

Draft report of the Coordinator to the Ad Hoc Committee (part 2)

Draft Article 12

After a number of delegations had commented on the repetitious language in Article 12 of the Working Group text, the Coordinator proposed that the Committee use the facilitator's text as a basis for discussion, on the understanding that it was very much a work in progress.

There was also general agreement in the Committee that draft Article 12 needed to focus on freedom from violence and abuse as a separate issue, with the right to free and informed consent to interventions or treatment being dealt with in a separate draft article 12bis.

Facilitator's paragraph 1

There was general agreement to delete the phrase "and their families" from paragraph 1 of the facilitator's text, but some delegations proposed its insertion in paragraph 2 after the words "persons with disabilities".

There was also broad agreement that "women and girls" or "women and children" were particularly vulnerable to violence and abuse, but no agreement about where and how a reference to this issue should be included. Interested delegations were invited to confer about an appropriate way to deal with the issue.

The Committee considered a number of proposals for dealing with the list of forms of violence and abuse in paragraph 1¹, although a

¹ One option is to include a list of forms of violence, but to make it clear the list is not exclusive by introducing it with the words "protection from all forms of harm, including:..." A second option is to delete the list and replace it with the proposed formulation: "all forms of exploitation, violence and abuse". A third

consensus has not yet formed around one of the options. Interested delegations were requested to work together with the facilitator (Ivana Grollová, the Czech Republic) to resolve this issue.

Taking into account the discussions, paragraph 1 currently reads:

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both within and outside the home, from [all forms of exploitation, violence and abuse.] [all forms of harm, including...] [all forms of exploitation, violence and abuse, including abandonment, violence, injury or mental or physical abuse, abduction, harassment, neglect or negligent treatment, maltreatment or exploitation including economic and sexual exploitation and abuse.]

Facilitator's paragraph 2

There was general agreement on paragraph 2, although as with paragraph one, some divergence of views on the need to mention the families or caregivers of persons with disabilities. The paragraph currently reads:

2. States Parties shall also take all appropriate measures to prevent violence and abuse by ensuring, inter alia, appropriate forms of assistance and support for persons with disabilities [and their caregivers], including through the provision of information and education on how to avoid, recognize and report instances of violence and abuse.

Facilitator's paragraph 3

There was general agreement that the issue persons with disabilities in situations of public emergency, such as armed conflict, was best dealt with in the new draft Article 8bis on that issue, so did not need to be repeated in this article.

option is to use the wording from the second option, but to also include a detailed list of forms of violence in the preamble.

Facilitator's paragraph 4

There was clear support expressed by the Committee for this paragraph on monitoring of facilities and programmes used by persons with disabilities. There was also a certain degree of support for adding the word "regular" in front of the word monitoring.

There was some discussion in the Committee on the scope of the paragraph. While some delegations suggested widening the scope of the paragraph, there was general agreement that it should not be widened so much that it incorporated services and facilities used by persons with disabilities, but for use by the general population, such as banks. The facilitator was requested to work with delegations to find appropriate language on this point.

Following the discussion, paragraph 4 would become paragraph 3, and currently reads:

3. States Parties shall ensure that all facilities and programs, both public and private, where persons with disabilities [live or access services separate from others], are regularly and effectively monitored in coordination with civil society by independent authorities, which include persons with disabilities and which make monitoring reports available to public in order to prevent the occurrence of violence or abuse.

Facilitator's paragraph 5

There was general agreement in the Committee on paragraph 5, with some minor reordering, as reflected below. There was also support expressed to add the words "welfare", "cognitive" and "worth" to the paragraph. Following the discussion, paragraph 5 would become paragraph 4, and currently reads:

4. States Parties shall take all appropriate measures to promote the physical [cognitive] and psychological recovery, rehabilitation and social reintegration of persons with disabilities who are victims of any form of violence or abuse, including through the provision of protection services. Such

recovery and reintegration shall take place in an environment that fosters the health [and welfare], self-respect, dignity [, worth] and autonomy of the person.

Facilitator's paragraph 6

There was general agreement in the Committee to paragraph 6. One delegation suggested that the phrase "...and, as appropriate, judicial involvement" (which appears in the Working Group draft) should be retained in the text. The general sense of the Committee, however, was that this was implicit in the paragraph and did not need to be spelled out.

One delegation suggested that the paragraph should also deal with prevention of violence and abuse. Other delegations, however, considered that prevention was dealt with elsewhere in the text and did not need to be repeated here. The concerned delegations were asked to discuss the issue with the facilitator.

Following the discussions, the paragraph 6 would become paragraph 5, and currently reads:

5. *States Parties shall put in place effective legislation and policies to ensure that instances of violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted and that protection services are available in such cases.* 1.

Draft Article 12bis

Some delegations consider that involuntary medical treatment is tantamount to torture, so should continue to be dealt with under draft article 11, as in the Working Group draft. The majority of delegations, however, shared the sense that issues related to the right to free and informed consent to interventions should be dealt with in a separate article that focused solely on that issue.

Paragraph 1

There was general agreement in the Committee that the draft paragraph should begin with a positive obligation on States Parties to protect the integrity of persons with disabilities on a basis of equality with others. The paragraph would read:

1. *States Parties shall protect the [physical and mental] integrity of persons with disabilities on a basis of equality of others.*

Paragraph 2

There was general agreement that the obligation that States Parties "shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving or alleviating any actual or perceived impairment", from draft Article 11(2), should be moved to this draft Article.

Some delegations suggested that the paragraph specifically list certain types of interventions (such as sterilisation, abortion, or removal of organs). But it was generally felt that those issues were implicitly included.

The paragraph would read:

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

Paragraph 3

There was general agreement in the Committee that the facilitator's paragraphs 1ter, 1quat and 1quin (from the discussion on draft Article 12) should be merged and replaced by a more general obligation.

While some delegations wished to retain paragraphs such as 1ter, quat and quin in the article, other delegations considered that draft Article 9 already provides for situations where persons with disabilities cannot exercise legal capacity. To repeat right to intervene without consent might risk undermining the presumption that persons with disabilities have legal capacity to give free and informed consent, and could run contrary to the spirit of the draft Convention.

Others delegations considered that if there was to be a provision on involuntary treatment, it should provide for it to be conducted on a non-discrimination basis. That is, rather than specify the grounds for involuntary intervention, the paragraph should specify that rules on involuntary intervention (for example, in times of medical emergency where obtaining consent is impossible) should be the same for all people, regardless of whether they have a disability or not.

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2011-11-11
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There was wide support for such a provision, and it was referred to the facilitator to refine the drafting. The paragraph would read:

3. *In cases of medical emergencies or issues of risk to public health involving involuntary interventions, persons with disabilities shall be treated on an equal basis to others.*

Paragraph 4

Some delegations proposed that the draft Convention should contain a provision obliging States Parties to minimise the use of any exceptions to the right to free and informed consent, and to provide safeguards. There was general agreement to consider the following proposal:

4. *States Parties shall ensure that involuntary treatment of persons with disabilities is:*

- (a) *Minimised 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 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 their family. —————) *شأنه من شأنه؟*

Draft Article 13

Chapeau

There was general agreement to bring the chapeau into line with other conventions by adding the word "all" before the words "appropriate measures"; to replace the word "and" after "opinion" with the words "including the right", and to add the words "and ideas" after the words "impart information".

Following consultations by the facilitator (Omar Kadiri, Morocco), the Coordinator proposed that the words "appropriate modes of communication...means of communication" in the facilitator's text be replaced with the words "sign languages, and Braille, and augmentative alternative communication and all other accessible means, ^{في شكل} modes and formats of communication of their choice".

The chapeau would then read:

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through ^{ووسائل} sign languages, and Braille, and augmentative alternative communication and all other

accessible means, modes and formats of communication of their choice including by:

Paragraph (a)

There was general agreement that the facilitator's text for this paragraph be used in the text.

Some delegations, however, were concerned about the open-ended commitment of resources that the phrase "public information" implied, if it was not qualified in some way. There were a number of proposals in the Committee to address this concern. Firstly, there were several proposals to qualify the word "public" in paragraph (a) with phrases such as "publicly available", or "official". Secondly, there was a proposal to begin the paragraph with the phrase "taking appropriate steps to". Thirdly, there was a proposal to add the words "on request". 2043

There was no general agreement to those proposals. Other delegations pointed out that the qualifiers were not needed because systems and formats designed for accessibility from the outset would not involve significant additional cost to governments. APC

Following the discussion, paragraph (a) currently reads:

(a) [Taking appropriate steps to/Providing] [official/public/public official/publicly available official] information [intended for the general public/that States Parties and other public authorities provide to the general public] to persons with disabilities, [on request,] in a timely manner and without additional cost and in accessible formats and technologies appropriate to different kinds of disabilities;

Paragraph (b)

The Coordinator proposed that the words: "Accepting and facilitating" be adopted provisionally as the introductory phrase for paragraph (b). The Committee agreed that for the sake of consistency, the words "a variety of modes of communication" be

replaced for the time being by the words used in the chapeau, pending agreement on a more concise formulation in the paragraphs in question.

Paragraph (b) would then read:

(b) [Accepting and facilitating] the use of sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

Paragraph (c)

The Committee again provisionally agreed to use the wording in the chapeau to replace the words "modes of communication of their choice" in paragraph (c).

There was no agreement, however, on whether the paragraph should be introduced with the words "Providing education programmes" or "Promoting opportunities for training".

The Committee agreed to retain the paragraph in draft Article 13, pending further discussion about its appropriate placement.

Sub-paragraph (c) currently reads:

(c) [Providing education programmes/Promoting opportunities for training] aimed at teaching persons with disabilities and, where appropriate, other concerned persons, to use sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice;

Paragraph (d)

The Committee confirmed its decision², taken at its fourth session, to merge sub-paragraph (d) other similar paragraphs elsewhere in the text and move it to draft Article 4 on general obligations.

Paragraph (e)

The Committee decided to consider paragraph (e) in conjunction with Article 17 (education) and Article 19 (accessibility) at a later meeting.

Paragraphs (f) and (g)

The Committee generally agreed that paragraph (f) should be retained pending resolution of the issue of whether information provided by the private sector would be covered by paragraph (a).

There was no agreement on whether the paragraphs should be introduced with the word "encouraging" as in the Working Group text, or strengthened by using "urging" or "requiring". During the discussion there was some recognition that in discussing this issue, delegations should bear in mind the need to develop a Convention that attracted a maximum number of States Parties.

Some delegations proposed merging paragraphs (f) and (g), and others proposed mentioning the internet either in both paragraphs, or as the subject of a separate paragraph.

Paragraphs (f) and (g) currently read:

(f) [Encouraging/Urging/Requiring] private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities.

(g) [Encouraging/Urging/Requiring] the mass media to make their services accessible to persons with disabilities.

Paragraph (h)

² A/59/360, Annex IV, paragraph 9.

There was no general agreement on whether it was desirable to retain the ideas in paragraph (h) of the facilitator's text, but it was decided that it should be maintained until it had been considered more fully on some future occasion.

Paragraphs (i), (j) and (k)

There was generally agreement in the Committee that the ideas in paragraphs (i), (j) and (k) of the facilitator's text should not be included in draft Article 13, but should be considered during the discussion on draft Article 19 (accessibility) at a later meeting.

Draft Article 14

There was general agreement to split the substance of the Working Group text for this article into two separate articles. Paragraph (1) of the Working Group text, addressing privacy matters, would remain in draft Article 14. Paragraph (2) of the Working Group text, addressing matters related to home and the family, would become a new Article 14bis.

The Committee noted that in a number of places paragraph (1) of the Working Group text deviated from similar provisions from the International Covenant on Civil and Political Rights. It also noted that there is some duplication between draft Article 14, and draft Articles 21(j) and 21(l), which also cover issues related to privacy of medical records.

Following extensive discussion the Committee generally agreed to use the language of Article 17 of the Covenant (which also appears in Article 16 of the Convention on the Rights of the Child), as a basis for the text, with a few small amendments.

The first amendment would take into account the particular circumstances of people with disabilities by adding the phrase, "regardless of place of residence or living arrangements". Although some delegations noted that the phrase was unnecessarily lengthy, there was general agreement to the amendment.

The second amendment was to update the term correspondence, and to take into consideration more recent communication technologies. There was general agreement to use the phrase 'correspondence or other types of communications', based on the phrase used in the Convention on Rights of Migrant Workers.

Following the discussion, draft Article 14 currently reads:

No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communications, nor to unlawful attacks on his or her honour and reputation. All persons with a disability have the right to protection of the law against such interference or attacks.

Draft Article 14 bis

The Committee noted that the intention of the Working Group text was not to promote changes to States Parties policies relating to home and family matters for the general population, includes policies on issues such as family size, marriage, and reproduction. There was general agreement in the Committee that the intention of this draft article is that on such issues, people with disabilities are treated on an equal basis to others.

There was general agreement in the Committee that paragraphs (a), (b), and (c) of the Working Group text would become paragraphs (1)(a), (b) and (c) of draft Article 14bis, and paragraphs (d), (e) and (f) would become paragraphs (2), (3), and (4).

A proposal was made to delete paragraph (a) and merge the language of the chapeau and paragraphs (b) and (c) into one paragraph. Several delegations supported the proposal, which can be found on the Ad Hoc Committee's website <http://www.un.org/esa/socdev/enable/rights/ahc5usa.htm>.

Paragraph 1 chapeau

There was general agreement that the chapeau of Article 14(2) of the Working Group text would become the chapeau of paragraph (1) of draft Article 14bis. There was also agreement to insert the text 'on an equal basis with others', so that the chapeau currently reads:

1. States Parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage and family relations, and in particular shall ensure that on an equal basis with others:

Paragraph (1)(a)

Some delegations noted that the language of paragraph (1)(a) may be too explicit for general agreement.

The Committee noted that a fundamental issue for this paragraph is the reality that most countries have historically treated people with disabilities differently from the general populations in relation to family and marriage matters. There was no disagreement on the underlying approach of the paragraph to ensure that no country treats people with disabilities differently in this way. It was also understood that the paragraph should in no way pronounce on or attempt to influence the general rules that apply to the general population in different countries and cultures.

To reflect this latter idea some delegations supported the addition of text "in accordance with national law", or "in accordance with the laws customs and traditions in each country". It was noted by the Committee that these additions could make the text subject to laws or traditions that contradict the fundamental obligation in this Article, which is to treat people with disabilities no differently than other persons in society.

Some delegations supported deletion of the paragraph on the grounds that too many details in the Article could interfere with existing rights or impose non-agreed upon rights. However, other delegations thought it was necessary to maintain a paragraph

covering this issue, as it is an area where people with disabilities are particularly vulnerable to discriminatory treatment.

Other proposals included:

- To delete "sexuality" and add the text "through a legal or legitimate marriage".
- To replace the text with: "that sexuality of people with disabilities should be respected on an equal basis with others."

The Committee noted a drafting issue in Spanish that parenthood should refer to men and women.

Following the discussion paragraph (1)(a) currently reads:

(a) That persons with disabilities are not denied the equal opportunity [to experience their sexuality,] have sexual and other intimate relationships [through a legal marriage], and experience parenthood [in accordance with the national laws customs and traditions in each country].

Paragraph (1)(b)

There was general agreement in the Committee to draw on Article 23(2) and 23(3) of the Covenant on Civil and Political Rights as a basis for this text.

A proposal to add language "and that husband and wife should be equal partners" received some support.

The committee noted that the text could be interpreted to not include marriage between people with disabilities and people without disabilities. This issue was referred to the facilitator (Anthony Miyeni, South Africa) to find language that fixed this ambiguity, possible through the use of the phrase "persons with disabilities" rather than the phrase "men and women".

Following the discussion, the text of paragraph (1)(b) currently reads:

(b) The right of all [men and women][persons] with disabilities who are of marriageable age to marry and to found

a family on the basis of free and full consent of the intending spouses, shall be recognised, [and that husband and wife should be equal partners]

Paragraph (1)(c)

There was general agreement in the Committee to the first part of paragraph (c).

It was noted that the phrase '*reproductive and family planning education*', in the second part of the sub paragraph goes further than the CEDAW Article 16 (1)(e), from which it was derived. It was also generally agreed that the article was not intended to in anyway to alter or prejudice the general policies of governments regarding family planning or related matters to the extent that these are permitted by national legislation of general application. There was general agreement that the addition of the text "to the extent that these are permitted by national legislation of general application" would ensure this approach was understood.

It was noted by the Committee that there was a high level of support for the idea that forced sterilisation, abortion or removal of organs should be clearly prohibited in some parts of the Convention. There was not, however, common agreement on where the issue should be dealt with. (See also the discussion under draft Article 12 bis.) A proposal to add the phrase '*and the equal opportunity to retain their fertility*' paragraph (c) received some support, although some delegations noted that the concept was implicit in the text.

Following the discussion, the text of paragraph (c) reads as follows:

(c) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children on an equal basis with other persons and to have access to information, [reproductive and family planning education], and to the means necessary to enable them to exercise these rights [and the equal opportunity to retain their fertility] to the extent that these are permitted by national legislation of general application.

Paragraph 2

There was general support in the Committee for the addition of the phrase *'and in all cases the interests of the child shall be paramount'*.

Issues with the term adoption were discussed by the committee. It was noted that the language *'where these concepts exist in national legislation'* was borrowed from the CEDAW Article 1 (f) for the purpose of addressing these issues. Countries who had an issue were requested to meet with the facilitator to see whether the existing language can meet their concerns.

It was also noted that the term rights and 'responsibilities' contained in the CEDAW 16 1 (f) had been omitted from the paragraph in the working group draft. There was support for retaining this term to create balance, however there was also some opposition. The delegations concerned were asked to discuss the issue.

It was noted by the Committee that the second part of paragraph 2 of the Working Group text may appear as though the assistance referred to is only intended for situations referred to in the first part of the paragraph. It was noted that deletion of the introductory phrase of the last sentence, i.e. *'for the purpose of guaranteeing these rights'* addresses this issue. A separate issue related to this phrase is raised in footnote 49 of the working group text. This raises the issue of whether States can guarantee the resources required. The Committee agreed to retain this footnote.

Following the discussion, the text of paragraph 2 reads as follows:

2. States Parties to this Convention shall ensure that *[the rights and responsibilities of] [there is no discrimination against] persons with disabilities in regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation and in all cases the interests of the child shall be paramount. States Parties shall render appropriate assistance to disabled persons in the performance of their child rearing responsibilities.*⁴⁹

⁴⁹ The Ad Hoc Committee may wish to consider the wording of the second sentence of this sub-paragraph in the light of concerns expressed by some delegations that States Parties might find it

difficult to guarantee the resources to "render appropriate assistance".

Paragraph 3

It was generally agreed that that no child should be separated from their parents on the basis of disability of either the child or one or both of the parents. It was noted that any separation must be in the interests of the child and the test for this should be on the same basis for people with or without disabilities. There was one delegation which had some issues with this concept however they were flexible.

It was generally agreed to delete the words 'either directly or indirectly'. There was also no opposition to a proposal to broaden the concept of judicial review to allow for other review procedures established by law.

Following the discussion, the text of paragraph 3 (previously sub paragraph e) reads as follows:

- 3. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities determine, in accordance with applicable law and procedures and subject to judicial review or other forms of administrative review as established by law, that such separation is necessary for the best interests of the child. No child shall be separated from parents with disabilities on the basis of disability of either the child or one or both of the parents.*

Paragraph 4

The Committee noted a wish to keep articles general and reasonably concise in this convention. On the other hand it was noted that there are areas where in reality people with disabilities have suffered appalling and particular discrimination, despite the general application of existing treaty bodies. Therefore a balance needs to be found between providing the correct degree of detail and not allowing the Convention to become overly complex and repetitive.

There was no agreement on where, if at all, the specific issues dealt with in Paragraph f should be placed in the Convention. A number of colleagues supported dealing with the content of the paragraph in Article 5 where similar issues are dealt with generically. However, other delegations emphasised the need to retain the wording within Article 14 bis.

The substance of this paragraph was discussed at the meeting however the Committee noted that its placement will be considered at a later date.

There was no agreement to the content of the paragraph. A number of reformulations of the paragraph were supported. These included:

- To delete the word sexuality, however this proposal was also opposed.
- To qualify the term information so that it should be accessible. This addresses the fact that awareness is required not only within the general public but also for people with disabilities themselves. This proposal was not opposed.

Following the discussion, the text of paragraph 4 or alternatively to be taken into consideration in Article 5, reads as follows:

4. States Parties shall take [all] appropriate and effective measures to promote awareness, and provide education and information to the public in accessible formats, aimed at changing negative perceptions and social prejudices [towards sexuality marriage and parenthood] [in all matters of marriage and family relations] for persons with disabilities.