

Q. 30000 20000 20000 20000. 2000000 - 20000 20000, 20000 - 20000 20000.
CEDAW. CRC 20000 20000 20000 20000 20000 - 20000 20000

7th AHC: 19 Jan 2006

30

2000000 (2000000 - 2000000). 2000000 2000000. 2000000 2000000

Joint Facilitators' proposal on women and children

Kwangyol
KTM

As it is clear from the Chairman's letter as well as from the discussions we had in the 5th and 6th AHC, the issue of women and children in the draft convention have to be dealt with in a similar manner. It has been stated by several colleagues that women are not just another group like children and that the category of gender is the most fundamental category of social organization. The facilitators do not wish to give the impression that they think that the issue of age and gender are the same. Just for the discussion on how to address women and children in the draft Convention will we use the terminology of "groups".

While the starting points were different, in that there was an article on children with disabilities in the working group text and there was none for women, both discussions focused on the issue on how best to deal with these two "groups", i.e. whether there is a need for a separate article or whether the issues could best be covered in other parts of the draft Convention. In terms of placement, the discussions we had, also made clear that whatever happens to children will determine the outcome for women and vice versa. This is why we start the discussion on both groups in a joint meeting.

The meetings we had under the auspices of the facilitators and the the discussions in the AHC revealed that there is agreement on the following:

1. Specific issues affecting children and women disproportionately or differently need to be addressed explicitly in the draft convention.
2. The proposals relating to content regarding the situation of children and women fall into two categories: (1) More general statements which could be included in the general parts of the draft convention or a separate article, so that they apply "horizontally" in relation to all of State Parties' obligations.
(2) More specific statements which could be either placed in a separate article or included in thematic articles of the draft convention.
3. Simple references to women and children such as "including children and women with disabilities" do not add much value to the draft convention unless it is supported by more substantive statements regarding the particular problems of women or children in a specific area.
4. While arbitrarily repeating rights stated in CEDAW and CRC do not appropriately solve the problem it is also necessary to remember that the draft Convention has the goal of "tailoring" all existing human rights to disability. Thus we also need to look at these two treaties for guidance on our two "groups".

Based on this common understanding and based on the agreements regarding substance achieved in the discussions under each facilitators' auspicion, we propose the following text.

In terms of structure, the facilitators have put all the more general statements in stand-alone articles, whereas more specific statements are placed in relevant thematic articles of the convention. It should be noted, however, that the more general statements can also be placed in other more general articles, such as Art. 4 (general obligations).

Our proposals shall be the basis for a first discussion on placement, which we want to keep short. We should then continue discussions in separate meetings in order to

concentrate on substantive text. As the Chairman wrote in his letter: "We cannot afford to be held up by such differences of approach" We are also of the opinion that now is the time to discuss detailed proposals rather than discussing substance in general.

CHILDREN:

- **Preamble**

n bis) Recognizing that children with disabilities should have full enjoyment of all human rights on an equal basis with others and fundamental freedoms, without discrimination on the basis of disability, and recalling obligations to that end undertaken by States Parties to the Convention of the Rights of the Child¹

- **Art. 7 Children with Disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by girls and boys with disabilities of all human rights.² To this end States Parties

a. shall ensure that children with disability have the right to be consulted in all matters relating to them on an equal basis with other children and be provided with disability and age appropriate assistance to realize that right.³

b. ensure that the best interest of the child shall be of primary consideration⁴ while recognizing the responsibilities, rights and duties of parents and family members responsible for the child to provide direction and guidance in the exercise of the child's rights.⁵

c. recognize that children with disabilities should enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and autonomy, and facilitate the child's active participation in the community.⁶

2. State Parties recognize that children with disabilities are disproportionately vulnerable to non registration of their birth and as a result be denied other rights and shall take all necessary measures to ensure that children with disabilities have equal rights regarding registration after birth and acquisition of a name and nationality⁷.

¹ Facilitator's Report

² Facilitator's report

³ Facilitator's report

⁴ EU proposit. 6th AHC, and Art.3 CRC

⁵ Art. 5 CRC

⁶ Facilitators report (principle of participation), Art.23 CRC , Art. 16 WG-Text

⁷ Facilitator's report & Art. 7 CRC

- **Art.13 Access to justice**

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, facilitating their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including the investigative and other preliminary stages.

States Parties shall ensure that children with disabilities have equal access to justice through, inter alia

a) disability (age) appropriate accommodations for children⁸

b) appropriate respect for their capacity to given testimony.⁹

- **Art. 16 Freedom from exploitation, violence and abuse**

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.

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

3. In order to prevent the occurrence of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

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 become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person.

5. States Parties shall put in place effective legislation and policies to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

6. States Parties shall ensure that child protection services take account of the needs of girls and boys with disabilities, and are accessible and available to all children with disabilities.¹⁰

⁸ adapted Israel proposal 7th AHC

⁹ Facilitators report and IDC (6th AHC)

¹⁰ IDC (7th AHC) adapted

- **Article 23**
Respect for the 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, and in particular shall ensure, on an equal basis with others:

(a) That persons with disabilities are not denied the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships and experience parenthood [in accordance with national laws, customs and traditions of general application];

(b) That 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 is recognized [and that spouses should be equal partners];

(c) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children [and to have access to information, reproductive and family planning education, 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 laws of general application].

2. States Parties shall ensure the rights and responsibilities of persons with disabilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount. States Parties shall render appropriate assistance to disabled persons in the performance of their child-rearing responsibilities.

2bis. ¹¹States Parties shall recognize the right of children with disabilities to family life and undertake:

- a. to provide early and comprehensive information, services and support to children with disabilities and their families, to promote children's optimum development and to ensure that they are able to be cared for within their family, be an active participant in family life, and to enable their full inclusion, and equality for opportunity;
- b. where the immediate family is unable to care for a child with disabilities, to make every effort to provide alternative care within their wider family, and failing that, within the community;
- c. to provide education and support to families and other caregivers to promote positive attitudes towards disability, prevent concealment, abandonment and neglect of children with disabilities and facilitate inclusion.

3. States Parties shall ensure that a child is not separated from his or her parents

¹¹ IDC prop. to 7th AHC

against their will, except when competent authorities determine, in accordance with national laws and procedures of general application 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. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

- **Art.31¹² Statistics and Data collection**

1. Where necessary, States Parties undertake to collect appropriate information, including statistical data, to enable them to formulate and implement policies to give effect to this Convention. The process of collecting and maintaining this information should:

(add before a)

(0.1) enable States Parties to disaggregate all data on the basis of disability, impairment, sex and age, and ensure that the data provides information on issues that may affect differently women with disabilities and men with disabilities;

(a) comply with legally established safeguards to ensure confidentiality and respect for the privacy of persons with disabilities, including legislation on data protection;

(b) comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles of statistics.

2. The information collected in accordance with this Article shall be used to assess the implementation of States Parties obligations under this Convention, and shall also be used to identify and address the barriers faced by persons with disabilities in exercising their rights.

- **Art. 33 National implementation and monitoring**

[1. States Parties shall designate a focal point within government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a coordination mechanism to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework to promote, protect and monitor implementation of the rights recognized in the present

¹² Taken from the discussion on women and applied to children, based on facilitator's proposal and Women's IDC proposal 7th AHC

Convention.] and ensure that this framework is sensitive with respect to age and gender.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in all levels of the monitoring process.

- **Art. 34¹³ International monitoring**

Ensure that membership of the committee provides expertise on the key issues of this convention (including children with disabilities).

¹³ based on Facilitator's report and women's IDC (7th AHC)

WOMEN

- **Art. 6 Women with disabilities**

1. **State Parties recognise that women and girls with disabilities are subject to multiple discrimination and that focused, sex-specific and gender sensitive measures are necessary to ensure that women and girls with disabilities enjoy all human rights and fundamental freedoms on the basis of equality with men and boys with disabilities.**¹⁴

- **Article 8 RAISING AWARENESS REGARDING DISABILITY**

1. States Parties undertake to adopt immediate and effective measures to:
 - (a) raise awareness throughout society regarding disability and persons with disabilities, and to foster respect for their rights;
 - (b) eliminate stereotypes and prejudices about persons with disabilities including those based on the idea of the inferiority of either of the sexes in all areas of life;¹⁵
 - (c) promote awareness of the capabilities and contributions of persons with disabilities.
2. Measures to this end include:
 - (a) initiating and maintaining effective public awareness campaigns designed to:
 - (i) nurture receptiveness to the rights of persons with disabilities;
 - (ii) change negative perceptions and social prejudices towards persons with disabilities in all matters of [sexuality,] marriage, parenthood and family relations of persons with disabilities;
 - (iii) promote recognition of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market;
 - (b) fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
 - (c) encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of this Convention;
 - (d) promoting disability-sensitive awareness training programmes.

- **Art. 16¹⁶ Freedom from exploitation, violence and abuse**

¹⁴ adapted Australian proposal 7th AHC

¹⁵ Facilit. Prop., Women's IDC to 7th AHC and Art. 5 CEDAW

¹⁶ If not otherwise indicated prop are based on Women's IDC prop (7th AHC)

States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect people with disabilities both within and outside the home, from all forms and threats of exploitation, violence and abuse.

(1 bis) When implementing these measures States parties shall take particularly into account that women and girls with disabilities are at great risk of all forms of violence, neglect and exploitation in private or public settings, particular on a basis of sex and disability.¹⁷

1. States Parties shall also take all appropriate measures to prevent exploitation and all forms of violence and abuse by ensuring, inter alia, appropriate forms of gender sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognise and report instances of violence and abuse.
2. In order to prevent the occurrence of exploitation, all forms of violence and abuse, States Parties shall provide access to gender-sensitive remedies and ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by competent and independent authorities.
3. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence, or abuse, including through the provision of protection services and accessible, acceptable and affordable shelters and services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account the specific needs of women and girls with disabilities.
4. States Parties shall put in place effective legislation, measures and policies to ensure that instances of exploitation, violence, and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.
5. State Parties shall put in place effective and gender sensitive legislation measures and policies to ensure that instances of exploitation, violence, and abuse aghainst pwd are identified, investigated and, where appropriate executed.

• Article 23¹⁸

RESPECT FOR THE HOME AND THE FAMILY

¹⁷ from the second facilitator's text, August 2005, for article 16 para 1

¹⁸ Based on Women's IDC proposal 7th AHC

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, family and personal relations, and in particular shall ensure, on an equal basis with others:
 - (a) that persons with disabilities are not denied the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships and experience parenthood ~~[in accordance with national laws, customs and traditions of general application];~~
 - (b) that 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 partners spouses is recognised ~~[and that spouses should be equal partners];~~
 - (c) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children [and to have access to information, reproductive and family planning education, the means necessary to enable them to exercise these rights and the equal opportunity to retain their fertility on a non-discriminatory basis and on a basis of equality between men and women. ~~to the extent that these are permitted by national laws of general application].~~
2. States Parties to this Convention shall ensure the rights and responsibilities of persons with disabilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount. States Parties shall render appropriate assistance to disabled persons in the performance of their child-rearing responsibilities.

States Parties shall ensure that a child is not separated from his or her parents against their will, except when competent authorities determine, in accordance with national laws and procedures of general application and subject to judicial review or other forms of administrative review as established by law, that such separation is necessary in the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

• Article 24¹⁹ EDUCATION

1. States Parties recognise the right of people with disabilities to education. With a view to achieving this right without discrimination, and on the basis of equal

¹⁹ Facilitator's meeting and Women's IDC prop to 7th AHC

opportunity States Parties shall ensure an inclusive education at all levels and life-long learning, directed to:

- a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) enabling persons with disabilities to participate effectively in a free society.

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

- (a) that persons with disabilities are not excluded from the general education system on the basis of their disability, and that children with disabilities are not excluded from free and compulsory primary and secondary education on the basis of their disability;
- (b) that persons with disabilities can access inclusive, quality, free primary and secondary education to the extent possible in the communities in which they live;
- (c) reasonable accommodation of the individual's requirements;
- (d) that persons with disabilities receive the support required, within the general education system, to facilitate their effective education. In exceptional circumstances where the general education system can not adequately meet the support needs of persons with disabilities, States Parties shall ensure that effective alternative support measures are provided, consistent with the goal of full inclusion;
- (e) the development of initial and continuing training, which incorporates disability awareness, the use of appropriate communication means and modes, educational techniques and materials to support persons with disabilities, for all professionals and staff who work at all levels of education.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall:

- (a) facilitate the learning of Braille, alternative script, orientation and mobility skills, and facilitate peer support and mentoring;
- (b) facilitate the learning of sign language and the promotion of the linguistic identity of the Deaf community;
- (c) ensure that the education of children who are blind, deaf, and deaf/blind is delivered in the most appropriate languages and modes of communication for the individual, and in environments which maximise academic and social development.

3. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities through the employment of teachers who are fluent in sign language or Braille, including teachers with disabilities.
4. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on the basis of equality of opportunity. To that end, States Parties shall render appropriate support to persons with disabilities.
5. States shall ensure that women and girls with disabilities enjoy their right to education and shall take steps to ensure their full enjoyment of that right in particular by ensuring that they benefit from educational curricula and skills development that do not perpetuate gender stereotypes and prejudices. States shall ensure an environment in which girls and women with disabilities can learn without harassment, with appropriate role models and with access to gender-sensitive services.²⁰

• Art. 25 HEALTH

States Parties recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental 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, including health-related rehabilitation. In particular, States Parties shall:

- (a) provide persons with disabilities with the same range and standard of **affordable** health services as provided other persons, [including sexual and reproductive health services] and population-based public health programmes;²¹
- (b) provide those health services needed by persons with disabilities specifically because of their disabilities including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities including amongst children and the elderly;
- (b bis) ensure that women with disabilities are enabled to decide freely and responsibly on the number and spacing of their children. To that end, States Parties shall develop and disseminate policies and programs in fields such as family-planning and parenthood, pregnancy, childbirth and the post-natal period that are inclusive to women with disabilities and protect them against any form of coercive treatment.²²

²⁰ cp. Second Facilitator's proposal, August 2005 and Womens' IDC 7th AHC

²¹ Women's IDC prop to 7th AHC

²² cp. Second facilitator's text, August 2005, for Art. 23 or 25

- (c) provide **these accessible and acceptable health services to persons with disabilities**, as close as possible to people's own communities, including in rural and remote areas;²³
- (d) require health professionals to provide care of the same quality to persons with disabilities as to others, **taking into account the specific needs of women with disabilities**,²⁴ and on the basis of free and informed consent by, where necessary, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training, **accessible general information**²⁵ and the promulgation of ethical standards for public and private healthcare;
- (e) prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where permitted by national law, which shall be provided in a fair and reasonable manner.

- **Art. 27 Work and Employment**

States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall set an example through employment of persons with disabilities in the public sector, and shall take other appropriate steps to safeguard and promote the realisation of the right to work, including measures to:

- (a) protect through legislation persons with disabilities with regard to conditions of recruitment, hiring and employment, continuance of employment, career advancement, working conditions, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, and the redressing of grievances;
- (b) ensure that persons with disabilities are able to exercise their labour and trade union rights in accordance with generally applicable national legislation;
- (c) enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services, and vocational and continuing training;
- (d) promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining and maintaining and returning to employment;
- (e) promote opportunities for self-employment, entrepreneurship and starting one's own business;

²³ Women's IDC to 7th AHC

²⁴ co, Women's Caucus Response, August 2005

²⁵ Women's IDC to 7th AHC

- (f) encourage employers to hire persons with disabilities through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (g) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (h) promote the acquisition by persons with disabilities of work experience in the open labour market;
- (i) promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities;
- (j) ensure that women with disabilities enjoy their rights to work on a basis of equality and that women and men with disabilities are protected from sexual or other harassment at the workplace. States parties shall ensure that the needs of women with disabilities during pregnancy and breast feeding are met at the workplace.²⁶

• Art.31²⁷ Statistics and Data collection

1. Where necessary, States Parties undertake to collect appropriate information, including statistical data, to enable them to formulate and implement policies to give effect to this Convention. The process of collecting and maintaining this information should:

(add before a)

- (0) involve both men with disabilities and women with disabilities and their organisations in the design of relevant indicators and the collection and analysis of the data;
 - (0.1) enable States Parties to disaggregate all data on the basis of disability, impairment²⁸ and sex and ensure that the data provides information on issues that may affect differently women with disabilities and men with disabilities;
 - (a) comply with legally established safeguards to ensure confidentiality and respect for the privacy of persons with disabilities, including legislation on data protection;
 - (b) comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles of statistics.
3. The information collected in accordance with this Article shall be used to assess the implementation of States Parties obligations under this

²⁶ adapted Korean prop. to 5th AHC

²⁷ Womens' IDC prop. to 7th AHC

²⁸ definitions according to WHO

Convention, and shall also be used to identify and address the barriers faced by persons with disabilities in exercising their rights.

- Art. 33²⁹ NATIONAL IMPLEMENTATION AND MONITORING

[1. States Parties shall designate a focal point within government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a co-ordination mechanism to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework to promote, protect and monitor implementation of the rights recognised in the present Convention.]

Civil society, in particular ~~persons~~ **men and women with disabilities** and their **representative** ~~respective~~ organisations, shall be involved and participate fully in all levels of the monitoring process.

- Art. 34³⁰ International Monitoring

- *Ensure that article 34 includes requirement that reporting provide specific information on the enjoyment of all rights by women and girls with disabilities.*
 - *Ensure that women with disabilities are involved and participate fully in all levels of the monitoring process.*
 - *Include a provision regarding balanced gender representation of the Monitoring Committee, e.g.:*

In the composition of the Monitoring Committee consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.³¹

²⁹ Facilitator's meetings and Women's IDC prop. to 7th AHC

³⁰ Facilitator's meetings and Women's IDC 7th AHC

³¹ Article 5 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 by GA resolution A/RES/57/199