



## Convention on the Rights of Persons with Disabilities

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### Committee on the Rights of Persons with Disabilities Fourth session

#### Summary record of the 7th meeting\*

Held at the Palais des Nations, Geneva, on Thursday, 7 October 2010, at 10 a.m.

*Chairperson:* Mr. McCallum

### Contents

Day of general discussion on article 9

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\* No summary records were prepared for the 2nd, 3rd, 4th, 5th or 6th meetings.

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*The meeting was called to order at 10.10 a.m.*

### **Day of general discussion on article 9**

1. **The Chairperson** announced the topic of the day of general discussion, namely accessibility (article 9 of the Convention), and stressed how crucial it was for persons with disabilities to be able to access buildings, communication tools, information and public transport, since without access some 650 million persons with disabilities around the world would not be able to learn, work or fully exercise their rights as citizens.

2. **Mr. Al-Tarawneh** (Vice-Chairperson of the Committee, Chairperson of the first session), reading out the keynote address of HRH Prince Raad Bin Zeid of Jordan, said that accessibility was one, if not the central, issue in the Convention. The Convention called for a radical shift in the understanding of disability, away from the charitable, medical model towards a social model. Disabilities were no longer to be seen as impediments to integration: the emphasis was on improving accessibility to ensure that persons with disabilities were integrated into all aspects of life. The concept of accessibility was closely associated in the Convention with the concepts of “reasonable accommodation” and “non-discrimination”.

3. Making the environment accessible and making the accommodations that the Convention, mindful of societal resistance, considered reasonable, in other words, those “not imposing a disproportionate or undue burden”, required investments in communications and information, public services and in both human and physical infrastructure, as well as in education, to increase the mobility of persons with disabilities, improve their lives as members of society and promote respect and tolerance.

4. The most important element, however, was the active participation of persons with disabilities in the economic growth of their countries through their integration in the labour market. Without access to means of transport, buildings, communication, information or education, persons with disabilities, who should no longer be considered passive receivers, would never be able to compete in the employment market. Persons with disabilities needed to be fully integrated into the social and political life of their countries. Without reasonable accommodation to their needs, they would be victims of discrimination. Accessibility, reasonable accommodation and non-discrimination were the three pillars on which the rights enshrined in the Convention were built.

5. **Mr. Mokhiber** (ad interim Director, Research and Right to Development Division, Office of the High Commissioner for Human Rights) said that he was pleased that the discussion was focusing on accessibility, a key element that, both explicitly and implicitly, underpinned the whole Convention and the rights it contained. At a more fundamental level, the notion of accessibility sprang from the essence of the historic text itself and lay at the heart of the revolution triggered by the concept of disability that the Convention upheld.

6. Disability was defined as the result of the interaction between persons with impairments on the one hand and environmental barriers on the other. It was therefore essential to remove those barriers, which were rooted in the discrimination that the minority suffered because only the needs of the majority were taken into account. The Convention was fortunately a highly valuable tool for the Committee thanks to the remarkable level of detail with which it addressed issues. Article 9, reinforced by article 3 (f), which established accessibility as a general principle, was very complete, but accessibility was also addressed in other articles such as those on education, health, employment and justice. It was therefore highly judicious to have structured the discussion around three main themes: the physical environment, information and communications, and best practices.

7. He felt that for the time being it was better to focus on the text of the Convention, partly because the Committee had not had time to build up a set of practices and methods or

to develop a body of case law, and partly because the Convention contained important details and concepts, such as “universal design” and “reasonable accommodation”. That approach should also apply to any general comment that the Committee might decide to draw up on accessibility.

8. Commending the exceptionally extensive participation allowed for in the process leading up to the adoption of the Convention, he encouraged the Committee to continue on that course and to consult experts and stakeholders at length before drawing up any guidelines on the question of accessibility.

*The meeting was suspended at 11.35 a.m. and resumed at 11.50 a.m.*

**First part: the right to access on an equal basis with others to the physical environment and transportation**

9. **Mr. Al-Tarawneh** (Chairperson of the first part) said that access for persons with disabilities was generally associated with physical access to buildings and other public spaces and services. He had therefore decided to devote the first part of the general discussion to the physical environment in which persons with disabilities lived and on the need to remove obstacles to their freedom of movement with a view to building societies that accommodated all and in which all could exercise their rights.

10. **Ms. McClain-Nhlapo** (Senior Operations Officer, East Asia and the Pacific and Africa Regions, World Bank) said that the notion of disability as an evolving concept needed to be taken into account in discussions of the issue. She stressed the importance of accessibility, which was enshrined as a general principle in article 3 of the Convention and the sole subject of article 9. She noted that any reservation to article 9 would contravene the aims and spirit of the Convention itself.

11. Article 9 referred to the diversity of the needs of persons with disabilities in terms of accessibility and established that measures needed to be taken to eliminate all barriers to that accessibility. She insisted on the need to draw up national plans to identify and eliminate those barriers and to undertake national audits. Developing and implementing minimum national standards and guidelines and providing training on accessibility would also be extremely useful. As to the interpretation of article 9, the Committee should focus on the application of the principle of progressive realization of rights and the implications of the States’ duty to move expeditiously and effectively towards the full realization of accessibility.

12. Accessibility was not limited to physical access, even if that was a core issue, it also referred to access to information, information and communications technologies, and economic and social life. The Committee needed to be innovative and creative in addressing the issue of accessibility in rural settings. Accessibility was a continuum in which all areas of life were interdependent, and access to equipment and services, such as urban transportation, needed to be seamless.

13. She pointed out that article 9 referred to both public and private actors and dealt with the accessibility both to and of services, two aspects of accessibility that deserved thorough consideration. In order to monitor the gradual realization of accessibility, the norms drawn up needed to establish what accessibility was and what tools could be used to measure it. She supported the idea of drafting, with the participation of persons with disabilities, a general comment on accessibility that would also address the issues of non-discrimination, equality, reasonable accommodation, and universal design, as well as the preparation of a manual or guide for States parties.

14. The measures set forth in article 9, paragraph 1, must be obligatory, specific and technically detailed and accompanied by oversight mechanisms and sanctions for non-

compliance. The difficulties anticipated in the application of article 9 included the adoption of novel and inexpensive, but effective, solutions in developing countries (the topic of the meeting of experts organized by the World Bank in June 2010 with the support of the United Nations Department of Economic and Social Affairs), the provision of technical assistance to States parties and the planning, once obstacles and barriers had been identified, of ways to guarantee the viability of residences and the accessibility of societies. She drew the Committee's attention to *World Report on Disability and Rehabilitation* published jointly by the World Bank and the World Health Organization which was a mine of information on the situation of persons with disabilities around the world and included a chapter specifically devoted to accessibility and enabling environments. She also drew the Committee's attention to the high-level meeting that the World Bank would host in the first half of 2011 on accessibility and its technical implications.

15. **Ms. Karr** (Atlas Council) referred to the obligation of States to ensure that all their citizens fully enjoyed their basic rights. Although neither authorities nor society at large could eliminate disabilities, they must strive to eliminate attitudinal and environmental barriers. Respect for the fundamental principle of the inherent dignity and self-worth of all human beings made it imperative to create all the conditions for an autonomous and independent life in society for persons with disabilities on equal terms with others. In other words, non-discrimination was an *erga omnes* obligation of all States not only with regard to their own citizens but also with regard to the international community as a whole.

16. Attitudinal barriers could be removed by developing intense awareness-raising campaigns that portrayed a positive image of persons with disabilities as capable and active contributing members of society. To remove environmental and physical barriers, States needed to develop standards and guidelines to ensure accessibility not only to various areas in society, such as housing, buildings and public transport, but also to schools and workplaces and to new technologies and assistive devices.

17. She then turned to the topic of reasonable accommodation, which was defined in the Convention as "necessary adjustments" that did not, however, impose "a disproportionate or undue burden", and the associated investments. If it were a question of gauging whether the investment in an accessible physical environment was disproportionate to the self-worth of persons with disabilities as human beings, then the answer would be that such investment was never disproportionate. Reasonable accommodation referred to all the adjustments without which a person with disabilities would not be able to lead an autonomous and independent life.

18. **Ms. Hodgkin** (Australia) said that Australia had accessibility standards for public transportation since 2002, the goal being to make 100 per cent of the country's bus stops accessible for persons with disabilities by 2022. Proposed regulations on access for persons with disabilities to public buildings and places had been submitted for consideration in March 2010. Much work still remained to be done, but Australia was making every effort to develop new mechanisms in partnership with persons with disabilities. The reform of the National Disability Advocacy Program, which had been endorsed by all the country's disability ministers, would place persons with disabilities and their families at the heart of services across the continent. A national strategy for persons with disabilities would be implemented within a suitable framework to guarantee the promotion, protection and monitoring of the implementation of the Convention.

19. **Ms. Richardson** (New Zealand), referring to paragraph 18 of the Human Rights Council resolution on the rights of persons with disabilities (A/HRC/RES/13/11), adopted in March 2010 at the initiative of New Zealand and Mexico, stated that all United Nations meetings, without exception, had to be accessible to persons with disabilities. She then gave examples of New Zealand's implementation of article 9 of the Convention. The 2004 Building Act, which integrated a disability perspective in all levels of the building

regulation framework, referred to various policy documents that detailed the standards of access for persons with disabilities to be applied in the design of buildings and other structures.

20. If disputes on what constituted reasonable and adequate access arose, consultation with the Office for Disability Issues was required. The New Zealand Transport Agency had issued guidelines for local councils on the requirements for the urban transportation network and pedestrian facilities, including guidelines on the installation principles that were to be systematically applied in places frequented by blind or vision-impaired people. As the inherent difficulty in all guidelines was implementation, New Zealand was making every effort to ensure that both regional and local authorities fully implemented the legislative measures and the general policies that had been adopted. She cited the new commuter trains introduced in the Wellington region as an example of how much there was to be gained by involving persons with disabilities and learning from their knowledge and experience when introducing the required adjustments.

21. **Ms. Olivera** (Mexico) stressed that accessibility was both a cross-cutting issue present in all the articles of the Convention, and a pillar of the Convention itself inasmuch as it showed how the change in approach should eliminate physical barriers and alter the attitudes of persons without disabilities. She underscored the importance of awareness-raising and constant training (especially in the role of technology) for those responsible for implementing the Convention and of drawing up standards (even if the task was complicated by the fact that countries faced different situations), and highlighted the fact that accessibility needed to be seamless both within and between buildings. An overview of the good practices already in use in certain countries could help others to find solutions, and the Committee had an important role to play in universal design and reasonable accommodation. She commented on the important role of the National Human Rights Commission and referred to the work of an inter-institutional group to remove barriers faced by persons with disabilities in Mexico, created as a civil society initiative in the 1990s to eliminate barriers to access to public buildings, which had performed a diagnosis of the situation in the country.

22. **Mr. Torres Correa** drew the attention of the World Bank representative to the fact that the standards and measures she had mentioned already existed in a number of Latin American and Caribbean countries. He also referred to the debts that developing countries owed to other countries and said that, instead of servicing or settling those debts, it would be more prudent for developing countries to invest the corresponding amount in improving all aspects of accessibility. He suggested that the World Bank consider the possibility at its next internal meeting. It was essential to grant the funds required to apply all the existing standards.

23. **Ms. Moodie** (United Nations Children's Fund (UNICEF)), said that the Fund's mission was to protect the most disadvantaged children, including children with disabilities. She said that barriers to educational access prevented children with disabilities from developing their full potential. Those barriers varied in kind and according to the type of disability the child had. Efforts needed to focus both on physical barriers and on how education was delivered. Through the "Child Friendly Schools" approach, which was based on the Convention on the Rights of the Child and the principles of inclusiveness, democratic participation and a child-centred focus, the Fund was supporting the development of national frameworks for inclusive education. The Fund was also working with national health systems to ensure that children with disabilities and their families had equal access to health services (including immunization and birth registration programmes) and that the special needs associated with disabilities and cultural beliefs about disabilities were taken into account. The right to accessibility needed to be integrated into the planning and monitoring of emergency responses, particularly in refugee camps, and child-friendly

spaces suitable for all children needed to be created. UNICEF was drafting guiding principles for such work and was expected to appoint a Senior Adviser on Children with Disabilities in the short term.

24. **Ms. Maina** (Rapporteur) summarized the points and suggestions made by speakers up to that moment.

25. **Ms. Mulligan** (Equality and Human Rights Commission) explained that despite the numerous laws, quality standards and guidelines in the United Kingdom, the problem of implementation still persisted as the latest study of the Convention's implementation carried out by the Queen's Counsel had shown. Navigating the legal system was highly complicated and very expensive for anyone wishing to bring a complaint against the State or a company. Moreover, the fines incurred by companies that violated accessibility regulations were so low that they hardly served as an incentive to compliance. She asked all present to lobby their Governments to introduce laws, standards and guidelines and above all to ensure that legal action was accessible and affordable.

26. **Mr. Aichele** (German Institute for Human Rights) asked whether article 9 established accessibility as an independent right.

27. **Ms. Richler** (International Disability Alliance (IDA)), said that accessibility should be approached from a different viewpoint than the one that prevailed when the text of the Convention was drafted and that the importance of the personal services that enabled persons with disabilities to exercise all their rights should be taken into account.

28. IDA had five recommendations for the Committee. First, the Committee should produce a general comment on article 9 of the Convention to comprehensively address its scope and provide concrete guidance to States parties on implementing the right to accessibility. All stakeholders, including representative organizations of persons with disabilities should be involved. Second, the general comment should call upon States to establish standards that addressed the access needs of persons with disabilities and included them in a continuous consultative process to develop and monitor those standards. The standards in question should not be restricted to measures related to the physical environment and information and communications technologies, but should also encompass accessibility to services and be incorporated into national legislation. In addition, the Committee should call upon stakeholders, including United Nations bodies and industry, to produce more accessibility-related standards through the active participation of stakeholders, including organizations of persons with disabilities, and to ensure their implementation. Third, the Committee should declare that States parties that did not have adequate accessibility legislation and standards or a national accessibility plan would be in violation of article 9. Fourth, the Committee should include in the general comment on article 9 comprehensive guidance on the interrelatedness and distinctions between accessibility, reasonable accommodation and universal design, and stress the role of those three elements in the implementation of the Convention by holding discussions with all organizations of persons with disabilities. Fifth, IDA recommended that the Committee should support the efforts of the World Intellectual Property Organization to establish an international instrument on exceptions and limitations to intellectual property laws to ensure full and equal access to information and cultural materials for blind persons and persons with impaired vision.

29. **Ms. Rau Barriga** (Human Rights Watch) insisted on the cross-cutting nature of accessibility and its connections with other articles of the Convention, especially with the article on education. She emphasized two points: the gender-specific aspect of disability (including matters related to family planning and family life) and the link between accessibility and the behaviour of persons without disabilities towards those who have them

(including in the health sector, the judiciary and the police). She asked that those two points should be included in the general comment if the Committee decided to draft one.

30. **Ms. Ortoleva** (Disability Awareness, Rights and Education (DARE)) suggested that the Committee should include a number of points in its concluding observations: the distinction between accessibility (which referred to universal designs) and reasonable accommodation (the assessment of which was individually made); the importance of raising awareness about articles 8 and 9; the importance of training and sensitizing those involved in infrastructure design, programme development and implementation, about accessibility and the incorporation of the principle of gender equality. Accessibility in the wake of catastrophes and conflicts (in camps for refugees or displaced persons, for example) and access to justice were two other aspects that must not be overlooked.

31. **Mr. Al-Shibani** (Global Alliance on Accessible Technologies and Environments (GAATES)) said that, in order to combat the widespread belief that only people with mobility impairments (primarily wheelchair users) were affected by the design of accessible environments and technologies, an international awareness campaign about the Convention on the Rights of Persons with Disabilities and on persons with disabilities in general needed to be launched. The Committee could develop a uniform model for monitoring accessibility provisions and their implementation to ensure that the policies, codes, standards and legislation that a number of countries had established were effectively enforced. Rather than developing assistive technologies to make information and communications technologies accessible to persons with disabilities, it would be more effective to design mainstream technologies to be accessible and to organize a targeted campaign to publicize the benefits of that approach. GAATES recommended uniform benchmarking of accessibility (and the creation of an assistance group to perform the task) that used efficient controls and tools to make it easier to assess the technologies that should be developed and supported by model programmes that drew on the simplest best practices. That would also allow States parties to gauge where they stood in relation to others as regards improving accessibility. GAATES had published a document entitled *International Best Practices in Universal Design: A Global Review*, on its website in Arabic, English, French, Serbian and Spanish. The document compared accessibility standards of the built environment in 40 countries. He suggested that the Committee support the biannual publishing of best practices in accessibility both for the built environment and information and communications technologies.

32. **Mr. Berglund** (Scandic), representing the Scandinavian hotel chain Scandic said that Scandic had implemented a number of measures to improve accessibility for persons with disabilities, mainly through a 10-point standard that had been developed over three years. Since then, the chain had often received requests from companies all over the world. For Scandic, ensuring accessibility was a useful investment as well as a commitment to the future. The number of persons with disabilities was constantly increasing due to the ageing of the population, and all companies needed to start to take that into account.

33. **Ms. Nyman** (European Disability Forum (EDF)) said that the establishment of standards should never preclude the imposition of obligatory measures. Even though in the European Union, standards were by tradition not obligatory, it was essential that international standards, in particular those of the International Organization for Standardization (ISO), did not prevent States from being more ambitious on their own. At the same time, it was necessary to ensure that specialists participated in the development of accessibility standards and to be able to verify compliance with them through third-party certification. It was also important to educate those who applied and were supposed to apply the standards on accessibility and universal design so that they could apply the principles correctly. By the same logic, the application of standards had to be monitored and the necessary resources needed to be allocated accordingly. As to access to public

transportation, the European Union had a solid legal framework to protect the rights of passengers with disabilities, but in practice the provisions were not always applied, sometimes owing to inadequate training. That was the case of certain bus drivers, for example, who did not know how to operate the ramps that certain buses were equipped with to allow persons with disabilities to board. It was also apparent that violations of accessibility regulations were not heavily penalized. In the document that EDF had submitted, the Committee would find specific solutions for addressing the problems raised.

34. **Mr. Harper** (Centre on Human Rights for People with Disabilities), comparing the provisions of article 9, paragraph 1, of the Convention with those of certain national human rights laws, said that accessibility was derived from a person's exercise of individual freedom, from the choice to access certain places, services or installations (to enter a public park, for example), rather than from that person's capacity to access those places, and in that regard, the provisions of article 9 established accessibility as a fully-fledged right.

35. He also said that although the progressive realization of economic, social and cultural rights was indeed mentioned in article 4, paragraph 2, no analogous reference was made in article 9. Within the context of economic, social and cultural rights, the progressive realization of accessibility was possible. Since other, namely political and civil, rights were involved, however, implementation was immediately applicable and could not be delayed for reasons related to the availability of resources. Insufficient resources could therefore not be cited as a reason for the incomplete implementation of article 9.

36. **Mr. Morris** (Fédération Internationale de l'Automobile (FIA)) explained that disability parking cards were intended to enable persons with reduced mobility gain access to given places more easily and without discrimination. On 3 December 2010, International Day of Persons with Disabilities, FIA would publish the *FIA Guide for the Disabled Traveller* which presented the conditions and benefits associated with the parking cards in 128 countries. Although they did not remove all barriers to access, the cards were appreciated by the holders as recognition of their right to mobility (and hence to parking in reserved spaces) even if that right was not always respected. Disabled parking permits could also be issued to persons without disabilities if they drove someone around who had reduced mobility. The number of such people was projected to increase with the ageing of the population. There was therefore a risk of demand for reserved parking spaces outstripping supply in the future.

37. **Mr. Courtis** (Office of the United Nations High Commissioner for Human Rights) said that the aim of the debate was to help the Committee issue guidance on the obligations derived from the Convention so that the States parties would know the points of reference that the Committee would be using when considering communications. It was therefore not particularly helpful to determine whether accessibility was a right or not as the Convention established it only as general principle. He stressed how important it was to establish obligatory standards for the private sector and the States parties because without binding norms, the Convention's provisions on accessibility would not be applied. He pointed out that the Convention did not call for the drafting of universal standards, but invited the States parties to adopt their own. The principle of progressive realization of accessibility was applicable to places that had already been built but not to new buildings which should respect current accessibility standards from the start. Similarly, the principle of reasonable accommodation was more applicable to specific places than the principle of accessibility, which by definition called for general standards.

38. **Ms. El Mamri** (Fédération algérienne des personnes handicapées) asked whether the fact of making services, places and modes of transport accessible would be enough to guarantee the full participation of persons with disabilities in society. Greater efforts were needed to make persons with disabilities, who were often marginalized, aware of their



capacity to change their lives and pursue their own personal development. Accessibility should be a tangible form of support that enabled them to achieve their goals.

39. **Ms. McClain-Nhlapo** (World Bank) said that the World Bank would soon be sending a note to its staff on accessibility. The Bank financed country projects that were drawn up in accordance with national priorities and within the framework of national legislation on accessibility. The Bank ensured that an accessibility component was present in the projects that it backed. The Bank also promoted good practices, such as those displayed in the project in Cambodia which had found inexpensive solutions for facilitating access to schools. The scope of the discussion on accessibility needed to be broader, to cover article 9 right through to article 32 (on international cooperation) of the Convention.

40. She said that she had never presented accessibility as a right. She felt however, that certain elements in article 9 of the Convention established it as an independent right. Hence the interest in discussing the matter to determine whether accessibility was a stand-alone right and, if so, to establish the corresponding regulatory provisions. She pointed out that 10 years earlier, nobody talked about the right to water, yet nowadays everyone knew it was a fully-fledged right that paved the way for several others.

41. **Ms. Karr** (The Atlas Council) said that the Atlas Council intended to collect information on best practices in accessibility. She proposed that best practices should be taken into account in guidelines, standards and laws even though their implementation could admittedly be expensive. If accessibility was acknowledged as a general principle, reasonable accommodation should not be reduced to merely responding to specific situations. More than anything else, accommodation was a question of making the required modifications and adjustments to allow all persons with disabilities to exercise their rights and freedoms.

42. **Mr. Torres Correa** (Resource person for the first part of the discussion), referring to the main points made by the various speakers, stressed the need to give particular consideration to the needs of women with disabilities, especially their difficulties in physically accessing health services. Even though the World Bank was funding some specific projects to improve accessibility, it was appalling that developing countries did not receive funds to invest in larger projects to improve the lives of persons with disabilities. The Committee had a very important role to play in supporting and controlling work done in that regard in the 94 countries that had ratified the Convention as the issue affected all human rights (women's rights, children's rights, etc.) and stakeholders in society. All around the globe, access was a fundamental issue for persons with disabilities, particularly access to suitable means of transport that enabled them to access health, education and leisure services, or even perhaps practice their religion. No place should be inaccessible to them. Everything was connected: access to education paved the way for access to information and communication and thus to employment. Developing countries must fight on several fronts, including to obtain aids and devices (such as wheelchairs and prostheses), even if second-hand, from other countries. The people with whom persons with disabilities lived must also be supported and provided with training, information and means of communication. The current economic crisis should force everyone to double the attention paid, particularly in developing countries, to those most affected by it, namely the poorest, and among them, persons with disabilities.

*The meeting rose at 12.55 p.m.*