

Working Text as
Amended by the IDC
according to the Chair
Proposed Program for
the 8AHC 1st week

Index

Monday, 14 August, morning	4
International Monitoring.....	4
Article 34 Committee on the Human Rights of Persons with Disabilities	4
Article 35 Establishment of the Committee.....	4
Article 36 Organisation of the Committee.....	7
Article 37 Cooperation by States with the Committee	7
Article 38 The Committee in the human rights treaty body system	7
Article 39 Reporting by States Parties	8
Article 40 Consideration of reports.....	9
Article 41 Consideration of implementation of the Convention in the absence of a report.....	10
Article 42 Follow-up.....	10
Article 43 Annual report of the Committee	10
Article 44 Co-operation with organizations and bodies	11
Article 45 Individual communications.....	12
Article 46 Inquiry procedure.....	14
Article 48 Studies, thematic work and visits to States parties	16
Article 49	16
Article 50 Appointment of Disability Advocate.....	17
[Article 51 Conference of States parties	18
Article 53	19
Monday, 14 August, afternoon	19
International Cooperation	19
Article 32 International Cooperation	19
Tuesday, 15 August, morning.....	21
Definitions.....	21
Article 2 Definitions	21
“National laws of general application”/ national laws and customs...Error! Bookmark not defined.	

IDC amendments for the 1st Week of Work

Article 23 Respect for home and the family	23
Article 27 Work and employment.....	23
Article 29 Participation in political and public life.....	24
Tuesday, 15 August, afternoon	24
Equal recognition before the law	24
Article 12 Equal recognition before the law	24
Protecting the integrity of the person.....	27
Article 17 Protecting the integrity of the person.....	27
Wednesday, 16 August, morning.....	29
Women and Gender issues.....	29
Article 6 Women with disabilities	29
Article 24 Education	31
Article 25 Health.....	31
Article 26 Habilitation and rehabilitation	33
Article 27 Work and employment.....	33
Article 30 Participation in cultural life, recreation, leisure and sport.....	34
Children.....	34
Article 7 Children with disabilities	34
Two amendments to Article 23.....	35
Wednesday, 16 August, afternoon	37
Education	37
Article 24 Education	37
Health.....	38
Article 25 Health.....	38
Family	39
Preamble	39
Respect for Home and the Family	40
Article 23 Respect for home and the family	40
Thursday, 17 August, afternoon.....	40
Situation of Risk	41
Article 11 Situations of risk	41

IDC amendments for the 1st Week of Work

Preamble	41
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Monday, 14 August, morning

International Monitoring

Article 34

Committee on the Human Rights of Persons with Disabilities

For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of Persons with Disabilities (the Committee).

Article 35

Establishment of the Committee

1. The Committee shall (ADD: "at the time of entry into force of the convention") consist of (DELETE: "eighteen") (ADD: "twelve") experts of high moral standing, and recognized competence and experience in the field covered by this Convention.

(ADD: "after ratification of or accession to the convention by the thirty-fifth state party, the membership of the committee shall increase to eighteen members.")

Justification: this text does not cater for increase in ratifications. The states parties to the convention on the rights of the child went through a lengthy process of amendment to the convention increasing membership from 10 to 18 members because ten members could not manage the workload of such a widely ratified treaty. Addressing for this possibility in advance would avoid such a process. In addition, a one time increase will avoid increasing the number of election procedures.

2. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

(ADD: the committee shall be composed of members, a majority

of whom, shall be persons with disabilities and there shall be equitable representation of persons with disabilities who have diverse disability experience.

Consideration shall also be given to balanced gender representation **(ADD: “and expertise on children with disabilities”)** **(DELETE: “and representation of different kinds of disabilities”)**.

***Justification:** the inclusion of experts who are also persons with disabilities ensures that the monitoring process reflects the principles and obligations of the convention: nothing about us without us. The idc’s language also ensures that the membership would also adequately reflect the diversity of disability, including children with disabilities who have different interests, needs, and rights from adults with disabilities.*

Members shall serve in their personal capacity and be independent and impartial **(ADD: “and hold no position which compromises the appearance of independence and impartiality”)** and shall be available to serve the Committee efficiently.

***Justification:** one of the most significant criticisms of the treaty bodies is that many members hold positions which potentially compromise their independence and impartiality, so the addition is to emphasise that it is critical for an expert body to be beyond criticism in this area.*

3. The members of the Committee shall be elected by secret ballot from a list of candidates possessing the qualifications and meeting the requirements set out in paragraphs 1 and 2 of this article, [half of which is to be nominated by States Parties, and half of which is to be nominated by the **(DELETE: “Secretary-General”)** **(MAINTAIN: “High Commissioner for Human Rights”)]**.

4. Each State party may nominate **(DELETE: “one person from among its nationals in consultation with competent national bodies”)** **(REPLACE WITH: “two persons who are nationals of states parties to this convention, in consultation with representative organizations of persons with disabilities and other relevant competent bodies. At least one of the nominees**

should be a person with a disability”). [Nominations by the Secretary-General/High Commissioner for Human Rights shall also be made in consultation with **[ADD: “international representative organizations of disabled persons organizations and other relevant”** competent national bodies.]

***Justification:** nomination process should not be restricted to nationals of the nominating country, but must be nationals of states parties to the convention. This will deepen the possibility of having independent experts. Consistent with the principle of nothing about us without us, dpos must be consulted, and to ensure that the nomination process is also consistent with this, we suggest that one of the nominees is a person with a disability.*

5. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

6. The elections shall be held at meetings of States Parties convened by the Secretary-General. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once if re-nominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairperson of the meeting referred to in paragraph 6 of this article.

8. If a member of the Committee dies or resigns or declares that for

any other cause she or he can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another eligible person possessing the qualifications and meeting the requirements set out in paragraphs 1 and 2 of this article taking account the need for proper balance among the various fields of competence to serve for the remainder of the term, subject to the approval of the Committee.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. The meetings of the Committee shall normally be held at the United Nations Office in Geneva or at any other convenient place as determined by the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided by its rules of procedure.

Article 36

Organisation of the Committee

1. The Committee shall establish its own rules of procedure.
2. The Committee shall elect its officers for a period of two years.

Article 37

Cooperation by States with the Committee

Each State party shall cooperate with the Committee and assist its members in the fulfillment of their mandate, to the extent of the Committee's functions that the State party has accepted.

Article 38

The Committee in the human rights treaty body system

1. A Conference of the States parties will take place at the earliest four years and the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to

decide, by a majority of two-thirds of the States parties present and voting, whether it is appropriate to transfer to another body – without excluding any possibility – the monitoring of this Convention.

2. Where fundamental changes have affected the human rights treaty body system prior to the entry into force of the Convention, a Conference of States parties will take place six months after the entry into force of the Convention to decide, by a majority of two-thirds of the States present and voting, whether it is appropriate to transfer to another body – without excluding any possibility – the monitoring of this Convention.

Article 39

Reporting by States Parties

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized in the present Convention and on the progress made on the enjoyment of those rights.

2. The States parties shall submit a first, comprehensive, report within two years of the entry into force of the present Convention for the State party concerned.

3. States parties shall submit further reports upon **(ADD: “periodic”)** requests of the Committee. **[DELETE: “The Committee shall determine the issues or provisions of the present Convention to be addressed by States parties in these reports.”]**

Justification: to ensure that there is periodicity in reporting, and that such reporting is not confined to select issues.

4. The State party shall consult with competent national bodies **(ADD: “and representative organizations of persons with disabilities”)** in preparing its reports.

Justification: inclusion of principle of nothing about us without

us, without precluding consultation with other stakeholders.

5. Non-States parties may, on a voluntary basis, provide reports to the Committee on implementation of the Convention in their respective States.

(ADD: “6. States Parties shall make a draft of their reports widely available in their own country in local languages and accessible formats six months prior to finalisation of the report and its submission to the secretary-general.”)

Justification: this provision aims at emphasising the goal of the reporting process, to ensure a national dialogue on the issues addressed by the convention, and stimulate participation.

Article 40

Consideration of reports

1. The Committee shall consider reports submitted under article 38 and shall issue comments, observations or recommendations as it may deem appropriate.

2. The Committee may request from States Parties further information relevant to the implementation of the Convention.

3. The Committee may receive information from international and national competent bodies **(ADD: “and representative organizations of persons with disabilities”)**, when considering reports submitted by States parties under the present article.

Justification: inclusion of principle of nothing about us without us, without precluding consultation with other stakeholders.

(ADD:” the committee shall adopt any further guidelines relating to the content of the reports, which it considers appropriate. these guidelines must be evolved to ensure gender, age, and indigenous disaggregated reporting by states parties. such guidelines must also take into account the particular situation of

persons with disabilities who are not visible in society.”)

Justification: this is to ensure that any guidelines adopted should reflect the diversity of disability, particularly those who are largely invisible in society, such as people with intellectual disabilities and people who are deaf-blind.

Article 41

Consideration of implementation of the Convention in the absence of a report

1. Where appropriate, the Committee may consider the situation in a State party in the absence of a report.

Article 42

Follow-up

1. States Parties shall make their reports and the comments, observations and recommendations of the Committee on those reports, widely available to the public in their own countries (**ADD: “in local languages and accessible formats as soon as possible after the reports have been submitted and the comments, observations and recommendations have been issued.”)**)

Justification: to ensure that all stakeholders are aware of the process and can accordingly work on supporting implementation.

2. The Committee may request the State party to submit a written response on the measures taken or identified in order to implement the recommendations of the Committee within a specified time period.

Article 43

Annual report of the Committee

1. The Committee shall report annually to the General Assembly of the United Nations on all its activities.
2. The Secretary-General of the United Nations shall transmit the

reports of the Committee to the Commission on Social Development and the Human Rights Council for their information.

Article 44

Co-operation with organizations and bodies

1. In the framework of the competencies granted by the Convention, the Committee shall co-operate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international human rights instruments, with the special procedures of the United Nations, and with the regional intergovernmental organizations or bodies concerned, as well as with all relevant State institutions, agencies or offices and other competent bodies, (**ADD: "in particular representative organizations of persons with disabilities"**), working in the field covered by this Convention.

2. As it discharges its mandate, the Committee shall consult with other treaty monitoring bodies established in the framework of relevant international human rights instruments, with a view to ensuring the consistency of their respective comments, observations and recommendations.

3. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention the relevant organs, offices and specialized agencies and funds of the United Nations, in particular the Department of Economic and Social Affairs, International Labour Office, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization and the United Nations Children's Fund, shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite these organs, offices and specialized agencies and funds and other competent bodies **ADD: "in particular representative organizations of persons with disabilities",)** as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates and may invite them to submit reports on the implementation of the Convention in areas falling

within the scope of their activities.

4. The Committee shall transmit, as it may consider appropriate, to the relevant organs, offices and specialized agencies, and funds of the United Nations and other competent bodies, **(ADD: "in particular representative organizations of persons with disabilities")**, any reports from States Parties that contain a request, or indicate a need for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications. The Committee may recommend that a State party consider seeking technical advice or assistance from these bodies.

5. The Committee may invite representatives of international and national competent bodies, **(ADD: "in particular representative organizations of persons with disabilities,")** to provide relevant information that would assist the Committee in its consideration of reports.

Justification: inclusion of principle of nothing about us without us, without precluding consultation with other stakeholders.

6. The Committee may make suggestions and general recommendations based on information received pursuant to its work. Such suggestions and general recommendations shall be transmitted to (any) States parties concerned and reported to the General Assembly, together with comments, with any from States parties.

Article 45

Individual communications

1. A State party may, at the time of ratification or at any time afterwards, declare that it **(ADD: "does not")** recognize **(DELETE: "s")** the competence of the Committee to receive and consider communications from or on behalf of individuals or groups subject to its jurisdiction claiming to be victims of a violation by this State party of the provisions of this Convention. **(ADD: "where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author**

can justify acting on their behalf without such consent.”) The Committee shall not receive a communication if it concerns a State party that has (DELETE: “not”) made such a declaration.

Justification: this addition mirrors CEDAW op and ensures informed consent and that there is no substituted decision-making, meanwhile allowing for submission of complaints on behalf of people who are held incomunicado.

2. The Committee shall consider a communication inadmissible when:

- (a) the communication is anonymous;
- (b) the communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;
- (c) is manifestly ill-founded or not sufficiently substantiated;
- (d) the same matter is being examined under another procedure of international investigation or settlement; or when (e) all effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged;
- (f) the facts that are the subject of the communication occurred prior to the entry into force of the Convention or this procedure for the State party concerned, unless those facts continued after that date.

3. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring that communication confidentially to the attention of the State party concerned. Within six months, the receiving State party shall submit to the Committee written explanations clarifying the matter and the remedy, if any that may have been provided.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.

5. The Committee shall consider communications in the light of information made available to it by their authors and by the State party concerned, provided that this information is transmitted to the parties concerned.

6. The Committee shall hold closed meetings when examining communications under the present article. After examining a communication, the Committee shall transmit its views and recommendations, if any, to the parties concerned.

7. The State party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

8. The Committee may invite the State party to submit further information about any measures the State party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 38 of this Convention.

Article 46

Inquiry procedure

1. If the Committee becomes aware of reliable information indicating grave or systematic violations by a State party of rights set forth in the

Convention, the Committee shall invite that State party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State party concerned as well as any other reliable information available to it, the Committee (may designate one or more of its members), to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State party concerned, together with any comments and recommendations.

4. The State party concerned shall, within six months of receiving the findings, comments and recommendations, transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State party shall be sought at all stages of the proceedings.

6. The Committee may invite the State party concerned to include in its report under article 38 of this Convention, details of any measures taken in response to an inquiry conducted under this article.

7. The Committee may, if necessary, after the end of the period of six months referred to in article 46.4, invite the State party concerned to inform it of the measures taken in response to such an inquiry.

8. At the time of signature or ratification of the present Convention, or accession thereto, a State party may declare that it does not recognize the competence of the Committee provided for in this article. Any State party having made such a declaration may, at any time, withdraw it by notification to the Secretary-General.

Article 47

Interstate complaints procedure

A State party to this Convention may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State party that has not made such a declaration, nor communications from a State party that has not made such a declaration.

Article 48

Studies, thematic work and visits to States parties

1. The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of persons with disabilities;
2. The Committee may conduct thematic consultations with States parties, United Nations bodies and other competent international and national bodies, **(ADD: "in particular representative organizations of persons with disabilities")** on any matter addressed in this Convention.

***Justification:** inclusion of principle of nothing about us without us, without precluding consultation with other stakeholders.*

3. With the consent of the State party, the Committee may conduct a visit to its territory, in particular to provide assistance on implementation of the Convention. The Committee may also convene national, sub-regional and regional seminars on any aspect of the Convention.

Article 49

Each State party undertakes to make widely known and give publicity to the Convention and to facilitate access to information about the

work and recommendations of the Committee, in particular on matters involving that State party.

(ADD: NEW “(article 49 bis)

Relationship between the committee and national mechanisms

In regard to the national mechanisms, the committee shall:

A. Advise and assist states parties, when necessary, in their establishment;

B. Maintain direct, if necessary confidential, contact with the national mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

C. Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection and promotion of the rights of persons with disabilities;

D. Make recommendations and observations to the states parties with a view to strengthening the capacity and the mandate of the national mechanisms for the promotion and protection of the rights of persons with disabilities; and

E. Cooperate, for the promotion and protection of the rights of persons with disabilities in general, with the relevant united nations organs and mechanisms, as well as with the international, regional and national institutions and organizations, particularly representative organizations of persons with disabilities, working toward the strengthening of the rights of persons with disabilities.”)

Justification: the inclusion of an independent national level monitoring framework reflects the understanding that international human rights are by their nature implemented at the national level. However, it is critical that international human rights remain just that, international, and that universal standards are not watered down. It is therefore essential for national level mechanisms to have a formal relationship with the international monitoring body to ensure that they have

adequate and appropriate assistance to undertake the task of monitoring international human rights at the national level.

Article 50

Appointment of Disability Advocate

1. For the purposes of promoting implementation of the Convention, an Advocate on Disability with recognized competence and experience in the field covered by this Convention will be appointed by the Secretary-General on the recommendation of the High Commissioner for Human Rights following consultation with competent international and national bodies to serve for a five year non-renewable period.
2. The Disability Advocate shall foster cooperation to ensure promotion and protection of the rights of persons with disabilities and contribute to the coordination of efforts by Governments, relevant United Nations bodies, notably the Office of the High Commissioner for Human Rights and the Department of Economic and Social Affairs, the specialized agencies, as well as United Nations field operations, regional and subregional organizations, other competent bodies.
3. The Disability Advocate shall work closely with the Committee on the Rights of Persons with Disabilities and the Special Rapporteur on Disability of the Commission on Social Development. He or she shall also collaborate with other treaty bodies, relevant special rapporteurs and working groups.
4. The Disability Advocate shall raise awareness and promote the collection of information about the situation of the human rights of persons with disabilities.]

IDC Comment: *The IDC supports the proposal to have a disability advocate, but never as a replacement for an independent expert treaty body.*

[Article 51

Conference of States parties

A Conference of States parties shall be convened biennially. At this Conference, national and international non-governmental organizations, (**ADD: “representative organizations of persons with disabilities”**), and competent bodies with experience in the field of the human rights of persons with disabilities may take part upon invitation of the Committee.]

***Justification:** inclusion of principle of nothing about us without us, without precluding consultation with other stakeholders.*

Article 53

A State party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation as a result of accessing any procedure established under this Convention.

Monday, 14 August, afternoon

International Cooperation

Article 32

International Cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of people with disabilities.

Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes (**ADD: “as well as humanitarian and emergency aid”**), are inclusive of, and accessible to, persons with disabilities, (**ADD: “reflecting the principles and obligations embodied in this Convention, and establish specific projects and programs to acknowledge and protect the rights of PWD as set out in the convention.”**)

Justification:

- *Humanitarian and emergency aid situations are special forms of international cooperation that are also in dire need of including persons with disabilities in planning, designing, implementing and evaluating their action.*
- *Inclusive international cooperation means that persons with disabilities are included at all levels and as a consequence no public money is spent to create barriers for persons with disabilities, particularly not in the developing world, where some 75% of persons with disabilities live.*

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programs and best practices;

(c) Facilitating cooperation in research and access to (**DELETE: “scientific and technical knowledge”**) (**ADD: “appropriate technology related to and studies on specific issues relating to the rights of persons with disabilities”**); and

Justification: “Scientific knowledge” has a particular connotation that is not desirable, therefore it should be made clear that research and access to technology and relevant studies are related to the matter of this convention, which is to promote and protect the rights of people with disabilities. This approach is consistent with the approach of International Cooperation in Child Rights Convention (CRC).

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

[2. States Parties recognize further that while international cooperation plays a supplementary and supportive role, each State Party undertakes to fulfill its obligations under the present Convention.]

[2. Each State Party undertakes to fulfil its obligations under the present convention, irrespective of international cooperation.]

Tuesday, 15 August, morning

Definitions

Article 2 Definitions

For the purposes of the present Convention:

“Disability” **(ADD – “is a state of restricted participation that”)** results from the interaction between persons with impairments, conditions, **(ADD “health needs or similar situations”)** and environmental, **(ADD: “social”)**, and attitudinal barriers. Such impairments, conditions, **(ADD: “health needs or similar situations”)** may be permanent, temporary, intermittent or imputed, and include those that are **(ADD: “inter alia”)**, physical, sensory, **(ADD: “cognitive”)**, psychosocial, neurological, medical or intellectual **(ADD: “or a combination of those”)**.

Justification: IDC finds it absolutely needed with a broad and inclusive definition on “disability”, to safeguard that no State will exclude any PWD from being protected by this Convention due to a more narrow national definition. If we do not have a definition in this convention, there would be as many definitions

on "disability" as there are countries. The formulation in this definition is based on the definition in the Standard Rules which was circulated by the Chair at the AHC7. Further, the IDC wishes to make it clear that disability occurs in the relation between the individual and the attitudes, the environment and social barriers the individual face in the society.

"Discrimination on the basis of disability" means any distinction, exclusion or restriction (ADD: "or denial of reasonable accommodation") on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation [and (ADD: "interalia") direct and indirect (ADD: "or systemic and intersecting") discrimination.

***Justification:** IDC will here referred to General Comments no: 5 of the CESCR there it is stated that "denial of reasonable accommodation is discrimination". It is very important that this reference is made in this definition to ensure that this convention will not create a weaker position than already adopted by the UN system. IDC have made a clarification by adding some known types of discrimination in the end. The list should be seen as an unexhausted list.*

(DELETE: "National laws of general application" means laws that apply to society as a whole and which do not differentiate in respect of persons with disabilities. "National laws and procedures of general application" and "national laws, customs and traditions of general application" shall have the same meaning, mutatis mutandis];)

***Justification:** IDC does not want to make any references to national laws of general applications or similar terms, in this convention as this could be an excuse for States to go below the rights set fourth in this convention. The convention as such should serve as an international law for States to apply to. IDC*

want this definition to be deleted as well as all other places with references to national laws of general applications except from article 4.

Article 23

Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family and personal relations, **(DELETE: “and shall ensure that national laws, customs and traditions relating to marriage, family and personal relationships do not discriminate on the basis of disability”)** so that³ :

Article 27

Work and employment

1. States Parties recognize 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 safeguard and promote the realization of the right to work, **(DELETE: “including for those who acquire a disability during the course of employment”,)** by taking appropriate steps, including through legislation, to, inter alia:

***Justification:** IDC want to delete the last part of the sentence as it is repeatable to clause (k). Having added “inter alia” in the listing and also justified this.*

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights **(LIFT BRACKETS: [“on an equal basis with others”]; (DELETE:” and in accordance with national laws of general application”])**

Justification: IDC does not want to make any references to national laws of general applications or similar terms, in this convention as this could be an excuse for States to go below the rights set fourth in this convention. The convention as such should serve as an international law for States to apply to.

Article 29

Participation in political and public life

States Parties shall guarantee to persons with disabilities their political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life [on an equal basis with others **(DELETE: “in accordance with national laws of general application”)**], directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

Tuesday, 15 August, afternoon

Equal recognition before the law

Article 12

Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

(DELETE BRACKETED TEXT: “2. States Parties shall recognize that persons with disabilities have [legal capacity]¹ on an equal basis with others in all fields and shall ensure that where support is required to exercise that capacity:

(a) The assistance provided is proportional to the degree of support required and tailored to the person's circumstances, that such support does not undermine the legal rights of the person, respects the will and preferences of the person and is free from conflict of interest and undue influence. Such support shall be subject to regular and independent review;

(b) Where States Parties provide for a procedure, which shall be established by law, for the appointment of personal representation as a matter of last resort, such a law shall provide appropriate safeguards, including regular review of the appointment of and decisions made by the personal representative by a competent, impartial and independent tribunal. The appointment and conduct of the personal representative shall be guided by principles consistent with the present Convention and international human rights law.”)

Justification: With a few modifications, the second alternative is a better basis for a progressive article that ensures support to the full extent needed without compromising the freedom to make one's own choices.

OR: alternative:

[LIFT BRACKETS: 2. States Parties shall recognize that persons with disabilities enjoy (ADD: “and can exercise) legal capacity” (DELETE:¹ “on an equal basis with others in all aspects of life.”)

Justification: Legal capacity must be understood, as it is in the context of CEDAW, to include the capacity to act, such as concluding contracts and participating in judicial proceedings.

2 bis. States Parties shall take appropriate legislative and other measures to (DELETE: “provide access by”) (ADD: “ensure that”) persons with disabilities (DELETE: “to”) (ADD: “have”) the support

they may require in exercising their legal capacity. **(ADD: “Such support measures shall include the assistance required to seek and obtain support.”)**

Justification: Paragraph 2bis should be strengthened to ensure that all people with disabilities actually have the support they may need to exercise legal capacity. This will make legal capacity truly accessible to those who can only exercise it with some support. We would also add that support includes the assistance necessary to seek support, so that other people may initiate support for someone who is not able to seek it. Provision of support is always subject to the person’s own exercise of legal capacity and other safeguards, so it cannot be imposed against a person’s will.

2 ter. States Parties shall **(DELETE: “ensure that all legislative or other measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.”)** **(ADD: “establish effective safeguards to prevent abuse of support in exercising legal capacity.”)** Such safeguards shall ensure that **(ADD: “support”)** measures **(DELETE: “relating to the exercise of legal capacity”)** the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, **(ADD: “and”)** are **(DELETE: “proportional and”)** tailored to the person’s circumstances. **(DELETE: “apply for the shortest time possible, and are subject to periodic impartial and independent judicial review.”)** The safeguards shall be **(DELETE: “proportional to the degree to which such measures affect the persons’ rights and interests”)** **(ADD: “appropriate to the type of support provided, including, where necessary, periodic impartial and independent judicial review.”)]**

Justification: Paragraph 2ter should be redrafted to refer to safeguards in the provision of support, and delete the reference to international law since there exists no such law in relation to safeguards for support. The current text is open to

interpretations that conflict with the support model and the premise of equal legal capacity.

The difference between the support model and the substitution model is that there cannot be an outside determination to deprive any person of the right to make his or her own decisions. All levels of support and representation can be included in the support model, with appropriate safeguards.

The provisions on procedural aspects of safeguards should be redrafted to say that safeguards shall be appropriate to the type of support provided, including, where necessary, periodic judicial review. The reference to the degree to which a person's rights and interests are affected should be deleted, as well as the requirement that measures apply for the shortest time possible. These provisions reflect a mistaken belief that support is undesirable and has a detrimental effect on a person's rights and interests. Support should be provided to the extent of a person's need, without any penalty or shame attached.

3. States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Protecting the integrity of the person

Article 17

Protecting the integrity of the person

OPTION A: DELETE ARTICLE AND MERGE WITH ARTICLE 15.

OPTION B:

1. States Parties shall protect the integrity of the person of persons with disabilities on an equal basis with others.

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

(DELETE: 3. “In cases of medical emergency or issues of risk to public health involving involuntary interventions, persons with disabilities shall be treated on an equal basis with others.”)

Justification: Paragraph 3 overstates existing jurisprudence on permissible limitations on the right to free and informed consent developed in the context of the right to health and drawing on the general limitations clause in the ICESCR. As an aspect of the right to respect for integrity of the person, free and informed consent is not subject to limitations, see EU Charter of Fundamental Rights article 3. It is not appropriate for a convention on the rights of persons with disabilities to endorse broad coercive public health powers, which cannot be fully explored in this context.

(DELETE: [“4. States Parties shall ensure that involuntary treatment of persons with disabilities is:

(a) Minimized through the active promotion of alternatives;

(b) Undertaken only in exceptional circumstances, in accordance with procedures established by law and with the application of appropriate legal safeguards;

(c) Undertaken in the least restrictive setting possible, and that the best interests of the person concerned are fully taken into account;

(d) Appropriate for the person and provided without financial cost to the individual receiving the treatment or to his or her family.”])

Justification: Paragraph 4 articulates a discriminatory standard allowing forced interventions on people with

disabilities and would make a mockery of the purpose and principles of this Convention.

IDC Comment: *the IDC is exploring other options for article 17, together with interested governments, and will update with further developments.*

Wednesday, 16 August, morning

Women and Gender issues

Article 6

Women with disabilities

Justification: *As CEDAW does not explicitly refer to women with disabilities IDC emphasizes the necessity of a comprehensive approach (twin track) to cover gaps in the Convention regarding the protection of human rights and fundamental freedoms of women with disabilities. The stand alone article is necessary to give visibility to multiple discrimination of women with disabilities, to address State Parties comprehensively and to mobilize for undertaking adequate gender sensitive measures to ensure human rights and fundamental freedoms for women with disabilities. But to meet needs of women and men with disabilities adequately gender sensitive measures have also to be part of relevant other articles.)*

1. States Parties recognise that women and girls with disabilities are subject to multiple discrimination and **(DELETE: “that focused, empowerment and gender sensitive”) (ADD: “and face particular disadvantages on the basis of the interactive effect of their gender and disability throughout the lifespan. State Parties shall therefore take all necessary”)** measures **(DELETE: “are necessary”) (ADD: “to eliminate all forms of discrimination against women and girls with disabilities and “)** ensure the full and equal enjoyment by women and girl with disabilities of all human rights and fundamental freedoms.

Justification: *The current working text does not state an obligation in paragraph 1. The relevant obligation after recognizing multiple discrimination against women and girls with disabilities is to eliminate all such discrimination and ensure equal enjoyment of human rights and fundamental freedoms recognizing discrimination demands immediate action.*

(REPLACE: “2. States Parties shall take all appropriate measures to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights”

BY:

“2. State Parties shall guarantee to women with disabilities equal enjoyment of rights set out in this Convention and, for this purpose, shall take focused gender sensitive measures to enable women with disabilities to live in freedom, safety and autonomy and to ensure the full advancement and development of women and girls with disabilities”)

Justification: *The current working text focuses only on positive measures for the purpose of ensuring equal rights under this Convention. However, it is necessary first to state that equal rights are guaranteed to women with disabilities under this Convention, as well as to require positive measures.*

(ADD: “NEW 3.State Parties shall ensure to women with disabilities the right to make their own decisions free from discrimination, coercive influence and violence and shall be guaranteed the same rights as others concerning their reproductive rights including their sexuality, pregnancy, childbirth, and motherhood and the right to gender sensitive information, education and related support on these matters for women with disabilities”)

Justification: *For women with disabilities, the right to make one’s own decisions in all areas of life, including those related to sexuality and reproduction, is fundamental to autonomy and*

equality. Discrimination based on both gender and disability impedes women with disabilities from exercising these rights on an equal basis with others. Article 23 is insufficient since it does not address the gender dimension and only covers aspects of reproductive rights in the private sphere.

Article 24

Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive **(ADD: “and gender-sensitive”)** education system at all levels, and life-long learning, directed to:

.....

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

(a) That persons with disabilities are not excluded from the general education system on the basis of disability, and that children **(ADD: “especially girls”)** with disabilities are not excluded from free and compulsory primary and secondary education on the basis of disability;

Article 25

Health

....

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health services as provided other persons **(LIFT THE BRACKETS: [including sexual and reproductive health services]¹** and population-based public health programmes;

¹ The Ad Hoc Committee notes that the use of the phrase “sexual and reproductive health services” would not constitute recognition of any new international law obligations or human rights. The Ad Hoc Committee understands draft paragraph (a) to be a non-discrimination provision that does not add to, or alter, the right to health as contained in Article 12 of the International Covenant on Economic, Social and Cultural Rights or Article 24 of the Convention on the Rights of the Child. Rather, the effect of paragraph

Justification: Sexual and reproductive health service, is provided for in several general comments and recommendations, for instance in ICESCR No 14 and further, IDC does not interpret "service" with any forms of contraception or abortion services, but only to provide women and men with disabilities with the same health care, information and service as to others. These rights are especially denied to women with disabilities, because Women with disabilities are seen as asexual and subordinated and also placed in a passive or subservient role where our self-determination is not supported

...

(RESTRUCTURE THE FOLLOWING: (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

TO INSTEAD READ:

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent.

(d) bis Provide (ADD: "information and") training to health professionals in order to raise awareness of the human rights, dignity, autonomy and needs of persons with disabilities (ADD: "and to enhance knowledge and understanding of the combined element of disability, age and gender;")

(a) would be to require States Parties to ensure that where health services are provided, they are provided without discrimination on the basis of disability.

(d) ter Promulgate ethical standards for public and private health care
(ADD: “reflecting the obligations contained in this article;”)

Justification: This restructuring (based on Mexico’s proposal at the 7th Session) separates elements of paragraph d that deserve independent attention. It is not a substantive change. The IDC additions indicated are designed to address a gender perspective and to improve the text in minor ways. The addition to (d) ter is necessitated by the restructuring.

Article 26

Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain their maximum **(ADD: “individual”)** independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services **(ADD: “and programs, applying to all persons with disabilities irrespective of gender, culture, age, covering all stages in life, degree, duration and complexity of disability and place of residence”)**, particularly in the areas of health, employment, education and social services, in such a way that:

.....

Article 27

Work and employment

(ADD: “(j bis) Ensure that women with disabilities enjoy the rights to work on an equal basis, including protective rights during pregnancy and maternity leave”;

Article 30

Participation in cultural life, recreation, leisure and sport

....

(New 5 (f): "To ensure that women and girls with disabilities are especially encouraged to participate into recreational, cultural and sporting activities and its organisational structures.")

Justification: Research (during the International Women and Sport 4-year conference revealed in Japan) has proven that the participation of girls and women with disabilities in all these fields is minimal and they are hardly encouraged, not facilitated to participate into these activities. This is even more the case for women and girls with disabilities in third world countries or with specific cultural backgrounds. When resources are made available for sport, men and boys (with and without disabilities) profit far and foremost. Wording stipulating the importance of full participation and encouragement of participation of women and girls is essential for their full enjoyment of life and finding self esteem if (full-time) employment is not an option.

Children

Article 7

Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms and ensure the equal rights of children with disabilities to the enjoyment of all rights set out in this Convention.
2. In all actions concerning children with disabilities the best interest of the child shall be a primary consideration.
3. State Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting to them,

(ADD: “their views being given due weight in accordance with their age and maturity,”} on an equal basis with other children, and to be provided with disability and age appropriate assistance to realize that right.

Justification: this addition brings the text up to the standard in CRC article 12, which is not limited to freedom of expression but extends to a level of participation in decision-making. This obligation must be applied to children with disabilities on an equal basis with other children.

Two amendments to Article 23

AMEND PARA 3

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realising these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall:

(ADD '(a)) Prohibit the sterilisation of children on the basis of disability'

(ADD '(b)' Undertake to provide early and comprehensive information, services and support to children with disabilities and their families

(sub-para (b) is already in the text but not separated out as sub-para)

Justification: the current text of Article 23 makes provision for the right of persons with disabilities to decide on the number and spacing of children, and to equal opportunity to retain their fertility. The paragraph is clearly articulated in the context of adult decision-making with regard to having children. It does not

address the concern that many children with disabilities are sterilised before they ever reach the stage of being in a position to make such choices. This amendment seeks to prohibit the practice whereby children with disabilities are sterilised on the basis of the consent of the parent or guardian.

In many countries, children with disabilities continue to be sterilised purely on the basis of their disability. The intervention is usually undertaken at the request of the parent who gives consent on the child's behalf. In most legal systems, parents have rights to consent to the treatment of children until a fixed age (16 -18years), or until the child is deemed to be competent to give consent on their own behalf. In this sense, the sterilisation of children is forced: the child is being forced to undergo a medical intervention on non-medical grounds without their consent, or even knowledge. This practice violates their personal integrity, and their right to found a family, is widely undertaken without regard to their best interests, and potentially places them at greater risk of sexual exploitation and abuse.

AMEND PARA 4

4 States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents (ADD: 'or institutionalised') on the basis of disability of either the child or one or both of the parents.

Justification: this amendment seeks to prohibit the practice of placing children with disabilities in institutions

as a matter of policy. In many countries, children are still placed in institutions, often from birth, specifically on the basis of their disability. This practice results in the denial of many of their rights - for example, not to be separated from their family, to freedom of association, to the right to express their views and have them taken seriously, and to the right to optimum development. In some instances it also leads to the denial of the right to life, to healthcare, to education and to play. The current provisions in Article 19 are insufficient to protect children with disabilities from forced institutionalisation. Article 19 states that persons with disabilities shall not be obliged to live in a particular living arrangement. Children with and without disabilities may be placed in institutions for a variety of reasons. The current wording in Article 19, para (a) implies choice. Children with disabilities do not have choice – these matters are decided on their behalf – by parents, professionals or administrators. A provision which simply provides that persons with disabilities shall not be obliged to live in an institution relies on the person him or herself expressing a view to that end. In respect of children, particularly very young children, consent can be given by a person with the authority to act on the child's behalf, and therefore, the concept of obligation, or imposition would not apply.

Wednesday, 16 August, afternoon

Education

Article 24

Education

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

(d) That persons with disabilities receive the support required, within the general education system, to facilitate their effective education. **(DELETE: “[In order to meet adequately] [In those circumstances where the general education system cannot adequately meet] the individual support needs of persons**

with disabilities,") States Parties shall ensure that effective individualized support measures are provided (**DELETE:** " in environments which") (**ADD: "to"**) maximise academic and social development, (**DELETE: "consistent with the goal of full inclusion."**)

***Justification:** IDC also want to delete the phrase: "consistent with the goal of full inclusion." as the goal of inclusion would not need the time of the existence of this convention, to be fulfilled. IDC wish to see the goal of full inclusion to be reached before the ratification of this convention.*

Health

Article 25 Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender (**ADD: "and age"**) sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health services as provided other persons (**LIFT THE BRACKETS: [including sexual and reproductive health services]**ⁱⁱ and population-based public health programmes;

***Justification:** Sexual and reproductive health service, is provided for in several general comments and recommendations, for instance in. ICESCR No 14 and further, IDC does not interpret "service" with any forms of contraception or abortion services, but only to provide women and men with disabilities with the same health care, information and service as to others. These rights are especially denied to*

women with disabilities, because Women with disabilities are seen as asexual and subordinated and also placed in a passive or subservient role where our self-determination is not supported

(ADD: “(a) bis Prohibit forced or withholding of health care or health services, on the basis of disability.”)

Justification: *IDC have find it needed to include text on the prohibition of withholding of desired health care and health service on the basis of disability, as it happen that PWD are denied health care and services which otherwise is provided to others.*

Family

Preamble

(v) *Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

[*Convinced* that the family, as the fundamental group of society, should receive support, information, and services to enable it to contribute toward the full and equal enjoyment of the rights of persons with disabilities,]

***IDC proposes the following paragraph on families:
“recognizing that many persons with disabilities live interdependently with others, including family members, and that, where appropriate, support, information and***

services provided to persons with disabilities should include their families or associates.”

Respect for Home and the Family

Article 23

Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family and personal relations, **(DELETE: “and shall ensure that national laws, customs and traditions relating to marriage, family and personal relationships do not discriminate on the basis of disability”)** so that³ :

(a) Persons with disabilities have the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships and experience parenthood;

IDC Comments: It seems that the second part of the chapeau of paragraph 1) repeats what is already stated in the first part and that the reference to national laws and regulations is unnecessary and could prove conflicting. IDC proposes the deletion of the second part of the sentence from “and shall ensure ... basis of disability”. IDC supports the retention of paragraph 1a). IDC proposes to delete the words “the equal opportunity” in paragraph 1c) and replace it by “the right”. The end of the sentence would therefore say: “... to enable people with disabilities to exercise these rights and the right to retain their fertility”. This wording should protect people with disabilities from compulsory sterilisation and abortion.

Thursday, 17 August, afternoon

Situation of Risk

Article 11

Situations of risk

(REPLACE:

“States Parties recognize that in situations of risk to the general population [, including situations of...,] persons with disabilities are a group in especially vulnerable circumstances and shall take all feasible measures for their protection.”

BY:

“States Parties shall, in existing and anticipated situations of major or complex humanitarian emergency, take all feasible measures for the protection of the rights of persons with disability and guarantee their rights on an equal basis with others”)

IDC Comment: As defined by Inter-Agency Standing Committee (IASC) “complex emergency” is ‘a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/ or the ongoing United Nations country program’ and “major emergency” is ‘a situation threatening the lives and wellbeing of a large number of people or a very large percentage of a population and often requiring substantial multi-sectoral assistance’ (IASC, December 1994).

Preamble

(REPLACE

“(s) Concerned that situations of armed conflict and the occurrence of natural disasters have considerably increased the experience of disability in war stricken and disaster prone countries, as well as having especially devastating consequences for the human rights of persons with disabilities,”

BY

“(s) *Concerned* that situations of armed conflict have especially devastating consequences for the human rights of persons with disabilities, and reaffirming that in such situations parties to armed conflict must abide by their obligations under international humanitarian law”)

¹¹ The Ad Hoc Committee notes that the use of the phrase “sexual and reproductive health services” would not constitute recognition of any new international law obligations or human rights. The Ad Hoc Committee understands draft paragraph (a) to be a non-discrimination provision that does not add to, or alter, the right to health as contained in Article 12 of the International Covenant on Economic, Social and Cultural Rights or Article 24 of the Convention on the Rights of the Child. Rather, the effect of paragraph (a) would be to require States Parties to ensure that where health services are provided, they are provided without discrimination on the basis of disability.