording is suggested as an addition to the existing text:
 - o States Parties shall undertake periodic reviews of their systems of social security, including employee compensation, to ensure that adequate support is provided and that no undue obstacles are inadvertently placed in the way of persons with disabilities in entering employment, retaining their job or occupation, or returning to the open labour market and paid employment.
- The ILO welcomes the reference to ensuring access of persons with disabilities, particularly women and girls and the aged with disabilities to both social security programmes and poverty reduction strategies, since, particularly in developing countries, many people with disabilities live in poverty.

Draft Article 25 Monitoring

- Regarding monitoring of implementation, the ILO would welcome provisions in the Convention for mechanisms which facilitate the involvement of all relevant stakeholders - governments, the social partners, representative organizations of persons with disabilities, specialized United Nations agencies and other UN organs, in their respective areas of competence.
- Regarding ILO involvement, the following wording is suggested:
 - o For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (*details to be added by the Ad Hoc Committee*).
 - o The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organization. The Committee shall consider in its deliberations such comments and materials as the Office may provide.