

The comments of International Disability Convention Solidarity in Korea

Chairman's Text (as amended by the International Disability Caucus)

- (j) **(REPLACE "Emphasizing" BY "Convince")** 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,
- (k) Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices **(ADD: and emphasizing that life of persons with disabilities shall be inclusively realized in communities.)**
- (l) **(REPLACE "Considering" BY "Emphasizing or recognizing")** that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, especially those directly concerning them,
- (o) Recognising that a disproportionately large number of persons with disabilities live in conditions of poverty, and mindful of the need to alleviate the negative impact of poverty on persons with disabilities, **(ADD: and acknowledging the need of active actions to prevent poverty from being continuous.)**

Article 2 DEFINITIONS

(JUSTIFICATION : "A person with a disability is an individual whose opportunities are limited or lost in taking part in the normal life of the community on an equal level with others, due to physical, social, attitudinal and cultural barriers because of their physical, sensory, intellectual, psychological, developmental, learning, neurological or other impairment including the presence in the body of an organism or agent causing malfunction or disease, which could be permanent, temporary, episodic or transitory in nature."

* Our suggestion is based on the Proposal C of Bangkok draft made in Oct. 2003)

Article 3 GENERAL PRINCIPLES

(NEW (a-bis) Diversity of disability perspective)

(NEW (b-bis) Empowerment & self-representativeness(or self representation) in policy concerning disability)

(b) Equality between **(REPLACE “men and women” BY “women and men”)**.

cf) Disabilities are nature

(Disabilities should be considered just one of different natures between people.)

Article 4

GENERAL OBLIGATIONS

1. States Parties undertake to ensure the full realization of all human rights and fundamental freedoms for persons with disabilities **(ADD: inter alia by mainstreaming a gender perspective in all policies and program relating to persons with disabilities)** without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
3. In the development and implementation **(ADD: evaluation)** of legislation and policies to implement this Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve, persons with disabilities **(ADD: “including children with disabilities.”)** and their representative organizations.

Article 5

EQUALITY AND NON-DISCRIMINATION

2. States Parties shall prohibit any discrimination on the basis of disability and guarantee to persons with disabilities equal and effective protection against discrimination. **(ADD: Whit legal measures)** States Parties shall also prohibit any discrimination and guarantee to persons with disabilities equal and effective protection against discrimination on any other grounds.

[Article 6

WOMEN WITH DISABILITIES]

(NEW TEXT PROPOSED)

1. States Parties shall eliminate the multiple and intersectional discriminations of women with disabilities throughout their life span and take gender specific measures to ensure that women with disabilities enjoy all human rights and fundamental freedoms on the basis of equality with others.
2. State Parties shall implement the obligations set forth in this Convention with a gender perspective in mind.

3. States Parties shall take all necessary steps to enable women with disabilities to live in freedom, safety and autonomy by addressing the multiple discrimination and the particular disadvantages that they face on the basis of their gender and/or disability and eliminate obstacles to economic and personal development. These steps shall include, but not be limited to, the following:
- (a) develop national mainstreamed policies and programs pertaining to women and girls with disabilities
 - (b) adopt appropriate legislative and other measures prohibiting all forms of discrimination against women and girls with disabilities and shall include a separate reference to the protection of the rights of women and girl with disabilities in laws pertaining to women and(or) persons with disabilities
 - (c) shall take all necessary measures to protect women with disabilities from sexual exploitation, violence and abuse at home and communities.
 - (d) recognize the particular disadvantage, inter alia in the labor market, of women with disabilities associated with health care and motherhood and ensure to women with disabilities appropriate and free services where necessary in connection with pregnancy, childbirth and post-natal period as well as adequate nutrition pregnancy and lactation .
 - (e) shall ensure that women and girl with disabilities are not denied their rights to work and not deprived of rights to education on a basis of gender and/or disability
 - (f) shall support to empower the self-help organizations of women with disabilities

(JUSTIFICATION FOR SPECIFIC ARTICLE)

- *Without appropriate support, women with disabilities have been suffering from multiple discriminations and placed under desperate situations. So, considering the severity of issues that women with disabilities are faced with, this Convention should include a stand-alone article dealing specifically with issues of women with disabilities.*
- *Even CEDAW, which is supposed to cover all issues of women in comprehensive ways doesn't fully deal with issues of women with disabilities.*

Under the circumstances, if this Convention doesn't specifically mention the issues of women with disabilities, it is highly likely for the WWD issues to be neglected.

- *If we don't deal with the WWD specific issues in a separate article in this Convention, general application of this convention might not fully address the specific disadvantages that WWD are suffering from.*
- *More concrete and specific obligations as well as general obligation must be necessarily included in this convention to ensure the implementation of this Convention. Particularly to encourage women with disabilities to participate in the implementation process at the national level, set-up of a separate article stipulating specific obligation for the issues of WWD is a must.*
- *To reflect the perspective of WWD in every article, a stand-alone article for WWD should be placed in the I part , which deals with general comments of chairman's text.*
- *Our experiences say that article like 'general obligations' can never address specific issues like sufferings of WWD. And that's why CRC and CEDAW were separately established despite the rules A and B of the existing Comprehensive Human Rights Convention. Therefore, we believe it more desirable to set a separate article for WWD beside general obligations.*
- *CRC deals with issues of children with disabilities in the article 23, but many insist that it has failed in protecting the rights of children with disabilities despite a separate article for children with disabilities. But, the reason of the failure is from too limited wordings of article 23, not from the existence of a separate article.)*

Article 8

RAISING AWARENESS (REPLACE "REGARDING DISABILITY" BY "ON THE RIGHTS OF PERSONS WITH DISABILITIES")

(Delete the whole article)

(JUSTIFICATION : We propose to delete the article 8 related to raising public awareness on disabled people. Rights of PWD should be respected as itself in that it cannot be guaranteed by public awareness raising. To mention public awareness in this convention may undermine the fact that human rights of PWD as human being should be respected and justified.

And also, guarantee of rights and public awareness raise cannot be compatible, so the article 8 on raising awareness is unnecessary in this Convention.

Particularly in the article 8, 1-(a) which says "raising awareness throughout society regarding persons with disabilities" and whole part of 1-(b), 1-(c), 2(a)-(ii), 2-(a)-(iii), 2(b) and 2(d) are inappropriate.

And if you remind the fact that CESC, ICCPR, CEDAW and CRC don't have any separate article regarding raising awareness, you may realize it's not necessary for this convention alone to have separate article for awareness. And if someone still think the article necessary, we believe the person may have a typical sympathetic aspect on disabled people, which we have to be careful about.)

**Article 9
ACCESSIBILITY**

(NEW 2-(i) State parties shall take measures for persons with disabilities to safely use these all public facilities and escape in emergency cases.)

**[Article 11
SITUATIONS OF RISK**

States Parties recognize that in situations of risk **(ADD: including natural disaster, wars, armed conflicts)** to the general population persons with disabilities are especially (REPLACE "vulnerable" BY "neglected") and shall take all feasible measures for (REPLACE "their protection" BY "the protection of their human rights, according to international law.")

**Article 14
LIBERTY AND SECURITY OF THE PERSON**

(We suggest the paragraph 2 of article 17 be moved here as a new paragraph 3

- 3. States Parties shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving or alleviating any actual or perceived impairment.)**

**Article 17
PROTECTING THE INTEGRITY OF THE PERSON**

(We suggest the paragraph 1 of this article move to chapeau of this convention or article

- 1. (REPLACE "States Parties shall protect the integrity of the person with disabilities on a basis of equality with others." BY "Every person with a disability has the right to have his or her physical, mental and moral integrity respected." AND MOVE TO ARTICLE 15))**

**(We suggest this paragraph move to a new paragraph 3 of article 14.
(MOVE SUBSTANCE OF THIS PARAGRAPH TO ARTICLE 15.**

- 2. States Parties shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving or alleviating any actual or perceived impairment.))**

**Article 22
RESPECT FOR PRIVACY**

- 2. States Parties shall protect the privacy of personal, (REPLACE "health and rehabilitation information" BY "personal information including medical history**

and other health information”) of persons with disabilities on an equal basis with others.

Article 26

HABILITATION AND REHABILITATION

(Delete the whole article)

(JUSTIFICATION :

1. *The definition of terms, 'rehabilitation' and 'habilitation' is unclear and ambiguous.*
2. *The range of rehabilitation and habilitation is unclear.*
3. *The contents of this article are overlapped with those of other articles.*

Since the definition of the term, 'habilitation' and 'rehabilitation' is unclear, what is stipulated in this article is also too ambiguous and doesn't deliver concrete messages.

Contents of Chapeau 1 is hardly differentiated with those of other articles so that a) and b) of Chapeau 1 are also unclear in terms of their definition and range.

The definition of rehabilitation experts is unclear. So, the difference between medical, education, labor, information, physical accessibility experts and the rehabilitation service experts is hard to figure out.

Set-up of this article, therefore, is unnecessary, and we believe that we can replace main points of this article without using the terms habilitation and rehabilitation to other articles. But, if the terms are used only for medical perspective, we may be fine with the use of the terms.

The article 1, a) says that rehabilitation services and programmes should support participation and inclusion of persons with disabilities, and those programmes should be based on multidisciplinary assessment. We believe that the wording can justify the excessive intervention of experts and control over persons with disabilities. Also, that kind of perspective is totally based on medical and individual models, which is inconsistent with social model UN has so far maintained.)

Article 27

WORK AND EMPLOYMENT

(We support the original text of the Chair.)

States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall (REPLACE: “set an example through employment of persons with disabilities in the public sector” BY (DELETE: “prioritize public employment for persons with disabilities who fulfil the professional requirements requested by the corresponding public organizations”)), and shall take other appropriate steps to safeguard and promote the realisation of the right to work, including measures to:

Article 28

ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION

- (d) ensure access by persons with disabilities to public housing programmes **(ADD: and encourage(recommend) private housing providers to guarantee access by persons with disabilities to their programme)**

Article 29

PARTICIPATION IN POLITICAL AND PUBLIC LIFE

- (c) (NEW c "State Parties shall ensure that persons with disabilities be consulted and involved on an equal basis with others in all policy making exercises and decision-making **(ADD: , implementation, evaluation, monitoring,)** processes to enable inter alia due appreciation of the disability dimension in such policies and be afforded an appropriate leading role on issues concerning persons with disabilities.")

Article 30

PARTICIPATION IN CULTURAL LIFE, RECREATION, LEISURE AND SPORT

(NEW 2-bis State parties acknowledge the art of and by persons with disabilities as one of genre of art and support the activities of artists with disabilities and DPOs.)

[Article 32

INTERNATIONAL COOPERATION]

(JUSTIFICATION: Paragraphs dealing with international fund, technological cooperation, set-up of international standard should be added.)