

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

## UNICEF Statement for the Seventh Session of the Ad Hoc Committee 16 January – 3 February 2006

### 1. Introduction

- 1.1 UNICEF submitted statements to the Ad Hoc Committee in June 2003, 2004 and 2005, elaborating why and how the new Convention should include specific mention on the rights of children with disabilities. In October 2005, the Chair of the Ad Hoc Committee produced a revised text of the draft Convention which is currently being discussed at the Committee's seventh session.
- 1.2 As it stands, the status of children in the draft Convention remains largely undetermined. The Chair's revised text includes Article 7 as a placeholder for a dedicated article on children with disabilities. However, it does not make specific suggestions for the text. Apart from Article 24 (Participation in Cultural Life, Recreation, Leisure, and Sport) and Article 30 (Education), the revised text does not incorporate any of the issues of concern that have been identified in respect of children.
- 1.3 The purpose of this statement is to reiterate the need for special inclusion of children in the Convention and to explain the rationale for textual amendments.

### 2. Strengthening the rights of children with disabilities: Issues of particular concern for consideration by the ad hoc committee

- 2.1 There are a number of specific concerns applicable only to children with disabilities that need to be incorporated in the new Convention if their rights are to be properly addressed. They include:

- *Respect for the evolving capacities of children with disabilities.*

One of the general principles in the draft text of the new Convention relates to recognition of people with disabilities to autonomy and independent decision-making. However, in contrast to adults, children are generally recognized as having neither autonomy nor legal capacity. These rights are granted to their parents who have responsibilities for decision-making in respect of their children. Only gradually, as children acquire capacity, do these rights transfer to them. In the case of children with disabilities, however, there is little recognition or willingness to allow them to exercise their rights for themselves. Without explicit mention of the right of children with disabilities to respect for their evolving capacities, the general principles will, de facto, exclude them.

- *The right of children with disabilities to be consulted in all matters affecting them on an equal basis with other children and be provided with disability, and age-appropriate assistance to realize that right.*

Children with disabilities have little opportunities to express their views. Due to stigma and common misperceptions, children are often excluded in their families, communities and at school. Many cannot access information and therefore lack opportunities for developing and expressing views. To ensure that children with disabilities have a voice in their own lives, the new Convention must include provisions that require that children with disabilities be consulted (a) in the implementation of all the rights in the Convention and (b) on an equal basis with other children in all matters that affect them as individuals.

- *The need for special measures to ensure that children with disabilities have equal rights regarding registration after birth and acquisition of a name and nationality.*

Children with disabilities are far less likely to be registered at birth in many countries, resulting in a denial of citizenship and often inability to access education or health care. Governments must be required to take measures to address this serious violation of rights.

- *The need for child protection services that are accessible and available to all children with disabilities.*

The current draft addresses the need for measures to protect people with disabilities from violence. It does not include, however, any obligations on governments to ensure that child protection systems are adapted to ensure that children with disabilities are equally protected.

- *The protection of children from sterilization on the basis of disability.*

International evidence shows that young people with disabilities from around the world continue to face forced sterilization, with disabled girls having even greater chance of having forced sterilizations without proper consent. Such practice represents a fundamental violation of their physical integrity, exposes them to major medical intervention for no clinical benefit and denies them the right to found a family.

- *The need to prevent children being placed in institutional care on the basis of their disability*

Children with disabilities have the right to the love, care and protection that a family provides. However, they are nearly always over-represented among children confined to institutional care; denied the right to grow up in a family environment, with less of the stimulation and individual attention needed to grow to their full potential and at greater risk of abuse and neglect. In many countries, there is an explicit policy encouraging parents whose child is born with a disability to place the child in an institution. Existing provisions relating to institutionalization in the new Convention (see Article 17, 19, and 23) do not sufficiently protect children from such policies. All of them imply choice. Children with disabilities, however, do not have choice as these matters are decided on their behalf – by parents, professionals, administrators or the courts. Therefore, a special amendment is needed to strengthen obligations to prevent children being placed in institutions simply on the basis of their disability.

### **3. Background: Reasons for specific mention of children in the new Convention**

- 3.1 As recognized in various human rights instruments including the Convention on the Rights of the Child (CRC), children are entitled to protection to address the particular vulnerabilities they face by virtue of their age, as well as safeguards to ensure their right to development. These protections and safeguards cannot be fully addressed or inferred from the main body of a text directed primarily towards the rights of adults with disabilities.
- 3.2 The argument has been raised that specific attention to children with disabilities is not needed in the new Convention in light of the existence of the CRC. It is true that all articles of the CRC apply to all children, including those with disabilities. Evidence from monitoring the implementation of the CRC indicates, however, that governments do not give consideration to the rights of children with disabilities except in regard to the provisions of Article 23, which focuses on education, health and rehabilitation. Other rights – to participate, to information, to freedom from violence, to an adequate standard of living – are rarely, if ever, addressed. It is therefore imperative that the new Convention pays attention to children with disabilities in imposing obligations on governments to ensure that they are afforded equal respect for their rights. That way, the new Convention would serve to reinforce and complement the CRC.