

# **Update on the Fifth Session UN Convention on the Rights of People with Disabilities**

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## **Introduction**

The Fifth Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities met from January 24 – February 4, 2005, in New York City. This briefing paper relates developments during that session.

## **Recent Developments**

During the Fourth Ad Hoc Committee (August 24 – September 4, 2004), delegations discussed Articles 1-7 of the Working Group draft text, and considered government proposals to modify the draft text. The Fifth Session of the Ad Hoc Committee continued the process of reviewing the Working Group draft text and government modifications to it. At the start of the Fifth Session, the Ad Hoc Committee resumed its discussions on Article 7(5). The Ad Hoc Committee discussed Articles 7(5) through Article 15. The emphasis of the discussion centered on Articles 8 (Right to Life), 9 (Equal recognition as a person before the law), 12 (Freedom from Violence and Abuse), and 13 (Freedom of Expression and Opinion, and Access to Information). Articles 10 (Liberty and Security of Person) and 14 (Respect for Privacy, the Home and the Family) were also discussed. Coordinator Don Mackay, Ambassador from New Zealand, facilitated in-depth discussion in an effort to draw delegations closer to reaching consensus on key issues relating to the articles under review.

In the wake of the recent tsunami disaster, concerns were raised about people with disabilities in situations of risk, as they are especially vulnerable. A new draft article 8bis (note: “bis” is added after any insertion in existing text) was created to address this concern and the obligation of States to ensure that people with disabilities receive adequate protection and services in such situations. Specific instances of risk situations, such as natural disaster and armed conflict, were not mentioned in the article.

Article 9 (Equal Recognition as a Person before the Law) received extensive discussion. There was general agreement to restructure the article but differing views on what kind of framework to adopt. Some States supported a strong statement recognizing the legal capacity of all persons with disabilities and providing clear guidance in situations where supported decision making

needs to be facilitated, while other States were concerned that this approach would weaken the text. The current text allows for appointment of a personal representative (guardian). Interventions were raised by some of the disability NGOs on this point, because of concerns that the full legal capacity of all people with disabilities be recognized. Many States voiced support for access to justice/court and the right to an effective remedy for people with disabilities. Delegations met informally to include these concerns in a new draft article, 9bis, in which a framework for assisted – not substituted – decision making is included and no reference is made to “legal incapacity”.

A detailed discussion about torture took place. Article 11 clearly states that no person with a disability will be subjected to torture, or cruel, inhuman, or degrading treatment or punishment. States will take all measures to prevent people with disabilities from being subjected to torture and cruel treatment or punishment. Lengthy discussion occurred about medical and other interventions and where and how to include the issue in the Convention. States offered a number of proposals but no consensus was reached.

The right to free and informed consent and freedom from violence and abuse were discussed. Article 12 was separated into two articles, with Article 12 requiring States to take all administrative, educational, social, and legislative measures to protect people with disabilities from all forms of violence and abuse and neglect and negligent treatment, and article 12bis addressing the right to free and informed consent. Article 12bis also prohibited forced intervention and forced institutionalization, although these issues remain controversial to some States who oppose their reference in this article. The particular situation of women and children with disabilities was discussed, as these groups are often frequently subjected to abuse. No consensus was reached on where and how to include the issue of women and children and abuse in the Convention. Monitoring and appropriate review in cases where people with disabilities are subjected to abuse was also mentioned.

The Government of Korea, supported by the strong advocacy of the Korean women’s rights advocates, pressed the importance of including gender issues in the Convention. It remains unclear whether there will be a separate article on gender (currently Article 15bis) or whether gender will be integrated throughout the entire Convention or a combination of both approaches.

Article 13 (Freedom of Expression and Opinion and Access to Information) received extensive discussion, as many complex issues were raised. Issues discussed included ensuring that people with disabilities have equal access to information, how to address access to Braille and sign language and other means of communication, the degree to which private entities and the mass media should be required to provide information in accessible formats, how to address issues of cost in information technology and how to account for evolving developments in technology. There was also extensive discussion of sign languages.

After considerable discussion, Article 14 (Respect for Privacy, the Home and Family) was separated into two Articles, Article 14 addressing privacy matters and Article 14bis addressing matters of the home and family. The issue of how to express the concept that people with disabilities have the right, on the same basis as others, to experience their sexuality was raised and requires further discussion as no consensus was reached. Discussions on Article 14 made it

clear that awareness raising among the world about human sexuality is needed.

Article 15 (Living Independently and Being included in the community) was briefly discussed during the last day of the Fifth Ad Hoc Committee session. The current text emphasizes that people with disabilities have equal choices to others in the community, specifically in relation to where and with whom they will live. Discussions on that article will continue at the next session.

Concerns were raised regarding NGO participation and influence concerning the drafting process. NGOs had only limited opportunities to speak during the Fifth Session, as most of the meetings were informal and only open for government interventions. Coordinator Mackay did hold three plenary sessions where NGOs were invited to make oral interventions. NGOs made the most of the situation by voicing their concerns through lobbying sheets to influence government delegations and through bilateral discussions with delegates.

The U.S. Government's treaty position remains the same, namely, the US will offer its technical advice to the Committee but will not sign or ratify the treaty on the basis that national legislation is the most effective way to ensure non-discrimination with regard to people with disabilities.

On the last day of the Fifth Session of the Ad Hoc Committee, Coordinator Mackay released a draft copy of his Report to the Ad Hoc Committee for review. This is the first time since the Working Group text was released a year ago that a consolidated and revised text based on the discussions has been released. The Coordinator stressed, however, that "nothing is agreed until everything is agreed" and acknowledged that nothing is final and much work still needs to be done.

Ambassador Luis Gallegos resigned as Chair of the Ad Hoc Committee to take on new responsibilities and tasks as Ambassador of Ecuador in Sydney, Australia. Government delegations and the International Disability Caucus offered their heartfelt thanks to Ambassador Gallegos for his commitment and contribution to the process.

### **Future Developments**

Elections of new officers to the Bureau of the Ad Hoc Committee will be held at the Sixth Session of the Ad Hoc Committee meeting scheduled for August 1-12, 2005, in New York. The Committee will continue to amend the draft, beginning with Articles, 15, 15bis and 24bis and then proceeding to Article 16 onward. The Committee hopes to have the treaty completed and adopted by Member States in 2006 and that by 2009, there will be enough ratifications for it to enter into force.

*Information for this update was gathered by Amy Doherty and provided by the U.S. delegation and NGOs present at the Fourth Ad Hoc Committee meeting.*