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Morning Session

Commenced: 10:23 AM

Adjourned: 1:00 PM

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Article 15 was discussed followed by a detailed discussion on a new proposed Article 15(bis) "Women with Disabilities", drafted by Korea. The remainder of the session was devoted to Article 16, on which India circulated its own revised draft text, with some interventions carried over to the afternoon session.

The Chair established intervention parameters of five minutes for Member States, and three minutes for NGOs due to the need for precision, succinctness, and cooperation in order to move forward the Committee timetable.

ARTICLE 15: LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY

Ireland, speaking on behalf of the **EU**, suggested rewording Article 15.1 to read as follows: "States Parties shall take appropriate measures to facilitate persons with disabilities (PWD) to live independently and be fully included in the community, including measures aimed at ensuring that." Reference to Article 10's discussion of institutionalization should be inserted at the end of 15.1(b). The language in 15.1(c) should be replaced by the following: "States Parties shall also take appropriate measures to promote the provision of life assistance in order to enable PWD to live independently." In 15.1(d) "without discrimination" should be revised to say "on an equal basis," because in many cases community services are subject to "means testing" based on the number of children per family. The goal should be to ensure that PWD can access the same general services as other members of the population.

Morocco proposed inserting a new paragraph, 15.1(f), as follows: "Support to the families who are taking care of persons with disabilities, and also provide material and moral support, and provide them with the necessary assistance to ensure the inclusion of persons with disabilities in society."

Japan addressed the difference in categories, and proposed redrafting to separate the civil and political rights contained in 15.1(a), (b), and (e), which should be implemented without delay, from the guarantees in 15.1(c) and (d), which are subject to progressive realization depending on environmental conditions and financial availability. Since the content of 15.1(b) is dealt with in Article 10, it should be moved to Article 10, and 15.1(e) should become 15.1(b). Then 15.1(c) and (d) should be moved to a new paragraph, 15.2, reading: "States Parties shall take appropriate steps to make accessible for persons with disabilities:

(a) 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; (b) Community services for the general population, on an equal footing with others, in a manner responsible to their needs." By separating these two categories of rights for persons with disabilities, Japan said, the issue of progressive realization could be acknowledged.

Jordan proposed amending Article 15's title to "Independent community living." In 15.1, the words "people with disabilities" should be added after "including by ensuring that"; and then the words "people with disabilities" should be deleted from the beginning of 15.1(a), (b), (c) and (e); and 15.1(d) should be changed to "Have access to community services that are responsive to their needs." Jordan supported Morocco's proposed addition, but recommended that it should be its own paragraph, 15.2.

Argentina suggested replacing the last portion of 15.1, "including by ensuring that" with the words "with a view to," as this involves an obligation of the States. Because 15.1(a) and (b) are redundant, (b) should be deleted.

Mexico proposed amending Article 15's title to read "Inclusion in the community and independent living." It suggested amending 15.1 to read as follows: "States Parties to this Convention shall take effective and appropriate measures to enable persons with disabilities to decide for an independent lifestyle and to be able to choose their place and structure of residence, without barring the possibility of being fully integrated in the community and in their families by ensuring that:." Mexico supported "independent living, rather than separation of families."

India expressed the title amendment of "Right to a life of independence in the community." It proposed deleting the portion of 15.1 following "persons with disabilities." --??? " In 15.1(a), India recommended replacing the current text with the following: "Persons with disabilities have the equal opportunity to exercise their choice of living independently or with their family respecting social and cultural practices of family norms and be included in the community." In 15.1(d), it deleted a redundancy of "for the general population." India supported the EU position on 15.1(b).

New Zealand (NZ) amended Article 15.1 to read as follows: "States Parties to this Convention shall take effective and appropriate measures to enable persons with disabilities to live in and to be fully included as members of the community. States Parties shall ensure that: (a) persons with disabilities have the equal opportunity to determine how, where, and with whom they live; (b)(bis) children live with their own family or, where that is not possible, live in another family situation; (c) persons with disabilities have access to a range of in-home and other community support services, including personal assistance, necessary to support them to live where they choose, to participate in the community, and to prevent isolation or segregation from the community; (d) community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs; (d)(bis) community support services are provided in a manner that recognizes the autonomy, individuality and dignity of persons with disabilities; (e) persons with disabilities have access to information about community services, including support services. NZ states the focus is community integration, and supporting autonomy

rather than control of PWD. Benefits to families and caregivers are a natural consequence of implementing the Convention's focus on PWD, so there is no need for additional family or caregiver provisions.

Philippines amended 15.1(d) by adding: "Persons with disabilities are allowed to become members and active participants in community organisations and instrumentalities of their choice. There shall be policies and facilities to assist PWD to qualify for membership and be able to participate."

Yemen supported the title amendment "Independent living and integration into society." It stated that "independence" does not fully reflect the aim of the Convention. Yemen supported the statements made by Morocco and Jordan.

Sierra Leone recommended deleting 15.1(b) as redundant. It supported Argentina and the Working Group (WG) footnote (FN) 52. It supported the EU's proposal for inserting a new paragraph. Sierra Leone supported promotion of supportive assistance, rather than an obligation to provide such assistance.

Vietnam amended 15.1(d) to read: "Persons with disabilities have rights to participate and benefit from all available community services on an equal basis with the general population."

Bahrain proposed the title amendment of: "Independent life and integration into society" or "social integration." It supported India and Yemen's related proposals.

Canada deleted 15.1(b), as its ideas are already expressed in 15.1(a). In 15.1(c), "based" was inserted between "community" and "support services." It added paragraph 15.1(f) "Persons with disabilities who require assistance communicating have access to necessary and appropriate supports to enable them to express their decisions, choices and wishes."

South Africa supported the inclusion of Article 15 in the Convention, but proposed replacing "included" with "integrated" in the title. PWD are not "add-on parts of communities." Integration should be further strengthened in 15.1(c) by replacing "inclusion" with "integration" for consistency with the proposed title. Because its ideas are captured in 15.1(a), as referenced in WG footnote 52 and noted by other delegations, South Africa supported deleting 15.1(b). However, if 15.1(b) is kept in the document, then South Africa proposes adding, at the end of the sentence, the words "unless where it is found appropriate."

Thailand supported the proposed changes by New Zealand, except in 15.1(c) where "residential" should be kept as an option. Some educational settings may require residential arrangements, similar to that offered to non-disabled persons. Since there are two sets of meanings for independent living (IL), it supported the general concept, but not the narrowed application to a particular movement. Thailand supported keeping 15.1(b) in any portion of the Convention deemed relevant. Both the terms "inclusion" and "integration" are non-problematic if viewed from an inclusive social structure, however Thailand would support use of a better term.

Kuwait amended 15.1(c) by deleting "in-home," adding "options" after the word "residential"

and deleting a redundant last phrase, “and to prevent isolation or segregation from the community.” It supported Yemen’s title proposal, South Africa’s 15.1(b) proposal, and Morocco’s proposal to add 15.1(f).

Botswana supported amending 15(e) to read: “Persons with disabilities, their families and caretakers have access to information about available community support services.”

The **Russian Federation** agreed with statements made by Argentina and Sierra Leone, and supported Canada’s proposal to eliminate 15.1(b).

The floor was opened for comments from the NGOs.

People with Disabilities Australia, speaking on behalf of the National Association of Community Legal Centres, and the Australian Federation of Disability Organisations, requested delegations’ support of Article 15, since independent living with support services is “fundamental to the realization of many human rights.” Stating that “the continued institutionalization of PWD remains one of greatest abuses of human rights,” it requested an “unequivocal obligation on state and non-state actors to cease institutionalizing persons with disabilities.” It also urged strengthening 15.1(b) to require states to eliminate institutional care since PWD are forced into them in absence of alternative choices. States should be required to develop and implement practices to relocate PWD currently institutionalized in the community, and provide necessary supports.

Inclusion International (II) opposed use of the term “integration” since it implies fitting into the existing system. “It is not about fitting in, but about accepting diversity.” Emphasizing the need to create choices and restore control of their lives to PWD, it stated that “removal of restrictions, lack of choice regarding meals, clothing, pets and friends – this is what it means to choose where one lives.” Additionally, grouping PWD together is not cost effective, and too proliferative. II affirmed New Zealand’s proposal.

World Network of Users and Survivors of Psychiatry (WNUSP) reiterated the importance of the right to freedom of choice and expression – with PWD “being able to live in the community as themselves,” able to disclose their status and experience without fear of being declared incompetent or dangerous. Institutionalization should not be supported. WNUSP endorsed the NZ amendments.

International Disability Convention Solidarity in Korea proposed replacing “living independently” with “independent living,” and, in 15.1, “live independently” should be replaced by “to achieve independent living.” It commented that “living independently” was written in place of “independent living (IL)” in the WG because IL was a service model for some developed countries. In other countries IL means “to govern their own lives by their own will,” not separation from families, so the use of “independent living” in this Convention is appropriate. Since the UN theme for the 2000 World Disability Day was “Independent Living,” it is reasonable to believe they didn’t choose the name of a popular service model.

World Union for Progressive Judaism (WUPJ) suggested an addition to 15.1(e) with a reference to the accessibility of information on available support services to family and caregivers, considering their important role in the inclusion of PWD. It also expressed

affirmation of PWD rights to live independently, be part of and take part in all services available to the general community, regardless of the level of independence.

National Human Rights Institutions supported Article 15 and the New Zealand proposal in order to clarify and strengthen community independent living principles for PWD.

The floor was re-opened to States for additional comments.

Lebanon proposed amending New Zealand's proposed 15.1(b)(bis) to read: "Children with disabilities live with their own family or, where that is not possible, favour that children with disabilities live in another family situation whenever possible."

Costa Rica stated their intent to present a written text to address overlooked points in Article 15. Specifically, it wants to clarify decision-making rights of PWD through provision of States' assistance.

PROPOSED NEW ARTICLE 15 (BIS): WOMEN WITH DISABILITIES

"1. State Parties undertake to ensure the enjoyment of full and equal rights and freedoms by women with disabilities and their equal participation in political, economic, social and cultural activities without any discrimination on the basis of their gender and/or disabilities.

"2. State Parties shall take the following steps from a gender perspective so as to ensure that women with disabilities are able to live with dignity in freedom, safety, and autonomy.

(a) Include a separate reference to the protection of the rights of women with disabilities in laws pertaining to women and persons with disabilities;

(b) Incorporate women with disabilities in social surveys and statistics collection efforts and collect gender-disaggregated data on persons with disabilities;

(c) Protect the motherhood of women with disabilities by developing and disseminating policies and programs for assistance based on the recognition of the special needs of women with disabilities in pregnancy, childbirth and postpartum health care and child-care;

(d) Ensure that women with disabilities are not deprived of their right to work due to their pregnancy or childbirth, and provide the necessary assistances in this regard;

(e) Ensure that women with disabilities are protected from sexual exploitation, abuse and violence at home, institutional facilities and communities."

The Republic of Korea introduced the above proposal for insertion before Article 16.

Paragraphs 15(bis)(a) and 15(bis)(b) requiring inclusion of women with disabilities' (WWD) issues into laws and into data collection both provide special consideration to the unique societal situation that WWD face. Paragraphs 15(bis)(c), (d) and (e) focus on protection of motherhood, right to work, sexual exploitation, abuse and violence. The rights of WWD need to be accorded similar attention to that received by children with disabilities.

South Africa called for a dedicated Article on WWD because they are one of the most highly marginalized groups. This is consistent with the draft text's inclusion of children.

Ireland reaffirmed the EU's position that the purpose of this Convention is to apply to, and ensure the rights of, all PWD. It highlighted structural problems resulting from proposals which differentiate high risk groups such as WWD and CWD within the whole community of

PWD. While they EU may agree with the substance of the proposal, as a matter of principle the EU believes that the appropriate placement for such references is in the Preamble.

Jordan supported the statement made by Ireland/EU regarding the need for unity, as opposed to more division. It suggested including WWD in the Preamble, or elsewhere.

Sierra Leone posited several questions, given that children are a special population group, on whether “special articles to cover special population groups” should be included in this Convention and if so, “how far can we go?” It highlighted an inconsistency because children are included, but women are not.

Yemen responded that inclusion of women would depart from the goal of a Convention covering all PWD. Children are different from adults since they cannot meet needs on their own. Yemen opposed including an Article on WWD, and supported the positions stated by Ireland/EU and Jordan.

India called for inclusion of WWD in the Preamble and General Principles, while retaining the separate Article on CWD. As stated by EU, Jordan and others, a separate WWD Article is unnecessary.

Norway echoed India’s statement, and added that the right to “equality between men and women” would also encompass children.

Namibia supported the Korean and South African proposal of a separate Article for WWD, since they are more marginalized than any other group, including children.

Ireland responded to Sierra Leone’s question regarding the EU’s apparently contradictory position in including a separate Article on children, but not women. The EU did not wish to imply that women and children don’t face severe challenges. It wanted to avoid compartmentalization, and digression into arguments about which group has the most or least severe challenges. This Convention should apply to all PWD. For this reason the EU also does not support a separate article on CWD. A dedicated Article implies that the only rights available to a group are those that are referred to in that Article, and therefore risks limiting children’s rights to the provisions of that Article. This may be a grave disservice to CWD. The Convention on the Rights of the Child (CRC) is virtually universal, with the greatest number of ratifications among the human rights instruments. An approach that attempts to incorporate incomplete elements of the CRC into this Convention would not enhance the protection of the human rights of CWD.

Kenya affirmed universality in principle, while noting that certain categories of PWD suffer disproportionately. It supported South Africa and Korea in specifically recognizing WWD, because women have suffered more. “This is our opportunity to recognize the principle of universality, but also recognize specific categories of people that have suffered most because of gender.”

Serbia and Montenegro stated that the Convention should contain reference to WWD, but does not support inclusion of a separate Article. The Preamble already contains reference to WWD; gender equality could be included in the Convention’s General Principles or

elsewhere.

Uganda supported separate Articles on WWD and children with disabilities. Disability is a diverse, non-homogenous category. Different PWD suffer differently, and women face special double discrimination and risk because of gender and disability.

Thailand acknowledged that WWD do face "multiple layers of discrimination, more so than men." However, the Convention can only contain a limited number of articles. Thailand urged finding a constructive approach to give strong recognition to the problem.

Mali supported addition of Article 15(bis). While it understands the EU view, this is a diverse world. In African countries women are doubly discriminated against, and a universal Convention should underscore this in the name of solidarity among PWD.

Korea expressed appreciation of the many concerns regarding categories, and asked all States Parties to give deeper attention to subgroups such as WWD.

Sierra Leone proposed a special Article covering population sub-groups, including women, children and any other at-risk group in a succinct, short format considering specific concerns of each group. These needs are not adequately covered in the Preamble. In the event of non-consensus on inclusion of separate Articles on women and children, and should the Committee choose to take the route of "not ignoring, nor overemphasizing the needs and positions of groups," Sierra Leone offered to prepare a proposal.

Saudi Arabia recognized discrimination against women with disabilities and the merit of the Korean proposal but believed this Convention should concentrate on PWD regardless of gender. The provisions of 15(bis) should be incorporated into other Articles such as the one on violence. Saudi Arabia supported the Article on CWD as a special, non-adult case.

Mexico affirmed its views regarding a separate Article on children. It noted that situation of WWD has not been dealt with in other human rights instruments and for this reason should be addressed in the Preamble, along with other special populations.

Costa Rica noted consensus regarding the inclusion of special population groups, but a lack of consensus on the best approach to PWD sub-groups facing additional challenges. Ireland is right to advise against establishing a hierarchy of disability sub-groups. Discussion on this issue is "more of form than substance" and should be suspended.

Liechtenstein echoed the position of Costa Rica noting that "form is optional, substance is not." Whether provisions on WWD is included in a separate article or integrated into other Articles into the Convention, what matters is the substance of these provisions. Addressing needs of specific categories of people in a human rights discourse is not inherently problematical. The theoretical danger that such an exercise could lower the standards of protection can be addressed with careful drafting, ensuring that they are in conformity with human rights standards. A general provision that deals with the relationship between this Convention and other Conventions addressing similar rights should be explored.

Lebanon has always been concerned about the risk of discrimination between and among

PWD. It agreed with Sierra Leone to create a special populations Article addressing women as well as the elderly, without being too detailed and restrictive.

The **Special Rapporteur on Disability** supported inclusion of Article 15(bis). An Article specifically dealing with WWD is necessary, as the issue has many dimensions. They relate to the stages of aging, and to societies that create situations and have cultural values that complicate this situation of multiple discrimination.

The floor was opened for NGO participation.

World Federation of the Deaf (WFD) supported the Korean proposal. Existing Conventions such as CEDAW and CRC do not adequately include all rights and needs of disabled women or children. The fear of having to add other new groups is insufficient grounds for not including the Articles on Women and Children.

Economic and Social Commission for Asia and the Pacific (ESCAP) affirmed the stance of Korea, South Africa, Mexico and others, although it understands the concept of universal application. The majority of disabled women, who are 50% of the population, do not have access to services, WWD should be included in this Article or the General Principles.

Landmine Survivors Network (LSN) strongly supported the Korean proposal and comments of Uganda, Namibia, Kenya, South Africa and others. It is convinced from its work with women and girls in mine affected countries that female amputees face additional discrimination.

World Blind Union (WBU) supported Korea's proposal. The issues of WWD have rarely been recognized, and this needs to begin somewhere. WWD are "the poorest of the poor." They are often neglected, and cannot move forward without States' recognition.

ARTICLE 16: CHILDREN WITH DISABILITIES

Vietnam proposed adding to Article 16.3(a) after "comprehensive services," the words "including early detection, intervention and rehabilitation." 16.4 is amended to "Recognizing the needs of children with disabilities, assistance extended in accordance with actual circumstances of children with disabilities shall be provided, whenever possible..."

Yemen supported a separate Article 16 on children with disabilities (CWD), but WWD should be integrated through the rest of the Convention.

Ireland stated that the EU preferred to see an appropriate reference to children with disabilities in the Preamble. The current proposals would alter the CRC to which the international community has agreed. This would not constitute a positive change to existing children's rights.

New Zealand recalled the WG discussions as noted in footnote 54. Due to time restraints the WG inserted Article 23 from the CRC into the draft text, with a poor result. New Zealand agreed with the EU that since almost all States involved in this Convention were signatories to the CRC, an article on children with disabilities would not add to the international body of

law. If this was determined to be necessary, however, it should be elaborated so as to improve on the CRC, for example, by addressing the “extra vulnerabilities” of CWD to rejection, abandonment, reduced aspirations by parents, reduction in opportunities and rejection by families and by emphasizing early intervention. On the other hand, the proposal put forth by India on 16.1 weakens the undertaking by Member States who are already bound by the CRC. It echoed concerns of the EU regarding new draft texts that repeat language in existing provisions, as is reflected in 16.5 of the Indian proposal, but which adds no value to obligations of parents as already mentioned in CRC.

Uganda suggested amending Article 16 as follows: In 16.2, replace the word “recognize” with the phrase “shall ensure”; strengthen 16.4 by replacing “social integration” with “social inclusion”; delete “should” in 16.5 and replace it with “shall.” In 16.6, add the following: “States Parties shall ensure that in all decisions concerning children with disabilities whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be of primary consideration.” In order to provide further protection to CWD, a new paragraph 16.7 should state, “States Parties shall undertake to prohibit the sterilization of children and young people with disabilities.” The high abuse, neglect, and incidents of crime against CWD must be mentioned in this Convention, along with the need to harmonize existing CRC provisions with the Convention.

Japan suggested the following language in 16.5 that would ensure consistency with States obligations in relation to the CRC: “States Parties shall recognise and take appropriate measures to respect the rights of children with disabilities in accordance with Article 23 of the Convention on the Rights of the Child and other relevant provisions of this Convention”

Palestine proposed an additional paragraph 16.6, “In accordance with the obligations under international humanitarian law to protect children with disabilities in armed conflict, States Parties shall take all appropriate measures in armed conflict, including foreign occupation.”

India amended Article 16 as follows: “16.1 States parties shall endeavour 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.” India also proposed adding the following paragraphs:

“16.3(a)alt Provision of early detection, early referral and early intervention services, including counseling for parents.

“16.5(bis) States Parties recognize the vulnerability of children to sexual abuse and exploitation and shall endeavour to ensure their protection.

“16.5(ter) States Parties recognize that the child, for the full and harmonious development of his or her personality, should grow up in a family environment. In the case of destitute or orphaned children, it shall be the duty of the State to make provision for adoption or legal guardianship as per prevalent laws, as also for respite and residential care, as appropriate.

“16.5(quart) States Parties shall respect the rights and duties of parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her rights in a manner consistent with the evolving capacities of the child.

“16.5(sext) States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of health care, preventive health care,

including dissemination of and access to, information concerning methods of rehabilitation, education, vocational training and services with the aim of enabling States Parties to improve their capabilities, skills, human resource development and research, in order to widen their experience in all these areas of expertise. In this regard, particular account shall be taken of the needs of developing countries."

The Holy See proposed amending 16.2, line 3 by adding the words "and citizenship" after "autonomy."

Canada proposed amending Article 16 by adding the following new paragraph: "16.2(bis): States Parties recognize the evolving capacities of children with disabilities in the exercise of their rights, and the right of children with disabilities to express their views freely on all matters affecting them, their views being given due weight in accordance with the child's age and maturity." A new paragraph, 16.6, should be added as follows: "Where children with disabilities are unable to live with their parents, States Parties shall make every effort to provide alternative family care in their community, and such placements shall be in the child's best interests." Canada suggested that new content should be developed specific to CWD, building on concepts appearing in the CRC, Article 23. Any Article on CWD should make it clear that its provisions in no way limit the rights to children enumerated in other parts of the Convention.

Kenya supported inclusion of Article 16, with reformulation of 16.3 and 4 to include state as well as parental responsibilities in provision of CWD services, subject to resource availability. "If previous instruments had provided equality for CWD, we would not be here today. Rights of this Convention are not a derogation of the rights of CRC." Rather, both are important. Situations of abuse of CWD by families and peers are not adequately addressed in the CRC. Kenya also reserved the right to draft additional references to procedural criminal evidence rules that allow criminals who abuse CWD to go free. The Working Group needs to do more work on this.

Afternoon Session

Commenced: 3:01 PM

Adjourned: 6:00 PM

The discussion on Article 16 dealt with the broader issue of whether this Convention should address the needs of specific groups within the population of PWD, like women and indigenous peoples. A large majority of States suggested modifications to Article 17 making it applicable generally to PWD rather than focusing on children with disabilities; these suggestions are not noted.

ARTICLE 16: CHILDREN WITH DISABILITIES (continued)

Thailand agreed that Article 16 was inadequate because it is modeled on Article 23 of the CRC and further amendments to its existing language would be of limited added value. It is in the best interest of children with disabilities that this article be totally redrafted containing

provisions beyond Article 23 of the CRC. Thailand reserved the right to submit revised draft language later.

Israel believed that from a legal perspective, this Convention is not appropriate to address specific groups or situations that are adequately dealt with in other international law instruments. Taking this path could lead to differentiation between different categories of groups and situations, which would be complicated given that this list is endless, and counterproductive, leading to further ambiguity as to the applicability of different principles and regimes of international law.

South Africa called for deletion of the qualification "subject to available resources" from 16.3 (b) as it weakens the much-needed assistance that children with disabilities require. The allocation of resources should not be conditional. 16.3(b) should be shortened to "The provision of assistance to eligible children and those responsible for his or her care" as the remaining text was redundant.

Kuwait called for a definition of "jurisdiction" as stated in 16.1.

Sierra Leone suggested that if no consensus is reached on referencing specific groups, the Convention should cover all groups. This legal document should be comprehensive, comprehensible and the language, particularly in the obligations, clear and consistent. If overloaded with declaratory statements it would bury the obligations. 16.2 should be amended: "States Parties also undertake to ensure the creation of conditions under which children with disabilities will enjoy a full, active, and decent life, in dignity within their respective communities." 16.4 should be replaced with: "States Parties undertake to provide and extend as far as possible free of charge appropriate early comprehensive services to the child as well as to their parents and others caring for the child. The provision and extension of these services shall be designed to ensure that a child with disabilities has effective access to, *inter alia*, education, training, participatory recreational activity and activities for the child's cultural and spiritual development." 16.5 should be replaced with: "States Parties shall provide the child with disabilities and his or her parents with appropriate information, referrals and counseling ensuring in all circumstances that the child maintains his or her self esteem and a positive view of his or her potential and right to live a full and inclusive life."

Jordan proposed substituting "their caregivers" for "other persons caring for or legally responsible for the child," and inserting "and information made available in these ways" after "counseling."

Mexico agreed with Canada, that although Article 16 restates much of Article 23 of the CRC, it would be advantageous to spell out and promote positive approaches to the rights of children with disabilities. Mexico stated that it had a text for two new paragraphs and would provide them to the Secretariat at a later date.

Ireland, on behalf of the EU, highlighted that all the provisions of the CRC apply to children with disabilities, not just Article 23 which has been the focus of the discussion thus far. Some of the proposals submitted today could in fact undermine existing rights in the CRC and other human rights instruments. Referencing certain parts of this Convention in this

Article implies that other parts of the Convention are not equally applicable to children with disabilities. This exercise is in danger not of enhancing the enjoyment of children's human rights but of undermining it.

Liechtenstein echoed the EU's statement that the Committee must avoid undermining rights as the draft is revised. The Article could be kept concise by referring to all the rights of the CRC, especially Article 23. It recommended keeping an Article on the rights of children with disabilities, because the Convention would not be complete without it. Already-established standards need not be repeated, but should be reflected and/or referenced. It is not necessary to mention progressive realization in every Article, which might dilute the Article; rather, this will be addressed in one Article. It suggested deleting "within their jurisdiction" in 16.1, as this will be addressed in a general horizontal Article in the Convention.

Norway agreed with Liechtenstein regarding progressive realization and the need for consistency and referencing to the CRC. It cautioned against using language that is similar but not identical to what already appears in the CRC. Some of the proposals made so far do pick up thoughts and concepts from the CRC but are not complete. In this situation there is the risk that the AHC will end up with a result opposite to that which it intended.

The **Chair** opened the floor to comments from NGOs.

Disabled Peoples' International expressed concern that the draft Convention does not deal with some essential issues for children with disabilities, such as abuse and exploitation, and suggested that the Committee consider groups at risk, including refugees and orphans with disabilities. Article 16 should be made more specific, to make it stronger than Article 23 of the CRC.

Save the Children, speaking on behalf of **Inclusion International, World Federation of the Deaf, World Network of Users and Survivors of Psychiatry, Canadian Association of Community Living, West African Federation of Disabled Persons, World Blind Union, People with Disability Australia Incorporated, Australian Federation of Disability Organizations, and Australian National Association of Community Legal Centres**, noted that the Draft is "adult biased and lacks a child perspective across and throughout the text." The fast pace of this Convention drafting process does not give young people the chance to catch up, and be prepared to make a strong stand. It is difficult for adults who have not lived that experience to understand. The law itself sometimes violates the rights of children with disabilities. The core principles of the CRC – non-discrimination, the best interest of the child, life survival and development, and participation – are not sufficiently addressed when it comes to children with disabilities, and the implementation mechanisms of the CRC are not sufficiently known by governments. The references to Article 23 of the CRC as a stand alone is a limited approach. While it appreciated the efforts of the EU to ensure that the Convention will not be weaker than other human rights instruments, Save the Children "hoped that EU understands our arguments to keep an Article on children with disabilities in this Convention." SCF made a counter proposal to the EU and other delegations calling for a strongly defined paragraph on diversity, in the Preamble, Principles, Definitions and in Monitoring. The SCF alliance's proposed revision of this Article is available at www.savethechildren.org.uk

Inclusion International represented by **CACL**, asserted that Article 23 alone does not adequately recognize the rights of children with disabilities which must be explicitly recognized and secured, both throughout the Convention, and in a strengthened Article devoted to children. Canada's proposed 17.6 should be adopted. Paragraph 9 in the SCF alliance's proposed text of Article 16 should be omitted because it references alternative care facilities, as it could be construed as an approval of institutions.

World Federation of the Deaf understood that many delegations are hesitant to have this article included because it is not well formed, and that the text needs to be refined. Article 23 of the CRC actually limits the rights of children with disabilities. Adults including parents and teachers should learn sign language in order to communicate with deaf children or children with intellectual disabilities. Components of Article 16 should not be moved to the Preamble, which would be long and non-binding.

The **National Human Rights Institutions** recommended a strong Article with additional language addressing prominently the concepts of nurturing, protecting, and empowering families and caregivers. Neither the broader text of the CRC nor Article 23 in particular has effectively addressed the rights of CWD. Rather than be a "mini-CRC" this Article should articulate specific issues pertaining to children with disabilities. Its current formulation is negative in its thrust, treating children with disabilities as liabilities. It is full of qualifiers, which weaken the rights of children with disabilities. Escape clauses such as "subject to available resources" and references to eligibility criteria should be deleted. The words "without discrimination of any kind on the basis of disability" should be deleted from 16.1. NHRI recommended that "have the right" replace "should enjoy" in 16.2, and the insertion of "identification" after "early" in the chapeau of 16.3. The following revision should be made to 16.3(b): "The provision to the child and the responsibility of their care of assistance for which application is made and which is appropriate to the child's condition and the circumstances of the parents of the caregiver." Also, 16.4 should be revised as follows: "All children with disabilities are guaranteed the right to free basic services that are designed to ensure that the child achieves the fullest possible social integration and individual development including his or her cultural or spiritual development, including, *inter alia*, education, training, health care services, nutrition, comprehensive rehabilitation and habilitation services and recreation opportunities." In 16.5, the words "other persons caring for" should be replaced by "caregivers," and "referrals" should be deleted as that is already covered by "appropriate information." A new paragraph should be added specifying that the child's best interest is of paramount importance in any considerations. The new paragraph 16.8, proposed by Save the Children, should be adopted, as should an additional paragraph related to Article 12 of the CRC, related to children's participation.

ARTICLE 17: EDUCATION

The **Russian Federation** asserted that Article 17 must address the education of persons, not children, with disabilities and proposed changes throughout the article accordingly. It noted that some people remain in secondary education beyond the age of 18. 17.1 (d) should be appended with "and granting, if need be, possibilities of education at home." A new subparagraph 17.1(e) should be added: "Granting to all persons with disabilities a professional training and retraining taking their physical and psychological limitations into

account.” The words “taking account of medical and social recommendations” should be appended to 17.2(a).

Sierra Leone reserved the right at a later stage to propose removing or canceling all references to children in this article, and directed the attention of the Committee to footnote 56, which mentions the WG's discussions about this in January. Sierra Leone also cautioned against making specific references to technology, since they may eventually become obsolete. “Children cannot wait for progressive realization” and references to it in 17.1 could diminish the obligation to action and should be deleted.

Ireland called for removal of the reference to progressive realization in the chapeau of 17.1 to replace the second sentence with “The education of persons with disabilities shall be directed to:” On a linguistic note, the EU clarified that once something is full, it cannot be made “fullest,” so “fullest” in 17.1(c) should be replaced with “full.” In 17.1(d), “take into account” should be replaced by with the more positive “promoting.” The chapeau of 17.2 should be revised to read: “In realizing this right, States parties shall endeavor to ensure:” The goal of 17.2(a) is inclusive and accessible education, but availability and location should be separated; therefore 17.2(a) should be revised as follows: “that persons with disabilities can avail of inclusive and accessible education (including equal access to early childhood and preschool education) and that such education shall be provided to the extent possible in the communities in which they live.” In 17.2(b) the words “the provision of required support, including the specialised training of teachers, school counselors and psychologists” should be replaced by with “Appropriate support including specialized training for teachers and other staff.” The EU further suggested that 17.2(c) should be moved up to become the first subparagraph, as it is an absolute right. The chapeau of 17.3 should be revised, in response to the debate about whether and how alternative education should be provided, to read as follows: “Where the general education system does not yet adequately meet the needs of persons with disabilities States Parties shall take appropriate measures to promote alternative forms of education. Any alternative forms of education provided under this article should:”

In order to conform with the Education clause of the Standard Rules, 17.3(a) should be revised to read: “be closely linked to and reflective of the same curriculum and aim to reflect the same standards and objectives provided in the general education system, taking into account the learning and development needs of persons with disabilities.”

The text of 17.3(c) be reworded: “allow for choice between general and special education systems.” Paragraph 17.4 should be expanded and reworded as follows: “States Parties shall take appropriate measures to ensure that persons with disabilities may choose to be taught using a variety of communication modes and shall work to ensure quality education to students with disabilities by ensuring that teachers are able to use different communication modes.” The EU expressed concern that there is no reference to secondary education, and recommended inserting draft language on this in 17.5. It replaced the last sentence in this paragraph with “To that end, States Parties shall ensure that reasonable accommodation is provided.”

Argentina also suggested modifying the first paragraph to address “persons with disabilities.”

Costa Rica called for the inclusion of university education and technical training as well as primary and secondary education, and proposed inserting in the first sentence of 17.1, after "education," the words "all stages of life and all educational levels and services." A new subparagraph should be inserted between 17.1(a) and (b), reading: "address the issues of disability, persons with disabilities and human rights in the curriculum of all educational programs." In 17.1(c), "self identity, talent, creativity" be inserted after "The development of." Costa Rica supported the EU's proposal to replace "ensure" with "endeavor to" in the chapeau of 17.2. In 17.2(a), the EU's proposed language should be amended by inserting "maximum" before "extent possible." In 17.2(b) "instructors" should be added after "teachers"; and "materials" should be inserted after "medium." In 17.4, to allow for the possibility of future technological developments, the words "using alternative modes of communication, including" should be inserted after "curriculum"; and "as appropriate" should be inserted after "Braille." An additional subparagraph should read: "Deaf and deaf blind persons have the right to receive education in their own groups and to become bilingual in sign language in their national spoken and written languages."

Israel recommended qualifying the chapeau of 17.1, so that "take all possible steps" would replace "ensure." In the first sentence in 17.2(a) "their own" should be replaced by "each." A new subparagraph should be added between 17.2(a) and (b), reading: "Priority is given to the integration of children with disabilities in the general school system." Two new subparagraphs should be inserted after 17.2(b). The first should read: "Accessibility of the school system to persons with disabilities whose children study in the school, on an equal footing, with other parents." The next new subparagraph should read: "Appropriate representations for teachers with disabilities in the school system, including by way of prevention of discrimination on the basis of disability in recruitment and throughout the course of employment and making reasonable accommodations in recruitment and throughout the course of employment." 17.2(c) should be appended with "unless accommodation of the child's needs on account of his or her disability would impose an extremely unreasonable burden." In 17.5 "ensure" should be replaced by "take all possible steps"; "may access" should be replaced by "in relation to"; and "To that end" should be replaced by "In order to secure the implementation of the provisions of the paragraph." After 17.5, two new subparagraphs should be added, as follows:

"(a) Persons with disabilities have access to all such systems including by way of accommodations in examinations and in the curriculum on an equal basis with others;
(b) appropriate representation for persons with disabilities and staff in all of the above systems, including by way of prevention of discrimination on the basis of disability and the making of reasonable accommodations in employment and recruitment in such systems."

Morocco suggested rewording the chapeau of 17.3 to read: "Acknowledging that education of persons with disabilities in the general education system should be the rule, and the provision of specialist education services the exception."

Brazil supported existing language in 17.2 (a) because it adequately represents the choice between general and special education systems. It supported existing language in 17.3 because it adequately reflects the idea as stated in footnote 62 that these education systems are not two mutually exclusive options.

Yemen suggested adding “sociologists” after “psychologists” in 17.3 (b) and made recommendations related only to the Arabic version of the draft Convention text for 17.3, including among other things mentioning “apprenticeship.”

China circulated new draft language for this Article. The chapeau of 17.1 should be retained, while all its subparagraphs should be deleted and replaced with:

- "a. education shall be directed to the full development of the human personality and sense of dignity and strengthen the respect for human rights and fundamental freedoms;
- "b. education shall enable all persons with disabilities to participate effectively in a free society,
- "c. education shall promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and
- "d. education shall further the activities of the United Nations for the maintenance of peace."

Paragraphs 17.2 and 17.3 should be deleted and replaced with a new paragraph 17.2: "States Parties shall take effective and appropriate measures to progressively realize the rights of PWD to education on an equal basis:

- "a. In order to develop an inclusive and accessible general education to meet the needs of persons with disabilities, States Parties shall provide support, including the specialized training of teachers, school counselors and psychologists, an accessible curriculum, an 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;
- "b. Where the general education does not adequately meet the needs of persons with disabilities, States Parties shall develop special or alternative forms of education. Any such special or alternative forms of education should:

"(i) Adhere to the standards and objectives provided in the general education system, and

"(ii) In no way be a barrier for persons with disabilities to participate in the general education."

Paragraph 17.4 and 17.5 would then be renumbered as 17.3 and 17.4, respectively. In the new paragraph 17.4, “shall” is replaced by “take appropriate measures to,” and “may access general” should be replaced by “have equal opportunity to access.” The final sentence -- “To that end, States Parties shall render appropriate assistance to persons with disabilities.” - should be deleted.

New Zealand explained that 17.1(a), (b), and (c) are based on Article 29 of the CRC, and were included in the draft text because these aspects of a child’s development seemed particularly pertinent to persons with disabilities. Those components -- a sense of dignity and self worth, human potential, participating effectively in society, and the development of a child’s mental and physical abilities -- are often neglected in the education of persons with disabilities. The Chinese proposal, on the other hand, while similar to Article 13 of ICESCR in mentioning understanding among all nations and racial, ethnic, and religious groups, and furthering the objectives of the UN for the maintenance of peace, is not disability-specific. New Zealand proposed deleting 17.1(d), as the obligation related to the best interests of child is adequately addressed elsewhere in the draft and in the CRC. Furthermore, the notion of “individualized education plans” go beyond the rights granted to other children and

are pedagogical tools that are go in and out of fashion, so should not be included in a legally binding treaty but should instead be addressed in national action plans. New Zealand supported the EU's suggested reordering of subparagraphs, which it said would do "less damage to the original text" than Israel's proposed addition to the end of 17.2(c). In the chapeau of 17.2, "ensure" should be replaced by "endeavor." In 17.3, both instances "learning" should be replaced by "education." While the difference in meaning between the two is uncertain, using the same word throughout would make the document more consistent. The last sentence in 17.5 should be reformulated according to the EU's proposal given the uncertainty of what was meant by "appropriate assistance".

The **Holy See** affirmed the importance of achieving coherence with other international texts. In order to be consistent with the ICCPR, the ICESCR, the CRC, and the UDHR, this Convention's subparagraph 17.1(d) should be modified by inserting, after the words "the best interest of the child," the words "while respecting the rights and responsibilities of parents and legal guardians concerning the child's education."

Bahrain also suggested modifying the first paragraph to address "persons with disabilities."

Kenya proposed the deletion of "progressively" from the chapeau of 17.1, to clarify that the right to education is expressly given. In 17.5, "professional training" should be inserted after "vocational training."

Japan supported the EU proposal for 17.2, as it strikes a balance between the availability of the educational system and that which is targeted to be achieved. Language in 17.3, (a) and (b) should however be retained. The EU's proposal for 17.3(c) should be appended with "upon careful consideration of the best interests of students with disabilities" as these decisions cannot be made whimsically or capriciously. 17.4 should be amended according to the EU proposal as the Convention should not limit itself to sign language or Braille when other forms of communication might be necessary. Language in 17.5 should be retained.

Canada affirmed that every child should be included in an education system that meets his or her individual needs, optimizing the opportunity to learn and be included in a supportive education system. This will benefit all people with disabilities and society as a whole, as school is where attitudes can be formulated that will result in real change. Substantial work needs to be done on this Article, but Canada does not have a specific proposal at this time.

Australia suggested adding "Training" after "Education" in the title and elsewhere to be consistent with its general applicability to all PWD. Language to "ensure" was qualified in 17.2 as per the EU proposal with "endeavour to", and in 17.4, to be replaced with "encouraging and promoting." It supported Costa Rica's amendments regarding communication in 17.4. In 17.5, the words "and with appropriate assistance" should be inserted after "others," and the remainder of the paragraph should be deleted.

Lebanon proposed the replacement of "school counselors and psychologists" in 17.2(b) with "other educational staff as needed." In 17.5, the word "general" should be replaced by "all academic and technical education in public or private institutions at all levels of education." At the end of 17.5, the following sentence should be appended: "States parties

shall guarantee that their national education systems recognize and certify skills acquired through alternative forms of vocational training for persons with disabilities.”

South Africa also called for the addition of “and Training” to the title, in keeping with the principles of lifelong learning, the Convention should provide a spectrum of educational processes across a range of ages. In 17.1(b), after “effectively,” the words “and equitably” should be inserted, to allow for fair provisions and to ensure that persons with disabilities are able to participate in an equitable manner. 17.2 should be retained but its provisions especially in 12.2(b) should be the prerogative of national policies. 17.4 should be deleted as it is specific a type of disability, and this Article should address all disabilities. In 17.5 “general” in relation to tertiary education is unclear and should be deleted. In 17.5, after “life long learning,” the words “and teaching” should be inserted in order to ensure that the delivery of teaching methods would include adult education, though this “would not be provided on an equal basis but on an equitable basis.” In the same paragraph “assistance” should be replaced by “support,” which is a more comprehensive concept. Students will continue to be excluded from education unless there is a provision for equitable education, and thus South Africa proposed a new paragraph 17.5 bis, as follows: “a) ensure non discriminatory access to the learning environment; b) ensure an enabling environment that ensures equitable participation of students with disabilities in the learning process.”

Serbia and Montenegro supported the proposal of the EU for 17.3, but retaining the words “free and informed choice.” The concept of professional training is better placed in Article 22, “Right to Work.” In 17.2(b), the concept of long distance education could be included.

Thailand emphasized the right to an education on an equal basis with others, one that is responsive to the needs of individuals, and called for deletion of “progressively” from 17.1. In 17.2 Thailand agreed with the EU’s amendment, except that “needed,” a student-centered term, should replace “appropriate” which could be open to too much interpretation. The text in 17.3 values the importance of choice, does not align itself with any specific educational model, and should be retained. While acknowledging the importance of keeping the concept of alternative communications as broad as possible, it endorsed Costa Rica’s additional language recognising sign language. This is part of the cultural heritage of the Deaf community, a visual language with its own grammatical structure, and a basis for cultural and spiritual growth. Likewise, Braille is the tactile representation of written script, and a fundamental tool of literacy, equivalent to the ability to read and write print. South Africa’s amendment regarding “support” should be incorporated, as should the EU’s reference to secondary education and Australia’s additional language on training.

Uganda supported the addition of “training” to the title and supported the deletion of “progressively” as recommended by other delegates. 17.2 should be appended with: “States Parties shall encourage the employment of teachers with disabilities in their general education systems and shall ensure the removal of legislative barriers to persons with disabilities becoming teachers and shall raise awareness on the needs of children with disabilities.” 17.2 (c) should be appended “and measures shall be taken to meet their educational needs” because without this students with disabilities cannot benefit from free education. Uganda also proposed text for 17.5(bis): “States Parties shall ensure that vocational rehabilitation, training and retraining opportunities are open to people who acquire a disability in the course of their working life.”

India recommended the following provision to appear after 17.5: "The State shall provide for functional education to persons with severe, intellectual and multiple disabilities on a continued basis."

Mexico supported Costa Rica's amendment so that the Article would encompass all educational levels. In 17.1(b), the words "and inclusive" should be inserted after "free." Text in 17.1(d) on "individualising educational plans" should be replaced with "satisfying the special educational needs of PWD." Mexico supported Costa Rica's addition of "materials" to "methods and technologies" in 17.2(b). A new subparagraph 17.2(d) should read: "promoting access to scholarships and financial resources for persons with disabilities, without restricting them solely to those who are attending mandatory education." In 17.3, in light of footnote 60, "learning" should be replaced with "teaching." The first sentence in 17.4 should be rewritten: "States Parties shall ensure that persons with sensory disabilities have access to sign language or Braille as appropriate to encourage their learning and to continue in their program of studies."

The **Republic of Korea** also suggested modifying the first paragraph to address "persons with disabilities."

China responded to New Zealand's comments on its draft of this Article by emphasizing that education is an economic, social, and cultural right that should also apply to PWD.

Trinidad and Tobago supported adding "and training" into the title, as well as the inclusion of a reference to all levels of education so the text is not confined to specific levels. While the Article should be amended to address all PWD, the text of 17.1(d) should retain the reference to children so as not to appear to allow others to determine the best interests of a child.

Yemen called for the incorporation of "Training" to this Article: the objective of training is "know-how," whereas "education is to train a person in thinking."

Libya amended 17.3(c) such that "The level of specialized education must be identical to the one of general education so as to be able to raise persons with disabilities to the level of non disabled people and give them access to higher education."

Jordan amended the title to "Education, training, and life long learning," added "and education" after "learning" in the chapeau of 17.3 and deleted 17.3(c), as both 17.2(a) and (c) both address choice, and the latter was redundant.

The floor was opened to comments from NGOs.

World Blind Union and International Disability Alliance (IDA) insisted that the concept of education should not be watered down to "learning." The disability movement and IDA agree that education should be provided both in inclusive school settings as well as in groups for blind, deaf-blind, and Deaf persons. WBU/IDA called upon States to recognize their jointly agreed upon text and offered to share their experiences to further understanding.

World Federation of the Deafblind emphasized that that no education for deafblind people means no communication, no development, and no information. Deafblind individuals are often excluded, even within the disability community. This document and these negotiations have brought the disability community to a consensus that is more than a compromise.

International Labor Organization strongly agreed that references to “training” should be incorporated into this Article and its title and called for an added reference to the specialized training of trainers and instructors to 17.2 (b)’s reference to teachers. Trainer qualifications should be covered in 17.3, which deals with alternative forms of training. Any alternative, non formal training including workplace training shall be made available to provide opportunities for the development, recognition, and certification of skills relevant to the labor market and to the national qualifications framework, as many PWD train for years for jobs which are irrelevant or unavailable. The EU’s amendments on reasonable accommodation is insufficient, and the last sentence of 17.5 should be revised: “To that end, States Parties shall develop equal opportunity strategies, measures, and programmes to promote and implement training for PWD, with the objective of reducing inequalities.” There should also be inclusion of vocational and career guidance and information in accessible format, and employment counseling for persons with disabilities.

National Human Rights Institutions, and the Asia Pacific Forum of the National Human Rights Institutions expressed concern that a linkage between progressive realization and the right to education is “unsuitable” and hoped that this will be addressed in informal consultations. The Convention should offer options for many approaches to the right to education because often a model is not determined by the characteristics of a person, but also by circumstances of families and parents who may choose one model over another. In this regard the EU’s text strikes a balance among various approaches to education, removes any prejudice for one approach over the other, and builds on the UNSR. The EU’s text also addresses NHRI / APF’s concern regarding the quality of education because it ensures an equal standard regardless of placement, model or delivery. To support the position of Mexico and Thailand, the linguistic needs of various disability groups especially those with hearing impairments should be recognized along with references to specific scripts and languages, as education has no meaning if it is not delivered in a language PWD can comprehend.

The **Chair** concluded by noting the need for informal consultations for negotiations to move forward.

The Ad Hoc Committee Daily Summaries are published by the Landmine Survivors Network, a US based international organization with amputee support networks in 6 mine affected / developing countries. They cover the proceedings of the UN Ad Hoc Committee elaborating a Convention on the human rights of people with disabilities.

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