Draft International Convention on the Full Enjoyment of All Human Rights and Fundamental Freedoms by Persons with Disabilities

PREAMBLE

The States Parties to the present Convention,

(a) Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

(b) Recognizing that these rights derive from the inherent dignity of the human person,

(c) Mindful that, despite the unquestioned applicability of existing human rights treaties in relation to persons with disabilities, discrimination against persons with disabilities and denial of their full and equal enjoyment of human rights are still widespread and have not yet received sufficient attention in the implementation of existing human rights treaties,

(d) Noting with great satisfaction that the Standard Rules on the Equalization of Opportunities for Persons with Disabilities have played an important role in influencing the promotion, formulation, and evaluation of the policies, plans, programs, and actions at the national, regional, and international levels to further the equalization of opportunities by, for and with persons with disabilities,

Agree upon the following articles:

PART I: Effective Enjoyment of all Human Rights by Persons with Disabilities

Article 1: General Obligations of States Parties

A State Party to the present Convention undertakes to respect, to protect and to fulfil, in respect of all persons with a disability, all the rights set forth in human rights treaties ratified by the State Party in question, such as:

(a) International Covenant on Economic, Social and Cultural Rights;

(b) International Covenant on Civil and Political Rights;

(c) International Convention on the Elimination of All Forms of Racial Discrimination;

(d) Convention on the Elimination of All Forms of Discrimination against Women;

(e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
(f) Convention on the Rights of the Child;

(g) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; or

(h) any Protocol to any of these treaties.

PART II: Definitions

Article 2: Disability

For the purposes of this Convention, the term “disability” shall be understood to cover:

(a) the loss or limitation of opportunities to participate in the daily life of the community on an equal level with others due to physical, social, attitudinal or cultural barriers encountered by persons having physical, sensory, psychological, developmental, learning, neurological or other impairment, including the presence in the body of an organism or agent causing malfunction or disease, which may be permanent, temporary, episodic or transitory in nature; and

(b) a suspected, imputed, assumed or possible future disability, perceived disability, a past disability or the effects of a past disability.

PART III: Equality and Nondiscrimination

Article 3: Equality

All persons, including persons with disabilities, are equal before the law and are entitled without any discrimination to the equal protection of the law.

Article 4: Non-discrimination

The law shall prohibit any discrimination and guarantee to all persons, including persons with disabilities, equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age, health, disability or other status.

In the application of this Convention, the notion of discrimination shall be understood to cover:

(a) Direct discrimination, that is, any distinction, exclusion, restriction based on any ground covered by paragraph 1 of this article which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of a right or benefit in the political, economic, social, cultural, civil or any other field by persons with disabilities;
(b) **Indirect discrimination**, that is, any act, criterion, provision, practice, policy, rule or arrangement which, although not explicitly based on a ground covered by paragraph 1 of this article, has a disproportionate impact on persons with disabilities or persons with particular disability;

(c) **Failure to treat differently** persons whose situations are different because of a disability, compared to persons without such a disability, if this failure results from non-compliance with the duty of reasonable accommodation as enshrined in article 5, paragraph 3, of this Convention.

(d) **Harrassment or retaliation** in respect of a person with disabilities or any person associated with such a person, on account of their explicit or presumed invocation of the right of any person with a disability to the full enjoyment of all human rights and fundamental freedoms.

**Article 5: Special Measures**

1. The concept of discrimination on the basis of disability does not include measures taken to ensure that persons with disabilities have equal opportunities with other persons to enjoy human rights and fundamental freedoms and to participate fully in the life of the community, for example the provision of financial support or of assistive devices or technical aids.

2. Adoption by States Parties of such special measures shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality or opportunity and treatment have been achieved.

3. The States Parties to the present Convention are under an obligation to take appropriate special measures to enable persons with disabilities to enjoy fundamental rights and freedoms on the same basis as other persons, particularly in the fields of employment and provision of education, transportation or other services to the public. In order to meet this obligation they shall include in their law a duty for private employers and service providers to take measures of accommodation in respect of persons with disabilities.

**Article 6: Relationship to Other Human Rights Treaties**

The States Parties to the present Convention recognize that the provisions in this Part III of the Convention shall be understood as an integral part of their obligations under the human rights treaties referred to in article 1, when applied in respect of persons with disabilities.

**PART IV: Monitoring Mechanisms**

**Article 7: Reporting by States Parties**

The States Parties to the present Convention undertake to include in their reports submitted pursuant to the provisions of the human rights treaties mentioned in article
1. full information on the measures they have adopted which give effect to the full enjoyment of human rights by persons with a disability and on the progress made in such enjoyment. This information may be provided either as a separate part of the reports in question or systematically integrated under the relevant provisions of the treaties in question.

**Article 8: Pool of Independent Experts**

1. There shall be established a pool of independent experts who will assist the treaty bodies established under the human rights treaties mentioned in article 1 in matters related to the full enjoyment of human rights by persons with a disability.

2. The pool of independent experts shall consist of eighteen individuals who are nationals of the States Parties to the present Convention and who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of persons with experience of life with a disability, as well as to equitable geographical distribution. The independent experts shall be elected and shall serve in their personal capacity.

3. The independent experts shall be elected by a meeting of States Parties to this Convention through secret ballot from a list of persons possessing the qualifications prescribed in paragraph 2 and nominated for the purpose by the States Parties to the present Covenant. Each State Party to the present Convention wishing to nominate a person shall nominate two persons, one male and one female. These persons shall be nationals of the nominating State. No more than one national of any State Party may be elected.

4. The initial election to the pool of independent experts shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

6. The members of the pool of independent experts shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chair of the meeting.

**Article 9: Individual Communications**

1. A State Party to the present Convention recognizes the right of persons with disabilities or groups of such persons to submit communications under those of the human rights treaties referred to in article 1 that are ratified by the State Party in
question and have in operation a procedure for communications by individuals or
groups of individuals.

2. In the consideration of communications submitted pursuant to paragraph 1, the
relevant procedures for communications shall be applied in respect of a State Party to
this Convention as if it had ratified the pertinent Optional Protocol or given the
separate declaration otherwise required for accepting the communications procedure
in question.

**Article 10: Disability Ombudsperson**

1. There shall be a United Nations Disability Ombudsperson with a mandate to
promote the full enjoyment of all human rights by persons with disabilities through,
inter alia, advocacy, awareness-raising and technical assistance. The Disability
Ombudsperson shall assist the States Parties and the United Nations in the
implementation of this Convention.

2. The Disability Ombudsperson shall be nominated by the Secretary-General.

3. The Disability Ombudsperson may represent a person with a disability or a group
of such persons in submitting a communication under article 9 of this Convention and
in any procedures, including follow-up procedures, that result from such a
communication.

**Article 11: Staff and Facilities**

The Secretary-General of the United Nations shall provide the necessary staff
and facilities for the effective performance of the functions of the Disability
Ombudsperson and the pool of independent experts established under the
present Convention.

**PART V: Final Provisions**

**Article 12**

The present Convention shall be open for signature by all States Parties to one or
more of the human rights treaties referred to in article 1.

**Article 13**

The present Convention is subject to ratification. Instruments of ratification shall be
deposited with the Secretary-General of the United Nations.

**Article 14**
The present Convention shall remain open for accession by any State Party to one or more of the human rights treaties referred to in article 1. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 15**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**Article 16**

1. Any State Party may propose an amendment to the present Convention and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

**Article 17**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

**Article 18**
A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 19

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 20

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.