

Update on the UN Convention on the Rights of People with Disabilities

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The Sixth Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities met from August 1 – August 12, 2005, at the United Nations in New York City. This briefing paper relates developments during that session.

During the Fifth Session of the Ad Hoc Committee (January 24 – February 4, 2005) the Ad Hoc Committee discussed Articles 7(5) through Article 15. Under the leadership of Ambassador MacKay of New Zealand, who assumed the Chair of the Ad Hoc Committee, the Sixth Session proceeded with work on the draft text starting with Articles 15, 24bis, and then 15bis and then proceeding to Article 16 onward through 25.

Of Particular Note

Consistent with the Committee's commitment to ensuring meaningful NGO participation, at the close of governments' discussions of each article, Ambassador MacKay opened into formal plenary session, in order to facilitate NGO input. The Chair interacted with questions and dialogue and this gave NGOs a broad opportunity to make their views known. Also of particular note was discussion of Article 25 (Monitoring), which has not been thoroughly addressed by the Committee since the Working Group meeting. Discussions were lively on developing provisions in the draft treaty on international monitoring mechanisms.

Articles Discussed

Article 15 (Living Independently and in the Community)

Negotiations of Article 15 included discussion about whether to retain the provision stating that persons with disabilities are not obliged to live in an institution, with many governments stating that this point was already covered by the language in the Article expressing the right of people with disabilities to choose where and with whom to live.

Article 24bis (International Cooperation)

The United Kingdom, speaking on behalf of the EU, expressed concern that an article on international cooperation could be used as an excuse by countries for non-implementation of the Convention. However, a number of delegations noted that this concern does not have a firm basis in international law. Many other countries also emphasized the importance of international cooperation for the implementation of the Convention. NGOs overwhelmingly support an article on international cooperation. During informal consultations with the facilitator for Article 24bis, the EU and Canada jointly proposed draft text putting forward substantive provisions related to Article 24bis.

Article 15bis (Women with Disabilities)

Discussion on this article focused on whether there should be a separate article on women, or whether issues related to women with disabilities should be addressed in the preamble and the general obligations section, as well as in other relevant articles. NGOs overwhelmingly support a separate article on women with disabilities, along with mainstreaming it into existing articles.

Article 16 (Children with Disabilities)

Discussion centered on whether a separate article on children with disabilities ought to be included, or whether the issue should (to the extent possible) be mainstreamed in the text, particularly given that the current draft text is duplicative of what is already set forth in the Convention on the Rights of the Child. NGOs were supportive of a separate article, expressing that other human rights documents are not sufficient. At one point during the two week period, the Chair invited the Chair of the Committee on the Rights of the Child (CRC) to give a statement on the issue of children with disabilities to further inform the Ad Hoc Committee on an issue discussed earlier in the week in relation to Article 16.

Article 17 (Education)

Australia introduced new draft text on Article 17, and discussion focused on a number of issues, in particular whether the Convention should include the concept of choice as to educational setting, and if included, who should have that choice. Australia's proposed text includes (17bis) provisions on life skills.

Article 18 (Political Participation)

Article 18 (Political Participation), received much attention from government delegates, where some delegates felt the existing text falls below existing international law on civil and political rights by using terms like "actively promote," instead of "guarantee." New Zealand proposed additions to the text to reflect the right of people with disabilities to hold political office. One delegation introduced language to ensure the participation of people with disabilities in the formulation, implementation, monitoring and evaluation of development programmes.

Article 19 (Accessibility)

Discussion on Article 19 (Accessibility) involved whether to link Articles 19 and 20 (Personal Mobility) in some way because there is considerable overlap between the two. There was also discussion from the EU on broadening 19 to include access to goods and services. Canada also proposed incorporating the principle of accessibility into the General Principles Article (Article 2).

Article 20 (Personal Mobility)

A number of delegations noted that Article 20 is duplicative in many places of other articles. Kenya proposed a 20bis on Liberty of Movement, which received some support from other delegations. Some delegations, including Thailand, emphasized that no important text should be lost if 20 is merged.

Article 21 (Health and Rehabilitation)

The main issue regarding Article 21 on Health and Rehabilitation is whether there should be a separate article on health and a separate article on rehabilitation, or whether provisions on rehabilitation should be incorporated into relevant articles, including the articles on health, employment and education. There was considerable support for the former proposal. The EU introduced text for a new Article 21bis (Right to Rehabilitation). Canada was cautionary and supported, instead, the integration of rehabilitation provisions into existing articles. Some governments stressed that health refers to both physical and mental health. The Holy See proposed language to ensure that people with disabilities are not denied life preserving treatment.

Article 22 (Work)

There was consensus on emphasizing in some form the concept of an open labor market for people with disabilities, and many delegations emphasized the importance of economic empowerment. Canada had an overall position of a rights-based approach to this article, and underscored the importance of retaining the concept of reasonable accommodation in this article. There was some discussion about whether this article was too prescriptive, particularly as it mentions “affirmative action, programmes, incentives, and quotas.” The issue of sheltered workshops drew a divergence of opinions, but on balance concerns were recognized about segregation and working conditions.

Article 23 (Social Security and Adequate Standard of Living)

Interventions were made on a variety of issues including whether a reference to families should be included. Some governments emphasized the importance of including a reference to poverty reduction strategies with New Zealand proposing 1bis stating, “States Parties shall ensure persons with disabilities benefit from government

development programmes and poverty elimination strategies including international aid programmes on an equal basis with others.” Israel proposed 23bis on Insurance.

Article 24 (Participation in Cultural Life, Recreation, Leisure and Sport)

Article 24 on participation in cultural life, recreation, leisure and sport included discussion on the reference to religion, and some governments emphasized the importance of including reference to local level sporting and recreational activities. There was some support for the inclusion of tourism in this article. There was also discussion of the need to address issues of cultural life separate from recreation, leisure and sport, with some delegations proposing that the article be split into two separate articles, and others proposing that the issues be distinctly addressed within the same article.

Article 25 (Monitoring)

Before beginning the discussion on monitoring (Article 25), the Chair asked the Office of the High Commissioner for Human Rights to report on the status of reforms of the existing treaty body monitoring mechanisms.

There seemed to be overwhelming agreement that this Convention requires an effective monitoring system that operates at both national and international levels. There was further agreement that the Committee should not wait for the treaty reform process to conclude before establishing a monitoring mechanism for this treaty, and that any monitoring mechanism should be flexible enough to adapt to reforms proposed in the future by the treaty reform process. There was also general support for the involvement and full participation of civil society, both persons with disabilities and their representative organizations, in all levels of the monitoring process.

Some governments submitted proposals for a treaty monitoring body, but most governments were only able to offer preliminary views. The Office of the High Commissioner for Human Rights is expected to submit a report on monitoring to the Committee at the next session, which will be considered by the Committee along with other monitoring proposals.

Finally, Convention structure was discussed and whether it should be divided between civil and political rights; and economic, social, and cultural rights. Many governments were against such a division and felt that human rights are too interdependent, indivisible, and interrelated to make such a division useful or accurate. There was also discussion on article titles/headers. Most human rights conventions delineate articles by number and do not include titles, though titles are commonly used in treaties from other areas of international law. Here, discussion centered on the accessibility of including titles while making sure that references are intended for ease of reference rather than interpretation.

It is anticipated that during the intercessional period, the Chair will put out a “Chair’s Text,” which will synthesize many of the proposals made thus far, and become the basis for the next round of negotiations. At the next meeting, the Chair hopes to complete a

read-through of the entire text. To complete such a reading the intention is to hold a three-week meeting in January. The United States intervened on the suggestion of a three-week long meeting citing budgetary concerns, although it was specified in the Report of the Ad Hoc Committee that the meeting would be within “existing resources” leading some NGOs to wonder why the US raised those concerns.

An advance, unedited copy of the report of the Sixth Ad Hoc Committee can be found at:
<http://www.un.org/esa/socdev/enable/rights/ahc6reporte.htm>

Detailed summaries of the proceedings are also being prepared by Rehabilitation International and are being made available here as they are completed:
<http://www.worldenable.net/rights/adhoc6meet.htm>

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