



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Second session

Summary record of the 4th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 20 October 2009, at 3 p.m.

Chairperson: Mr. Al-Tarawneh

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The meeting was called to order at 3.10 p.m.

Ways and means of expediting the work of the Committee (continued)

(b) Draft Reporting Guidelines and other Working Methods (continued)
(CRPD/C/2/CRP.3)

Annex C. Segment of the report relating to specific rights (continued)

Article 14 – Liberty and security of the person (continued)

1. **The Chairperson** said that the Committee had not yet reached agreement on whether a reference to psychosocial and other forms of disability should be included in the guidelines on article 14 of the Convention.
2. **Mr. Uršič** sought clarification as to whether the Committee had decided to include psychosocial and other disabilities in a general comment on article 1.
3. **Mr. McCallum** recalled that the Committee had agreed to adhere to the definitions set out in the Convention, and that psychosocial and other matters could be included in general comments on article 1 in a year's time.
4. **The Chairperson** said that, in his view, the Committee had not made a final decision on the matter.
5. **Ms. Peláez Narváez**, supporting the comments made by Mr. McCallum, said that the Committee had voted against the inclusion of any references to specific groups of persons with disabilities in the context of article 14.
6. **The Chairperson** said that, although the Committee had already voted on the matter, it might still be necessary to modify any decision that had been taken in order to ensure that the definition of disability was fair and inclusive.
7. **Mr. McCallum** proposed that the Committee should agree to adhere to the definitions contained in the Convention for the time being, and reconsider the question of psychosocial and other forms of disability under an item concerned with general comments at its third session.
8. *It was so decided.*

Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment

9. **Mr. Chowdhury**, stressing the importance of article 15, said that persons with disabilities were treated as second-class citizens in many parts of the world. In developing countries, poverty was an additional factor in a vicious circle that resulted in the neglect and deprivation of persons with disabilities, who continued to be extremely vulnerable in the family, the community, and society. Torture, cruelty, injustice and violence often began in the home. For example, persons with disabilities in families of Hindu faith on the Indian subcontinent had no inheritance rights, which was grossly unjust. Article 15 should be properly reflected in the reporting guidelines in order to obtain extensive feedback from Member States.

10. **Mr. Ben Lallahom** said that, despite being concerned with freedom from torture or cruel, inhuman or degrading treatment or punishment, the reporting guidelines on article 15 placed too much emphasis on measures to protect persons with disabilities from medical or scientific experimentation, without reference to any other forms of torture. States parties should be requested to report on measures taken to protect persons with disabilities from all forms of torture and inhuman treatment.

11. **The Chairperson** agreed that the reporting requirements for article 15 should be amended along the lines suggested by Mr. Ben Lallahom.

12. **Ms. Cisternas Reyes**, supporting the comments made by Mr. Ben Lallahom, recalled the other human rights instruments that supported the Convention, such as the Convention against Torture. Turning to the first indented subparagraph of article 15, she said that the working group had decided that “consent” should always be preceded by the words “free and informed” in order to ensure that the guidelines were uniform and harmonized.

Article 16 – Freedom from exploitation, violence and abuse

Article 17 – Protecting the integrity of the person

13. **Ms. Cisternas Reyes**, referring to the first indented subparagraph of the guidelines on article 17 concerning measures taken to protect persons with disabilities from medical or other treatment without their consent, called for the insertion of a reference to electroconvulsive therapy and invasive surgery. Any legislation that permitted such practices without the free and informed consent of the individual should be repealed. It was also vital to amend legislation that was silent on such matters and tacitly authorized human rights violations, particularly since such treatments were often requested by family members of the person with a disability.

14. **Ms. Peláez Narváez** supported the comments made by Ms. Cisternas Reyes. She noted, however, that there was an error in the first indented subparagraph: the word “full” should be deleted in order to reflect the wording agreed by the working group at its meeting in June 2009.

15. **Ms. Cisternas Reyes**, agreeing with the comment made by Ms. Peláez Narváez, said that the phrase “free and informed” was consistent with the language of the UNESCO Universal Declaration on Bioethics and Human Rights.

16. **The Chairperson** said that the word “full” would be deleted.

17. **Ms. Al Suwaidi**, referring to the second indented subparagraph on forced abortion and sterilization, wondered why it only referred to girls and women when sterilization was equally relevant to men. The sterilization of men with mental disabilities had been the subject of considerable controversy during debates regarding the content of the Convention.

18. **Ms. Maina** agreed that issues such as sterilization deserved fuller treatment, as did the references to gender and child-based aspects in the article 16 guidelines.

19. **The Chairperson**, in response to the point raised by Ms. Al Suwaidi, suggested substituting “all persons” for “girls and women” in relation to the issue of sterilization.

20. **Ms. Yang Jia** supported the comments made by Ms. Al Suwaidi and the suggestion by the Chairperson. She recalled that articles 15, 16 and 17 were particularly important for persons with disabilities in developing countries, in view of the need for guidance on many contemporary challenges, such as the shortage of transplantable human organs.

21. **Ms. Peláez Narváez**, referring to the second indented subparagraph, proposed replacing the words “girls and women” with “persons”.

22. **Mr. Könczei** wondered whether a reference to “persons with disabilities” would detract from the importance of abortion as a problem specific to women. One solution would be to amend the second indented subparagraph to read: “measures taken to protect girls and women with disabilities from forced abortion and sterilization, and men from sterilization”.

23. **Ms. Cisternas Reyes** said that the comment made by Ms. Al Suwaidi was highly relevant. It was crucial to ensure that all forms of forced sterilization and abortion were eliminated.

24. **Ms. Maina**, noting that article 6 dealt specifically with women with disabilities, said that human rights violations relating to women could be provided for under the guidelines on that article. That would have the additional advantage of making it easier to monitor States parties' compliance with the provisions of the Convention with respect to women's issues. If references to sterilization and abortion were retained in article 17, however, the most appropriate solution would be to replace "girls and women" with a phrase that covered both genders.

25. **Mr. McCallum** recalled the importance of adhering to the language of the Convention, which referred to the gender perspective in articles 16 and 17.

26. **The Chairperson** expressed a preference for the wording proposed by Mr. Könczei. Without straying too far from the language of the Convention, the Committee could play a positive role in shaping the guidelines so they could be more easily interpreted by States parties.

27. **Ms. Peláez Narváez** reiterated her view that it was sufficient to replace "girls and women" with "persons with disabilities".

28. **The Chairperson** suggested the following wording for the subparagraph: "measures taken to protect all women and girls with disabilities from forced abortion and all persons with disabilities from forced sterilization".

29. **Mr. Könczei** said that he could accept either of the solutions proposed by the previous two speakers.

30. **The Chairperson** said he took it that the Committee wished to amend the second indented subparagraph to read: "measures taken to protect persons with disabilities from forced abortion and sterilization".

31. *It was so agreed.*

Article 18 – Liberty of movement and nationality

32. **Ms. Al Suwaidi** said that some States parties had reservations regarding the reference to the acquisition of nationality in article 18. The Convention might be wrongly interpreted as meaning that persons with disabilities had the right to acquire any nationality.

33. **Ms. Maina**, referring to the second indented subparagraph, proposed replacing the phrase "every boy and girl" with "every person" in order to ensure that children born without a gender were registered and given a name and a nationality.

34. **The Chairperson** suggested that the phrase "persons with disabilities" could be used instead of "every person" in order to ensure consistency of language in the guidelines.

35. **Mr. McCallum** said that article 18 of the Convention did not refer to boys or girls but rather to children.

36. **Mr. Ben Lallahom** said that because the subject was births, the guideline should refer to newborn children.

37. **Mr. Könczei** recalled that the issue of nationality raised earlier had not yet been addressed.

38. **Ms. Yang Jia** said that the use of "newborn" would make the wording more succinct.

39. **Ms. Cisternas Reyes** said that the use of the phrase “newborn children” would bring the text closer into line with the spirit of the Convention.

40. **Ms. Peláez Naváez** said that the Committee should use the same language as article 18. She therefore supported a reference to newborn children.

41. **Ms. Al Suwaidi** said that several States, such as Kuwait, had reservations with respect to the article, because it was unclear whether a child with disabilities could take any nationality or the nationality of the parents or the country where the child was born. The Committee must ensure that the reference to nationality in article 18 was clear.

42. **The Chairperson** noted that the concept of nationality depended on a State’s domestic law.

43. **Mr. McCallum** said that the definition of nationality varied from State to State. The Committee would be able to raise the issue of nationality with States parties, if necessary, when it considered their reports.

44. **Ms. Cisternas Reyes** said that the granting of nationality was influenced by a number of guiding principles, including *ius solis* and *ius sanguinis*, which were applied variably by States. The Committee could best address the issue in its recommendations and concluding observations on the reports of States parties. The issue could not be tackled in the guidelines.

45. **Mr. Uršič** said that the Committee’s guidelines should not seek to interpret the Convention. That was an exercise best left to the general comments.

Article 19 – Living independently and being included in the community

Article 20 – Personal mobility

46. **Mr. Könczei** asked whether the signal indicators and street signs for accessibility referred to in the guidelines on article 20 were intended for blind persons alone or for hearing-impaired and deaf persons as well.

47. **The Chairperson**, noting that crossing signals were typically made for blind persons, said that the reference to assistive technologies and devices was inclusive of all persons with disabilities.

48. **Mr. Ben Lallahom** said that the word “appropriate” should be added to the adjectives describing technologies in the second indented subparagraph of the guidelines on article 20. Technologies should be adapted to the needs of a particular person with disabilities.

49. **The Chairperson** said that the issues raised were closely related to article 9 of the Convention concerning accessibility. Without accessibility it was not possible to be fully integrated into a community. States parties should be given explicit guidance on how to ensure accessibility, personal mobility and independent living, as far as possible, for all persons with disabilities, as some States were willing to meet only the minimum requirements in that regard.

50. **Ms. Maina** said that the subparagraph in question should be redrafted to make it clear that it referred to technologies that met the needs of persons with disabilities.

51. **The Chairperson** said he agreed that the reference to technologies should be more specific. The subparagraph should be linked with the first indented subparagraph concerning personal mobility and access to forms of assistance.

52. **Mr. McCallum** said that it was very hard to specify which technologies were most appropriate to encourage independent living, as there were so many, including simple

technologies of the kind used for kitchen stoves, for example. Wheelchair technology had changed considerably in recent years. It was for State parties to inform the Committee of the affordable technologies that they had made available to their citizens with disabilities.

53. **The Chairperson** said that the Committee owed it to all persons with disabilities to emphasize the need for the deployment of the most up-to-date technologies and to seek to ensure that States parties did more than simply meet minimum requirements.

54. **Ms. Peláez Naváez** said that the Committee might be able to overcome the difficulty of specifying new technologies by referring to technologies for personal mobility under article 20. The Committee could mention technologies for other aspects of the life of persons with disabilities under the guidelines on other articles.

55. **Ms. Maina** said that the text should make clear that it referred to technologies that were affordable and accessible to persons with disabilities.

56. **Ms. Yang Jia** said that the word “technology” was clear and did not require further explanation. She suggested amending the subparagraph to read: “measures taken to ensure that the technologies are high quality, affordable and user friendly”.

57. **Mr. Ben Lallahom** suggested that the word “accessible” should be added.

58. **Mr. McCallum** said that the proposal to add “user friendly” was clear and likely to win the widest support.

59. **The Chairperson** said that he took it that the Committee wished to adopt the wording proposed by Ms. Yang Jia.

60. *It was so decided.*

Article 21 – Freedom of expression and opinion, and access to information

Article 22 – Respect for privacy

61. **Ms. Peláez Naváez** said that the text added by the secretariat to the end of the second paragraph of the guidelines on article 22 went beyond what was stated in the article. She suggested deleting “Respect for privacy should not be interpreted as giving a right to enhance the violence that the article wishes to prevent” and replacing it with “State parties should report on the measures taken so that persons with disabilities are not hidden under the pretext of the protection of privacy”. That wording was more in keeping with the article than what had been added.

62. **Ms. Maina** recalled that she had initially raised the concern about respect for privacy being used to conceal persons with profound or mental disabilities in the Ad Hoc Committee. She suggested that the word “conceal” should be used rather than “hide”.

63. **Mr. Schmidt** (Office of the United Nations High Commissioner for Human Rights) said that the article was modelled on article 17 of the International Covenant on Civil and Political Rights. It also reflected the practice of the Human Rights Committee in its concluding observations and a few decisions under the First Optional Protocol with respect to arbitrary interference with the privacy of persons with disabilities. The Committee had urged States parties to inform it of the measures that they had taken to prevent arbitrary interference with the privacy of persons with disabilities on the ground of their disability.

64. **Mr. Doria** (Secretary of the Committee) said that the secretariat had tried to reflect the views on the concealment of persons with disabilities that had been expressed at the Ad Hoc Committee meeting. The sentence added to the second paragraph rephrased the views put forward in terms normally found in legal texts.

65. **Ms. Maina** said that, in Kenya, there had been a campaign called “Hide me no more”, which had encouraged families not to hide mentally disabled relatives. Some families, including those of government officials, took good care of their mentally disabled relatives and did not necessarily violate their rights, but kept their existence a secret because of the stigma that was attached to mental disability. She therefore considered that the aspect of concealment should be reflected in the wording of the guidelines.

66. **Ms. Peláez Narváez** said that the Committee should not retain the last sentence that the secretariat had added to the second paragraph of the article 22 guidelines, especially as, when drafting the reporting guidelines, the Committee had been careful to follow the Convention and not extrapolate. She favoured amending the wording to say: “States parties should report on the measures taken so that persons with disabilities not be concealed on the pretext of protection of privacy.”

67. **Ms. Maina** supported the wording proposed by Ms. Peláez Narváez.

68. **Ms. Cisternas Reyes** said that the second paragraph of the guidelines on article 22 concerned a very serious violation of human rights. She supported the redrafting proposal that Ms. Peláez Narváez had made on the basis of Ms. Maina’s comments.

69. *The guidelines on article 22, as orally amended, were approved.*

The meeting was suspended at 4.30 p.m. and resumed at 4.55 p.m.

Article 23 – Respect for home and the family

Article 24 – Education

70. **The Chairperson** recalled that many States parties had expressed reservations regarding article 24.

71. **Mr. Könczei** said that States parties’ reservations should not affect the standards upheld by the Committee. The term “special education” was used in the guidelines, but not in the Convention, because civil society had opposed its inclusion. Accordingly, he did not think that Governments should be asked to report on special education facilities. They could do so if they so wished, but special education should not be characterized as a requirement under the Convention.

72. **Ms. Cisternas Reyes**, referring to article 24 (2) (a) and (b) of the Convention, recalled that the working group had included in the guidelines a request to States parties to report on the measures taken to ensure access to early-stage education and primary and secondary education for children with disabilities, because of the importance of compliance with the relevant provisions of the Convention. The guidelines should reflect the terms actually used in the Convention.

73. **Mr. Ben Lallahom** said that some countries favoured inclusive education, such as Italy and some Scandinavian countries, while others operated both inclusive and special education systems. The Committee could not force countries, through the Convention, to implement inclusive education exclusively, given the level of resources required. The alternative was to run both systems side by side. He welcomed the reference to both systems in the guidelines, as a way of helping countries that were lagging behind in the promotion of the rights of persons with disabilities. He also wished a reference to be made to individualized teaching plans, whether at special or ordinary schools, which were plans that took into account the needs of all children.

74. **Ms. Peláez Narváez** said that she fully agreed with the comments made by Ms. Cisternas Reyes and Mr. Könczei but that she disagreed with Mr. Ben Lallahom. Nowhere in the Convention was there any mention of special education; inclusive education was

mentioned, as were the possibilities of individualized support. If it was wished to avoid placing a prescriptive emphasis on inclusive education, the term “education” by itself could be used. By the same token, the third indented subparagraph, on access to the labour market, should be deleted. Comparisons could not be made between special education and inclusive education, so the guidelines should either just talk about education with no qualifiers, or about inclusive education.

75. **Mr. McCallum** said that special education might have been acceptable in the past, but it narrowed the options of persons with disabilities, which was why many had fought for inclusive education. He considered that it would be regressive to move away from the wording of the Convention and he agreed with the previous speaker that the term “education” should be used with no qualifiers.

76. **Ms. Maina** recalled that the Ad Hoc Committee, in its deliberations on that issue, had made it clear that it advocated inclusive education; she was therefore unsure how the redrafting had come to include the term “special education”. The third indented subparagraph of article 24 should mention the difficulties faced by graduates with disabilities in the job market, as that was a matter that had been brought up in the Ad Hoc Committee.

77. **Ms. Yang Jia** said that she supported what had been said by Mr. Könczei, Mr. McCallum and Ms. Peláez Narváez. Inclusive education was the ultimate goal and the Committee should adhere to the terms of the Convention. Special education was often stereotyped; States parties could refer to it in their reports if they so wished, but they should not be misled into believing that that was a reporting requirement.

78. **Mr. Könczei** disagreed with what Mr. Ben Lallahom had said about the Committee not being able to force States parties to do anything on the basis of the Convention; he thought that, on the contrary, that was precisely the Committee’s role.

79. **Mr. Chowdhury** said that article 24 of the Convention was very clear on the education of persons with disabilities. It was true that certain categories of persons with disabilities, such as the visually impaired, had traditionally been placed in special education facilities, but activists, development workers and civil society representatives were raising their voices to change that policy and to make education for persons with disabilities a mainstream issue. In fact, disability was a cross-cutting development issue. In many South and South-East Asian countries, Governments still ran special education programmes. The Committee should strictly follow the Convention’s spirit and philosophy in the hope that children with disabilities could enter mainstream education in phases. However, it should be borne in mind that some children with severe disabilities required special attention.

80. Inclusive education had a huge financial cost. In Bangladesh, a consortium had been formed by various donors, including the World Bank and the Asian Development Bank, to provide primary education to all children. It was an inclusive education programme, but it excluded the visually and hearing impaired. It was hoped to change that situation by means of an ongoing dialogue.

81. **Ms. Cisternas Reyes** agreed with what had been said about the spirit and the letter of the Convention. She recalled that the Convention represented a legal evolution of rights, otherwise its articles would be exactly the same as those on education in the International Covenant on Economic, Social and Cultural Rights. The article on education in the Convention on the Rights of Persons with Disabilities embodied a paradigm shift in terms of its emphasis on inclusive education, and that should not be forgotten. It was important to be clear and precise so that the guidelines and the Committee followed the principle of inclusive education and the States parties were guided by that principle.

82. **Ms. Peláez Narváez**, recalling the concerns expressed by Ms. Maina, suggested the following wording for the third indented subparagraph of the guidelines on article 24: “measures taken to ensure that students with disabilities have the same access to the general labour market”.

83. **The Chairperson** agreed that the spirit of the Convention should be followed. Different States had different cultures and education systems and would report on and implement certain articles in diverse ways, but the Committee’s duty was to guide them in that exercise.

84. He took it that the Committee wished to adopt the wording proposed by Ms. Peláez Narváez for the third indented subparagraph of the guidelines on article 24.

85. *It was so agreed.*

86. **Mr. Ben Lallahom** pointed out that special education was mentioned in the second and third indented subparagraphs of the article 24 guidelines. It was important to refer to the accommodation and support that were required in the education system because a child with disabilities could not just be placed in a school – adjustments were needed in terms of teaching, materials, accessibility and training for teachers. That was known as an individual educational plan. Preparation was needed in order for a country to develop a good programme of inclusive education.

87. **Mr. Könczei** clarified that in the context of the reporting guidelines he had not said that the Committee should force States parties to do anything. The Committee could decide in the future how to respond to State party reports. Following on from Mr. Ben Lallahom’s remarks, he suggested that in the second indented subparagraph, the words “distinguishing between inclusive and special education and differentiating by type of disability” should be deleted. If States parties wished to provide more detailed information, they could do so, and the issue could be dealt with in a future general comment.

88. He suggested that in the twelfth indented subparagraph “provision” should be changed to “provisions”. In the following indented subparagraph “measure” should be replaced by “measures”.

89. **Ms. Maina** said that she supported the deletion from the second indented subparagraph of the words “distinguishing between inclusive and special education”, but that it was important to retain the words “differentiating by type of disability”. In the first indented subparagraph it was necessary to include a reference to university education, so as not to suggest that children with disabilities never went on to higher education. In the tenth and twelfth indented subparagraphs there were references to “tertiary education” and “lifelong education”, but a reference to “university education” was lacking.

90. **Ms. Al Suwaidi** said that she agreed with the comments made so far. Bearing in mind the avowed wish to adhere to the spirit of the Convention, she considered that the guidelines on article 27 were the right place for the third indented subparagraph, since article 24 of the Convention made no reference to the labour market.

91. **Mr. Ben Lallahom** said that Mr. Könczei had made a sensible proposal with regard to the second indented subparagraph. However, States should be encouraged to work towards adopting an inclusive education system. That was an important, but very difficult and long-term task, for which many countries lacked the necessary resources. Italy had taken 30 years to create an inclusive education system, for example, and was still not satisfied with the results.

92. **Ms. Peláez Narváez** said that she shared the concerns expressed in the previous two statements. Mr. Ben Lallahom had appeared to touch on the issue of legislation, which was covered in the fifth indented subparagraph. Under that subparagraph, the Committee would

require information on the “reasonable accommodation and support” actually provided in ordinary schools to cope with the diversity of disability.

93. **Ms. Cisternas Reyes** endorsed the comments made by Ms. Peláez Narváez. In her view, the guidelines on article 24 appropriately paraphrased the relevant provisions of the article itself, with a view to ensuring inclusive education.

94. **The Chairperson**, recalling that different countries had different education systems, said that the Committee should focus on urging States parties to follow the spirit of the Convention. Some developing countries, for example, might ratify the Convention, but still have special education schools or special education departments in ministries. Those systems would not change overnight, and the work required to bring about an inclusive system would take years.

95. **Ms. Maina** said that a reference to access to higher or continuing education should be included in the first indented subparagraph. She had reservations about moving the third indented subparagraph, which referred to the labour market, to the guidelines on article 27, since the subparagraph could also be understood to apply to internships for graduates with disabilities.

96. **Mr. Torres Correa** recalled that education was not only the responsibility of the State, but also of the family. The role of the State was to provide the facilities and resources to ensure diversity in education. However, some countries lacked the necessary resources, teachers, and infrastructure. It was necessary to bear in mind the basic goals of education for disabled persons: full integration into the labour market, and full integration into all areas of life in general.

97. **Mr. Chowdhury** endorsed Ms. Maina’s proposal to include a reference to university education in the guidelines. In India, legislation had recently been passed to overturn a ban on students with physical disabilities studying medicine. Similar legislation was being drafted in Bangladesh. Access to higher education should be ensured for all students with disabilities.

98. **Ms. Peláez Narváez** endorsed the proposal to move the third indented subparagraph, which referred to the labour market, to the guidelines on article 27.

99. **Ms. Maina** drew attention to the importance of internships and attachments, which for some students — particularly medical students and graduates — were an integral part of their training. It was necessary to ensure that students or graduates with disabilities were not denied access to that kind of environment. The Committee should give careful consideration to whether it was appropriate to move the third indented subparagraph.

The meeting rose at 6 p.m.