

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS



REFERENCES TO EXISTING HUMAN RIGHTS INSTRUMENTS*

Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities ¹

The States Parties to this Convention,

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

ICESCR and ICCPR, Preamble, first and second paras: Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

CERD, Preamble, first para: Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

* **Legenda:** *references to existing human rights instruments in italics.*

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

CEDAW, Preamble, first para: *Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,*

CAT, Preamble, first and second paras: *Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that those rights derive from the inherent dignity of the human person,*

CRC, Preamble, first para: *Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,*

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

CERD, Preamble, second para: *Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,*

CEDAW, Preamble second para: *Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,*

CRC, Preamble, second para: *Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,*

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

d) Reaffirming the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,²

e) Recognising the importance of the principles and policy guidelines contained in the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities in influencing the promotion, formulation, and evaluation of the policies, plans, programs and actions at the national, regional and international levels to further equalise opportunities for persons with disabilities,

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

f) Recognising that discrimination against any person on the basis of disability is a violation of the inherent dignity of the human person,

g) Recognising the diversity of persons with disabilities,

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

***CEDAW, Preamble sixth para:** Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,*

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

***CEDAW, Preamble sixth para:** Affirming that the strengthening of (...) mutual co-operation among all States irrespective of their social and economic systems (...) will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,*

***CRC, Preamble, last para:** Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,*

On international co-operation, see also references under footnote 7.

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

***CEDAW, Preamble sixth para:** Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,*

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

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

m) Concerned about the difficult conditions faced by persons with severe or multiple disabilities and of persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of

³ Some members of the Working Group considered that there should not be a reference to international cooperation in the Preamble, or that it should be subject to final agreement on whether the issue of international cooperation should be addressed in the Convention, and if so where it should be included. A fuller summary of the discussion on this issue is appended to the report of the Working Group in Annex 2.

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

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,⁵

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

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

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

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

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

Hereby agree as follows:

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

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

Draft Article 1 PURPOSE

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

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

ICESCR, 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.

ICESCR, Article 23: The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

CRC, Article 4, second sentence: 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.

See also

CESCR General Comment no. 5 (Persons with disabilities), para. 1: The methods to be used by States parties in seeking to implement their obligations under the Covenant towards persons with disabilities are essentially the same as those available in relation to other obligations (see General Comment No. 1 (Third session, 1989)). They include the need to ascertain, through regular monitoring, the nature and scope of the problems existing within the State; the need to adopt appropriately tailored policies and programmes to respond to the requirements thus identified; the need to legislate where necessary and to eliminate any existing discriminatory legislation; and the need to make appropriate budgetary provisions or, where necessary, seek international cooperation and assistance. In the latter respect, international cooperation in accordance with articles 22 and 23 of the Covenant is likely to be a particularly important element in enabling some developing countries to fulfil their obligations under the Covenant.

CESCR General Comment no. 3 (The nature of States parties' obligations), paras. 13 and 14:

13. A final element of article 2(1), to which attention must be drawn, is that the undertaking given by all States parties is "to take steps, individually and through international assistance and cooperation, especially economic and technical ...". The Committee notes that the phrase "to the maximum of its available resources" was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance. Moreover, the essential role of such cooperation in facilitating the full realization of the relevant rights is further underlined by the specific provisions contained in articles 11, 15, 22 and 23. With respect to article 22 the Committee has already drawn attention, in general comment No. 2 (1990), to some of the opportunities and responsibilities that exist in relation to international cooperation. Article 23 also specifically identifies "the furnishing of technical assistance" as well as other activities, as being among the means of "international action for the achievement of the rights recognized ...".

14. The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. The Committee notes in particular the importance of the Declaration on the Right to Development

Draft Article 2 GENERAL PRINCIPLES

The fundamental principles of this Convention shall be:

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

adopted by the General Assembly in its resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all of the principles recognized therein. It emphasizes that, in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries. In this respect, the Committee also recalls the terms of its general comment No. 2 (1990).

CRC, General Comment no. 5 (General measures of implementation of the Convention on the Rights of the Child), paras. 7 and 8:

7. The second sentence of article 4 reflects a realistic acceptance that lack of resources - financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of "progressive realization" of such rights: States need to be able to demonstrate that they have implemented "to the maximum extent of their available resources" and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation (see paragraph 60 below).

8. The sentence is similar to the wording used in the International Covenant on Economic, Social and Cultural Rights and the Committee entirely concurs with the Committee on Economic, Social and Cultural Rights in asserting that "even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances ...". Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.

See also CESCR General Comment no. 2 (International technical assistance measures).

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

Draft Article 3 DEFINITIONS⁹

“Accessibility”¹⁰

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

“Disability”¹²

CESCR General Comment no. 5 (Persons with disabilities), para. 3: *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".

“Persons with disability”¹³

CESCR General Comment no. 5 (Persons with disabilities), para. 4: *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.*

“Discrimination on the ground of disability”¹⁴

CESCR General Comment no. 5 (Persons with disabilities), para. 15: *...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.*

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

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

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

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

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 is included, it should be one that reflects the social model of disability, rather than the medical model.

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

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

“Reasonable accommodation”¹⁶

***Cfr. CESCR General Comment no. 5 (Persons with disabilities), para. 15:** ...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.*

“Universal Design” and “Inclusive design”.¹⁷

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

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

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

Draft Article 4
GENERAL OBLIGATIONS^{18, 19}

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

ICCPR, Article 2(3):

Each State Party to the present Covenant 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 persons acting in an official capacity;*
- (b) To ensure that any person claiming such a remedy shall have his 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 to develop the possibilities of judicial remedy;*
- (c) To ensure that the competent authorities shall enforce such remedies when granted.*

CERD, Article 6: *States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.*

CAT, Article 14:

- 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.*
- 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.*

See also CERD General Recommendation XXVI (Article 6 of the Convention), para. 2: *...[T]he right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, which is embodied in article 6 of the Convention, is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate.*

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

ICESCR, 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.*

CRC, Article 4, second sentence: *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.*

See also

CESCR General Comment no. 5 (Persons with disabilities), para. 9: *The obligation of States parties to the*

1. States Parties undertake to ensure the full realisation of all human rights and fundamental freedoms for all individuals within their jurisdiction²⁰ without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

ICESCR, 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.*

Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.

CRC, General Comment no. 5 (General measures of implementation of the Convention on the Rights of the Child), para. 7: *The second sentence of article 4 reflects a realistic acceptance that lack of resources - financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of “progressive realization” of such rights: States need to be able to demonstrate that they have implemented “to the maximum extent of their available resources” and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation.*

On the concept of progressive realisation of economic, social and cultural rights, see CESCR General Comment no. 3 (The nature of States parties’ obligations).

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

ICCPR, Article 2(1): *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...*

CERD, Article 1(2): *2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.*

CRC, Article 2(1): *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction ...*

On CERD Article 1(2), see also CERD General Recommendation no. XI (Non-citizens), paras. 2-3:

2. *The Committee has noted that article 1, paragraph 2, has on occasion been interpreted as absolving States parties from any obligation to report on matters relating to legislation on foreigners. The Committee therefore affirms that States parties are under an obligation to report fully upon legislation on foreigners and its implementation.*

3. *The Committee further affirms that article 1, paragraph 2, must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.*

ICCPR, Article 2(1): *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.*

CEDAW, Article 3: *States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*

CRC, Article 2(1): *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

(a) to adopt legislative, administrative and other measures to give effect to this Convention, and to amend, repeal or nullify any laws and regulations and to discourage customs or practices that are inconsistent with this convention;

ICCPR, Article 2(2): *Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

CERD, Article 2(1)(c): *Each State Party shall take 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;*

CEDAW, Article 2, (b), (f) and (g): *States parties (...) undertake: ... (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; ... (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.*

CAT, Article 2(1): *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*

CRC, Article 4, first sentence: *States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.*

(b) to embody the rights of equality and non-discrimination on the ground of disability in their national constitutions or other appropriate legislation, if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realisation of these rights;

CEDAW, Article 2(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;*

CRC, Article 2(2): *States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

See also Article 5 CERD (infra, sub draft Article 7)

(c) to mainstream disability issues into all economic and social development policies and programmes;

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

CERD, Article 2(1)(a): Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

CEDAW, Article 2, (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 on the ground of disability by any person, organisation or private enterprise;

CERD, Article 2(1)(d): Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

CEDAW, Article 2, (e): To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) to promote²¹ the development, availability and use of universally designed goods, services, equipment and facilities. Such goods, services, equipment and facilities should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities.²²

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

CESCR General Comment no. 5 (Persons with disabilities), para. 14: [P]olicy-making and programme implementation in this area should be undertaken on the basis of close consultation with, and involvement of, representative groups of the persons concerned. For this reason, the Standard Rules recommend that everything possible be done to facilitate the establishment of national coordinating committees, or similar bodies, to serve as a national focal point on disability matters. In doing so, Governments should take account of the 1990 Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies.

CRC, General Comment no. 5 (General measures of implementation of the Convention on the Rights of the Child), para. 12: The development of a children's rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of the following articles in the Convention identified by the Committee as general principles:

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

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

(...) Article 12: *the child's right to express his or her views freely in "all matters affecting the child", those views being given due weight. This principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States to implement the Convention. Opening government decision-making processes to children is a positive challenge which the Committee finds States are increasingly responding to. Given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament. If consultation is to be meaningful, documents as well as processes need to be made accessible. But appearing to "listen" to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights.*

CRC, General Comment no. 5 (General measures of implementation of the Convention on the Rights of the Child), para. 56: *Implementation is an obligation for States parties, but needs to engage all sectors of society, including children themselves. The Committee recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non State services and organizations. The Committee concurs, for example, with general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, paragraph 42, of which states: "While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities."*

Draft Article 5
PROMOTION OF POSITIVE ATTITUDES TO PERSONS WITH DISABILITIES

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

(a) Raise awareness throughout society regarding disability and persons with disabilities;

***CRC, Article 42:** States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*

***Cfr. CERD, Article 7:** States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.*

***Cfr. CEDAW, Article 3:** States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*

(b) Combat stereotypes and prejudices about persons with disabilities;

***Cfr. CERD, Article 7:** States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.*

***Cfr. CEDAW, Article 5(a):** 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 the superiority of either of the sexes or on stereotyped roles for men and women;*

***See also CEDAW, Article 10(c):** States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: ... (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;*

(c) Promote an image of persons with disabilities as capable and contributing members of society sharing the same rights and freedoms as all others and in a manner consistent with the overall purpose of this Convention.

2. These measures shall include, among others:

(a) initiating and maintaining an effective public awareness campaign designed to nurture receptiveness to the rights of persons with disabilities;

CRC, Article 42: *States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*

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

(c) encouraging all organs of the media to project an image of persons with disabilities consistent with the purpose of this Convention;

(d) working in partnership with persons with disabilities and their representative organisations in all measures taken to give effect to the obligations contained in this article.

Draft Article 6
STATISTICS AND DATA COLLECTION²³

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

CRC, General Comment no. 5 (...), para. 48: Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation. The Committee reminds States parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies. The reporting guidelines for periodic reports call for detailed disaggregated statistical and other information covering all areas of the Convention. It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children. Evaluation requires the development of indicators related to all rights guaranteed by the Convention.

On statistics and data collection see:

CERD General Recommendation no. XXIV (Information on the demographic composition of the population)

CEDAW General Recommendation no. 9 (Statistical data concerning the situation of women)

- (a) respect the right to privacy, the dignity and the rights of persons with disabilities, and the information collected from persons with disabilities should be on a voluntary basis;
- (b) be kept only in a statistical format without identifying individuals and should be kept secure to prevent unauthorised access or misuse of information;
- (c) ensure that the design and implementation of data collection is done in partnership with persons with disabilities, their representative organisations and all other relevant stakeholders;

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

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

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

(d) be disaggregated according to the purpose of the collection of information and should include age, sex and type of disability;

CRC, General Comment no. 5 (...), para. 48: Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation...

(e) include detailed information on their access to public services, rehabilitation programs, education, housing and employment;

(f) adhere to established ethics regarding respect for anonymity and confidentiality in the collection of statistics and data.

Draft Article 7
EQUALITY AND NON-DISCRIMINATION

1. States Parties recognise that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. States Parties shall prohibit any discrimination on the basis of disability, and guarantee to all persons with disabilities equal and effective protection against discrimination. States Parties shall also prohibit any discrimination and guarantee to all persons with disabilities equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, source or type of disability, age, or any other status.

ICCPR, Article 26: 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.

ICESCR, Article 2(2): The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Article 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.

CERD, Article 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (omissis)

CEDAW, Article 2: 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: (omissis)

CEDAW, Article 3: States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

CRC, Article 2(1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2.

(a) Discrimination shall mean any distinction, exclusion or restriction which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by persons with disabilities, on an equal footing, of all human rights and fundamental freedoms.

CESCR General Comment no. 5 (Persons with disabilities), para. 15: 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.

See also CERD, Article I(1): 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.

See also CEDAW, Article I: 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.

(b) Discrimination shall include all forms of discrimination, including direct, indirect²⁴ and systemic, and shall also include discrimination based on an actual or perceived²⁵ disability.

3. Discrimination does not include a provision, criterion or practice that is objectively and demonstrably justified by the State Party by a legitimate aim and the means of achieving that aim are reasonable and necessary.²⁶

4. In order to secure the right to equality for persons with disabilities, States Parties undertake to take all appropriate steps, including by legislation, to provide reasonable accommodation,²⁷ defined as necessary and

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

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

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

²⁷ The Ad Hoc Committee may wish to consider the following points when considering the term 'reasonable accommodation': The Working Group considered that there was a need for a concept such as 'reasonable accommodation' in the Convention in order to secure compliance with the principle of non-discrimination.

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

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

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

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.

Cfr. CESCR General Comment no. 5 (Persons with disabilities), para. 15: *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*

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

CERD, Article 1(4): *Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.*

CEDAW, Article 4(1): *Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women 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; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*

CESCR General Comment no. 5 (Persons with disabilities), para. 18: *Because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory in the sense of article 2 (2) of the International Covenant on Economic, Social and Cultural Rights as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective.*

See also CEDAW General Recommendation no. 25 (Temporary special measures)

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

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

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

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

See CERD, Article 1(4) and CEDAW, Article 4(1).

Draft Article 8
RIGHT TO LIFE³⁰

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

ICCPR, Article 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

CRC, Article 6(1): States Parties recognize that every child has the inherent right to life.

See also ICCPR, General Comment no. 6, para. 5: [T]he 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.

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

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

Article 38(4): In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Draft Article 9
EQUAL RECOGNITION AS A PERSON BEFORE THE LAW

States Parties shall:

- (a) recognise persons with disabilities as individuals with rights before the law equal to all other persons;

ICCPR, Article 16: Everyone shall have the right to recognition everywhere as a person before the law.

ICCPR, Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

CERD, Article 5(a): In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice (...)

CEDAW, Article 15 (1): States Parties shall accord to women equality with men before the law.

- (b) accept that persons with disabilities have full legal capacity on an equal basis as others,³² including in financial matters;

CEDAW, Article 15 (2): States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

- (c) ensure that where assistance is necessary to exercise that legal capacity:

- (i) the assistance is proportional to the degree of assistance required by the person concerned and tailored to their circumstances, and does not interfere with the legal capacity, rights and freedoms of the person;

Cfr. CRC, Article 12:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

- (ii) relevant decisions are taken only in accordance with a procedure established by law and with the application of relevant legal safeguards;³³

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

³³ Paragraph (c) allows for the provision of assistance to a disabled person to exercise their legal capacity, and is based on the assumption of full legal capacity, even if the person needs assistance in exercising that capacity. It is intended that subparagraph (c)(ii) apply only in exceptional circumstances, for which legal safeguards must be

(d) ensure that persons with disabilities who experience difficulty in asserting their rights, in understanding information, and in communicating, have access to assistance to understand information presented to them and to express their decisions, choices and preferences, as well as to enter into binding agreements or contracts, to sign documents, and act as witnesses;³⁴

Cfr. CRC, Article 40(2)(b)(vi): Every child alleged as or accused of having infringed the penal law has at least the following guarantees: ... (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(e) take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs, and to have equal access to bank loans, mortgage and other forms of financial credit;

CERD, Article 5(d): States Parties undertake (...) to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (v) The right to own property alone as well as in association with others; (vi) The right to inherit;

CEDAW, Article 13(b): States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (b) The right to bank loans, mortgages and other forms of financial credit;

CEDAW, Article 15 (2): ...In particular, [States Parties] shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

(f) ensure that persons with disabilities are not arbitrarily deprived of their property.

CEDAW, Article 15 (2): ...In particular, [States Parties] shall give women equal rights (...) to administer property...

Cfr. UDHR, Article 17:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

provided. The Ad Hoc Committee may wish to consider whether the paragraph is sufficiently clear, and also how best to protect persons with disabilities who cannot exercise their legal capacity. A separate paragraph may be required for this purpose. Some members of the Working Group proposed that where others are exercising legal capacity for a person with disabilities, those decisions should not interfere with the rights and freedoms of the person concerned.

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

Draft Article 10
LIBERTY AND SECURITY OF THE PERSON

1. States Parties shall ensure that persons with disabilities:

(a) enjoy the right to liberty and security of the person, without discrimination based on disability;

ICCPR, Article 9(1), first sentence: Everyone has the right to liberty and security of person.

CERD, Article 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

Human Rights Committee, General Comment no. 8, para. 1: The Committee points out that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. It is true that some of the provisions of article 9 ... are only applicable to persons against whom criminal charges are brought. But the rest, and in particular the important ... right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention. Furthermore, States parties have ... also to ensure that an effective remedy is provided in other cases in which an individual claims to be deprived of his liberty in violation of the Covenant.

(b) are not deprived of their liberty³⁵ unlawfully³⁶ or arbitrarily, and that any deprivation of liberty shall be in conformity with the law, and in no case shall be based on disability.³⁷

ICCPR, Article 9(1), second and third sentences: 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.

Cfr. CRC, Article 37(b): States Parties shall ensure that: ... (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty, they are:

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

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

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

(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;

ICCPR, Article 10(1): *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

CRC, Article 37(c): *States Parties shall ensure that: ... (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

CRC, Article 40(1): *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

(b) provided with adequate information in accessible formats as to the reasons for their deprivation of liberty;

ICCPR, Article 9(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.*

ICCPR, Article 14(3), (a) and (f): *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; ... (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*

CRC, Article 40(b), (ii) and (vi): *... States Parties shall, in particular, ensure that: ... (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: ... (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians... (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;*

(c) provided with prompt access to legal and other appropriate assistance to:

ICCPR, Article 14(3), (b), (d) and (f): *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; ... (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; ... (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*

CRC, Article 37(d): *States Parties shall ensure that: ... (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance...*

CRC, Article 40(b), (ii) and (vi): *... States Parties shall, in particular, ensure that: ... (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: ... (ii) To be*

informed promptly and directly of the charges against him or her; and, if appropriate, through his or her parents or legal guardians... (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

- (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);

CRC, Article 40(b)(iii): ... States Parties shall, in particular, ensure that: ... (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: ... (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

- (ii) seek regular review of the deprivation of their liberty;

ICCPR, Article 14(5): Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

CRC, Article 37(d): States Parties shall ensure that: ... (d) Every child deprived of his or her liberty shall have (...) the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

CRC, Article 40(b)(v): ... States Parties shall, in particular, ensure that: ... (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: ... (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

- (d) provided with compensation in the case of unlawful deprivation of liberty, or deprivation of liberty based on disability, contrary to this Convention.

ICCPR, Article 9(5): Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

ICCPR, Article 14(6): When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

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

1. States Parties shall take all effective legislative, administrative, judicial, educational or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

ICCPR, Article 7, first sentence: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

CAT, Article 2(1): Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

CAT, Article 4(1): Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

CAT, Article 16(1): Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...

CRC, Article 37(a): States Parties shall ensure that: ... (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...

Human Rights Committee, General Comment no. 20 (Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment), para. 2: The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights 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.

Human Rights Committee, General Comment no. 20 (Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment), para. 5: The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

2. In particular, States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned, and shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment.³⁸

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

ICCPR, Article 7, second sentence: In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Human Rights Committee, General Comment no. 20 (Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment), para. 7: ... The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.

Draft Article 12
FREEDOM FROM VIOLENCE AND ABUSE

1. States Parties recognise that persons with disabilities are at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse. States Parties shall, therefore, take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.

CRC, Article 19(1): States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

CRC, Article 32(1): States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

CRC, Article 34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse...

CESCR, General Comment no. 5 (Persons with disabilities), para. 32: Children with disabilities are especially vulnerable to exploitation, abuse and neglect and are, in accordance with article 10 (3) of the Covenant (reinforced by the corresponding provisions of the Convention on the Rights of the Child), entitled to special protection.

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

3. States Parties shall also take all appropriate measures to prevent violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, by ensuring, inter alia, support for persons with disabilities and their families, including the provision of information.

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

5. Where persons with disabilities are the victim of any form of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, States Parties shall take all appropriate measures³⁹ to promote their physical and psychological recovery and social reintegration.

CRC, Article 39: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture

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

or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

6. States Parties shall ensure the identification, reporting, referral, investigation, treatment and follow-up of instances of violence and abuse, and the provision of protection services and, as appropriate, judicial involvement.

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

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

ICCPR, Article 19 (1): Everyone shall have the right to hold opinions without interference.

ICCPR, Article 19 (2): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

CERD, Article 5(d)(viii): In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:... (viii) The right to freedom of opinion and expression;

CRC, Article 12(1): States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

CRC, Article 13(1): The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

CRC, Article 17: States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States parties shall: (omissis)

- (a) providing public information to persons with disabilities, on request, in a timely manner and without additional cost, in accessible formats⁴² and technologies of their choice, taking into account different kinds of disability;
- (b) accepting the use of alternative modes of communication by persons with disabilities in official interactions;
- (c) educating persons with disabilities to use alternative and augmentative communication modes;
- (d) undertaking and promoting the research, development and production of new technologies, including information and communication technologies, and assistive technologies, suitable for persons with disabilities;

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

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

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

- (e) promoting other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;⁴³
- (f) encouraging⁴⁴ private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities;
- (g) encouraging the mass media to make their services accessible to persons with disabilities.

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

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

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

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

ICCPR, Article 17:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

CRC, Article 16:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

2. States Parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage and family relations,⁴⁶ and in particular shall ensure:

- (a) that persons with disabilities are not denied the equal opportunity to experience their sexuality, have sexual and other intimate relationships, and experience parenthood;

CESCR General Comment no. 5 (Persons with disabilities), para. 31: Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, "persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood". The needs and desires in question should be recognized and addressed in both the recreational and the procreational contexts. These rights are commonly denied to both men and women with disabilities worldwide. Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2).

- (b) the right of all men and women with disabilities who are of marriageable age to marry on the basis of free and full consent of the intending spouses, and to found a family;

ICESCR, Article 10(1), last sentence: *...Marriage must be entered into with the free consent of the intending spouses.*

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

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

ICESCR, Article 10(1): *The States Parties to the present Covenant recognize that: (1) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children*

ICCPR, Article 23(1): *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

ICCPR, Article 23(2) and (3):

2. *The right of men and women of marriageable age to marry and to found a family shall be recognized.*
3. *No marriage shall be entered into without the free and full consent of the intending spouses.*

CERD, Article 5(d)(iv): *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (iv) The right to marriage and choice of spouse;*

CEDAW, Article 16(1), (a) and (b):

1. *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*

(a) *The same right to enter into marriage;*

(b) *The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*

CESCR General Comment no. 5 (Persons with disabilities), para. 30: *In the case of persons with disabilities, the Covenant's requirement that "protection and assistance" be rendered to the family means that everything possible should be done to enable such persons, when they so wish, to live with their families. Article 10 [Protection of the family and of mothers and children] also implies, subject to the general principles of international human rights law, the right of persons with disabilities to marry and have their own family. These rights are frequently ignored or denied, especially in the case of persons with mental disabilities...*

(c) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children⁴⁷ on an equal basis with other persons⁴⁸ and to have access to information, reproductive and family planning education, and the means necessary to enable them to exercise these rights;

CEDAW, Article 16(1)(e): 1. *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*

(d) the rights of persons with disabilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. For the purpose of guaranteeing these rights, States Parties shall render appropriate assistance to disabled parents in the performance of their child-rearing responsibilities;⁴⁹

CEDAW, Article 16(1)(f): 1. *States Parties shall take all appropriate measures to eliminate*

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

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

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

discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(e) that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. The child shall not however be separated from parents with disabilities on the basis either directly or indirectly of their disability;⁵⁰

CRC, Article 9(1): 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.

(f) the promotion of awareness and the provision of information aimed at changing negative perceptions and social prejudices towards sexuality, marriage and parenthood of persons with disabilities.

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

Draft Article 15
LIVING INDEPENDENTLY⁵¹ AND BEING INCLUDED IN THE COMMUNITY

1. States Parties to this Convention shall take effective and appropriate measures to enable persons with disabilities to live independently and be fully included in the community, including by ensuring that:

(a) persons with disabilities have the equal opportunity to choose their place of residence and living arrangements;

ICCPR, Article 12(1): Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

CERD, Article 5(d)(i): In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (i) The right to freedom of movement and residence within the border of the State;

CEDAW, Article 15(4): States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

(b) persons with disabilities are not obliged to live in an institution or in a particular living arrangement;⁵²

(c) that persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance, necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;⁵³

(d) community services for the general population are available on an equal basis to persons with disabilities and are responsive to their needs;

(e) persons with disabilities have access to information about available support services.

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

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

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

Draft Article 16
CHILDREN WITH DISABILITIES⁵⁴

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

***CRC, Article 2(1):** States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

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

***CRC, Article 23(1):** 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.*

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

- (a) early provision of appropriate and comprehensive services;
- (b) the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

***CRC, Article 23(2):** States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.*

4. Recognising the needs of children with disabilities, assistance extended in accordance with paragraph 3 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure that a child with a disability has effective access to and receives education, training, health care services, comprehensive [re]habilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development;

***CRC, Article 23(3):** Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into*

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

account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

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

Draft Article 17
EDUCATION⁵⁵

1. States Parties recognise the right of all persons with disabilities to education. With a view to achieving this right progressively and on the basis of equal opportunity, the education of children⁵⁶ with disabilities shall be directed to:⁵⁷

ICESCR, Article 13(1), first sentence: The States Parties to the present Covenant recognize the right of everyone to education.

CEDAW, Article 10: States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education...

CRC, Article 28(1): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (omissis)

- (a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) enabling all persons with disabilities to participate effectively in a free society;
- (c) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (d) take into account the best interests of the child, in particular by individualising education plans;

ICESCR, Article 13(1), second sentence: [The States Parties] agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

CRC, Article 29(1): States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*

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.

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

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

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

See also CERD, Article 5(e)(v): *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (v) The right to education and training;*

CERD, Article 7: *States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.*

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

(a) that all persons with disabilities can choose inclusive and accessible education in their own community (including access to early childhood and pre-school education);⁵⁸

CESCR, General Comment no. 5 (Persons with disabilities), para. 35: *School programmes in many countries today recognize that persons with disabilities can best be educated within the general education system. Thus the Standard Rules provide that "States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings"...*

(b) the provision of required support, including the specialised training of teachers,⁵⁹ school counsellors and psychologists, an accessible curriculum, accessible teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, accessible physical environment, or other reasonable accommodations to ensure the full participation of students with disabilities;

CRC, Article 23(3): *Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education (...) in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.*

CESCR, General Comment no. 5 (Persons with disabilities), para. 35: *...States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary*

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

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

equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.

(c) that no child with disabilities is excluded from free and compulsory primary education on account of their disability.

ICESCR, Article 13(2)(a): *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all;*

CECR, General Comment no. 13 (Right to education), para. 31: *The prohibition against discrimination enshrined in article 2(2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination. The Committee interprets articles 2(2) and 3 in the light of the UNESCO Convention against Discrimination in Education, the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the ILO Indigenous and Tribal Peoples Convention, 1989 (Convention No. 169)...*

CECR, General Comment no. 13 (Right to education), para. 37: *States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination.*

3. States Parties shall ensure that where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning⁶⁰ should be made available. Any such special and alternative forms of learning should:⁶¹

- (a) reflect the same standards and objectives provided in the general education system;
- (b) be provided in such a manner to allow children with disabilities to participate in the general education system to the maximum extent possible;⁶²

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

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

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

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

- (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.

CECR, General Comment no. 13 (Right to education), para. 33: *In some circumstances, separate educational systems or institutions for groups defined by the categories in article 2 (2) shall be deemed not to constitute a breach of the Covenant. In this regard, the Committee affirms article 2 of the UNESCO Convention against Discrimination in Education (1960).*

4. States Parties shall ensure that children with sensory disabilities may choose to be taught sign language or Braille, as appropriate, and to receive the curriculum in sign language or Braille. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities by ensuring the employment of teachers who are fluent in sign language or Braille.⁶³

CESCR, General Comment no. 5 (Persons with disabilities), para. 35: *...States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.*

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.

ICESCR, Article 13(2)(c): *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: ... (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*

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

Draft Article 18
PARTICIPATION IN POLITICAL AND PUBLIC LIFE

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

(a) actively promote an environment in which persons with disabilities can effectively and fully participate in political and public life, directly or through freely chosen representatives, including the right and opportunity of citizens with disabilities to vote and be elected, and by ensuring that voting procedures and facilities:

- (i) are appropriate, accessible and easy to understand;
- (ii) protect the right of citizens with disabilities to vote by secret ballot; and
- (iii) allow, where necessary, the provision of assistance in voting to citizens with disabilities;

ICCPR, Article 25, (a) and (b):

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

CERD, Article 5(c): *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage...*

CEDAW, Article 7(a): *States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*

Human Rights Committee, General Comment no. 25 (The right to participate in public affairs, voting rights and the right of equal access to public service):

4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. (...) For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

10. The right to vote at elections and referenda 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...

11. States must take effective measures to ensure that all persons entitled to vote are able to exercise that right...

12. ...Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which 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. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections (...) Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

(b) actively promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public administration, and shall encourage, as appropriate, their participation in public affairs, including to:⁶⁴

- (i) participate on a basis of equality in the activities and administration of political parties and civil society;
- (ii) form and join organisations of persons with disabilities to represent persons with disabilities at national, regional and local levels;

ICCPR, Article 25, (c): *Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: ... (c) To have access, on general terms of equality, to public service in his country.*

CERD, Article 5(c): *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(c) Political rights, in particular the right (...) to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;*

CEDAW, Article 7(b) and (c): *States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: ... (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.*

(c) to ensure that persons with disabilities and their organisations participate, on an equal basis to others, in all decision-making processes, in particular those concerning issues relating to persons with disabilities.⁶⁵

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

⁶⁵ The Ad Hoc Committee may wish to consider paragraph (c) alongside the similar provision in draft Article 4(2) of this draft, and whether both provisions are necessary. The Ad Hoc Committee may also wish to compare both paragraphs to Article 6(b) of ILO Convention No. 169 and Rule 14 of the Standard Rules.

Draft Article 19 ACCESSIBILITY

1. States Parties to this Convention shall take appropriate⁶⁶ measures to identify and eliminate obstacles, and to ensure accessibility for persons with disabilities to the built⁶⁷ environment, to transportation, to information and communications, including information and communications technologies, and to other services,⁶⁸ in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. The focus of these measures shall include, inter alia:

(a) the construction and renovation of public⁶⁹ buildings, roads and other facilities for public use, including schools, housing, medical facilities, in-door and out-door facilities and publicly owned workplaces;

(b) the development and remodelling of public transportation facilities, communications and other services, including electronic services.

ICCPR, Article 12(1): Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement...

CESCR, General Comment no. 5 (Persons with disabilities), para. 23: ...[T]he 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.

CESCR, General Comment no. 14 (The right to the highest attainable standard of health), para. 12: ...[H]ealth facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as (...) persons with disabilities (...) Accessibility further includes adequate access to buildings for persons with disabilities.

2. States Parties shall also take appropriate measures to:

(a) provide in public buildings and facilities signage in Braille and easy to read and understand forms;

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

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

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

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

- (b) provide other forms of live assistance⁷⁰ and intermediaries,⁷¹ including guides, readers and sign language interpreters, to facilitate accessibility to public buildings and facilities;
- (c) develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of public facilities and services;
- (d) encourage private entities that provide public facilities and services to take into account all aspects of accessibility for persons with disabilities;
- (e) undertake and promote research, development and production of new assistive technologies, giving priority to affordably priced technologies;
- (f) promote universal design and international cooperation in the development of standards, guidelines and assistive technologies;
- (g) ensure organisations of persons with disabilities are consulted when standards and guidelines for accessibility are being developed;
- (h) provide training for all stakeholders on accessibility issues facing persons with disabilities.

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

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

Draft Article 20
PERSONAL MOBILITY⁷²

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

ICCPR, Article 12(1): Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement...

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

CESCR, General Comment no. 5 (Persons with disabilities), para. 34: ...The right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services - including orthopaedic devices - which enable persons with disabilities to become independent, prevent further disabilities and support their social integration...

(b) promoting universal design for mobility aids, devices and assistive technologies and encouraging private entities which produce these to take into account all aspects of mobility for persons with disabilities;

(c) undertaking and promoting research, development and production of new mobility aids, devices and assistive technologies;

(d) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(e) facilitating the freedom of movement of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(f) providing information to persons with disabilities about mobility aids, devices, assistive technologies and other forms of assistance and services;

(g) promoting awareness about mobility issues for persons with disabilities.

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

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

Draft Article 21
RIGHT TO HEALTH AND REHABILITATION⁷⁴

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

***ICESCR, Article 12(1):** The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

***CERD, Article 5(e)(iv):** In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (iv) The right to public health, medical care, social security and social services;*

***CEDAW, Article 12(1):** States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*

***CRC, Article 24(1):** States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

***See also CEDAW, General Recommendation No. 24 (Women and health), para. 13:** The duty of States parties to ensure, on a basis of equality of men and women, access to health care services, information and education implies an obligation to respect, protect and fulfil women's rights to health care. States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations. They must also put in place a system that ensures effective judicial action. Failure to do so will constitute a violation of article 12.*

In particular, States Parties shall:

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

***CESCR, General Comment no. 5 (Persons with disabilities), para. 34:** According to the Standard Rules, "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society". The right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services - including orthopaedic devices - which enable persons with disabilities to become independent,*

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

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

prevent further disabilities and support their social integration. Similarly, such persons should be provided with rehabilitation services which would enable them "to reach and sustain their optimum level of independence and functioning". All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity.

CEDAW, General Recommendation No. 24 (Women and health), para. 25: *Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.*

(b) strive to provide those health and rehabilitation services needed by persons with disabilities specifically because of their disabilities;

(c) endeavour to provide these health and rehabilitation services as close as possible to people's own communities;⁷⁶

CESCR, General Comment no. 14 (The right to the highest attainable standard of health), para. 12: *...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: (...) 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.*

CEDAW, General Recommendation No. 24 (Women and health), para. 21: *States parties should report on measures taken to eliminate barriers that women face in access to health care services and what measures they have taken to ensure women timely and affordable access to such services. Barriers include requirements or conditions that prejudice women's access, such as high fees for health care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and the absence of convenient and affordable public transport.*

(d) ensure that health and rehabilitation services include the provision of safe respite places, to use on a voluntary basis, and counselling and support groups, including those provided by persons with disabilities;

(e) provide programs and services to prevent and protect against secondary disabilities, including amongst children and the elderly;⁷⁷

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

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

ICESCR, Article 12(2)(c): *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ... (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

CRC, Article 24(2)(f): *States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ... (f) To develop preventive health care, guidance for parents and family planning education and services.*

(f) encourage research and the development, dissemination and application of new knowledge and technologies that benefit persons with disabilities;⁷⁸

(g) encourage the development of sufficient numbers of health and rehabilitation professionals, including persons who have disabilities, covering all disciplines needed to meet the health and rehabilitation needs of persons with disabilities, and ensure they have adequate specialised training;

(h) provide all health and rehabilitation professionals an appropriate education and training to increase their disability-sensitive awareness and respect for the rights, dignity and needs of persons with disabilities, in line with the principles of this Convention;⁷⁹

(i) ensure that a code of ethics for public and private healthcare, that promotes quality care, openness and respect for the human rights, dignity and autonomy of persons with disabilities, is put in place nationally, and ensure that the services and conditions of public and private health care and rehabilitation facilities and institutions are well monitored;

(j) ensure that health and rehabilitation services provided to persons with disabilities, and the sharing of their personal health or rehabilitation information,⁸⁰ occur only after the person concerned has given their free and informed consent,⁸¹ and that health and rehabilitation professionals inform persons with disabilities of their relevant rights;⁸²

CESCR, General Comment no. 14 (The right to the highest attainable standard of health), para. 8: *...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.*

CEDAW, General Recommendation No. 24 (Women and health), para. 20: *Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.*

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

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

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

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

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

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

CEDAW, General Recommendation No. 24 (Women and health), para. 22: *...Acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives. States parties should not permit forms of coercion, such as non consensual sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women's rights to informed consent and dignity.*

(k) prevent unwanted medical and related interventions and corrective surgeries from being imposed on persons with disabilities;⁸³

(l) protect the privacy of health and rehabilitation information of persons with disabilities on an equal basis;⁸⁴

(m) promote the involvement of persons with disabilities and their organizations in the formulating of health and rehabilitation legislation and policy as well as in the planning, delivery and evaluation of health and rehabilitation services.⁸⁵

CESCR, General Comment no. 14 (The right to the highest attainable standard of health), para. 54: *The formulation and implementation of national health strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. In particular, the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under article 12. Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people's participation is secured by States.*

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

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

⁸⁵ The involvement of persons with disabilities in formulating legislation and policy, as well as in the planning, delivery and evaluation of services, has wider applicability than this draft Article. Some members of the Working Group suggested that it should be covered under draft Article 4 on general obligations.

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

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

***ICESCR, Article 6(1):** The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

***CERD, Article 5(e)(i):** In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;*

***CEDAW, Article 11(1),(a)-(c):** 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment...*

(a) promote a labour market and work environment that are open, inclusive, and accessible to all persons with disabilities;⁸⁹

***CESCR, General Comment no. 5 (Persons with disabilities), paras. 21-23:** 21. 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 substandard 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...*

22. 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 Organisation 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

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

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

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

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

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.

23. 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.

(b) enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services, assistive devices, and vocational and continuing training;

ICESCR, Article 6(2): *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

CESCR, General Comment no. 5 (Persons with disabilities), para. 24: *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.*

CEDAW, Article 11(1)(c): *1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (c) ...the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;*

(c) promote⁹⁰ employment opportunities and career advancement for persons with disabilities in the open labour market, including opportunities for self-employment and starting one's own business, as well as assistance in finding, obtaining and maintaining employment;

ICESCR, Article 7(c): *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: ... (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*

(d) encourage employers⁹¹ to hire persons with disabilities, such as through affirmative action programs, incentives and quotas;⁹²

CESCR, General Comment no. 5 (Persons with disabilities), para. 20: *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*

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

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

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

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.

- (e) ensure the reasonable accommodation of persons with disabilities in the workplace and work environment;⁹³
- (f) promote the acquisition by persons with disabilities of work experience in the open labour market;

CEESCR, General Comment no. 5 (Persons with disabilities), para. 20: *...The integration of persons with disabilities into the regular labour market should be actively supported by States.*

- (g) promote vocational and professional rehabilitation, job retention and return-to-work programs;
- (h) protect⁹⁴ through legislation persons with disabilities with regard to employment, continuance of employment, career advancement, working conditions, including equal remuneration for work of equal value and equal opportunities, and the redressing of grievances,⁹⁵ and to ensure persons with disabilities are able to exercise their labour and trade union rights;

ICESCR, Article 7(a)-(c): *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence...

ICESCR, Article 8(1)(a): *1. The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

CERD, Article 5(e)(i)-(ii): *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: (i) The rights (...) to just and favourable conditions of work, to*

⁹³ Some members of the Working Group emphasised the particular importance of the obligation to make reasonable accommodation in the employment context, and considered that a more detailed paragraph on reasonable accommodation should be elaborated under the right to work, in addition to any draft article on reasonable accommodation elsewhere in the Convention.

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

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

protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) The right to form and join trade union;

CEDAW, Article 11(1), (c) and (d): States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (c) ...the right to promotion, job security and all benefits and conditions of service... (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

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

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

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

1. States Parties recognise the right of all persons with disabilities to social security, including social insurance,⁹⁹ and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures to:

ICESCR, Article 9: The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

CESCR, General Comment no. 5 (Persons with disabilities), para. 28: 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...

CERD, Article 5(e)(iv): In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: (iv) The right to public health, medical care, social security and social services;

CEDAW, Article 11(e): States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(a) ensure access by persons with disabilities to necessary services, devices and other assistance for disability-related needs;¹⁰⁰

(b) ensure access by persons with disabilities, particularly women and girls with disabilities and the aged with disabilities, to social security programmes and poverty reduction strategies, and to take into account the needs and perspectives of persons with disabilities in all such programmes and strategies;

Cfr. CEDAW, Article 14(2)(c): States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ... (c) To benefit directly from social security programmes;

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

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

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

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

(c) ensure access by persons with severe¹⁰¹ and multiple disabilities, and their families,¹⁰² living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;¹⁰³

CESCR, General Comment no. 5 (Persons with disabilities), para. 28: ...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.

(d) ensure access by persons with disabilities to governmental housing programs, including through earmarking percentages of governmental housing¹⁰⁴ for persons with disabilities;

(e) ensure access by persons with disabilities to tax exemptions and tax benefits in respect of their income;¹⁰⁵

(f) ensure that persons with disabilities are able to access life and health insurance without discrimination on the basis of disability.¹⁰⁶

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

ICESCR, Article 11(1): 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

CESCR, General Comment no. 5 (Persons with disabilities), para. 33: 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

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

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

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

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

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

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

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

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.

CESCR, General Comment no. 4 (The right to adequate housing), para. 8(e): *...Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups (...) the physically disabled,(...) the mentally ill, (...) and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups...*

CERD, Article 5(e)(iii): *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: (iii) The right to housing;*

CRC, Article 27(1)-(3):

- 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
- 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*
- 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*

Draft Article 24
PARTICIPATION IN CULTURAL LIFE, RECREATION, LEISURE AND SPORT¹⁰⁸

1. States Parties recognise the right of all persons with disabilities to take part in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

ICESCR, Article 15(1)(a): The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life;

CERD, Article 5(e)(vi): In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to (...) guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: (vi) The right to equal participation in cultural activities;

CEDAW, Article 13(c): States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (c) The right to participate in recreational activities, sports and all aspects of cultural life.

CRC, Article 31:

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

(a) have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community;

(b) enjoy access to literature and other cultural materials in all accessible formats, including in electronic text, sign language and Braille, and in audio and multi-media formats;

CESCR, General Comment no. 5 (Persons with disabilities), para. 37: 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".

(c) enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats, including captioning and sign language;

CESCR, General Comment no. 5 (Persons with disabilities), para. 37: see supra, under (b)

(d) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and the hospitality industry, and, as far as possible, enjoy access to monuments and sites of national cultural importance;

2. States Parties shall take all appropriate steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.

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

3. Persons who are deaf shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity.¹⁰⁹

4. States Parties recognise the right of persons with disabilities, on an equal basis with others,¹¹⁰ to participate in recreational, leisure and sporting activities and shall take appropriate measures to:

***CEDAW, Article 13(c):** States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (c) The right to participate in recreational activities, sports and all aspects of cultural life.*

***CRC, Article 31(1):** States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*

(a) encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at regional, national and international levels;¹¹¹

(b) ensure that persons with disabilities have an opportunity to organise and participate in sporting activities and to receive the same instruction, training and resources in support that is available to other participants;

(c) ensure that persons with disabilities have access to sporting and recreational venues, and that children with disabilities have equal access to participating in sporting activities with the education system;

(d) ensure that persons with disabilities have access to services from those involved in the organisation of recreational, leisure and sporting activities.

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

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

¹¹¹ Some members of the Working Group emphasised the importance of mainstreaming sporting activities for persons with disabilities. Others indicated that this obligation would need to be balanced with the promotion of separate sporting activities and organisations that are tailored to the needs and abilities of persons with disabilities, as well as disability specific sports that may not be included in mainstream sporting events. The Ad Hoc Committee may wish to consider how best to incorporate these views.

Draft Article 25
MONITORING¹¹²

National Implementation Framework¹¹³

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

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

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

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