

Ad Hoc Committee Daily Summary

A SERVICE MADE POSSIBLE BY LANDMINE SURVIVORS NETWORK

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MORNING SESSION
Commenced: 10:27 am
Recessed: 12:54 pm

SUMMARY: The AHC completed consideration of Articles 8 and 9.

The Chair opened the morning session by carrying over additional Article 8 interventions.

ARTICLE 8: RIGHT TO LIFE (Cont)

Costa Rica reiterated their proposal with regard to the definition in Article 8, filed with the Secretariat, and withdrew their observation as to Article 8 (bis) in order to back Kenya's proposal as endorsed by other delegations.

Yemen, on behalf of the Arab Group, proposed a new two-part 8(b), with added reference to "armed conflicts, occupations, and wars." These create special conditions impacting PWD, and Yemen expressed readiness to look at any ways and means to enhance the text. They reminded the delegates that PWD in countries in armed conflict, refugee situations, and under occupation deal with problems of such severity as to result in suicides. All delegates are encouraged to "strive to protect the disabled laboring under such travail" by adding a reference to "persons under the yoke of occupation."

The floor was opened for comments from NGOs.

National Right to Life (NRL), also speaking on behalf of **International Right to Life**, supported the Article as written, and as a separate Article. "If we do not have the right to life, we have no other rights."

Save the Children International (SCI), speaking also on behalf of **Handicap International**, agreed that the Article is for everyone, including children. It supported the proposal of Argentina, India and others on the concept of survival and development, and suggested modifying the Article title to harmonize with core principles of right to life, survival, and development contained in Article 6 of the Convention on Rights of the Child (CRC), and to reflect "not only right to life as such, but the right to survive." An additional paragraph 8.1 is suggested, as follows: "Children and young people have right to physical, mental, spiritual, moral and social development to the maximum extent possible." Since the global increase of conflict and natural disaster pose an extra risk for PWD, Save the Children also supported the Costa Rica, Uganda, Kenya, and NRL positions regarding the need for a separate Article on the issue of conflict.

Landmine Survivors Network (LSN) supported the Article because "the right to life is a fundamental principle of human rights law from which no derogation is permitted." They agreed with the WG proposal, but commented that serious consideration should be given to India's proposal reflecting the CRC approach. Groups at risk would be more appropriately addressed in a separate Article addressing the situations of PWD in armed conflict and natural disasters, in rural or remote areas, or scattered populations, based on the CEDAW precedent.

The **Canadian Association of Living (CAL)** supported the Article and urged that genetics and biotechnology issues also be addressed. As parents, they expressed concern that scientific and medical models may pose a "slippery slope toward genetic perfection" detrimental to PWD. CAL stated a need for the families of people with disabilities to be included in all discussion on bioethical issues, and for recognition that "technology must sustain diversity and common humanity." Parents and families should be provided education and support to help them resist the societal pressure to abandon or hide their children. Delegates were encouraged to "start a new page to embrace our sons and daughters, and promote their inclusion and right to life."

ARTICLE 9: EQUAL RECOGNITION AS A PERSON BEFORE THE LAW

India proposed deleting from 9(b) of "as others, including in financial matters", and inserting instead "except as provided by law." In 9(c), the clause "endeavor to" should be inserted prior to "ensure". Under 9(c)(i), "to the extent feasible" should be inserted between "assistance is" and "proportional." In 9(d), the words "endeavor to ensure" should again be inserted; and the words "as well as to enter into binding agreements or contracts, to sign documents, and act as witnesses" should be deleted. It would be "imprudent and unfair to leave unprotected a large number of people with multiple disabilities in circumstances of abandonment, destitution, or extreme poverty and whose families desperately require assistance." India proposed inserting this new paragraph: "The state must protect the interests of PWD who cannot exercise their legal capacity in reduced /temporarily reduced situations. In exceptional circumstances where legal safeguards are necessary, the appointment of third parties as legal guardian/surrogate may be made in the best interests of PWD."

Japan proposed a new subparagraph after 9(f): "Take appropriate and effective measures to eliminate physical and communication barriers and to reduce understanding difficulty of PWD in order to exercise all the rights in judicial procedure which are provided in the International Covenant on Civil and Political Rights." They reasoned that in interrogations and tribunals, PWD -- especially people with mental, hearing and visual disabilities -- are often victims of so-called normal procedures. Due to their inability to understand what judges and interrogators are saying, PWD should be given extra protections to avoid being wrongly judged.

Syria suggested adding at the end of 9(e) the words, "bearing in mind the quality and degree of disability," arguing that this would make the Article more realistic, applicable, and efficient.

Canada called Article 8 an important Article, and stated that it welcomes the opportunity to hear all views. They stated that the current Article has some difficulties, as reflected in the footnotes to the WG text, alluded to by other delegations including India. The main difference is a lack of consensus around what is meant by legal capacity. Canada proposed replacing the current WG draft text with the following:

"1. States Parties shall recognize that, in civil matters, adults with disabilities have a legal capacity identical to that of other adults and shall accord them equal opportunities to exercise that capacity. In particular, they shall recognize that adults with disabilities have equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

"2. States Parties shall ensure that where adults with disabilities need support to exercise their legal capacity, including assistance to understand information and to express their decisions, choices and wishes, the assistance is proportional to the degree of support required and tailored to the adult's individual circumstances.

"3. Only a competent, independent and impartial authority, under a standard and procedure established by law, can find an adult not to have legal capacity. States Parties shall provide by law for a procedure with appropriate safeguards for the appointment of a personal representative to exercise legal capacity on the adult's behalf. Such an appointment should be guided by principles consistent with this Convention and international human rights law, including:

"(a) ensuring that the appointment is proportional to the adult's degree of legal incapacity and tailored to the adult's individual circumstances; and,

"(b) ensuring that personal representatives take into account, to the maximum extent possible, the adult's decisions, choices and wishes."

This new language would address the lack of clarity regarding the definition of "legal capacity" by referring to CEDAW, Article 15.2. There would be no need to include 9(a), 9(b), and 9(c) equality provisions since equality would be fully covered by Article 7.

The proposed text for 9.2 comes from WG draft 9(c)(i),(ii) with important concepts of proportionality and the tailoring of support to the individual circumstances of PWD. 9.3 is included to clearly address India and other delegates' concerns regarding what would happen when a PWD is found to have diminished or no legal capacity. Language addressing these issues is necessary for inclusion in the Article, so that critical safeguards regarding appointment of a personal representative or substitute decisionmaker for that adult are in place. Canada's two Article revision imperatives are to incorporate proportionality, and adult choices and wishes.

China proposed to make 9(a) more concise by adding the word "equal" before "rights" and deleting the phrase "equal to all other persons." The content of 9(b), regarding PWD having the same rights under the law, is already reflected in 9(a). Paragraph 9(e) should be deleted. The Convention should not be too detailed, but should focus on principles. Since 9(b), 9(c) and 9(d) have similar content concerning assistance to disabled, and Article 13 has specific provisions on providing information to PWD, 9(c) and 9(d) should be merged into the following text: "States Parties shall endeavor to provide assistance to PWD who experience difficulties in exercising their rights."

Uganda suggested redrafting 9(a) to read "States Parties shall organize and ensure that PWD are individuals with equal right before the law as other persons." Under 9(b) "accept" should be replaced by "ensure." In order to provide wider areas of equality for PWD, the end of 9(b) should read: "Ensure that PWD have full legal capacity on an equal basis as others including in political, civil, social, cultural and economic matters." In 9(c)(i) the word "interfere" should be replaced with

“undermine.”

Argentina stated that this is a very important Article, and offered comments about the risk of rewriting definitions already embodied elsewhere; and also about a lack of clarity in describing how to empower PWD who need assistance. To simplify matters, Argentina supported the proposal introduced by Canada as more general, avoiding listings that may falsely imply exclusion of other types of assistance.

Thailand supported the retention of WG Article 9, but are willing to support any proposed amendment seeking to clarify confusing language. It is not necessary to replace the term “persons with disabilities” with the word “adults,” as the article should address adults who have legal capacity; children normally have other legal safeguards.

Ireland stated that the EU shares many of the concerns about this Article being too detailed in certain areas and insufficient in others. The EU supported the Canadian proposal, except that there is a need at the outset of the Article for a strong statement of equality to set the framework for subsequent discussion of legal capacity. For that reason, like China and others, the EU supported rephrasing 9(a) and 9(b) to read along the lines of, “Recognize PWD as individuals with equal rights before the law, and guarantee equality before the law without discrimination against PWD” There is a difference between recognition of equal rights and guaranteed equality, and both should feature in this Article. It is necessary to return to an exploration of recognition of legal capacity by persons who need assistance, and therefore the EU supported 9(c)(i). The words after “tailored to their circumstances” should be deleted because they are unclear. The idea in 9(c)(ii) is central. Any decision in relation to legal capacity needs to be taken by independent and impartial authority, Canada’s proposal in this regard deserves a close look. Paragraphs 9(d) and 9(e) are too detailed and lack clarity. As an odd mixture of ideas in these paragraphs, they should be deleted initially, and their concepts should be considered later. The issue of property is worthy of special mention, and can be resolved by keeping 9(f), but the EU remains open to further proposals in that regard.

Kenya proposed working with the WG draft text on this Article. Amendments should be made to 9(e), as follows: “Take all appropriate and effective measures to ensure the equal rights of PWD to own, inherit, use, or otherwise dispose of property.” In Africa PWD often are not allowed to own or use property. Kenya supports CEDAW language vis-à-vis property rights.

Qatar stated that this was an important Article, but difficult without a definition of disability to go along with relevant subparagraphs. Qatar would be ready to look at any relevant proposals along these lines.

Costa Rica agreed with the EU proposal to revamp 9(a) noting this Article represents a major step forward in establishing and recognising equality of PWD under the law. Costa Rica supported the Canadian proposal, especially 9.3, which deals with the problem of PWD who don’t have a chance to get representation. The reference to financial matters in 9(b) should be deleted. 9(c)(ii) requires additional language recognising the need for periodic review and revision of the decisions in question, relating to individuals that assist or may represent PWD. A subparagraph should be added, based on language found in other international instruments, as follows: “Take necessary measures to ensure everyone whose rights and freedoms as recognized in this Convention are violated should have an effective remedy before a national authority, notwithstanding that the

violation has been committed in an official capacity.” Costa Rica reaffirmed backing for proposals made by India, Canada, Ireland, and Japan.

Kuwait stressed the importance of this Article. It also affirmed the need for a juridical, legal definition of equal recognition, but adding greater detail to the text might spawn controversy and undermine prospects for the Convention. Canada’s approach in 9(a) and 9(b) might be a proper beginning of the process of amending the Article.

Mexico expressed concerns about the differences among the legal systems of various countries, some based on Roman/Continental law and some on Common/Anglo Saxon law. Under these two approaches, either a PWD is considered to have full capacity or is prohibited from certain things; there is no intermediary position. Mexico stated that its first goal was to stipulate safeguards necessary for preventing abuse; its second goal was to propose measures so that each country can adopt legislation that fits its own circumstances; and its third goal was to leave the door open, so that the Convention would not serve as a “straitjacket for more favorable laws.” Mexico further suggested that the title of the Article be changed to “Equality under the law,” and recommended that the text of 9(a) be changed to: “Recognize PWD as subjects of rights and obligations before the law, in equal conditions to those of persons without disabilities.”

Mexico considered 9(b) to be redundant since 9(a) is so broad. It considered 9(c) to be well constructed and general enough to establish the principle regarding assistance PWD may require to fully exercise their legal capacities. In this regard 9.3 of the Canadian proposal is excessively detailed. This only needs to ensure an established process under the law for applying necessary legal safeguards. Mexico expressed concern that in some countries it may not be the judiciary per se that handles these matters, but some other entity, such as in the case of tutelage over minors. Moreover, the Canadian proposal introduces a series of difficult subjective elements, such as guardians to make decisions for PWD. In Mexico, the delegate explained, a judge can decide on these situations on an ad hoc basis, and the status of legal incapacity is not irreversible. Mexico suggested that 9(d) be maintained as it is, but it stated that although a person may be fully legally capable, he or she might need juridical backing to understand certain things. Mexico considered 9(e) to be excessively detailed and thought that certain elements of it could be worked into 9(d), although Mexico agreed with the EU on deleting 9(e) from the text. Mexico also suggested that the end of Convention should contain an Article as a safeguard clause, based on those in other human rights instruments, stipulating that no provision in this Convention shall undermine the provisions of any domestic law more favorable to the rights of PWD. Finally, Mexico welcomed Japan’s proposal, but felt that it could be covered by a general provision, as it would otherwise need to be infused into all the Articles of the Convention.

Viet Nam suggested adding “if the PWD are in need” after “their own financial affairs.”

India expressed its support of the Canadian proposal.

Sierra Leone noted that PWD gave significant contributions to this Article and asserted that it is important to review the footnotes for this article when considering it. It stated that the Article could end after 9(c)(i), as it recognizes PWD as individuals, and agrees with Uganda’s proposals in this regard. There must be established legal procedures within the jurisdiction of each state to ensure the rights of PWD. It cautioned that the Committee should avoid legal commentary in reviewing this Article. The Convention cannot include everything; the Committee should work within the WG draft.

New Zealand stated that the Canadian proposal seemed to capture more clearly some of the ideas already contained in Article 9, but does not contain ideas expressed in 9(e) and 9(f). While further clarity can be brought to the Article, the Committee should recall why 9(e) and 9(f) were included in the draft in the first place. New Zealand then recalled Articles 13 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was an effort to correct the historical presumption that women were not capable of owning property or exercising legal capacity; there is a similar presumption facing PWD which should be corrected with a similar level of detail. New Zealand stated that while specific issues of loans, mortgage, and credit could be incorporated into Article 15, it would like to see other important concepts retained in the text of this Article. New Zealand then pointed out that the Canadian proposal is the only one explicitly stating the important safeguard that only a court can deem a PWD to have reduced or no legal capacity, though the WG's draft hints at it. India's proposal mentions guardians or surrogates, which leaves out the possibility that a person can be appointed to exercise legal capacity for a PWD only for a limited time or in a limited function.

Liechtenstein did not agree with the placement of the Article and suggested that it would be more appropriately placed after Article 7, and remarked that the ordering of Articles seemed to be a problem throughout the draft. It also agreed with the Canadian proposal, especially surrounding the issues of equal legal capacity in general and the provisions and safeguards for those who need assistance. The WG draft did not address personal representatives or guardians. The AHC should work with the Canadian proposal, but should not forget other ideas that were contained in the WG draft or suggested later, such as the right to have and dispose of property.

Serbia and Montenegro suggested working with the EU draft of 9(a) and accepted Canada's proposal from 9(b) on; and suggested adding to 9.3 of Canada's proposal "and with the application of relevant safeguards, including provisions for review." PWD should enjoy equal rights to property without discrimination. Serbia and Montenegro agreed with New Zealand that this might not be the right placement of the Article, and proposed that the Article retain the last subparagraph.

Jordan called this a very important Article that needs serious revision and supported the Canadian proposal, especially point 3; and Jordan proposed the addition of subparagraph 9(c) to the Canadian text, "ensuring regular review of the findings of legal incapacity."

Botswana supported the suggestions made by Japan, with the addition of "social" after "physical" to address negative attitudes toward PWD.

Oman agreed that this is an important Article and affirmed that PWD are equal before the law and have full legal capacity on an equal basis with others, but questioned how this is exercised. It is crucial that PWD have the ability to participate in the legal process; 9(d) deals with the provision of tools that enable PWD to participate and to ensure that the legal process itself is accessible, and 9(d) must be formed sufficiently broadly to make all legal processes exercisable. The Committee should consider degree and quality of disability when providing assistance for the exercise, not the limits, of rights.

Yemen questioned the title, asking, "before the law – what law? Of what nation?" Yemen asserted that laws differ from one country to the next and cautioned that a text must be crafted that is mindful of this. Legal capacity of PWD differs depending on the type of disability – e.g., with disabilities of movement or vision "we can find a way of dealing with it but certain disabilities do not lend

themselves to recognition under the law as to legal capacity.” Therefore, Yemen supported Qatar, in that there is not a precise definition of disability in defining legal capacity.

Ireland, speaking on behalf of the EU, suggested a change to 9(c)(ii), deleting “only” and, after the word “taken,” adding the words “by a competent, independent and impartial authority”; and appending “including provisions for review.”

Lebanon expressed interest in the Canadian proposal, especially paragraph 3; suggested keeping all elements of the WG draft; and agreed with the amendments proposed by the EU.

Norway remarked that the EU proposal, more than the Canadian one, emphasized not only equal rights, but also equality before the law. Norway agreed with Costa Rica's proposal to include a review mechanism in 9(c)(ii) as a safeguard.

Thailand reiterated its support for the content as put forth by the WG. Any attempt to move away from it should only be for the purpose of clarity. Some countries may not think 9(d), 9(e), and 9(f) are important, but in some developing countries, PWD are at risk of being deprived of these rights. However, Thailand would support their placement, in their entirety, in a different Article.

Colombia expressed concern that the Canadian proposal focused only on adults and addressed only civil matters, not criminal or other areas of law. Colombia suggested keeping 9(a) and 9(b), and agreed with Mexico that there should be equality vis-à-vis persons without disabilities, by establishing affirmative measures to help persons with disabilities. Colombia suggested deleting 9(d), as it lacks clarity with regards to managing personal affairs, control over moneys, and access to credit.

Mexico stated that Canada's proposal might have a restrictive impact by limiting the scope of the Article to the civil arena only.

The floor was opened to comments from NGOs.

International Labor Organization suggested the preparation of detailed guidelines for implementation, not only for this Article but also for other Articles, a procedure which the ILO itself has found effective. The Article should provide for an effective dispute, prevention, and settlement system, as well as for legal aid.

The **Chair** noted that this practice already exists under international law.

Landmine Survivors Network stated that the Canadian proposal left out essential elements of the text, specifically 9(b) and 9(c)(i) that would be necessary to support the achievement of full equal rights by PWD. If assistance is provided, the rights and freedoms of legal capacity is not interfered with. LSN agreed with Uganda and with the World Network of Users and Survivors of Psychiatry, that “undermine” should be replaced with “interfere” in order to make it harder to impose guardianship, because it is in effect a “social and legal death” and a violation of human rights and dignity for a person not to exist before the law. People may need support in decisions and some people may need a high level of support, but that does not mean a person may be excluded. It is possible to provide assistance without taking away or limiting a person's rights. Autonomy must be respected; a support person should facilitate self-determination in the decision-making of the

person being supported. LSN also discussed interdependence and relationships of trust, and the need for procedural safeguards to assure that support people act on the wishes of PWD and do not abuse their position by imposing their own wishes on the PWD. When capacity is assessed, it begins a process of discrimination, especially in cases involving people with intellectual or psychiatric disabilities. Even where this is not a legal presumption, it is a social presumption and lawmakers and judges retain that social presumption. LSN suggested that the Committee review their model on supported decision-making and issues of providing assistance without limiting rights.

People with Disabilities Australia, the National Association of Community Legal Centers, and Australian Federation of Disability Organizations stated that there are four key rights underpinning Article 9: 1) the right to recognition everywhere as persons before the law, found in Article 16 of the ICCPR and in 9(a) of this draft Convention; 2) the right to be presumed to have full legal capacity to make decisions in all areas of life, found in Article 15 of CEDAW, in the common law of various states and jurisdictions, and in 9(c) and 9(d) of this Convention; 3) the right to the full and equal enjoyment before and under the law as all other people, recognized in Articles 14, 15, and 26 of the ICCPR and 9(a) of this Convention; and the right to own and administer property, as recognized in Article 17 of the UDHR, Articles 13 and 15 of CEDAW, and 9(d) to 9(f) of this Convention. PDA asserted that these rights represent the necessary preconditions to the effective exercise of all other rights of PWD and recommended they be addressed in separate articles, rather than together in Article 9, which is neither clear nor far-reaching enough, and which “conflates and confuses the four quite separate rights.” PDA agreed with the wording of 9(d), but recommended substantial redrafting of 9(c)(i) to elaborate procedures and safeguards necessary to support the full range of assisted and substituted decision making from the most informal, culturally appropriate, and least restrictive to the more formal options of limited and plenary guardianship. PDA supported ILO in that legal aid must be provided for PWD to challenge deprivations of their liberty.

Inclusion International supported the position of the World Network of Users and Survivors of Psychiatry in that people with psychosocial and intellectual disabilities are most vulnerable in attempts to propose substituted decision-making. While II endorsed the idea of seeking legal means to develop supported decision making options before the law, they hoped that the Committee would adopt recommendations by Jordan and others that substitute decision-making be granted only as a last resort and only on a time limited basis. II stated that Japan raised an important issue, touching upon the spirit of the Convention, related to people with significant communication challenges who need to be assisted in having their needs understood and expressed.

Save the Children supported the statements of the World Network of Users and Survivors of Psychiatry and Inclusion International. It suggested appending to 9(a) the words “and respect the rights of children with disabilities to exercise legal capacity in accordance with their evolving capacities” and replacing “persons” with “children and adults.” In 9(d) the words “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 decision, choices” should be replaced with the words “difficulty in communication, accessing and handling information needed to address their rights, can acquire non-partial assistance.”

Disabled Peoples’ International stated that the failure to recognize the fundamental right to make decisions with support has resulted in institutionalization, forced sterilization and countless human rights infractions for PWD all over the world. Paragraph 9(c) is a key element, but additional wording is needed. DPI directed the Committee’s attention to footnote 33, which articulates that where

assistance is necessary, the underlying assumption is still for full legal capacity; DPI felt that this principle was not made explicit in the draft text. Similarly, DPI stated that 9(c) does not outline procedural safeguards, such as when and how assistance should be provided, who will make these determinations, or avenues for review and appeal. DPI supported Japan on the need to take effective measures to eliminate physical and communication barriers and to ensure the exercise of rights in judicial procedures according to the ICCPR.

World Blind Union stated that these rights should be equal to other persons, and should be detailed and specific. WBU considered that 9(d), 9(e), and 9(f) were of the highest importance and should remain in the text, as blind persons are often denied the right to own property, to marry, to inherit, to sign contracts, to hold bank accounts, to sign documents, or even to vote in public elections. WBU also pointed out that in footnote 33 the term "disabled person" is used, and urged "person first" language in all cases.

The **UN Economic and Social Commission for the Asia and the Pacific (ESCAP)** stated that the draft does not have specific provisions for remedies, and suggested adding text from the Bangkok draft, as follows: "States Parties recognize that access to effective remedies may require the provision of free legal assistance to PWD and the modification or flexible application of existing laws and practice regulating matters of procedure and evidence."

World Federation of the Deaf stated that assistance alone is not enough. Often in court or police situations sign language interpreters are ordered to leave the room. WFD suggests adding "interpreter services" to both 9(d) of the WG draft and to 9.2 of Canada's draft. WFD remarked on the importance of a property clause, and on the interconnectedness of legal capacity and property.

The **Special Rapporteur** stated that 9(f) is not sufficient to protect the rights of PWD.

Mexico supported the ILO in calling for the development of guidelines or even a model law which could direct the preparation of domestic law.

AFTERNOON SESSION

Commenced: 3:16 PM
Adjourned: 5:50 PM

The AHC finished discussion of Articles 10 and 11 and began discussions on Article 12.

ARTICLE 10: LIBERTY AND SECURITY OF THE PERSON

China suggested, in 10.2(b), inserting before "reasons" the words "the applicable law and" because freedom of parties should be based on fact and law. Regarding 10.2(d), it would delete the phrase "or deprivation of liberty based on disability, contrary to this Convention" because it is redundant with 10.1(b).

Changing the subject back to Article 9, **Thailand** supported Costa Rica's proposed remedies section.

New Zealand referred to the comment in footnote 35 that it is not clear whether Article 10 deals with civil commitment, or criminal incarceration, or both. It supported the LSN position that this Convention cannot accept a lesser standard than the ICCPR, Article 9. New Zealand suggested an amendment similar to China's, in 10.2(b), to add after "at the time this occurs" the words "at their legal rights and". The words "at the time this occurs" should be added at the end of 10.2(b). The EU's proposed new 10.3(i) is problematic because it may create an internal contradiction in the document, and 10.3(ii) should be rewritten to reflect the autonomy and dignity of PWD.

Argentina stated that there is a translation error in 10.2(a), Spanish version: Inherent is the correct word, not imminent.

Ireland, on behalf of the EU, asked that 10.2(d) be changed to: "Compensated following determination by an appropriate authority that the deprivation of liberty has been unlawful." There needs to be an impartial authority to rule in such cases. The EU's 3 (bis) was written in response to concerns in footnote 36 about whether this Article does or should prohibit civil commitments. This concept should be dealt with as a question of deprivation of liberty, instead of in Article 11. Ireland concurred with New Zealand that this Convention should contain no lesser standard than that which is in the ICCPR, Article 9. That however covers criminal detentions so its provisions may not apply to health-related detentions at issue in this Convention. Forced institutionalization is illegal. It needs to be clear that involuntary commitment should only be allowed in exceptional circumstances, and with clear legal safeguards. The EU's 10.3(i) (bis) provides stronger safeguards than does the ICCPR. A central issue is consideration of the best interests of the individual person with a disability. Consent is the issue, therefore the AHC should think about adding "involuntary institutionalization" because this may be a more appropriate term.

Japan proposed two changes. The words "seek regular review of deprivation of their liberty" should be deleted from 10.2(c)(ii), because the right to appeal to a court is more important than review by States; and the second "deprivation of liberty" should be deleted from 10.2(d) to eliminate the redundancy.

Costa Rica suggested adding "fully respecting their rights in conditions of equality" at the end of 10.2(a).

Canada proposed adding "solely" to 10.1(b), so it would read "shall be based solely on disability." It prefers deleting 10.2(d) and replacing it with a new paragraph 10.3 which tracks the ICCPR, Article 9.5: "Any PWD who has been the victim of unlawful deprivation of liberty shall have an enforceable right to compensation." It is important to make this Convention consistent with other Conventions.

Korea proposed adding in 10.2(a): "the degree of the violation of freedom against persons with disabilities should not exceed the general standard, and proper provision of conveniences such as the measure for ensuring a meeting with the guardian, assistive tools and due medical service should be properly secured."

Colombia proposed adding a new paragraph, either at 10.1(c) or at 10.2(e), as follows: "States Parties shall guarantee that when persons with disabilities are detained or imprisoned that they be

placed in a site adapted to their particular circumstances of disability respecting their right to participate in all activities necessary for them to be reincorporated in social life.”

Uganda stated that there must be a legitimate reason for deprivation, either an offense committed by the person or a potential threat, and not on the basis of disability. In 10.1(b), the word “solely” should be added before “on the basis of disability.” Uganda proposed a new paragraph at 10.1(c), as follows: “when lawfully deprived of liberty measures shall be taken to ensure that they receive rehabilitation while under confinement.”

Serbia and Montenegro supported the WG's Article 10 with the amendments proposed by the EU.

Mexico supported Argentina's translation correction in 2(a). It supported addressing compensation issues more generally in the Convention. In 10.2, “through a civil or criminal procedure” should be added after “liberty.” In 10.1(a), the addition of the word “solely” may cause problems by implying that PWD should be deprived of their liberty.

Australia shares New Zealand's uncertainty about whether this Article covers criminal or civil cases or both. It also supported New Zealand's amendment to 10.2(b), adding legal rights, and supported Canada in adding the term “solely” to 10.1(b).

Kenya approved of adding 10.1(c), as suggested by Uganda, because disability and rehabilitation needs must be taken into account during incarceration.

Jordan suggested that in 10.1(a), the phrase “based on disability” should be deleted as redundant. In 10.2(a), “the needs they have because of” should be deleted, due to its negative connotations, and replaced with “the challenges they encounter due to.”

✓ **Norway** agreed with the EU regarding the need to be consistent with other Conventions. The article may need to deal with civil and criminal cases in different parts to make it clearer.

The floor was opened for NGOs to offer comments

DPI commented that due to disability many people are subjected to cruel and inhuman treatment and abuse, both in and out of institutions. NGOs do not support footnote 38 regarding permitting forced institutionalization. Institutionalization should be defined with reference to one's separation from nondisabled people and the deprivation of liberty and/or autonomy. Boarding schools chosen by deaf, blind and deaf-blind students should not be considered institutionalization. No level of institutionalization should be necessary.

WNUSP/Support Coalition International supported 10.1(b) as drafted by the WG without any qualifications such as the term “solely.” Deprivation of liberty based on disability encompasses civil commitment and forced institutionalization as well as private deprivation of liberty. If the AHC adds the term “solely,” it would open the door for States to deprive persons with disabilities of their liberty for being “a danger to society,” which is discriminatory because people without disabilities are not subject to the same standard. If there is no crime, a State cannot lock up person who is not considered mentally ill or intellectually disabled. PWD should not be subject to a different standard. There is a moral obligation to move society toward inclusiveness. If a person with a disability is

deprived of liberty, that imposes a social disadvantage and therefore, under the social model, that is discrimination.

Inclusion International recommends changing Articles 10, 11, and 12 so that no law could force people to live in institutions. Institutionalization is very destructive to PWD and leads to dehumanization of both PWD and staff, leading to abuse. Institutions take over the core of a person's life. Contrary to the claim that institutions offer quality care at an affordable price, the speaker insisted that they are a costly form of segregation. Instead, PWD need integration in school, housing, employment, and recreation.

PWD Australia/NACLC/Australian Federation of Disability supported Article 10. A deprivation of liberty must not abrogate other human rights, including the right to legal capacity and freedom from torture. It supported an obligation to States to reform laws that result in the arrest and detention of PWD (footnote 37). The least restrictive alternatives should be used during permissible deprivations of liberty, the minimum level appropriate to the circumstances. The guarantee in 10.2(b) needs to be more broadly stated so that PWD who are detained will know the reason for their deprivation; it should include obligations to provide information in alternate formats and support people. The right to free legal assistance should be included. The word "solely" should not be added because it would create a loophole allowing States to deprive a PWD of liberty based on another reason, which by itself would not be sufficient to deprive liberty. The Article needs to explicitly state that deprivation of liberty should be broadly interpreted to include civil commitment, mental health and immigration. *col 22 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100*

DPI Japan supported using the language in ICCPR to avoid misinterpretation. The term "needs" in 10.2(a) is too ambiguous and does not state how needs are determined nor who determines them. This section needs to include physical and information access, general programs and services, and reasonable accommodations must be provided in detention facilities. (See Chair's draft Article 14, Bangkok draft Article 13, and Mexican draft Article 10). The standard in 10.2(c)(i) is below that in the ICCPR, Article 9.4. DPI Japan remarked that 10.2(c)(ii) contradicts 10.1(b). It recommended changing the language of the 10.2 chapeau as follows: "States Parties shall ensure that if PWD are unlawfully deprived of their liberty or deprived of their liberty based on disability contrary to this convention they are." It supported WNUSP's recommendation to keep 10.1(b) as drafted.

Save the Children expressed concern about this article. The title and the grounds for permissible deprivation of liberty are unclear. In many countries, the legal reasons for deprivation are questionable, and this Article does not address that. The distinction between legal reasons for deprivation of liberty and disability-based reasons is also not clear. The Article does not provide protection for PWD. A drastic revision is needed to ensure that institutionalization and perceived incapacity will be halted. Save the Children commented that the drafted article is based on needs and perceived needs instead of rights and there is nothing about who defines the needs. *21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100*

Support Coalition International disagreed with the EU that involuntary institutionalization is not the norm. Forced institutionalisation is the rule not the exception in the U.S. Legal safeguards are set up to protect society, not to protect PWD; in contrast, this Convention is about protecting PWD rights.

NHRI supported EU 3 (bis) providing legal safeguards against arbitrary institutionalisation, an illegal deprivation of liberty. Where a restriction of liberty is necessary, procedures in law must be applied and States must review their own laws. The focus should be in the best interests of the person.

ARTICLE 11: FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Ireland said the EU supported 11.1 because it obliges States to implement the ICCPR and prohibits medical or scientific experimentation without consent. The EU has made proposals in relation to forced institutionalization in Article 10, and because forced interventions are dealt with in Article 12, the EU recommends deleting from 11.2 the following words: "and shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment."

India proposed merging Articles 11 and 12. This new Article titled "Freedom from Torture, Degrading Treatment, Violence and Abuse" (available on the UN Enable website) retains 11.1 and 11.2 with an addition to 11.2. The new paragraphs 11.3, 11.4, and 11.5 are similar to Article 12. Both these articles deal with acts, which take away the fundamental freedoms, rights, and dignity of persons and should be treated together.

Canada supported the EU in deleting the last part of 11.2.

Japan supported the EU and Canada because Article 10 addresses institutionalization and Article 12 addresses the rest of 11.2.

Yemen stated that the title of Article 11 and 12 imply that they deal with one subject that could be combined, and supported India's proposal. It does not support deleting 11.2, but it may be combined with Article 10.2.

Uganda supported 11.1 in total, and proposed adding in 11.2 the word "abduction" after "forced interventions." PWD are abducted and taken to institutions.

Argentina supported 11.1 in the original text. The language in 11.2 goes further than the Convention against Torture and therefore may fit in Article 12, Protection against Violence.

China supported the deletion of the last part of 11.2, as advocated by the EU and Canada. Forced interventions, footnote 38, is controversial and suggests placement a separate article or in another article.

South Africa supported 11.1 and removal of last part of 11.2, because it is already in Article 12.

Norway supported Canada, China and EU's proposals to keep 11.1 and to delete the last part of 11.2.

Costa Rica supported the current text Article 11, but may agree to delete the second part of 11.2. There is a translation issue: The English version says "forced intervention" while the Spanish version says "forced medical interventions."

Kenya supported retaining the original Article. Forced interventions and institutions are cruel and inhuman treatment, and should be addressed in this article. Article 11 and 12 should not be merged because Article 11 tracks other Conventions and Article 12 is unique to PWD.

Holy See proposed adding “, including sterilization” after “forced interventions” in 11.2.

Mexico spoke against the proposed merger of Article 11 and 12 because they are separate issues. In 11.2, kidnapping (abduction) should not be listed because it is a special kind of crime. It proposes a new Paragraph 11.3 to address monitoring the living situations of PWD: “In order to monitor living conditions and facilities of places where persons with disabilities are placed, international instruments shall be applied, as appropriate, including the Optional Protocol of the Convention against Torture, for the realization of visits by national or international bodies to detention centres.”

Singapore supported deleting the last part of 11.2.

Thailand supported the text as drafted and suggested adding “and other forms of experimentation” after “medical or scientific research,” in order to be more inclusive.

Eritrea supported the WG's original text. Although 11.2 it is redundant with article 10, it is necessary to keep it in Article 11.

Sierra Leone supported the WG's original Article 11. The second part of 11.2 is important; footnote 38 merely states that there was disagreement about whether it should appear in Article 11 or Article 12. There was no disagreement about its necessity. The AHC needs to address appropriate legal procedures and safeguards relating to forced interventions. It would like to discuss whether to merge Articles 11 and 12 after the entire Convention is drafted.

Algeria does not favor merging Articles 11 and 12 because the seriousness of torture is different from abuse. It proposes adding the words “in all of its forms” after the word “torture” in 11.1.

Liechtenstein supported keeping Articles 11 and 12 separate. Different actors commit these different kinds of abuses. Article 11.1 mainly addresses the public sphere, while Article 11.2 deals with medical situations. The focus of Article 12 is on abuse and violence in the private sphere, which the State should do everything to prevent.

The floor was opened for comments from NGOs.

WNUSP stated that its members experience forced interventions such as electric shock and drugging which traumatize them for life. It agreed with Kenya that these practices constitute torture. Under international law, there is no distinction between torture and forced interventions. Abuse of political prisoners is understood and confronted; but in “medical” institutions it is more difficult to defend against violence, even though the torture is the same, because it is not referred to as such. Legal standards and procedural safeguards can never legitimize torture and other cruel treatment. WNUSP finds Algeria's amendment constructive.

Society of Catholic Social Scientists supported the WG draft text with the Holy See's amendment adding forced sterilization, because of the danger posed by eugenics interventions. Bodily integrity is a vital concern to PWD.

ARTICLE 12: FREEDOM FROM VIOLENCE AND ABUSE

Ireland explained that the EU does not favor merger of Articles 11 and 12 because violence and abuse is broader than torture. Although the EU agrees with the first sentence in 12.1, it is more appropriate to the preamble. To emphasize obligations, Article 12 should begin with States Parties duties to protect PWD from all forms of violence. The EU has proposed rewriting 12.2 to make it broader and stronger than the WG's language: "States shall take the necessary measures to ensure that medical and related interventions, including corrective surgery, are not undertaken without the free and informed consent of the person concerned." (Moved and reworded from Article 21(k)).

In the WG draft, 12.3 repeats 12.1. Therefore 12.3 should be deleted, and the rest reworded to focus on information, as follows: "Such measures shall include the provision of appropriate information to persons with disabilities and their families."

Although the EU agreed that forced intervention is illegal, there are exceptional circumstances where it is appropriate. Therefore, the EU suggested an addition 3 (bis): (i) "States Parties shall accept the principle that forced intervention of persons with disabilities is illegal, save in exceptional circumstances in accordance with the procedures established by law and with the application of appropriate legal safeguards." (ii) "The law shall provide that in any case of forced intervention of persons with disabilities, the best interests of the person concerned will be fully taken into account." The EU supported 12.4 and 12.5. In 12.6, the EU suggested replacing "treatment" with "prosecution" because this paragraph addresses the perpetrators of violence and abuse. In addition, "as appropriate" should be moved to before "of protection services" so it includes both protection services and judicial involvement.

Argentina proposed deleting the first sentence of 12.1 because it is redundant. In 12.2, it proposed deleting "abduction" in favor of a clearer term. The terms "forced interventions" and "forced institutionalization" are not clear.

Yemen agreed with the WG's draft of 12.5. This Convention needs explicit remedies as stated in footnote 39.

Korea proposed to change 12.1 by adding "abandonment" to the list of forms of violence and abuse in both sentences.

Jordan remarked that 12.3 is redundant because it is included in 12.1 and should be deleted. It proposed adding "provision of information" to 12.5 and adding "and their families" after PWD in 12.6. Forced interventions is an abstract concept, but people are concrete. These decisions should be supported by counselors, not just judges and lawyers in isolation.

China remarked that the first sentence in 12.1 of the WG text sentence may lead to negative views of PWD. It suggests using Article 19 of CRC as a guide and deleting 12.1 as drafted. With regard to 12.2, forced intervention and institutionalization are important issues, and the AHC should further discuss how to address them.

Bahrain proposed that 12.1 focus on institutional mistreatment.

Costa Rica stated that the Spanish text in 12.1, 12.2, and 12.3 include both physical and mental abuse, but the English version does not include that distinction. It suggested inclusion of both in all translations. It proposed that 12.3 (the provision of information) be placed in 12.1. In 12.6, add after "protection services," "adequate deterrence and effective sanctions, including as appropriate, traditional involvement." This makes clear the need to apply sanctions when violence is used as in CEDAW.

Japan stated that 12.2 mixes forced institutionalization with medical treatment. If a person consents, then medical treatment is fine. The EU proposal would clarify this.

Sierra Leone agreed with deleting the first sentence and placing it in the preamble. It also supported deleting 12.2 because this is already in 11.2. There is no need to address footnote 39 because 12.5 and 12.6 implicitly address remedies. Sierra Leone asked for clarification as to whether "judicial involvement" in 12.6 means legal remedies. It prefers to incorporate remedies into the Articles instead of describing them in a separate Article. Alternatively, 12.5 could be amended to add a provision for appropriate legal remedies.

Uganda stated that the first sentence of 12.1 should not be deleted because it contains information that States need to understand for the remedies that follow. Paragraphs 12.1 and 12.3 need to be harmonized. In 12.4, the phrase "placed together, separate from others" may reinforce institutionalization and segregation. It proposes replacing this phrase with "where PWD's live and access services." A new paragraph at the end should read: "States Parties reaffirm the rights of persons to make a choice over their bodies and shall ensure PWDs are not subject to sterilization or forced abortions."

Kenya recommended a paragraph that takes into account the fact that PWD are more likely to suffer rapes and maimings in situations of armed conflict, given especially that PWD are seen as less likely to be infected with AIDS. It proposed language whereby States Parties recognize that armed conflict particularly undermine freedom from violence and abuse of PWD, and shall take appropriate legislative, administrative and other measures to protect PWD from armed conflict.

New Zealand proposed several amendments. The first sentence of 12.1 can be deleted as had already been proposed provided that it is moved to the Preamble. The references to exploitation in this sentence and in 12.3, 12.5 and 12.6 should include "economic" exploitation as well. The instances of "violence and abuse" mentioned in 12.6 should specify the whole list of types of abuse as stated in the first sentence of 12.1. In 12.3 "And education about how to avoid, recognise and report instance of the above. SP shall also ensure those working with PWD that are trained to identify and prevent such instances." 12.4 should be amended to include the need for monitoring and transparency: "Recognising that PWD are more at risk of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including economic and sexual exploitation and abuse in segregated policies and programs where persons with disabilities are placed together, separate from other people, NZ States Parties shall ensure that those facilities and programmes, both public and private, are effectively monitored by independent authorities, which include PWD, and the monitoring reports made available to the public." The following language should be added to 12.5: "Such recovery and reintegration shall take place in an environment that fosters the health, self-respect, dignity and autonomy of the person." These amendments are based on the LSN Legal Analysis. 12.6 should focus on follow up as treatment has already been dealt with and amended as follows: "States Parties shall ensure the identification, reporting and investigation

of all instances of violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, and referral to the appropriate protection agency, and where necessary to the courts.”

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