

CONVENTION ON THE RIGHTS OF PERSONS WITH  
DISABILITIES

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY ON DECEMBER 13, 2006, AND SIGNED BY THE UNITED STATES OF AMERICA ON JUNE 30, 2009 (THE "CONVENTION")



MAY 17, 2012.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE



## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *May 17, 2012.*

*To the Senate of the United States:*

I transmit herewith, for advice and consent of the Senate to its ratification, the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on December 13, 2006, and signed by the United States of America on June 30, 2009 (the "Convention"). I also transmit, for the information of the Senate, the report of the Secretary of State with respect to the Convention.

Anchored in the principles of equality of opportunity, non-discrimination, respect for dignity and individual autonomy, and inclusion of persons with disabilities, the Convention seeks to promote, protect, and ensure the full and equal enjoyment of all human rights by persons with disabilities. While Americans with disabilities already enjoy these rights at home, U.S. citizens and other individuals with disabilities frequently face barriers when they travel, work, serve, study, and reside in other countries. The rights of Americans with disabilities should not end at our Nation's shores. Ratification of the Disabilities Convention by the United States would position the United States to occupy the global leadership role to which our domestic record already attests. We would thus seek to use the Convention as a tool through which to enhance the rights of Americans with disabilities, including our veterans. Becoming a State Party to the Convention and mobilizing greater international compliance could also level the playing field for American businesses, who already must comply with U.S. disability laws, as well as those whose products and services might find new markets in countries whose disability standards move closer to those of the United States.

Protection of the rights of persons with disabilities has historically been grounded in bipartisan support in the United States, and the principles anchoring the Convention find clear expression in our own domestic law. As described more fully in the accompanying report, the strong guarantees of nondiscrimination and equality of access and opportunity for persons with disabilities in existing U.S. law are consistent with and sufficient to implement the requirements of the Convention as it would be ratified by the United States.

I recommend that the Senate give prompt and favorable consideration to this Convention and give its advice and consent to its ratification, subject to the reservations, understandings, and declaration set forth in the accompanying report.

BARACK OBAMA.



## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE,  
*Washington, June 23, 2011.*

The PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you the Convention on the Rights of Persons with Disabilities (the convention), adopted by the United Nations General Assembly on December 13, 2006, and signed by the United States of America on July 30, 2009. I recommend the convention be transmitted to the Senate for its advice and consent to ratification. Ratification of the convention would serve both to underscore our commitment to the rights of persons with disabilities and to enhance our ability to promote those rights internationally.

At its core, the convention seeks to ensure that persons with disabilities enjoy the same rights as everyone else and are able to lead their lives productively as do other individuals, if given the same opportunities. The United States has always been a world leader in ensuring the rights of individuals with disabilities, through legislation and enforcement measures. The United States has made great progress toward the goals of inclusion, equal opportunity, full participation, independent living, and economic self-sufficiency. By becoming a party to the convention, the United States would continue its leadership role and would be in a better position to support, assist, and encourage other states to ratify and implement the convention, thereby contributing to verifiable improvements in guaranteeing to persons with disabilities equality of opportunity, nondiscrimination, accessibility, and reasonable accommodation in foreign countries. In short, ratification would position us as a leader in promoting the rights of approximately 650 million people in the world who have a disability, including the large number of Americans with disabilities who travel, study, do business, and reside abroad. Ultimately, it will be persons with disabilities, both inside and outside the United States, who will benefit from the global acceptance and implementation of the convention.

Equality of treatment and nondiscrimination, precepts anchored in the United States Constitution, are the primary principles permeating the entire treaty. The convention's provisions apply these principles in a number of key areas, such as:

- Participation in political life and access to justice,
- Freedom from torture and cruel, inhuman, and degrading treatment.
- Accessibility, personal mobility, and reasonable accommodation,
- Health,

- Education,
- Employment,
- Housing, and
- Rehabilitation.

To assist the Senate in its consideration of the convention, I am enclosing a detailed report containing an article-by-article analysis, which addresses U.S. convention implementation. Included in that analysis are three reservations, five understandings, and one declaration that are recommended for inclusion in the Senate's resolution of advice and consent. As further discussed in the enclosed report, if the United States makes the proposed reservations, understandings, and declaration, existing domestic law will serve to implement the convention.

It is my belief that if ratified as outlined above, adoption of the convention would be advantageous to the United States. All relevant U.S. government departments and agencies, including key implementing departments and agencies, participated actively in this review of the convention's provisions with respect to their domestic authorities. In particular, the Departments of Justice and Health and Human Services and the Equal Employment Opportunity Commission join me in recommending that the convention be submitted to the Senate for its early and favorable consideration and advice and consent to ratification, subject to the reservations, understandings, and declaration set forth in the enclosed report.

Respectfully submitted,

HILLARY RODHAM CLINTON.

Enclosures: As stated.

**Executive Summary**  
**UN Convention on the Rights of Persons with Disabilities**

Equality of treatment and non-discrimination are the main principles of the Disabilities Convention and U.S. domestic disability law, including the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA). The convention seeks to ensure that persons with disabilities enjoy the same rights as others and are able to lead their lives as others do, if given the same opportunities. With the following reservations, understandings, and declarations (RUD package), the United States would be able to implement its obligations under the convention using its vast existing networks of laws affording protection to persons with disabilities. Therefore, no new legislation would be required to ratify and implement the convention.

**Reservations**

**Federalism.** To the extent that state and local governments exercise jurisdiction over issues covered by the convention, U.S. obligations under the convention are limited to the U.S. government taking measures appropriate to the federal system, such as enforcement under the ADA, with the ultimate objective of full implementation of the convention.

**Non-Regulation of Certain Private Conduct.** The United States does not accept any obligation under the convention to take measures with respect to private conduct, except as mandated by the Constitution and U.S. laws.

**Torture and Cruel, Inhuman, or Degrading Treatment.** Persons with disabilities are protected against torture and other cruel, inhuman, or degrading treatment on an equal basis with others, consistent with the obligations the United States has undertaken in the UN Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR).

**Understandings**

**First Amendment.** The United States understands that the convention does not authorize or require actions that would restrict free speech, expression, or association protected by the Constitution and U.S. laws.

Economic, Social, and Cultural Rights. The United States understands the convention prevents discrimination on the basis of disability with respect to economic, social, and cultural (ESC) rights, insofar as such rights are recognized and implemented under U.S. federal law.

Equal Employment Opportunity. U.S. law protects persons with disabilities against unequal pay, including the right to equal pay for equal work. The United States understands that the convention does not require adoption of a comparable framework for persons with disabilities.

Uniformed Employees of U.S. Military Departments. With regard to the hiring, promotion, or other terms or conditions of employment of uniformed employees in U.S. military departments, the United States understands the convention does not recognize rights that exceed the rights available under U.S. federal law.

Definition of Disability. As “disability” or “persons with disabilities” are not defined under the convention, the United States understands the meaning of those terms to be consistent with relevant U.S. laws.

### **Declaration**

Non self-executing. The United States declares that the provisions of the convention are not self-executing, and thus would not be directly enforced by U.S. courts or of itself give rise to individually enforceable rights.



## OVERVIEW OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, WITH ARTICLE BY ARTICLE ANALYSIS

### *I. Overview of the Convention and U.S. Implementation*

The structure of the convention is fairly straightforward. The Preamble and Articles 1-5 set forth the purposes and principles of the convention, and Articles 4 and 5 prescribe the generally expressed obligations of States Parties, including the over-arching principles of equality of treatment and nondiscrimination. Articles 6 and 7 set forth the obligation of nondiscrimination towards women and children with disabilities; Articles 8-21 and 29 require measures to ensure equal observance of civil and political rights; Articles 22 and 23 address respect for privacy, the home, and the family; Articles 24-28 and 30 recognize non-discrimination and equal opportunity with respect to the enjoyment of economic, social, and cultural rights; Article 31 addresses data collection; and Articles 32 and 33 address international cooperation and national implementation. Articles 34-39 establish a Committee on the Rights of Persons with Disabilities (Committee) and clarify its role, including the consideration of initial and periodic State Party reports on the measures they have undertaken to implement the convention, which is similar to the reporting already undertaken by the United States with respect to the International Covenant on Civil and Political Rights (“ICCPR”), the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, and two Optional Protocols to the Convention on the Rights of the Child (“CRC Protocols”). Article 40 addresses meetings of a Conference of the Parties to the convention. Articles 41-50 contain final clauses.

These provisions are discussed below in detail, along with specific information regarding how the United States interprets and would implement relevant obligations. In general, by requiring States to give effect to their obligations by “appropriate” or by “all appropriate” measures (*see, e.g.*, Article 4(1)(a)), the convention adopts a broad and flexible approach to how States Parties may implement the convention’s provisions and thus allows for the legal particularities of each State Party to be taken into account. Subject to certain reservations, understandings, and a declaration proposed in this report, the analysis below illustrates that existing U.S. law and practice would be sufficient to implement the convention fully in the United States. As is the case with the other United Nations human rights treaties to which the United States is a State Party (identified above), the convention would not be self-executing, and thus would not

be directly enforced by U.S. courts or of itself give rise to individually enforceable rights.

Both the convention and federal disabilities laws share a general framework of protecting *specific subject areas of disability rights* such as equal access to air transportation (Convention Article 9, Air Carrier Access Act of 1986, and Americans with Disabilities Act (ADA) Title III); protection against discrimination in employment (Convention Articles 5 and 27, ADA Title I, and Sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act)); access to education on the basis of equality (Convention Article 24, Individual with Disabilities Education Act (IDEA), ADA Titles II and III, and Section 504 of the Rehabilitation Act); and access to housing on the basis of equality (Convention Article 28, Fair Housing Act, and ADA Titles II and III). (See Tab 1 for legal citations and description of statutes.) At the same time, in certain provisions the convention identifies broad subject areas of protection such as freedom from exploitation, violence, and abuse (Article 16) that are guaranteed in the United States under the U.S. Constitution and a broad range of federal laws including the over-arching non-discrimination laws (the Rehabilitation Act and the ADA) and multiple layers of legal protection, including the Civil Rights of Institutionalized Persons Act (CRIPA), as well as under state constitutions and state or local statutes. Even very specific convention rights, such as equal access to voting (Article 29), are addressed and protected under a panoply of federal statutes such as the Voting Accessibility for the Elderly and Handicapped Act of 1984, National Voter Registration Act of 1993, and the Help America Vote Act, as well as the Rehabilitation Act and ADA Title II. There are also varying structures to federal laws; certain statutes are specific and narrow, such as the National Voter Registration Act, while many disabilities rights laws, such as the ADA, are over-arching, containing various titles targeted at sectors of the economy, such as state and local services (Title II) and public accommodations (Title III) and covering all forms of discrimination by such entities, whether in regard to access to buildings, provision of benefits, or participation in a program.

There is an overlapping and intersecting – and imposing – network of federal statutes and other laws that would serve to implement the provisions of the convention. The breadth and depth of federal disabilities law is illustrated in Tab 1, which contains a description of principal federal laws and regulations in the field of non-discrimination and other disability rights and benefits. Tab 2 identifies general civil rights laws that also protect persons with disabilities. Tab 3 describes principal federal enforcement agencies and mechanisms that monitor compliance with certain of the laws described in Tabs 1 and 2.

## ***II. Article-by-Article Analysis***

The following discussion provides a summary of key provisions of the convention and describes, as appropriate, how these provisions would be implemented by the United States upon entry into force of the convention.

### **Article 1 – Purpose**

Article 1(1) states that “The Purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

The purpose of the convention is fully consistent with core principles and objectives underlying U.S. disability law and policy to promote equality and ensure nondiscrimination. *See, e.g.*, 42 U.S.C. § 12101(b) (“It is the purpose of [the Americans with Disabilities Act] . . . to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; . . .”). The key overriding objective of the convention, to ensure the full and equal enjoyment of human rights by persons with disabilities, permeates each provision of the convention and anchors the convention, at its core, as a nondiscrimination instrument. The numerous statutes described in Tabs 1 and 2 will serve to implement the purposes of the treaty as outlined in Article 1(1).

Article 1(2) describes in general terms persons with disabilities, using a social model of disability, providing that “[p]ersons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” (Preambular paragraph (e) similarly describes disabilities as an “evolving concept” framed in terms of the interaction of persons with disabilities with their environment.)

The convention does not define “disability,” and the description of persons with disabilities in Article 1(2) is not a definition. This is made clear from several factors, including the text and *travaux préparatoires* of the convention. Importantly, the treaty negotiators deleted the term “disabilities/persons with disabilities” from the definitions section of the convention (Article 2), where it was originally placed in the treaty draft produced during the 7th Ad Hoc Committee,<sup>1</sup>

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<sup>1</sup> <http://www.un.org/esa/socdev/enable/rights/ahc7report-e.htm> at pp. 8-9.

and instead decided to address the concept in Article 1(2) and the Preamble (paragraph (e)). This change was undertaken to avoid establishing a definition of “disability” in the convention. For example, statements made by the Chair of the Ad Hoc Committee Ambassador Donald MacKay during the final negotiating session<sup>2</sup> made clear that developing a definition was not a fruitful task, that Article 1 contained a “non-definition,” and that States Parties would look to definitions in domestic law, of which there could be several, in applying the convention. In addition, interpretive explanations of the convention by the United Nations Secretariat contained on the UN website state clearly that the convention contains no definition, for example:

“What is Disability?”

- The convention does *not* explicitly define disability.
- Preamble of convention states:
  - ‘Disability is an **evolving** concept, and that disability results from the **interaction** between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others.’
- Article 1 of the convention states:
  - ‘Persons with disabilities **include** those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’<sup>3</sup> (Emphasis in original.)

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<sup>2</sup> E.g., remarks by Chair of the Ad Hoc Committee, Amb. Donald MacKay, regarding the description of persons with disabilities in Article 1 (August 24, 2006, afternoon session):

“If you look at national definitions around the world of disability they are very different, and in fact many of them are different in the same country, because they are used for different purposes within the same country. Whether it is for social protection purposes or for work purposes or for health purposes or for rehabilitation purposes – the definition may be quite different in individual countries, and those of you who are familiar with your own legislation will know that. .... So clearly we can’t get a definition that will satisfy everyone, and the approach that has been taken with preambular language and then a *non-definition* basically but an indication – and it’s an inclusive indication – the language that has been come up with, that has been arrived at, is inclusive it is not exclusive. It uses the word “includes.” .... We can’t find here language that is the same as every national legislation, so *what we need is a broad approach, an inclusive approach*, not an exclusive approach *that then allows countries to obviously to approach this issue in terms of the approach they take domestically.* ...” (Emphasis added). Transcribed by the Department of State from Audio Recording of 8th UN Ad Hoc Committee session, August 24, 2006, afternoon session (emphasis added).

<sup>3</sup> <http://www.un.org/disabilities/default.asp?navid=14&pid=162>. The UN website further states as follows:

**Are the terms “disability” and “persons with disabilities” defined in the Convention?**

In sum, the convention is not intended to supplant detailed and precise definitions of disability found in national legislation but is rather intended to afford States Parties flexibility in defining disability under domestic law, often for different purposes (such as employment discrimination, access to health services, or entitlement to financial disability benefits). U.S. law contains various definitions of disability; for example, under civil rights nondiscrimination statutes such as the ADA, the Rehabilitation Act, and the IDEA, and under the Social Security Act for purposes of eligibility for social security disability benefits. *The various statutory definitions of disability in U.S. law, including definitions in the IDEA and ADA (and ADA exclusions), can and will continue to govern the definitions of disability once the treaty enters into force for the United States, and the convention envisions this outcome as discussed above.*<sup>4</sup> In order to make our

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The Convention does not include a definition of “disability” or “persons with disabilities” as such. However, elements of the preamble and article 1 provide guidance to clarify the application of the Convention [Describes Preamble and Article One.] Several elements of these provisions are relevant to highlight. First, there is recognition that “disability” is an evolving concept resulting from attitudinal and environmental barriers hindering the participation of persons with disabilities in society. Consequently, the notion of “disability” is not fixed and can alter, depending on the prevailing environment from society to society.

Second, disability is not considered as a medical condition, but rather as a result of the interaction between negative attitudes or an unwelcoming environment with the condition of particular persons. By dismantling attitudinal and environmental barriers - as opposed to treating persons with disabilities as problems to be fixed - those persons can participate as active members of society and enjoy the full range of their rights.

<http://www.un.org/disabilities/default.asp?navid=23&pid=151#sqc3>

<sup>4</sup> Definitions of disability in domestic non-discrimination law in any event generally meet or exceed the description in Article 1(2). By way of illustration, the ADA defines disability as (A) a physical or mental impairment that substantially limits one or more major life activities; (B) a record of such impairment; or (C) being regarded as having such an impairment. 42 U.S.C. § 12102. Although judicial interpretation since the passage of the ADA narrowed the scope of individuals who meet the definition, the passage of the ADA Amendments Act, effective January 1, 2009, reinstated the broad scope of protection against discrimination on the basis of disability. (See Sec. 2(b)(1) of the Amendments Act describing the Act’s purpose.) The Act broadens protection by containing language that supersedes or supplants Supreme Court holdings which narrowed the scope of coverage in Sutton v. United Airlines, 527 U.S. 471 (1999), Murphy v. United Parcel Service, 527 U.S. 516 (1999), and Albertsons, Inc. v. Kirkingburg, 527 U.S. 555 (1999), which held that “disability” should be determined by reference to the ameliorative effects of mitigating measures. The Act also rejects the Supreme Court’s holding in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the ADA creates a “demanding standard” for establishing coverage and requires that an impairment “severely restrict” major life activities. As a result of the passage of the ADA Amendments Act, the ameliorative effects of mitigating measures, such as medications, assistive devices, and reasonable accommodations, are not considered when determining whether an individual has a disability. 42 U.S.C. § 12102(4)(E). The ADA Amendments Act further clarified that individuals with impairments that are “episodic or in remission” may have disabilities if their impairments would substantially limit major life activities when active. 42 U.S.C. § 12102(4)(D). The ADA Amendments Act also defines “major life activities” broadly to include not only activities such as walking, seeing, hearing, speaking, thinking, and communicating, but the operation of major bodily functions, such as functions of the immune system, normal cell growth, brain, neurological, respiratory, circulatory, endocrine, and reproductive functions. 42 U.S.C. § 12102(2)(B). Coverage was also broadened through expansion of the “regarded as” definition of disability. For example, the ADA Amendments Act states that an employer regards an individual as disabled if it takes an adverse action because of an

interpretation clear, the Administration recommends that the following Understanding be adopted upon ratification:

**As “disability” or “persons with disabilities” are not terms defined under the convention, for the United States of America those terms shall be defined to be coextensive with the definitions of such terms pursuant to the relevant laws in the United States.**

#### **Article 2 – Definitions**

Article 2 defines “communication,” “language,” “discrimination on the basis of disability,” “reasonable accommodation,” and “universal design.” The convention definitions are compatible with the use of these terms in U.S. law. Of particular importance is the definition of “Discrimination on the basis of Disability,” which the convention defines as:

Any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

This definition is consistent with the equal protection guarantees established by the Fifth and Fourteenth Amendments to the U.S. Constitution, which ensure that all individuals are treated as equals before the law. It also is consistent with the broad definitions of discrimination set forth in the ADA, which include prohibitions on intentional discrimination as well as policies or practices that have a discriminatory impact.

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actual or perceived impairment, regardless of whether the impairment limits, or is perceived to limit, a major life activity. The only exception to this rule is where the impairment that is the basis of the employer's action is transitory (lasting or expected to last for six months or less) and minor. 42 U.S.C. § 12102(3)(B). The result of all these changes is that the ADA protects individuals with a broader variety of impairments – those with impairments that have traditionally been covered, such as deafness, blindness, or mobility impairments requiring use of a wheelchair, and individuals with impairments such as cancer, diabetes, epilepsy, and psychiatric disabilities including depression, bipolar disorder, and post-traumatic stress disorder, if these impairments substantially limit one of more major life activities. The convention's broad “non-definition” of persons with disabilities does not contain specific exclusions as appear in the ADA definition of “disability,” for conditions such as pedophilia, pyromania, compulsive gambling, or current illegal drug use. See 42 U.S.C. §§ 12114 and 12211; 29 C.F.R. § 1630.3. As noted above, these statutory exclusions will continue to apply under Article 1(2).

### **Article 3 – Principles**

Article 3 contains cross-cutting and overarching convention principles. The general principles set out in Article 3 include: respect for the dignity, autonomy, and independence of persons with disabilities; nondiscrimination; equality of opportunity; inclusion; accessibility; equality for men and women; respect for human diversity; and respect for children with disabilities. These principles, which are overarching and animating objectives, rather than specifically binding obligations on States Parties, are consistent with U.S. law and policy, as reflected in federal civil rights laws, among other places.

### **Article 4 – General Obligations**

Article 4 sets out States Parties' general obligation under the convention "to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability." To this end, Article 4(1) requires States Parties to: adopt "all appropriate measures" to implement the rights in the convention, modify legislation and practices that discriminate against persons with disabilities, and incorporate disability rights concerns into all policies and programs; ensure that public authorities and institutions and persons, organizations, and private enterprises comply with the convention; promote universally designed goods, services, and facilities, new technologies, and information and communication aids; and train persons to provide assistance and services guaranteed by the rights guaranteed by the convention more effectively. Article 4(2) requires States Parties to realize progressively economic, social, and cultural rights for persons with disabilities. Article 4(3) requires consultation by States Parties with persons with disabilities in the development and implementation of legislation to implement the convention. Article 4(4) affirms the permissibility of "provisions which are more conducive" to the rights of persons with disabilities and directs that there shall be no restriction upon or derogation from any of the human rights of persons with disabilities "on the pretext" that the convention does not recognize such rights or recognizes them to a lesser extent. Article 4(5) extends convention provisions to all parts of federal states.

The comprehensive and detailed approach under existing U.S. law to eliminating disability discrimination (see Tabs 1 and 2) constitutes appropriate measures – legislative, administrative, and other – that are consistent with and implement the convention's general obligations under Article 4, subject to the reservations and understandings recommended below.

Consistent with Article 4(1)(a), (b), and (c), the United States has successfully undertaken a comprehensive effort to protect the rights of persons with disabilities enshrined in the convention. At the federal, state, and local level, the United States has enacted legislation that guarantees nondiscriminatory access to goods, services, facilities, and programs offered by public and private entities. For example, as elaborated at Tab 1, such statutes include the **Americans with Disabilities Act of 1990 (ADA)**, 42 U.S.C. § 12101 *et seq.*, which prohibits discrimination on the basis of disability in employment, state, and local government, public accommodations, commercial facilities, transportation, and telecommunications; and the **Rehabilitation Act**, which prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. 29 U.S.C. § 791, 793, 794. This statute also established requirements for electronic and information technology developed, maintained, procured, or used by the federal government, in that all such electronic and information technology must be accessible to people with disabilities, including employees and members of the public. 29 U.S.C. § 794d. Other examples include the following: the **Communications Act of 1934**, as amended by the **Telecommunications Act of 1996**, 47 U.S.C. § 251(a)(2) and 255, which requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities, if readily achievable; the **Fair Housing Act**, as amended in 1988, 42 U.S.C. § 3601 *et seq.*, which prohibits housing discrimination on numerous grounds, including disability and covers private housing, housing that receives federal financial assistance, and public housing operated by state and local entities; the **Air Carrier Access Act**, 49 U.S.C. § 41705, which prohibits discrimination in air transportation by domestic and foreign air carriers against qualified individuals with physical or mental impairments; the **Voting Accessibility for the Elderly and Handicapped Act of 1984**, 42 U.S.C. § 1973ee *et seq.*, which generally requires polling places to be physically accessible to persons with disabilities for federal elections, or, where no accessible location is available, to provide an alternate means of casting a ballot on the day of the election, and also requires states to make available registration and voting aids for persons with disabilities, including information by TTY for the deaf; the **Help America Vote Act of 2002 (HAVA)**, 42 U.S.C. § 15301-15545, which affords additional protections to ensure that persons with disabilities have a full and equal opportunity to participate in the political process; and the **National Voter Registration Act of 1993**, 42 U.S.C. § 1973gg *et seq.*, which requires all offices of state-funded programs that are primarily engaged in providing services to person with disabilities to provide all program applicants with voter registration



forms, assist them in completing the forms, and transmit completed forms to the appropriate state official.

Additionally, the **Civil Rights of Institutionalized Persons Act (CRIPA)**, 42 U.S.C. § 1997 *et seq.*, authorizes the U.S. Attorney General to investigate conditions of confinement at state and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes, and institutions for people with psychiatric or developmental disabilities. The **Copyright Act**, 17 U.S.C. §§ 101 *et seq.*, includes a narrow exception for the reproduction of copyrighted materials for use by persons who are blind or have other disabilities. The **Genetic Information Nondiscrimination Act (GINA)**, 42 U.S.C. §§ 200ff *et seq.*, makes it illegal to discriminate against employees or job applicants because of genetic information and strictly limits the disclosure of genetic information. The **Individuals with Disabilities Education Act**, 20 U.S.C. § 1400 *et seq.*, requires states to make available to all eligible children with disabilities a free appropriate public education in the least restrictive environment appropriate to their individual needs. The **Architectural Barriers Act (ABA)**, 42 U.S.C. § 4151 *et seq.*, requires that buildings and facilities that are designed, constructed, or altered with federal funds or leased by a federal agency, comply with federal standards for physical accessibility.

In addition, Congress has integrated disability nondiscrimination provisions into statutes of general applicability to federal policies and programs. A list of program statutes of general applicability that include disability rights protections are at Tab 2.

Subparagraphs 1(d) and (e) of Article 4 require public authorities, institutions, persons, organizations, and private enterprises to abide by the convention's provisions. The United States has a vast enforcement system operating at the federal, state, and local levels that ensures compliance with applicable law regarding disability rights protections. The Department of Justice (DOJ) leads federal efforts in enforcing the ADA and other key provisions of disability rights law. The U.S. Equal Employment Opportunity Commission (EEOC) assumes primary responsibility for compliance with Title I of the ADA (employment discrimination), while the Department of Transportation's (DOT) Federal Transportation Authority enforces the transportation components of Title II. To comply with Section 504 of the Rehabilitation Act, most federal agencies have Offices for Civil Rights that receive, investigate, and if necessary, enforce

action in response to complaints of discrimination on the basis of disability. The extensive federal government enforcement system is detailed at Tab 3.

Article 4(1)(f) requires promoting research and development of universally designed goods, services, equipment, and facilities, as defined in Article 2. Universal design of products, environments, programs, and services means design that, in the Article 2 definition, will “be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.” This definition is echoed in some construction standards, including housing codes, at the federal, state, and local levels, as well as in the program design of some federal agencies. For example, the “universal design” definition in the Assistive Technology Act is fully compatible with the Article 2 definition. See 29 U.S.C. § 3002(19). The ADA Standards for Accessible Design reference universal design for parking structures at 4.1.2(5)(b). See 28 C.F.R. Part 36, Appendix A at 4.1.2(5). The standards permit universal design principles to be incorporated in other areas by permitting “equivalent facilitation,” that is, by allowing alternative design solutions as long as departures from particular technical and scoping requirements will provide substantially equivalent or greater access to and usability of the facility. See 28 C.F.R. Part 36, Appendix A at 2.2. Various agencies such as the Federal Communications Commission (FCC) and the Department of Education (ED) promote universal design in their policies and programs.

In keeping with the requirements of Articles 4(1)(f), (g), and (h), the federal government strongly supports the development, dissemination, and use of new technologies, information, and communication and mobility aids to assist persons with disabilities. The United States has enacted laws and established programs that promote the development and dissemination of mobility aids, devices, and assistive technologies. For example, the National Institute on Disability and Rehabilitation Research (NIDRR), a federal agency that is part of ED, was established to generate, disseminate, and promote new knowledge to improve the options available to disabled persons. ED’s Rehabilitative Services Administration administers the Assistive Technology Act (ATA) of 2004, which provides grants to states to help increase the availability of, access to, and funding for assistive technology. A wide variety of U.S. programs provide funding for the acquisition of assistive devices. These programs include the Department of Health and Human Services’ (HHS) Medicare and Medicaid programs, ED’s Centers for Independent Living programs, and the Social Security Administration’s SSI/SSDI programs, as well as vocational rehabilitation programs, educational programs under IDEA, and programs offered by the Department of Veterans Affairs (VA). In addition, the HHS-backed Protection and Advocacy (P&A) Assistive Technology program

provides legally based advocacy services to individuals with disabilities on assistive technology issues.

The enforcement efforts of federal agencies addressing disability discrimination are coupled with outreach and training that demonstrate U.S. compliance with Article 4(1)(i). For example, DOJ engages in extensive training efforts to ensure that professionals and staff working on guaranteeing the rights of persons with disabilities are effective. Other key federal agencies, including the EEOC and DOT, conduct extensive training efforts to diverse audiences. ED's NIDRR relies on its Disability and Business Technical Assistance Centers network to conduct technical assistance and operates the ADA National Network, a national network of 10 regional ADA Centers, to provide training, referrals, and resources to businesses, employers, government entities, and individuals with disabilities, as well as media and news reporters.

Under Article 4(2), “[w]ith regard to economic, social, and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights. . .” The approach recommended with respect to references to economic, social, and cultural rights will be discussed in greater length in the discussion of Article 25. As that discussion will illustrate, the text of the treaty and its negotiating history make clear that the convention requires the grant of such rights to be on a non-discriminatory basis, that is, rights, benefits, and programs provided to the general public must be provided under the treaty to persons with disabilities on an equal basis with others.

Under Paragraph 4(3), states are required to involve actively persons with disabilities in the development and implementation of legislation and policies to implement the convention and in other decision-making processes concerning issues related to persons with disabilities. In the United States, the National Council on Disability (NCD) (an independent federal entity) and nongovernmental disability organizations throughout the country play an active and vocal role in formulating and implementing disability policy. The democratic legislative process affords disability rights organizations and persons with disabilities an opportunity to make their voices heard at the federal, state, and local level regarding the creation and implementation of new laws. Vigorous advocacy by disability rights advocates played a key role in the passage of the Rehabilitation Act of 1973 as amended, the Education of All Handicapped Children Act in 1975,

the landmark ADA in 1990, and most recently the passage of the ADA Amendments Act in 2008. The ADA requires all public organizations to adopt Self Evaluation and Transition Plans identifying obstacles limiting access to programs, services, and activities and requires that public organizations routinely solicit and incorporate public input as part of their plans. At the regulatory level, each federal agency proposing regulations must provide the public with notice of an open comment period on any proposed rule so that individuals and organizations can offer feedback prior to the issuance of final rules. For example, with respect to Titles II and III of the ADA, DOJ alone has received thousands of comments on proposed ADA regulations and has held public hearings where persons with disabilities and disability rights organizations provided input on the development of disability legislation and policies. This type of involvement occurs with each of the key federal agencies enforcing disability laws and at the state and local levels.

Article 4(4) is intended to ensure that “[n]othing in the present convention shall affect any provisions that are more conducive to the realization of the rights of persons with disabilities and may be contained in the law of a State Party or international law in force for that State.”

Article 4(5) provides that the treaty provisions “shall extend to all parts of federal states without any limitations or exceptions.” Many human rights treaties deal with subjects governed principally by state law in the United States. This human rights treaty is different, however, as the rights and protections of persons with disabilities have, for the most part, been federalized. The United States has a broad array of federal statutes, regulations, programs, and benefits designed to promote the rights of, and eliminate discrimination against, persons with disabilities (see Tabs 1 & 2). These federal statutes regulate the conduct of the federal government, state, and local governments, nearly every employer (with narrow exceptions such as an employer with under 15 employees) (addressed below under “Private Conduct”), places of public accommodation, and public transport, among others. The numerous federal agencies that ensure compliance with disability rights laws and policies are discussed at Tab 3.<sup>5</sup> The federal government also has created an expansive umbrella of disability rights protections,

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<sup>5</sup> Individuals with disabilities also may be protected by their state anti-discrimination laws, some of which provide broader protection than federal laws. In the area of employment, the EEOC partners with state agencies enforcing the state anti-discrimination law in processing claims of employment discrimination. In states in which a work sharing agreement between EEOC and the state fair employment practice agency has been established, a charge of discrimination filed with EEOC is considered cross-filed with the state agency, and vice-versa.

including undertaking enforcement actions against state and local governments that are non-compliant with ADA requirements.

Notwithstanding the broad array of federal legislation that would implement the convention, certain treaty provisions cover matters traditionally governed by state law, notably Article 8(2)(b) regarding “all levels of the education system,” Article 12 on civil capacity, Article 14 on detention and civil commitment, Article 18(2) on birth registration, Article 19 on living in the community and choice of residence, Article 22 on unlawful interference with privacy, Article 23 on marriage and family relationships, and Article 24 on education. In these areas, state and local laws and regulations often meet or exceed the federal standards. Nevertheless, some state and local standards are less vigorous than the convention would require, such as with respect to certain obligations under the above-mentioned articles. Thus, an appropriate reservation may be included in the U.S. instrument of ratification that would preserve the existing balance between federal and state jurisdiction over these matters, as follows:

**This convention shall be implemented by the Federal Government of the United States of America to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the obligations of the United States of America under the convention are limited to the Federal Government’s taking measures appropriate to the Federal system, which may include enforcement action against state and local actions that are inconsistent with the Constitution, the Americans with Disabilities Act, or other Federal laws, with the ultimate objective of fully implementing the convention.**

*Private Conduct*

A core purpose of the convention, as exemplified in Article 4(1)(e), is for States Parties to take appropriate measures to eliminate discrimination on the basis of disability in all sectors of society, including by private persons and entities. The United States strongly shares the view that discrimination against persons with disabilities by private employers, landlords, common carriers, and places of public accommodation must be prohibited in order to achieve equality of opportunity. Indeed, the United States generally and broadly applies domestic nondiscrimination laws to private entities with respect to operation in public

spheres of life. For example, Titles II and III of the ADA apply to entities of any size. However, some laws such as laws prohibiting employment discrimination typically set a threshold before their protections are triggered. Selected employment-related civil rights laws apply only to employers that have 15 or more employees (e.g., ADA, 42 U.S.C. § 12111(5), Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e(b)). Thus domestic civil rights legislation does not extend to absolutely all private discrimination against persons with disabilities, such as employment discrimination by a sole proprietor or rental of a single-family home. Further, individual privacy and freedom from governmental interference in certain private conduct are also recognized as among the fundamental values of our free and democratic society. As a result, a “non-regulation of certain private conduct” reservation is recommended similar to the reservation made when ratifying the CERD, as follows:

**The Constitution and laws of the United States of America establish extensive protections against discrimination, reaching all forms of governmental activity as well as significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in certain private conduct are also recognized as among the fundamental values of our free and democratic society. The United States of America understands that by its terms the convention can be read to require broad regulation of private conduct. To the extent it does, the United States of America does not accept any obligation under the convention to enact legislation or take other measures with respect to private conduct except as mandated by the Constitution and laws of the United States of America.**

In sum, the United States’ comprehensive and detailed approach to eliminating disability discrimination constitutes appropriate measures – legislation, regulation, administrative practices, policy initiatives, and otherwise – that are consistent with and implement the convention’s general obligations under Article 4, subject to the recommended ratification statements described herein.

#### **Article 5 – Equality and Nondiscrimination**

Under paragraph 1, States Parties “recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.” States Parties shall “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities

equal and effective legal protection against discrimination on all grounds.” Further, States Parties shall “take all appropriate steps to ensure that reasonable accommodation is provided.” Finally, Article 5 recognizes that “specific measures” to accelerate or achieve *de facto* equality of persons with disabilities shall not be considered discrimination under the convention.

Article 5’s recognition of the fundamental tenets of equality and nondiscrimination is fully consistent with, and fully implemented under, U.S. law and policy, which provide administrative and legal mechanisms for persons with disabilities to report and pursue effective remedies for discrimination on the basis of disability. The Equal Protection Clause of the Fourteenth Amendment precludes any state from denying its citizens “the equal protection of the laws.” The Fifth Amendment of the U.S. Constitution provides that “No person . . . shall be deprived of life, liberty, or property without due process of the law.” Through the Due Process Clause of the Fifth Amendment, the requirement for equal protection is also applicable to the federal government. See Bolling v. Sharpe, 347 U.S. 497 (1954). The Supreme Court has interpreted the Equal Protection Clause as a “direction that all persons similarly situated should be treated alike.” Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). In essence, it precludes governments from adopting unjustifiable legal distinctions between groups of people. See Plyler v. Department of Education, 457 U.S. 202, 216-219 (1982). The Fifth and Fourteenth Amendments ensure that all individuals are equal before the law.

Additionally Congress intended for the ADA to allow the federal government to play a central role in the elimination of disability discrimination throughout the nation. See 42 U.S.C. § 12101(b). The ADA, the Rehabilitation Act, and other federal statutes, and their implementing regulations, provide comprehensive schemes to ensure that federal agencies investigate and remedy disability discrimination within their jurisdiction. The wide array of disability-specific statutes and broad regime of federal program statutes of general applicability that include specific provisions that prohibit discrimination on the basis of disability were noted in the description of Article 4 above and in Tabs 1 and 2. The effect of these nondiscrimination provisions in the federal program statutes is to prohibit public and private entities receiving funding under the statute from discriminating on the basis of disability in the administration and implementation of the program. The programs are usually not limited to persons with disabilities.

Article 5(3)'s mandate for States Parties to "take all appropriate steps to ensure that reasonable accommodation is provided," is fully implemented by U.S. law and policy. The convention specifically states in Article 2 that a denial of reasonable accommodation constitutes a form of discrimination, which is consistent with the ADA, the Rehabilitation Act, and other federal antidiscrimination laws. Article 5(4) permits, but does not require, affirmative steps to attain equality and notes that such steps "shall not be considered discrimination." Under both the ADA and the Rehabilitation Act, reverse discrimination claims are barred, which is consistent with this provision. See 42 U.S.C. § 12201(g); PL 110-325 § 6(a)(1)(g). Additionally there are federal programs that seek to remedy past disparities in treatment through ameliorative or affirmative measures, such as set-asides in the grant of federal contracts.

#### **Article 6 – Women with Disabilities**

Under Article 6(1), States Parties recognize that women and girls with disabilities may be subject to discrimination on multiple grounds and undertake an obligation to take measures to ensure women with disabilities the full and equal enjoyment of all human rights and fundamental freedoms. Article 6(2) calls for States Parties to take appropriate measures to ensure the full development, advancement, and empowerment of women, toward achieving full and equal opportunity. This article is fully consistent with U.S. law and policy, and will be implemented through the U. S. Constitution and a broad array of civil rights laws prohibiting discrimination against women and girls and prohibiting discrimination against persons with disabilities. These laws include the **Civil Rights Act of 1964** (Titles VII and IX), codified at 42 U.S.C. 2000e *et seq.*, which is the primary federal statute addressing discrimination in employment and prohibits discrimination on multiple grounds, including gender; **Title IX of the Education Amendments of 1972**, 20 U.S.C. § 1681 *et seq.*, which prohibits sex discrimination in certain federally assisted education programs or activities; the **Equal Educational Opportunities Act**, 20 U.S.C. § 1701 *et seq.*, which prohibits states from denying equal educational opportunities to an individual on account of his or her race, color, sex, or national origin; the **Equal Pay Act of 1963**, 29 U.S.C. § 206(d), which requires equal pay for equal work on jobs requiring equal skill, effort, and responsibility which are performed under similar working conditions; the **Pregnancy Discrimination Act**, codified at 42 U.S.C. § 2000e(k), which prohibits employers from providing less favorable treatment of pregnancy-related conditions in comparison to other conditions; the **Family and Medical Leave Act of 1993**, codified at 29 U.S.C. § 2601 *et seq.*, which provides (among others things) that certain public and private sector employees have the right to



take up to twelve weeks of unpaid leave in any 12-month period for the birth or adoption of a child, becoming a foster parent, or the serious illness of a child, spouse, parent, or the employee himself or herself; and the **Equal Credit Opportunity Act**, codified at 15 U.S.C. § 1691, which prohibits discrimination on account of sex or marital status in the granting or terms of credit. In addition, **Executive Order 11246** of September 24, 1965, 30 FR 12319, 30 FR 12935, prohibits covered federal contractors and subcontractors from discriminating on multiple grounds, including sex, and requires “affirmative action” to ensure equal employment opportunity without regard to those factors. Executive Order 11246 is enforced by DOL’s Office of Federal Contract Compliance Programs (OFCCP).<sup>6</sup>

#### **Article 7 – Children with Disabilities**

Article 7, which focuses on children with disabilities, would be implemented by existing U.S. law that provides children with disabilities a range of protections and access to services that meet their individual needs, including the ADA, the Rehabilitation Act, the IDEA, the Developmental Disabilities Assistance and Bill of Rights Act (DD Act), the Elementary and Secondary Education Act, and the Social Security Act.

Article 7(1) requires States Parties to “take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis as others.” Article 7(2) provides that in all actions concerning children with disabilities, “the best interests of the child shall be a primary consideration.” Titles II and III of the ADA protect children with disabilities from discrimination by public entities and public accommodations. DOJ regulates and enforces these titles and educates the public about their responsibilities to provide equal treatment to children with disabilities. For example, DOJ has issued technical assistance materials educating day-care providers on the inclusion of disabled children into their programs. DOJ has

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<sup>6</sup> DOJ addresses violence against women with disabilities through its Education and Technical Assistance Grants to End Violence Against and Abuse of Women with Disabilities, which are distributed under the Violence Against Women Act, 42 U.S.C. § 3796gg-7. DOJ grantees provide training, consultation, and information to service providers (including independent living centers, disability-related service organizations, and domestic violence programs) about responding to violence against women with disabilities. States, units of local government, Indian tribal governments, and nongovernmental private entities are eligible to receive funds under this grant program. Moreover, several states’ laws include provisions for the protection of women’s rights, and most of the states and many large cities have adopted their own statutory and administrative schemes for protecting individuals from discrimination on the basis of gender in fields actively regulated by state and local government. For example, state constitutions and statutes often protect individuals from discrimination in housing, employment, public accommodations, government contracting, credit transactions, and education.

successfully settled several cases where public accommodations failed to make reasonable modifications of their policies, practices, or procedures to include children with disabilities on an equal basis, including cases arising in day-care centers and schools. Section 504 of the Rehabilitation Act guarantees the right to full participation and access to a free appropriate public education to all children regardless of the nature or severity of the disability. Section 504 also requires the provision of appropriate educational services that are designed to meet the individual needs of qualified students to the same extent that the needs of students without a disability are met.

The IDEA, which is discussed in greater detail at Article 24, provides children between birth and the age of three – and in some states, five – with access to family-centered early intervention service. For children aged three through 21, the IDEA guarantees a free appropriate public education designed to meet a child’s individual needs and in the most integrated setting appropriate. Parents are directly involved in planning for their child’s education under this law. Under IDEA, a child may participate in the development of an individualized education program whenever appropriate.

Article 7(3) requires States Parties to ensure that children with disabilities have the right to “express their views freely in all matters affecting them, and that their views be given due weight in accordance with their age and maturity, on an equal basis with other children,” and must provide such children with age-appropriate assistance to realize their rights. This provision is an obligation of nondiscrimination and would therefore be implemented under U.S. disability non-discrimination laws (see Tabs 1 and 2). Moreover, several laws in the United States, including the IDEA, prescribe the involvement of children of a certain age in decisions affecting them.

#### **Article 8 – Awareness-Raising**

Article 8, subject to the statement described below, would be fully implemented by the ADA and Rehabilitation Act. The federal government plays a central role in education and awareness-raising regarding disability-related issues through the ADA’s Technical Assistance component, as noted in connection with the description of Article 4. See 42 U.S.C. § 12206. In addition, federal law prohibits entities covered by Section 504 of the Rehabilitation Act or ADA Title II from making decisions about persons with disabilities based on stereotypes or generalizations. As the U. S. Supreme Court stated, a goal of Section 504 of the Rehabilitation Act is to protect individuals with disabilities from “deprivations

based on prejudice, stereotypes, or unfounded fear.” See Sch. Bd. of Nassau County v. Arline, 480 U.S. 273, 286 (1987); see also id., at 284 (finding that Section 504 of the Rehabilitation Act prohibits discrimination based on the contagious effects of a physical impairment and noting that individuals with these impairments are subjected to a high level of “public fear and misapprehension.”) The ADA Title II regulations state that determinations that an individual with a disability poses a direct threat to the health or safety of others “may not be based on generalizations or stereotypes,” but rather “must be based on an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence.” See 28 C.F.R. Part 35, App. A, Definitions.

Vigorous enforcement of the ADA and the Rehabilitation Act raises awareness about disabilities and fosters respect for the rights and dignity of persons with disabilities. Moreover, all federal departments and agencies have educational and awareness-raising components that encompass issues relating to disability discrimination, typically through their Offices for Civil Rights. For example, the U.S. Departments of Justice, Education, Homeland Security, Health and Human Services, Housing and Urban Development, and Transportation and the Access Board all have programs promoting awareness about the rights of persons with disabilities through outreach and technical assistance activities. In addition, a variety of programs under the IDEA raise awareness of the issues affecting persons with disabilities in elementary and secondary education. For example, technical assistance centers funded through the IDEA provide information on specific topical areas such as early childhood, literacy, behavior, autism, assessment, and response to intervention to assist states and local school districts in increasing awareness of and facilitating implementation of evidence-based practices in these areas. See 20 U.S.C. § 1463.

The Assistive Technology Act of 2004 (ATA) provides states with financial assistance in order to support programs to increase awareness and knowledge of assistive technology devices and services that can be used by persons with disabilities and to increase the availability of assistive technologies to persons with disabilities. See 29 U.S.C. § 3001 *et seq.*

#### *First Amendment*

As noted above, a core purpose of the convention, as exemplified in Article 4(1)(e), is for State Parties to take appropriate measures to eliminate discrimination on the basis of disability in all sectors of society, including by

private persons and entities. Other provisions of the convention further this goal by requiring parties to “undertake to adopt immediate, effective, and appropriate measures” that “include . . . [e]ncouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present convention” (Article 8) and to “recognize the right of persons with disabilities to take part on an equal basis with others in cultural life” through “all appropriate measures” (Article 30(1)). An expansive reading of these provisions might raise free speech issues under the First Amendment of the U.S. Constitution and, in the case of Article 8, under Section 326 of the Communications Act, 47 U.S.C. §§ 326. For example, the First Amendment and the Communications Act could bar the United States from taking measures to encourage the media to portray persons with disabilities in a certain manner as inappropriate “content-based” requirements or restrictions on speech.

That said, the nature of the obligations in these provisions can reasonably be read to fall short of a requirement on the United States to proscribe or require expression based on content. To clarify this reading, the following understanding, similar to a reservation made when ratifying the ICCPR, is recommended:

**The United States understands that this convention, including Article 8 thereof, does not authorize or require legislation or other action that would restrict the right of free speech, expression, and association protected by the Constitution and laws of the United States of America.**

#### **Article 9 – Accessibility**

Article 9(1) calls for States Parties to take appropriate measures to “ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications . . . and to other facilities and services open or provided to the public. . . .” The accessibility measures shall apply, in particular, to buildings, roads, transportation, schools, housing, medical facilities, workplaces, and other indoor and outdoor facilities, and information technology, including emergency services. Article 9(2) directs States Parties to take appropriate measures to promote accessibility by developing standards and guidelines; providing measures to facilitate communication with persons with disabilities; and promoting access for persons with disabilities to new information and communications technologies and systems.

### *U.S. Implementation*

Article 9's goal of ensuring persons with disabilities access on an equal basis with others can be fully implemented under current U.S. law and policy. Titles I, II, III, and IV of the ADA, Section 504 of the Rehabilitation Act, the Architectural Barriers Act, and numerous other federal laws share Article 9's goal of ensuring that persons with disabilities independently enjoy the benefits available to other persons in the physical environment, as well as in the receipt of information and communications. Article 9 calls for States Parties to take appropriate measures to ensure access on an equal basis with others, and, as discussed above, identifies areas of focus for accessibility. The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. Under the ADA, the U.S. Access Board is charged with establishing minimum accessibility guidelines that, once adopted as legal standards, must be followed by engineers, designers, architects, and builders. The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors and subcontractors. 29 U.S.C. 791, 793, 794. The Architectural Barriers Act, 42 U.S.C. 4151 *et seq.*, requires that buildings and facilities that are designed, constructed, altered with federal funds, or leased by a federal agency comply with federal standards for physical accessibility. Numerous other federal laws, together with state and local laws, regulations, and ordinances, require equal access for persons with disabilities. Although federal law includes some exemptions in its accessibility requirements (e.g. undue financial and administrative burden or where barrier removal is not "readily achievable"), the United States' comprehensive scheme toward accessibility and the removal of physical and programmatic barriers constitutes "appropriate measures" in the implementation of obligations under Article 9(1) and (2).

### *Physical Accessibility*

With respect to physical accessibility, U.S. law assesses accessibility by means of comprehensive architectural design standards that are specifically tailored to each context to account for factors such as cost, demand, feasibility, and safety. The U.S. Access Board is charged with establishing minimum accessibility guidelines that, once adopted as legal standards, must be followed by engineers, designers, architects, and builders.

Under Section 504 of the Rehabilitation Act and Titles II and III of the ADA, covered entities may not deny access to their programs or activities or to the goods and services they provide because the entity's facilities are inaccessible to or unusable by persons with disabilities. See, e.g., DOJ regulations implementing Section 504 of the Rehabilitation Act with respect to entities receiving federal financial assistance (DOJ's federally assisted regulations), 28 C.F.R. § 42.520, and ADA Title II regulations, 28 C.F.R. § 35.150. Facilities built after the effective date of the respective regulation (or altered portions of facilities, to the extent feasible) must be readily accessible to and usable by persons with disabilities in accordance with prescribed standards. See 28 C.F.R. § 42.522(b) (standards applicable under DOJ's federally assisted regulations); 28 C.F.R. § 35.151 for Title II standards; 28 C.F.R. § 36.401 (Title III new construction) and 28 C.F.R. § 36.402 (Title III alterations). Title III also requires existing facilities to remove existing barriers to access to the extent that it is "readily achievable" to do so. 28 C.F.R. § 36.304.<sup>7</sup>

#### *Information and Communication Accessibility*

With respect to information and communication, in light of Articles 9(1)(b) and 9(2)(g), the ADA Title II regulation addresses directly covered entities' obligations to ensure that communications with persons with disabilities are as effective as communications with others. In order to achieve this, a covered entity "shall furnish appropriate auxiliary aids and services where necessary . . ." 28 C.F.R. § 35.160. Written before public access to the Internet was available, the regulation does not directly address electronic and information technologies, but this section of the ADA Title II regulation is sufficiently broad to encompass evolving technologies, as is the Title III regulation covering public accommodations. With respect to website accessibility, Title II of the ADA covers

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<sup>7</sup> These laws and their implementing regulations do not require all existing facilities to be modified, but structural modifications are required when program access cannot be accomplished by other means. Section 504 of the Rehabilitation Act and Title II require "program access," which requires covered entities to operate each service, program, or activity so that each such program, service, or activity, when viewed in its entirety, is readily accessible to and usable by, individuals with disabilities. See 28 C.F.R. § 35.150, 34 C.F.R. § 104.22(a). Nonstructural methods of achieving compliance, such as the relocation of a program or service to an accessible location, may be sufficient to achieve compliance. 28 C.F.R. § 35.150(b)(1), 34 C.F.R. § 104.22(b). Public entities are not required to make changes that would result in a fundamental alteration in the nature of the service, program, or activity, or that would result in undue financial and administrative burdens. 28 C.F.R. § 35.150. Title III adopts a similar concept with respect to barrier removal, requiring structural modifications to improve access in existing facilities. If barrier removal is not readily achievable, a covered entity must make its goods and services available through readily achievable alternatives to barrier removal such as by providing its goods and services in alternative accessible locations. 28 C.F.R. § 36.305.

access to websites of public entities, while Title III covers access to websites of public accommodations. Under the ADA, public entities or public accommodations may meet their obligations to make websites accessible by providing an accessible alternative for individuals to enjoy the websites' goods or services, as long as that alternative provides an equal degree of access in terms of hours of operation and range of options and programs available. Title IV addresses telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) twenty-four hours a day, seven days a week, that enable callers with hearing and speech disabilities who use telecommunications devices for the deaf and callers who use voice telephones to communicate with each other through a third-party communications assistant. The FCC has set minimum standards for TRS services. Title IV also requires closed captioning of federally funded public service announcements. Section 508 of the Rehabilitation Act also establishes requirements for electronic and information technology developed, maintained, procured, or used by the federal government, in that all such electronic and information technology must be accessible to people with disabilities, including employees and members of the public. 29 U.S.C. § 794d.

With respect to promoting access to, and development of, new information and technologies, Section 508 of the Rehabilitation Act, which requires federal agencies to make their electronic and information technology accessible to persons with disabilities, has resulted in the development of new technologies for accessible information. The Access Board has issued "Electronic and Information Technology Standards," see 39 C.F.R. § Pt. 1194. The ATA targeted the removal of environmental barriers and increased access to assistive and universally designed technologies. See 29 U.S.C. § 3001(b)(1). Other government initiatives, e.g., the Interagency Council on Disability-Related Statistics, promote public-private partnerships and research opportunities to develop and make available assistive technologies. The Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 251(a)(2) and 255, requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities, if readily achievable.

The FCC oversees five programs that help to ensure access to assistive technology, including: closed captioning of video programming; access to emergency information in video programming; Telecommunications Relay

Services; access to telecommunications services and equipment; and hearing aid compatibility for telephones.

#### *Emergency Service Providers*

With respect to U.S. implementation of Article 9(1)(b), Title II of the ADA covers emergency service providers and other state and local government entities. See 28 C.F.R. Part 35. Direct, equal access must be provided to all emergency services, such as emergency communication, evacuation, and shelter. More than 25 federal agencies participate in the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities (ICC). Through the provision of technical assistance, the ICC undertakes the implementation of emergency preparedness plans as they related to individuals with disabilities and encourages consideration of the unique needs of employees and individuals with disabilities served by state, local, and tribal governments, private organizations, and individuals in emergency preparedness planning. In addition, DHS's Federal Emergency Management Agency (FEMA) works to achieve inclusive preparedness, response, and recovery practices. Before, during, and after an emergency, FEMA's Office of Disability Integration and Coordination provides guidance, tools, methods, and strategies to integrate and coordinate emergency management efforts to meet the access and functional needs of needs of all citizens, including children and adults with disabilities.

#### *Housing*

The Fair Housing Act, 42 U.S.C. §§ 3601-19, 3631, applies to privately and publicly owned housing, with some limited exceptions, and prohibits discrimination because of disability. In addition to protecting persons with disabilities as a class within its provisions, the Fair Housing Act also contains provisions focused directly on ensuring that persons with disabilities can equally use and enjoy housing. The act makes it unlawful to refuse to permit a reasonable structural modification of existing premises, 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203, and to "refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person an equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204. The act requires accessibility features in the design and construction of covered multifamily dwellings for persons with disabilities. 42 U.S.C. § 3604(f)(3)(C); 24 C.F.R. § 100.205.



The Rehabilitation Act and the ADA also protect against housing discrimination. Section 504 mandates that HUD must ensure general program accessibility and meet specific affirmative physical accessibility requirements. For example, HUD's Section 504 regulations require that in new construction of federally assisted multifamily housing projects containing five or more dwelling units, 5 percent, or a minimum of one unit, must be built to the Uniform Federal Accessibility Standards while an additional 2 percent, or at least one unit, must be accessible to persons with hearing and/or visual disabilities. 24 C.F.R. §§ 8.22-8.23. The ADA applies to some housing programs, and in particular, to the public and common use areas such as rental offices in multifamily housing covered by the Fair Housing Act. In addition, many state and local residential housing and facilities and non-housing facilities receive federal funds subject to the ADA.

#### *Employment*

Title I of the ADA requires state and local governments and employers with 15 or more employees to provide individuals with disabilities who are qualified an equal opportunity to benefit from the full range of employment-related opportunities available to others. It prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. See 42 U.S.C. § 12112(a). Employment rights for persons with disabilities are discussed further at Article 27.

#### *Medical Facilities*

Titles II and III of the ADA, and where applicable the Rehabilitation Act, provide that persons with disabilities have the right to access health care and services on an equal basis with others. Hospitals and other residential health care facilities and doctors' offices must ensure that some of their patient rooms are fully accessible to persons with disabilities. Examination rooms should contain, or have available, accessible medical equipment, such as adjustable height examination tables, accessible radiologic equipment, and mechanical lifts. Existing facilities must determine where structural barriers may exist, and remove them to the extent that it is readily achievable. New construction and alterations must be done in compliance with federal accessibility standards. Additionally, healthcare providers must ensure that they are providing effective communication for individuals who are deaf, hard-of-hearing, blind, have low vision, or have speech impairments. Staff involved in direct patient assistance should have proper training on providing equal access for patients with disabilities. Public and private entities must ensure that ambulances and hospital shuttle buses are accessible to persons with

disabilities and that health care providers understand that care must be provided without discrimination.

### *Transportation*

Access to both public and private transportation is critical for persons with disabilities. Title II of the ADA requires accessibility in all aspects of the transportation services provided by state and local governmental entities, including city buses, subway systems, and public rail transit, while Title III covers transportation services provided by private entities such as taxi services, private shuttle buses (such as those that shuttle individuals to airports or between hotels and other locations), and entities that operate intercity and interstate bus companies. These laws and regulations require that the transit vehicles as well as the associated terminals, depots, and other stations be accessible to individuals with disabilities, including individuals with mobility-related disabilities. Public transportation authorities and public accommodations may not discriminate against people with disabilities in the provision of their services.

In addition to requiring access to mainstream methods of transportation, U.S. law recognizes the need for “paratransit,” that is, a service where individuals who are unable to use a regular transit system independently are picked up and dropped off at their destinations. See 42 U.S.C.A. §§ 12141 - 12165. The Air Carrier Access Act of 1986 prohibits discrimination by domestic and foreign air carriers against individuals with covered physical or mental impairments. It applies to air carriers that provide regularly scheduled services for hire to the public and requires boarding assistance and certain accessibility features in newly built aircraft and new and altered airport facilities. See 49 U.S.C. § 41705. Title III of the ADA covers cruise ships, including foreign-flagged cruise ships operating in U.S. waters. Barrier removal is not required under Title III of the ADA if it would bring a vessel into noncompliance with international legal obligations, for example under the International Convention for the Safety of Life at Sea, and therefore would not be “readily achievable,” nor would barrier removal be required if it would pose a direct threat to the safety of the crew or other passengers. See Spector v. Norwegian Cruise Line, Ltd., 125 S. Ct. 2169, 2181 (2005).

### **Article 10 – Right to Life**

Under Article 10, States Parties “reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.” Article 10,

for the most part, restates and reaffirms the right to life provision in the ICCPR, to which the United States is a party. Article 6(1) of the ICCPR provides: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Article 10 is consistent with, and implemented through, the U.S. Constitution and disability law. The Fifth and Fourteenth Amendments to the U.S. Constitution provide that the federal and state governments, respectively, shall not deprive any person “of life, liberty or property, without due process of law.” Article 10 reaffirms the right to life “on an equal basis with others,” and statutes such as the ADA and the Rehabilitation Act are premised on the principle of equality and nondiscrimination for persons with disabilities.

#### **Article 11 – Situations of Risk and Humanitarian Circumstances**

This article reaffirms preexisting international legal obligations by providing that “States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies, and the occurrence of natural disasters.” This article highlights the importance of ensuring the proper implementation of these legal obligations to ensure the protection of persons with disabilities in situations of risk. The United States has laws, regulations, an executive order, and policies in place that implement these preexisting obligations. For example, Executive Order 13347, Emergency Preparedness and Individuals with Disabilities, issued by President George W. Bush on July 22, 2004, established procedures for inter-agency cooperation and coordination to ensure that the federal government appropriately supports safety and security for individuals with disabilities in all-hazard, emergency, and disaster situations including earthquakes, tornadoes, fires, floods, hurricanes, and acts of terrorism. Currently, DHS’s Office of Civil Rights and Civil Liberties leads the implementation of Executive Order 13347. The Executive Order created an Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities. The ICC is comprised of senior leadership from more than 25 federal departments and agencies. The Council has concentrated its work in eight major areas: Emergency Communications; Emergency Preparedness in the Workplace; Emergency Transportation; Health; Private Sector Coordination; Research; State, Local and Tribal Government Coordination; and Technical Assistance and Outreach. DHS’s FEMA has provided guidance, tools, and training to state and local governments to meet the access needs of children and adults with disabilities in general population shelters.

FEMA is placing Disability Integration Specialists in its regional offices and has made whole community planning, inclusive of the access and functional needs of children and adults with disabilities, a priority.

The Department of Health and Human Services has implemented numerous programs and strategies to ensure the health and safety of persons with disabilities in an emergency. For example, HHS has developed assessment tools to ensure that persons with disabilities facing evacuation will have accessible transportation and will be transported to facilities that can address their needs. HHS also has expanded the cache of equipment and supplies at Federal Medical Stations (FMS) to include accommodations for persons with disabilities, such as medicines, lifts, wheelchair and walker accessibility aisles, and toilet seat risers. Additionally, the checklist for site inspection and approval at FMSs includes accessibility items such as wheelchairs and walker-accessible aisles. HHS also provides technical assistance to emergency planners, including state and local government agencies, to ensure that issues related to the at-risk population and health information privacy are considered in emergency planning.<sup>8</sup>

On the state and local level, the ADA applies to state and local governments' policies, practices, and procedures, which would include those entities' policies, services, and programs related to emergency services and disaster preparedness and response. To ensure that state and local governments provide appropriate emergency and disaster preparedness services for persons with disabilities, DOJ has provided detailed guidance and an ADA checklist for emergency shelters.

#### **Article 12 – Equal Recognition Before the Law**

Article 12(1), which reaffirms that persons have the right to recognition as persons before the law, and Article 12(2), which requires States Parties to recognize that persons with disabilities enjoy legal capacity on an equal basis with others, would be implemented by current U.S. law that presumes that each adult has “legal capacity” until proven otherwise combined with constitutional

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<sup>8</sup> In addition, HHS is responsible for implementing key provisions of the Pandemic and All Hazards Preparedness Act (PAHPA). Under PAHPA, the HHS Secretary must establish plans and strategies that address the needs of at-risk individuals, including those with disabilities, so that emergency planners, managers, and responders will be better prepared to account for the needs of at-risk individuals prior to and following a catastrophic event. Such strategies include: establishing guidance to ensure that recipients of state and local public health grants address the medical and public health needs of at-risk individuals in the event of a public health emergency; overseeing curriculum development for the public health and medical response training program on medical management of casualties, as it concerns at-risk individuals; and disseminating best practices for outreach and care of at-risk individuals before, during, and following public health emergencies.

guarantees of equal protection under the law and due process and statutory prohibitions against discrimination on the basis of disability. Accordingly, persons with disabilities are entitled to a neutral and objective determination of their legal capacity “on an equal basis” with others under existing U.S. law. Further, as described in detail below, and subject to the federalism reservation described above, there has been a significant trend toward the modernization of guardianship standards, moving most states into conformity with Article 12.

Statutes addressing legal capacity may take a variety of forms or arrangements, such as guardianship or substituted decision making, supported decision making, and representative payee arrangements. Article 12 permits a spectrum of measures, with safeguards to be implemented proportional to the degree that such measures affect the person’s rights and interests (Article 12(4)). Determinations of legal capacity occur at the federal or state level.

Paragraphs 3 and 4 of Article 12 direct States Parties to take appropriate measures to support the exercise of legal personhood and capacity, including safeguards against abuse “in accordance with international human rights law.” At the federal level, there are a number of circumstances whereby the federal government supports persons with a limited ability to make decisions, such as the receipt of Social Security Administration (SSA) benefits through an appointed representative payee for a person deemed legally incompetent. Representative payeeships, which also are used by the Office of Personnel Management, the Department of Defense, the Veterans Administration, and the Railroad Retirement Board, are limited to management of benefits. Federal agencies using representative payee structures, such as SSA and the VA, provide due process protections for affected persons. The SSA and VA approaches to allowing representatives to assist beneficiaries incorporate nondiscriminatory principles and safeguards against abuse.

HHS supports several programs that afford persons with disabilities assistance to allow supported decision-making. HHS’s Medicaid program funds intensive case management programs that assist persons with chronic mental illness and developmental disabilities in managing their personal and financial affairs. Some state mental health service programs offer similar supported decision-making. HHS’s National Center on Elder Abuse, directed by the U.S. Administration on Aging, is committed to helping national, state, and local partners in the field be fully prepared to ensure that older Americans will live with independence, and without facing abuse, neglect, or exploitation from improper limitations on legal capacity. The Administration on Aging enforces the Older

Americans Act (OAA) by providing alternatives to guardianship to enhance the continued freedom and independence of elderly Americans. Grants awarded under the OAA support more than 1,000 legal service providers nationwide who promote alternatives to guardianship, such as financial powers of attorney and advanced health care directives, and encourage limited guardianships over plenary guardianships. Programs funded under the OAA also assist courts in training and monitoring guardians.

In addition, the federal government actively supports efforts to reinforce safeguards against any limitations on the exercise of legal capacity, including those arising at the state level. The Protection and Advocacy system, as described in the discussion of Article 16 *infra*, advocates and litigates on behalf of persons with disabilities at the state and tribal level to ensure that their due process rights are respected with respect to the appointment and actions of any guardians.

Article 12(5) requires appropriate measures to ensure the equal rights of persons with disabilities to own property and control their own financial affairs. Substantive federal nondiscrimination laws touching on housing, access to credit, and inheritance, would serve to implement this provision and to protect persons with disabilities against discrimination in owning, possessing, or inheriting property, controlling their financial affairs, and having equal access to loans and credit.

All fifty states and the District of Columbia have laws addressing guardianship of incapacitated adults. Each state also offers some combination of less restrictive alternatives to guardianship, including health care advance directives, psychiatric advance directives, powers of attorney, revocable living, testamentary, or special needs trusts, representative payee arrangements, and assistance with money management and case management. These alternative arrangements allow persons with disabilities to maintain their autonomy and independence, even in the face of diminished functional capacity. In virtually all states, the subsequent appointment of a guardian will not result in any modification of the legal instruments previously created by the affected person, preserving their choices about their own welfare.

Although the standards for guardian (over the person) or conservator (over personal property, except in some states that use the term in lieu of guardian) selection, appointment, monitoring, and removal differ, there has been a significant trend toward the modernization of guardianship standards, moving most states into conformity with Article 12. At the leading edge of this trend, six states (Alabama,

Colorado, Hawaii, Massachusetts, Minnesota, and Montana) and the Virgin Islands have adopted the Uniform Guardianship and Protective Proceedings Act (UGPPA), a 1997 derivative of the Uniform Probate Code's (UPC) guardianship standards that comprises key convention concepts, including an emphasis on only appointing guardians or conservators where clearly necessary and demonstrated by "clear and convincing" evidence, focusing on functional limitations rather than medical diagnoses, and ensuring that the powers delegated to guardians or conservators are the least restrictive possible for the incapacitated person, exercised through a limited guardianship that relies on consultations with and input from the affected person. The UGPPA also enhances due process protections in the appointment process, requiring a "visitor" to act as an independent agent of the court in the proceedings, appointing counsel for the affected party if requested or the visitor recommends it, requiring the affected party's presence at any guardianship hearing if at all possible, and establishing short and long-term reporting requirements for guardians and conservators. Finally, the UGPPA provides for temporary, short-term guardians and for emergency guardians to replace guardians removed for misconduct or other reasons. See UGPPA §§ 311, 317 and 420.

Ten states (Alaska, Arizona, Idaho, Maine, Michigan, Nebraska, New Mexico, North Dakota, South Carolina, and Utah) adopted the 1982 UPC guardianship provision and many of these have subsequently revised their guardianship laws to afford persons potentially subject to guardianship enhanced rights. The 1982 UPC initially took the lead on modernizing guardianship standards by moving away from plenary guardianship and encouraging limited guardianships, by endorsing the "least intrusive approach to guardianship," enhancing notice requirements, calling for the affected person to be present at a hearing, with legal representation if desired, requiring a thorough exploration of the person's alleged need for a guardian, to comprise an interview, a home visit, and an examination, and permitting petitions for guardian removal to be submitted by affected parties or any interested persons. The underlying goal of the UPC's guardianship provision was to "develop maximum self-reliance and independence of a protected person."

Several other states have undertaken significant reform of their guardianship laws, consistently moving toward greater recognition of each affected person's autonomy, emphasizing alternatives to guardianship and imposing only the least restrictive and least intrusive guardianship possible, recognizing limited guardianships, and greatly enhancing due process protections, including by making all efforts to have the affected person participate in any guardianship appointment process, emphasizing functional limitations, requiring more demanding guardian

monitoring and reporting requirements, and enhancing judicial oversight. States adopting these types of reforms include: California, Connecticut, Florida, Illinois, Iowa, Kentucky, Maryland, Nevada, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Texas, Vermont, Wisconsin, Wyoming, and the District of Columbia.

Despite these positive changes in guardianship provisions in most states, many state constitutions and statutory provisions continue to limit the full exercise of civil and political rights of persons deemed incompetent. In many states, presumptions of incompetency linked to the appointment of a guardian may result in restrictions on voting, holding office, serving on a jury, testifying, or bearing arms. State laws also may reach into the realm of family and privacy, with termination of parental rights or the right to refuse medical treatment.

The federal government will continue to support sustained progress at the state level. Indeed, the strong trend toward modernization and increased recognition of autonomy has resulted in all but three states recognizing limited guardianships and one third of these expressing a preference for limited guardianship over plenary guardianship. Eighteen states have endorsed decision-making that encourages the active participation of the affected person with a guardian in the decision-making process with an ultimate goal of independence. All but nine states consider an individual's functional capacity to make independent health and safety decisions as part of a determination about whether any type of substitute decision-making is warranted.

As part of this modernization of state standards, 48 states (excluding Nebraska, Wyoming, and the District of Columbia) have public guardianship programs that offer different types of assistance with managing personal affairs and property. Public guardian programs provide assistance to low-income incapacitated adults who do not have any personal contacts who might serve as private guardians. Almost all of these programs include language permitting or encouraging courts to limit a public guardian's role to areas where a person lacks a capacity for independent decision-making. Some states expressly provide that public guardians may serve in a limited, rather than plenary, capacity. Public guardian programs often require training and certification for the public guardians, set limits on the number of incapacitated persons each guardian can assist, and establish visitation and reporting requirements to allow for oversight of the public guardians' performance.



### **Article 13 – Access to Justice**

Article 13, which requires States Parties to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of accommodation, to facilitate their role as participants in all stages of legal proceedings, would be implemented by the U.S. Constitution and federal statutes, including those listed in Tab 1. Specifically, the Fourteenth Amendment of the U.S. Constitution provides that U.S. states may not deny their citizens the exercise of a fundamental right, including liberty, without due process of law. The Fifth Amendment provides the same with respect to the federal government. The Constitution's equal protection guarantees support equal access to justice for persons with disabilities. To the extent that Article 13 addresses physical access governed under Article 9, the ADA, the Rehabilitation Act, and the Architectural Barriers Act provide that persons with disabilities have the right to access the judicial process, courthouses, law enforcement services, lawyers' offices, and detention facilities on an equal basis with others. Where services are provided in inaccessible older buildings and facilities, public entities must relocate those services to accessible locations where necessary to provide equal access for persons with disabilities. If necessary, older facilities must be altered to provide accessible features.<sup>9</sup> Title III of the ADA prohibits discrimination by privately owned places of public accommodation, which includes essential components of the judicial system, and requires such places of public accommodation, including lawyers' offices, legal libraries, law schools, and lecture halls to meet accessibility standards.

Under Title II of the ADA, public entities must take measures to communicate effectively with persons who are deaf, hard of hearing, blind, have low vision, or have speech impairments. This may include ensuring that qualified oral/sign language interpreters are available to interpret court proceedings and in-person transactions, including investigations and arrests by police. Other measures may include accessible websites and the provision of real-time captioning services and assistive listening devices in courtrooms. Furthermore, public entities are

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<sup>9</sup> In *Tennessee v. Lane*, 541 U.S. 509 (2004), a landmark decision in the field of disability rights, the U.S. Supreme Court upheld the obligation under Title II of the ADA of a state to provide access to a courtroom proceeding for persons with mobility disabilities. Plaintiff George Lane, a defendant in a criminal matter, crawled up two flights of stairs at his first court appearance, but refused to do so a second time or be carried by guards. He was arrested and jailed for failure to appear in court. Co-plaintiff Beverly Jones, a court reporter, could not get to courtrooms on the second floor of the courthouse. The Supreme Court upheld congressional authority to require the several states to provide access to persons with disabilities in furtherance of "the fundamental right of access to the courts." State courts that are recipients of federal financial assistance are also subject to the architectural standards and other access requirements of Section 504 of the Rehabilitation Act.

required to make reasonable modifications to policies, practices, and procedures where necessary to provide equal access for persons with disabilities, unless the entity can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided. For example, a policy prohibiting animals in a courtroom would be modified to allow persons accompanied by service animals to enter a courtroom and participate on an equal basis with others.

The Department of Justice has an array of programs related to advancing equal and effective access to justice for persons with disabilities. These include the Mental Health Courts Program established under America's Law Enforcement and Mental Health Project, Pub. L. No. 106-515, 114 Stat. 2399 (2000), the Mentally Ill Offender Treatment and Crime Reduction Act of 2004, Pub. L. No. 108-414, 118 Stat. 2327, and programs administered by the Office for Victims of Crime, funded through the Crime Victims Fund, 42 U.S.C. § 10601, and established in 1988 through amendments to the Victims of Crime Act of 1984, 42 U.S.C. § 10605.

#### **Article 14 – Liberty and Security of Person**

Article 14(1) requires States Parties to ensure that persons with disabilities enjoy the rights to liberty and security of person, are not deprived of their liberty unlawfully or arbitrarily, that any deprivation is in conformity with the law, that “the existence of a disability shall in no case justify a deprivation of liberty,” and that these rights are ensured “on an equal basis with others.” Article 14(2) requires States Parties to ensure that if persons with disabilities are deprived of their liberty through any process, they are:

[O]n an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this convention, including by provision of reasonable accommodation.

Although federal law has enhanced the due process protections for persons with disabilities facing deprivations of liberty, as have many states, because of the diversity of pertinent state laws, U.S. compliance with Article 14 is subject to the federalism reservation noted above.

Protection against unwarranted deprivations of liberty is enshrined in the Fifth and Fourteenth Amendments of the U.S. Constitution. The U.S. Constitution's guarantees of due process and equal protection apply to all persons

in the United States on an equal basis and with respect to both criminal and civil proceedings. Although due process protections for civil commitment hearings vary from state to state, landmark U.S. Supreme Court cases have clarified due process protections that must be afforded to persons facing potential civil commitment. The Supreme Court has repeatedly recognized that “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections.” Addington v. Texas, 441 U.S. 418, 425 (1979). For that reason, civil commitment must be justified by a “proof more substantial than a mere preponderance of the evidence,” rising to something “equal to or greater than the ‘clear and convincing’ standard.” Id., at 427, 433.

Although state laws generally have adopted heightened due process protections for persons with disabilities facing deprivations of their liberty, gaps remain. Forty-six states and the District of Columbia have adopted Addington’s “clear and convincing” standard of proof in involuntary civil commitment hearings. Most jurisdictions also afford persons under consideration for possible civil commitment with due process protections including a right to a hearing, to present and cross-examine witnesses, to be represented by counsel or have counsel appointed if unable to pay, to be notified of the proceedings, and to be evaluated by licensed mental health professionals. In 39 states and the District of Columbia, persons under consideration for involuntary civil commitment have a right to attend their commitment proceedings.

Most states offer alternatives to long-term involuntary civil commitment, such as emergency or outpatient commitments, and these state laws vary greatly. The laws of 47 states and the District of Columbia permit emergency short-term inpatient commitment where there is probable cause that, without treatment, the affected person will pose a serious risk of harm to self or others. There are notable differences among the state standards in establishing a time frame in which an initial due process hearing must occur. For example, although Montana mandates such a hearing within 24 hours of a temporary confinement, New Jersey permits a 20-day confinement before triggering the requirement for a due process hearing. In a positive emerging trend, upon affirmation of a civil commitment determination, more than half of all states now require the adoption of the least restrictive available alternative treatment. With respect to voluntary commitment, in Zinerman v. Burch, the Supreme Court clarified that voluntary consent to inpatient commitment only can be provided by an individual who is competent and informed. 494 U.S. 113, 138-39 (1990). When minors face civil commitment, guardians or parents may play a substantial role but cannot be final decision-makers. Parham v. JR, 442 U.S. 584 (1979). Despite the guidance provided by

Parham, there is great variety in the due process protections afforded minors facing commitment determinations at the state level.

Federal civil commitment determinations arising in the criminal context with the assertion of mental status defenses (e.g., for persons found to be mentally incompetent to stand trial or not guilty by reason of insanity) incorporate several due process safeguards, such as mandatory district court hearings; representation by counsel and appointment of counsel if an individual cannot pay for representation; the opportunity to testify, subpoena witnesses, and confront and cross-examine witnesses; and opportunities for the affected person's counsel subsequently to challenge any civil commitment, including by filing a writ of habeas corpus. See 18 U.S.C. 4247.

Under federal and state law generally, persons may be subject to civil commitment if they pose a danger to themselves or to others. With respect to the relevant factors in making determinations about the appropriateness of civil commitments, the Supreme Court held that:

[A] State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.

O'Connor v. Donaldson, 422 U.S. 563, 576 (1975). Civil commitment hearings may arise in a civil or criminal context. While the processes are distinct in each context, both civil and criminal commitment evaluations consider dangerousness as a key component of determining whether or not commitment is warranted. Because a propensity toward dangerousness may be a manifestation of a mental illness or disability, the question arises whether civil commitment is permissible in such a circumstance, given Article 14's directive that "the existence of a disability shall in no case justify a deprivation of liberty." The United States understands the convention to require that commitment can only be ordered on the basis of conduct that demonstrates a danger to self or others (which may be associated with a mental disability) and not merely on the "existence of a disability."

In keeping with O'Connor, dangerousness is a determinative factors in civil commitments arising in a civil context at the state level. With respect to extended in-patient commitments, 43 states and the District of Columbia require a serious or severe mental condition or mental illness and dangerousness to self or others as prerequisites to involuntary civil commitment, with 23 states requiring demonstration of a link between the mental condition and the dangerousness. Ten

states also require long-term in-patient civil commitment determinations to evaluate whether or not the affected individual is competent to make treatment decisions. Consistent with the Supreme Court's Heller v. Doe decision, which permitted the adoption of two different approaches to civil commitment as long as the state government had a legitimate reason for making a distinction and minimum due process protections were afforded to all, 33 states treat persons with mental illness and persons with developmental disabilities distinctly in the civil commitment process. See 509 U.S. 312, 328 (1993).

With respect to civil commitments arising in the criminal context, the Supreme Court clarified that, with respect to persons who have committed crimes and served their sentences, dangerousness needs to be coupled with a "volitional impairment rendering [individuals] dangerous beyond their control." Kansas v. Hendricks, 521 U.S. 346, 358 (1997). Hendricks noted wide diversity among states in terms of the terminology used to describe mental conditions in civil commitment statutes, emphasizing that the Supreme Court did not require any particular medical or legal terminology but only that states "set forth criteria relating to an individual's ability to control his dangerousness." Id., at 359-60. Hendricks clarified that a lack of control over one's behavior, rather than a mental illness or disability per se, coupled with objective facts evidencing the existence of danger to self or other are required to justify civil commitment. In May 2010, the Supreme Court upheld the Adam Walsh Child Protection and Safety Act, 18 U.S.C. 4248, which authorizes federal prosecutors to seek civil commitment of federal prisoners who would have "serious difficulty in refraining from sexually violent conduct or child molestation if released." The law established a procedure to keep any federal inmate deemed sexually dangerous in confinement. The Supreme Court determined that the statute is a "necessary and proper" exercise of federal authority, as permitted by the Constitution, to maintain the security of the public. U.S. v. Comstock, 130 S.Ct. 1949, 1965 (2010).

Article 14's qualification that protections and rights are to be ensured "on an equal basis with others" clarifies that the convention does not mandate greater protections or rights for individuals with disabilities, but parallels the protections afforded under U.S. laws and policy in both criminal and civil contexts, including the recognition that reasonable accommodation or modification may be necessary to achieve equality for persons with disabilities.

**Article 15 – Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment**

Article 15(1) states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.” Article 15(2) requires States Parties to take “all effective legislative, administrative, judicial, or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman, or degrading treatment or punishment.”

Article 15, which tracks treaty obligations already assumed by the United States under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the International Covenant on Civil and Political Rights, would be implemented through existing U.S. law. The Eighth and Fourteenth Amendments to the Constitution prohibit “cruel and unusual punishment,” and torture is outlawed under federal criminal law (18 U.S.C. 2340A) and the laws of each of the 50 states and the District of Columbia. Any act of torture falling within Article 15 would be criminally prosecutable in every jurisdiction within the United States. Such acts may be prosecuted, for example, as assault, battery, or mayhem in cases of physical injury; as homicide, murder, or manslaughter, when a killing results; as kidnapping, false imprisonment, or abduction where an unlawful detention is concerned; as rape, sodomy, or molestation; or as part of an attempt, a conspiracy, an act of racketeering, or a criminal violation of an individual’s civil rights.

As to the prohibition on cruel, inhuman, or degrading treatment or punishment, the Detainee Treatment Act of 2005, Pub. L. No. 109-148, § 1003(a) (2005), contains a prohibition on cruel, inhuman, or degrading treatment or punishment with respect to anyone in the custody or under the physical control of the U.S. government. Further, the ADA, the Rehabilitation Act, and CRIPA are among the U.S. laws that provide protection against discriminatory treatment of persons with disabilities in matters relating to health care and institutionalization. CRIPA, 42 U.S.C. § 1997 et seq., permits the Attorney General to bring civil lawsuits against state institutions regarding the civil rights of their residents, including the conditions of their confinement and use of excessive force, and serves as a vehicle used by the Department of Justice’s Civil Rights Division to prevent unlawful use of force. Additionally, the Department of Justice’s Civil Rights Division may institute civil actions for equitable and declaratory relief pursuant to the Pattern or Practice of Police Misconduct provision of the Crime

Bill of 1994, 42 U.S.C. § 1414, which prohibits law enforcement agencies from engaging in a pattern or practice of violating people's civil rights. Federal and state law, including the laws just described, also provide extensive protections against conduct that may amount to cruel, inhuman, or degrading treatment or punishment.

As noted above, the United States also has undertaken treaty obligations to refrain from torture and cruel, inhuman, or degrading treatment or punishment (CIDT) in the CAT and the ICCPR. At the time the United States became a State Party to the those treaties, it undertook formal reservations, understandings, and declarations that clarified the scope of the treaty obligations it was undertaking under those treaties, including that the United States considers itself bound by the obligation to prevent CIDT only insofar as the term means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution. As Article 15 of the Disabilities Convention covers the same subject matter as ICCPR Article 7 and CAT Articles 2 and 16, and as the intention of the United States in this treaty would be to mirror as precisely as possible the proper scope of those obligations regarding torture or cruel, inhuman, or degrading treatment or punishment, it is recommended that the United States take the following reservation to this article:

**Article 15 memorializes existing prohibitions on torture and other cruel, inhuman, or degrading treatment or punishment contained in Articles 2 and 16 of the United Nations Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and in Article 7 of the International Covenant on Civil and Political Rights (ICCPR), and further provides that such protections shall be extended on an equal basis with respect to persons with disabilities. To ensure consistency of application, the obligations of the United States of America under Article 15 shall be subject to the same reservations and understandings that apply for the United States of America with respect to Articles 1 and 16 of the CAT and Article 7 of the ICCPR.**

#### **Article 16 – Freedom from Exploitation, Violence and Abuse**

Article 16(1) requires States Parties to take “all appropriate legislative, administrative, social, educational, and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.” Toward that end, paragraphs 2, 4, and 5 call for States Parties to take appropriate measures to ensure

that allegations of exploitation, violence, and abuse can be identified, investigated, and remedied, and that measures exist to promote the physical, cognitive, and psychological recovery of victims of abuse. Article 16(3) requires States Parties to ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities.

### *U.S. Implementation*

Overall implementation of Article 16 would be achieved in the United States by actions under various federal laws, including CRIPA, the ADA, the Rehabilitation Act in cases involving institutionalized persons with disabilities, and the federal civil rights criminal statutes.<sup>10</sup> The ADA and the Rehabilitation Act apply in a variety of contexts, private and public, which provide meaning for the protective principles of Article 16. Various state criminal laws that require protection and reporting of exploitation, violence, and abuse, including of individuals with disabilities, also further compliance with this article.

On both federal and state levels, these mechanisms address the requirements of both Article 16(3) and (4). Article 16(3) requires effective monitoring by independent authorities to prevent freedom from exploitation, violence and abuse. DOJ's enforcement of CRIPA allows it to independently monitor persons with disabilities held in a wide variety of institutional settings, identify any ongoing abuses, and mandate corrective measures to address any abuse, exploitation, or violence. Additionally, Protection and Advocacy (P & A) systems in each state are created by federal law to monitor, review, and protect rights of individuals to be free from exploitation, violence, and abuse. HHS funds and monitors this comprehensive network of Protection and Advocacy programs in each state that are authorized to investigate incidents of abuse and neglect of persons with disabilities and follow up reports of incidents or investigate if there is probable cause to believe that such incidents have occurred. HHS's Administration on Aging operates a number of Vulnerable Elder Rights Programs that provide important protections against exploitation and abuse of seniors, including those with disabilities. HHS's Substance Abuse and Mental Health Services Administration (SAMHSA) has initiated efforts to reduce and ultimately eliminate seclusion and restraint procedures in behavioral healthcare settings through evaluation of effective reduction practices, planning and implementation grants, and policy development. The Children's Health Act of 2000 (Pub. L. 106-310)

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<sup>10</sup> Implementation of Article 16 would be subject to the reservations and understandings taken by the United States upon ratification, including if adopted the federalism and private conduct reservations.



provides legislative requirements regarding seclusion and restraint for all federally-funded healthcare settings (Part H) and certain non-medical residential programs for children with mental health needs (Part I). Many states have similar local systems to monitor, review, and protect against such occurrences.

With regard to Article 16(4), which requires appropriate measures to redress victims of exploitation, violence, or abuse, DOJ operates programs that implement this requirement. For example, DOJ's Office of Violence Against Women implements "The Education, Training, and Enhanced Services to End Violence Against and Abuse of Women with Disabilities Grant Program," which addresses the proliferation of domestic violence, dating violence, stalking, and sexual assault against individuals with disabilities and gaps in victim services and the criminal justice response for this population.<sup>11</sup>

#### **Article 17 – Protecting the Integrity of the Person**

Article 17, which provides that, "Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others,"

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<sup>11</sup> Corporal punishment is permissible in schools under the U.S. Constitution and is controlled by state and local laws. See *Ingraham v. Wright*, 430 U.S. 651, 664 (1977). Similarly, the inappropriate use in schools of seclusion and restraint techniques as a form of corporal punishment generally is controlled by state and local law. U.S. courts, however, have recognized a constitutionally-protected interest of students to be free of corporal punishment that is excessive or arbitrary. See e.g., *Kirkland v. Greene County Board of Education*, 347 F.3d 903 (11th Cir. 2003); *P.B. v. Koch*, 96 F.3d 1298 (9th Cir. 1996). To the extent that excessive or arbitrary corporal punishment may fall within the prohibitions of Article 16, students in the United States are protected under the Constitution and by federal statutes. In addition, at least thirty states prohibit corporal punishment. Consistent with U.S. law, Article 16 prohibits discriminatory punishment directed against persons with disabilities, though the Convention does not by its terms ban corporal punishment.

A discriminatory imposition of discipline upon children with disabilities would be prohibited under Section 504 of the Rehabilitation Act and the ADA, and subject to the ADA's broad enforcement authorities and measures, as would the discriminatory use of seclusion or restraint. The Constitution also provides protections against excessive or arbitrary corporal punishment, seclusion, and restraint. Further, the IDEA, which articulates a strong preference for positive behavior interventions as an alternative to restraint and seclusion, includes an extensive series of procedural safeguards designed to ensure that parents of children with disabilities may seek redress whenever they are concerned about the provision of a free appropriate education to their child, including if they believe that their child is being inappropriately disciplined. These safeguards include an opportunity to present a due process complaint and have an impartial due process hearing. 20 U.S.C. §§ 1415. ED also requires states to offer a more informal complaint process, through which any individual or organization may file a written, signed complaint with the state educational agency alleging a violation of any requirement of the IDEA. 34 CFR §§ 300.151-53. The IDEA also includes procedures concerning the administration of discipline to children with disabilities. 20 U.S.C. § 1415(k). These procedures are directed primarily at ensuring that children with disabilities are not removed through discipline from their regular educational environment on a long-term basis for behavior that is a manifestation of their disability and for ensuring the provision of appropriate services, in another setting, to those children with disabilities who are appropriately removed on a long-term basis for disciplinary reasons from their regular educational environment.

would be implemented by the U.S. Constitution in combination with other federal law, including the ADA, which was devised to “provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities.”

### **Article 18 – Liberty of Movement and Nationality**

Article 18 sets out obligations on States Parties to ensure that persons with disabilities are not discriminated against, on the basis of disability, with respect to liberty of movement and nationality.

Article 18 would be implemented by the U.S. Constitution, federal disability discrimination law, regulations, and policy, including the ADA and the Rehabilitation Act, and other federal non-discrimination and accessibility legislation identified in Tab 1. Although Article 18(2) does not expressly contain a nondiscrimination component, the principle of nondiscrimination animates the entire convention. U.S. laws and state laws afford children the rights to obtain a name and nationality, and “as far as possible” to be cared for by their parents, in a nondiscriminatory fashion and would serve to implement Article 18(2).

#### *Freedom of Movement*

Article 18’s guarantees of freedom of movement – the rights to liberty of movement and to choose a residence within a country and to enter and leave one’s own country – reaffirm existing U.S. treaty obligations under Article 12 of the ICCPR and Article 5(d)(i) and (ii) of the CERD, as applied to the particular context of persons with disabilities. Article 18 addresses an equal right to liberty of movement and the right of citizens to enter and depart their country; it does not address the admissibility of aliens. Constitutional equal protection guarantees under the Fifth and Fourteenth Amendments ensure that any deprivations of liberty and impediments to free movement are subject to equal protection guarantees. The ADA, the Rehabilitation Act, and the Air Carrier Access Act all address potential impediments to free movement by ensuring physical and technological accessibility to all means of transportation. Section 504 of the Rehabilitation Act requires the Department of Homeland Security (DHS) to ensure that persons with disabilities receive equal treatment in any DHS programs or activities conducted by DHS or receiving federal financial assistance, including the U.S. Customs and Border Protection, which is charged with travel control all persons entering the United States at U.S. borders and ports of entry. *See* 8 U.S.C. § 1185. The Transportation Security Administration, which is charged with ensuring the safety of domestic travel and transportation, adapts its screening procedures to

accommodate persons with disabilities. The Fair Housing Act, 42 U.S.C. §§ 3601-19, applies to privately and publicly owned housing and prohibits discrimination because of disability, supporting the right of persons with disabilities to choose a residence on an equal basis with others.

#### *Freedom of Nationality*

The requirements in Article 18 to afford nationality and related rights on an equal basis with others would be implemented in the United States under Section 504 of the Rehabilitation Act, which applies to the administration of the nationality provisions of the Immigration and Nationality Act, e.g. INA § 301 *et seq.*, 8 U.S.C. § 1401 *et seq.*, by the Departments of State and Homeland Security.

With respect to the ability of persons with disabilities to obtain, possess, and utilize documentation of their nationality, such as a passport or birth certificate, this provision would be implemented in the United States through federal disability nondiscrimination legislation, including Section 504 of the Rehabilitation Act with respect to issuance of a passport by the Department of State, and the ADA (Title II) with respect to issuance of a birth certificate by a state or local government.

With regard to the ability of persons with disabilities to “utilize relevant processes, such as immigration proceedings,” Article 18 comports with, and would be implemented through, the statutory obligations of DHS (and DOJ for judicial appellate proceedings) under Section 504 of the Rehabilitation Act. Section 504 requires that qualified individuals with disabilities have equal access to participate in all DHS programs, services and activities (e.g. immigration or detention facilities) that DHS provides. Specifically, Section 504 of the Rehabilitation Act requires these programs be accessible to individuals with disabilities by: reasonably modifying policies, practices, or procedures; providing effective communication; and ensuring physical accessibility to the facilities. Under DHS requirements, reasonable modifications would ensure that an individual with a disability has, to the extent possible, the same rights and privileges as those of individuals without disabilities.

#### *Children’s Rights*

Article 18(2) ensures children’s rights to immediate registration of their birth, to a nationality, and to, “as far as possible . . . know and be cared for by their parents.” The guarantees of birth registration and acquisition of a nationality directly echo U.S. obligations under Article 24(2) and (3) of the ICCPR. Birth

registration is handled by the states, which are subject to the nondiscrimination requirements of Title II of the ADA and Section 504 of the Rehabilitation Act. Under the Fourteenth Amendment to the Constitution, U.S. law guarantees nationality to all individuals who are born in the United States subject to U.S. jurisdiction, without regard to disability. Accord, 8 U.S.C. § 1401. Similarly U.S. nationality law governing acquisition of citizenship by children born abroad to U.S. national parent(s), 8 U.S.C. §§ 1401-1409, applies without regard to disability. The Bureau of Consular Affairs of the U.S. Department of State is charged with providing U.S. passports to U.S. citizens, a duty that must be discharged on a nondiscriminatory basis in compliance with Section 504 of the Rehabilitation Act.

The intent of Article 18(2)'s provision on parents is to prevent situations whereby children with disabilities are taken from their parents on account of their disability. Article 23(4) addresses a similar concern in greater detail, barring the separation of disabled children from their parents against the will of the parents and on the basis of a disability. The emphasis in Article 18, entitled in part "Nationality," is on the child's birth, name, nationality, and family identity, thereby preserving as far as possible the child's identity; the emphasis in Article 23, entitled "Respect for Home and the Family," is on requiring due process protections to safeguard family relationships. State law governs matters of parental custody and neglect and the potential removal of children from their parents. Under the Fourteenth Amendment to the U.S. Constitution, each of the fifty states must guarantee that any proceeding potentially resulting in the removal of a child from parental custody or termination of parental rights must provide due process protections.

Article 18(2)'s clarification that children should know and be cared for by their parents "as far as possible" permits recognition of the diversity of approaches to child custody matters in each of the several states. To support the retention of children with disabilities in a family setting, ED and HHS offer a wide range of programs to assist parents in caring for and educating children with disabilities, some of which are discussed under Articles 19, 23, and 25.

#### **Article 19 – Living Independently and Being Included in the Community**

Under Article 19, States Parties "recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with

disabilities of this right and their full inclusion in the community.” The ADA establishes a federal right, binding on all states, for an individual both to live in the community (the most integrated setting appropriate to meet the individual’s needs) and to equal choices as others while living in the community. Other federal laws such as Medicaid, which recognizes that persons with disabilities have a choice between where services are delivered and provides enhanced funding for community services, the Fair Housing Act, which requires non-discrimination on the basis of disability in housing, the IDEA, which requires non-discrimination in educational programs and services, and the Rehabilitation Act, which prohibits discrimination in any program or activity receiving federal financial assistance or conducted by any executive agency, complement the ADA in underscoring these rights. DOJ, along with other federal agencies, such as HHS, HUD, and ED, vigorously monitor, enforce, and provide technical assistance to effectuate these federal rights. As such, the United States has taken both effective and appropriate measures that would serve to implement this article.

Individual states have the primary responsibility for implementing the rights in Article 19, and the federal government has responsibility for ensuring that they are implemented appropriately. In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the U.S. Supreme Court affirmed that the ADA protects the right of persons with disabilities to live in the most appropriate integrated setting, as long as it is not a fundamental alteration of the state’s programs and services, which is assessed through a combination of whether new programs and services have to be added, the cost of alteration to existing services, and whether the state has effective plans and processes to provide community services. The *Olmstead* decision supports the fundamental tenet at issue in Article 19, because each state already has an array of community programs and services in place, community services on average are less expensive than segregated services, and federal agencies provide support to states to develop plans and processes. As outlined below, where states do not comply with the *Olmstead* decision, DOJ and other federal agencies have the authority and have acted decisively to ensure compliance.

#### *Enforcement and Technical Assistance Actions*

DOJ, HHS, HUD, and ED have the authority to respond to complaints and initiate compliance actions to ensure that states are providing an equal right to live in the community and have choices equal to others and provide technical assistance to help effectuate these rights. Each of these agencies has a vigorous enforcement and technical assistance program that ensures effective and appropriate measures to facilitate full inclusion by persons with disabilities in their community. HHS

funding, policy, and technical assistance have long supported living independently and being included in the community. Most recently, the Patient Protection and Affordable Care Act facilitated additional funding, regulations, and technical assistance to support Article 19's requirements.

Traditionally, HHS's Office for Civil Rights has worked closely with states as they develop Olmstead plans. During the past 11 years since the Olmstead decision, HHS/OCR has secured resolution in more than 330 cases involving both systemic and individual complaints resulting in many individuals moving from institutions to the community or avoiding institutionalization. DOJ has moved to intervene in pending Olmstead matters and has filed a number of amicus briefs, interventions, and statements of interest to support independent living opportunities. DOJ also has modified its enforcement of CRIPA to address questions of whether institutional settings are the most appropriate settings for disabled residents. In order to increase support for persons who might be deinstitutionalized, DOJ is working with the states to address discharge planning and community capacity. DOJ has also worked successfully with HUD to challenge local zoning regulations that do not provide equal choices to persons with disabilities and with ED to ensure that educational services provide integrated education programs and equal opportunity to educational services. In sum, although individual states and localities are in varying degrees of compliance with the array of federal laws that address Article 19, there continues to be progress and refinement in approaches to achieve full compliance, and DOJ along with other federal agencies remain vigilant in ensuring such compliance.

#### *Programmatic Support*

Article 19(b) provides that "Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community." Although there is no particular federal requirement that mandates states to provide these support services, the federal government does provide funding to states and nonprofit agencies to fulfill this initiative through its Medicaid program, demonstration grants, initiatives under the Patient Protection and Affordable Care Act, and its independent living (IL) programs, all of which provide independent living skills training, information and referral services, peer counseling, and individual and systems advocacy. These programs also provide: attendant care; services related to securing housing or shelter; activities to identify appropriate housing, recreation,

and accessible transportation; and other support services including medical care, treatment and habilitation, crisis services, education, and transportation.

Article 19(c) provides that “Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.” States and public accommodations are required to implement this initiative through Titles II and III of the ADA and Section 504 of the Rehabilitation Act. The federal government provides funding to states, localities, and non-profit entities to increase the availability and improve the quality of community options for community and independent living. HHS supports numerous programs designed to assist individuals with disabilities to live as independently as possible. For example, the Developmental Disabilities Assistance and Bill of Rights Act, administered by HHS, is implemented through culturally competent programs sponsored or conducted through State Councils on Developmental Disabilities; Protection and Advocacy systems to protect individuals with developmental disabilities; university level education and research on developmental disabilities; data collection; and technical assistance. ED also administers and supports Centers for Independent Living under the Rehabilitation Act that provide support for persons with significant disabilities to live independently and be included in the community.

#### **Article 20 – Personal Mobility**

Article 20 requires States Parties to take “effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities.”

The United States would implement this provision in two basic ways: (1) by prohibiting discrimination against persons with disabilities in access to transportation programs and systems under laws such as Titles II and III of the ADA, Section 504 of the Rehabilitation Act, and the Air Carrier Access Act, 49 U.S.C. § 41705, 14 C.F.R. § 382, and (2) by enforcing laws that fund the development and purchase of assistive devices that directly enable individuals with disabilities to acquire the technology they need for personal mobility such as wheelchairs. U.S. laws governing access to transportation programs and systems are discussed in connection with the description of Article 9 above.

A wide variety of U.S. programs provide funding for the acquisition of assistive devices. These programs include federal Medicaid, Medicare, and Social Security SSI/SSDI programs, vocational rehabilitation programs, which provide a

variety of services and devices for the purpose of assisting adults with disabilities to become independently employed, and programs under IDEA, which require school districts to provide assistive technology in the context of ensuring that a child with disabilities receives a free appropriate public education, regardless of ability. These programs afford persons with disabilities the opportunity to obtain assistive devices of their choice, such as wheelchairs and scooters, at an affordable cost, increasing their independence.

In addition, the United States has many programs that promote the development and dissemination of mobility aids, devices, and assistive technologies. For example, the National Institute on Disability and Rehabilitation Research (NIDRR), a federal agency part of ED, was established to generate, disseminate, and promote new knowledge to improve the options available to disabled persons. ED's Rehabilitative Services Administration administers the ATA, which provides grants to states to help bring about systems change to increase the availability of, access to, and funding for assistive technology.

#### **Article 21 – Freedom of Expression and Opinion, and Access to Information**

Article 21 requires State Parties to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive, and impart information and ideas “on an equal basis with others,” and through all forms of communication of their choice. Article 21 would be implemented through First Amendment protections under the U.S. Constitution as well as federal statutes.

Appropriate measures described in Article 21 include providing public information in accessible formats and technologies without surcharge; facilitating the use of sign languages and other auxiliary aids by public entities; urging private entities to provide information and services in accessible and useable formats; and recognizing and supporting the use of sign languages. With respect to requiring public and private entities to provide services to the public, including making information available in accessible formats and technologies and facilitating the use of auxiliary aids, the ADA and Rehabilitation Act impose obligations on the executive branch, public entities, public accommodations, and recipients of federal financial assistance to ensure accessibility for persons with disabilities on an equal basis. With respect to information and communication, the ADA Title II regulation directly addresses the obligations of covered entities to ensure that communications with persons with disabilities are as effective as communications



with others. In order to achieve this, a covered entity “shall furnish appropriate auxiliary aids and services where necessary. . . .” 28 C.F.R. § 35.160. Written before public access to the Internet was available, the regulation does not directly address electronic and information technologies, but this section of the ADA Title II regulation is sufficiently broad to encompass evolving technologies, as is the Title III regulation covering public accommodations. See 28 C.F.R. §§ 35 - 36.

With respect to website accessibility, Title II of the ADA covers access to websites of public entities, while Title III covers access to websites of public accommodations. Public entities or public accommodations may meet their obligations to make websites accessible by providing an accessible alternative for individuals to enjoy the websites’ goods or services, as long as those alternatives provide an equal degree of access in terms of hours of operation and range of options and programs available. Title IV addresses telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, seven days a week, that enable callers with hearing and speech disabilities who use telecommunications devices for the deaf and callers who use voice telephones to communicate with each other through a third-party communications assistant. The FCC has set minimum standards for TRS services. Title IV also requires closed captioning of federally funded public service announcements. Section 508 of the Rehabilitation Act also establishes requirements for electronic and information technology developed, maintained, procured, or used by the federal government, in that all such electronic and information technology must be accessible to people with disabilities, including employees and members of the public. 29 U.S.C. §794d.

Section 504 regulations of more than one-hundred federal agencies and sub-agencies incorporate parallel provisions for programs, activities, and services provided by these federal agencies. Article 21(b), setting out States Parties’ obligation to accept and facilitate the use of sign languages, Braille, and augmentative and alternative types of communication and Article 21(e), “recognizing and promoting the use of sign languages,” are broadly consistent with the U.S. emphasis on effective communication guaranteeing inclusion and equal access.

#### **Article 22 – Respect for Privacy**

Article 22(1) provides that “[n]o person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or

unlawful interference with his or her privacy, family, home, or correspondence or other types of communication or to unlawful attacks on his or her honor or reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.” Article 22(2) calls for States Parties to protect privacy of personal health and rehabilitation information regarding persons with disabilities “on an equal basis with others.”

This provision replicates almost verbatim ICCPR Article 17, and in prohibiting “arbitrary or unlawful” interference with privacy, is consistent with and implemented by the U.S. Constitution and laws. U.S. laws contain many national safeguards to prevent the dissemination of confidential information, including the Rehabilitation Act and the ADA, which contain provisions guaranteeing the confidentiality of medical information submitted by employees to their employers, and restrict both employers’ and prospective employers’ abilities to inquire about medical conditions. See, e.g., EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA) (July 2000), available at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>. The ADA and Rehabilitation Act also require that information obtained regarding the medical condition or history of an applicant or employee must be collected on separate forms, kept in separate medical files, and be treated as a “confidential medical record.” 29 C.F.R. §1630.14(b)(1).

In addition, the federal Health Insurance Portability and Accountability Act (HIPAA) provides for privacy of medical records under certain circumstances for all persons, including those with disabilities. The Privacy Regulation issued pursuant to the HIPAA establishes federal protections and individual rights for the privacy of personal health information. The Privacy Regulation’s standards apply to individually identifiable health information held by health plans, health care clearinghouses, and health care providers who conduct certain health care transactions electronically. Several recent federal laws strengthen HIPAA and the Privacy Regulation. Under the Genetic Information Nondiscrimination Act of 2008, genetic information is specifically protected under the Privacy Regulation and health insurance underwriters cannot use genetic information to make health insurance determinations. Under the Health Information Technology for Economic and Clinical Act, privacy protections are strengthened and extend to electronic health records as well as paper records. The Privacy Regulation does not replace federal, state, or other law that grants individuals even greater privacy protections, and covered entities are free to retain or adopt more protective policies or practices.

HHS's Office for Civil Rights (OCR) enforces HIPAA. In the six years since HIPAA has been in effect, HHS has investigated and resolved over 9,000 cases, requiring systemic changes in privacy practices and other actions by health care providers and health insurers. HHS also promotes and protects privacy interests of individuals with disabilities through its comprehensive, national education initiatives.

Under Title I and Title VII of the Rehabilitation Act, states, and centers for independent living must adopt and implement policies and procedures to safeguard the confidentiality of all personal information concerning the rehabilitation or independent living services provided under that statute. With regard to education records, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, requires the protection of any personally identifiable data, information, and records collected or maintained by an educational agency or institution that receives funds from ED and provides educational services or instruction. See 34 C.F.R. Part 99. Similar provisions in the regulations implementing the IDEA require the protection of personally identifiable information in the education records of children with disabilities. 34 C.F.R. §§ 300.610-300.626.

#### **Article 23 – Respect for Home and the Family**

The overarching requirement of Article 23 is that persons with disabilities be treated “on an equal basis with others” with respect to family matters, and that States Parties take “effective and appropriate measures to eliminate discrimination.” Title II of the ADA prohibits state and local laws that discriminate against persons with disabilities in matters of marriage, family, parenthood, and relationships.

Subparagraphs of Article 23 touch on a number of areas covered by the U.S. Constitution and federal and state laws regarding privacy, marriage, procreation, guardianship, parenthood, and custody. As many of the issues arising under this article are addressed under the laws of the fifty states (most notably, in paragraphs 2, 4, and 5), the federalism reservation described above is relevant here as well. At the same time, there is substantial relevant federal law, as well as programs and policies, that will implement this article as provided below.

The text and the negotiating history of Article 23(1)(a) and (b) made clear that the provision is intended to guarantee persons with disabilities the same rights to marry on the basis of free and full consent of the spouses and to procreation as are granted to persons without disabilities. The U.S. Constitution and laws

guarantee these rights as an aspect of ordered liberty protected under the due process clause. Article 23(1) is a nondiscrimination provision and would be implemented through the ADA and other U.S. disability statutes. As a non-discrimination provision, Article 23(1) does not address abortion or any other particular health service. The convention does not affect U.S. law with regard to abortion. Rather, as described in detail under Article 25, the convention guarantees to persons with disabilities equal access to reproductive health care as provided or permitted under domestic law and on an equal basis with others.

Of particular significance to States Parties and civil society is Article 23(1)(c)'s express recognition of the right of persons with disabilities "to retain their fertility on an equal basis with others." Throughout the treaty negotiations, haunting references were made to the U.S. Supreme Court decision in Buck v. Bell, 274 U.S. 200 (1927), which upheld the sterilization of persons with mental disability. Under the U.S. Constitution's penumbra of privacy, all persons, including those with disabilities, enjoy general protections of the privacy of the home and family relationships, and Buck is no longer good law in the United States – evidencing the very positive trend of U.S. disability law and clarifying that some of the most offensive practices of concern to civil society are impermissible in the United States.

Article 23(2) requires that rights of persons with disabilities be protected with regard to guardianship, wardship, trusteeship, and adoption, ensuring the best interests of the child, and that States Parties render "appropriate assistance" to person with disabilities in the performance of child-rearing. These rights are addressed under the discussion of Article 12 or are protected under the wide range of health and human services laws and programs addressed under Articles 19, 25, and 26 and in Tabs 1 and 2.

Article 23(3) requires efforts to "provide early and comprehensive information, services and support to children with disabilities and their families" to "ensure that children with disabilities have equal rights with respect to family life." HHS's Administration for Children and Families (ACF) has developed One Stop Family Support 360 Projects, which help families to stay together. The One Stop Project family plan includes services and support (e.g., health and/or mental health care, housing, counseling, parenting skills development, and child care) that may be provided by multiple funding sources and organizations.

Article 23(4) provides express recognition that a child shall not be separated from his or her parents against their will except when subject to judicial review and

in accordance with applicable law and procedures, and only when necessary for the best interests of the child. The treaty further provides that “[i]n no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents,” which is understood to mean that such a separation must be based on objective and factual findings of neglect, harm, or danger, a model recognized in the laws of the several states in the United States.

Article 23(5) states that “states parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.” Children with disabilities are protected against discrimination in matters of foster care under the ADA and the Rehabilitation Act, both of which would serve to implement Article 23(5) obligations.

#### **Article 24 – Education**

Article 24 recognizes the “right of persons with disabilities to education . . . without discrimination and on the basis of equal opportunity.” Article 24 requires States Parties to ensure persons with disabilities have access to education at all levels on an equal basis with others, and imposes an obligation of non-discrimination (see discussion of proposed Understanding on non-discrimination addressed at length under Article 25 below).

From 1787 when the Northwest Ordinance authorized land grants to establish educational institutions, through 1867 when the Congress enacted the Department of Education Act establishing the federal office of education, through the present, see <http://nces.ed.gov/pubs2003/2003060d.pdf>, U.S. federal and state authorities have established a vast array of laws granting a free public primary and secondary education to their citizenry and residents. The obligations imposed in Article 24 would be implemented in particular through federal laws, regulations, and programs targeted at providing free and equal education to students with disabilities and prohibiting discrimination in education. Although education in the United States is provided largely by state and local governments, federal laws extend the reach of the federal government over the states’ provision of public education through Section 504 of the Rehabilitation Act, Titles II and III of the ADA, and the IDEA, which recognize and protect the rights of persons with disabilities to be educated, to the extent appropriate to their needs, with non-disabled peers. See 34 C.F.R. § 104.34 (Section 504); 28 C.F.R. § 35.130(d) (Title II); 28 C.F.R. § 36.203 (Title III); and 34 C.F.R. §§ 300.114-120 (IDEA).

Under the regulations implementing Section 504, which applies to educational programs and activities receiving federal financial assistance, and Title II of the ADA, public elementary and secondary school systems must provide children with disabilities with a “free appropriate public education” that is designed to meet the individual needs of children with disabilities as adequately as the needs of non-disabled children are met. *See* 34 C.F.R. § 104.33(a)-(b). Section 504 coverage also extends to private schools to the extent they receive federal financial assistance. Further, private educational institutions, including nursery, elementary, secondary, undergraduate, or postgraduate private schools, or other places of education, are subject to nondiscrimination mandates under Title III of the ADA, which also establishes the goal of inclusion. 28 C.F.R. § 36.203(a). Title III also ensures equal access to courses and examinations. 28 C.F.R. § 36.309. The IDEA governs how states and public agencies that accept IDEA funding provide early intervention, special education, and related services to children with disabilities. These laws recognize and protect the rights of persons with disabilities to be educated in a non-discriminatory manner in the most integrated setting appropriate.

The treaty also requires that access to adult education and “lifelong learning” (Article 24(5)) be provided “without discrimination and on an equal basis with others” (Article 24(1) & (5)). Adult education and other courses and programs for adults in the United States would be protected under the disability non-discrimination provisions of the ADA and the Rehabilitation Act, providing equal opportunity for all and ensuring implementation of the treaty’s obligations in this regard.

*Free Appropriate Education for Children with Disabilities in the United States*

The United States provides extensive protections for the rights of children with disabilities to a free, appropriate public education in settings with their nondisabled peers to the maximum extent appropriate to the needs of the individual child.

In addition to the requirements of Section 504 of the Rehabilitation Act and Title II of the ADA, since 1975, the IDEA, 20 U.S.C. § 1401 *et seq.*, and its predecessors have required that the United States ensure the provision of a free, appropriate public education to each child with a disability who, because of that disability, needs special education and related services. Through the IDEA, eligible children are entitled to appropriate special education and related services

and supplementary aids and supports generally from age three through age 21 or until they graduate from secondary school with a regular high school diploma or reach the maximum age for secondary school in the state, whichever comes first. 20 U.S.C. § 1412(a)(1). In fall 2007, 6,718,203 children with disabilities aged three through 21 were served under the IDEA.

The IDEA requires that, to the maximum extent appropriate to the needs of the individual child, he or she is educated in regular classes with nondisabled children and that removal from regular classes occurs only when education for the child with a disability cannot be satisfactorily achieved in the regular setting. 20 U.S.C. § 1412(a)(5). An individualized education program team writes an individualized education program (IEP) that *inter alia* identifies measurable annual academic and functional goals for the child; a description of how the child's progress toward those goals will be measured and when periodic reports to parents will be provided; and a statement of the special education supplementary aids and services to be provided for the child. 20 U.S.C § 1414(d)(1)(A).

Both the IDEA and Title I of the Elementary and Secondary Education Act, 20 U.S.C. § 6301 *et seq.*, emphasize efforts to improve educational results for children with disabilities and close academic achievement gaps between children with and without disabilities. These laws promote high quality instruction by providing school staff with opportunities for professional development, requiring that staff be appropriately and adequately prepared and trained, and require that schools, school districts, and states be held accountable for the academic achievement of children with disabilities. 20 U.S.C. §§ 1412(a)(14)-(16); 6311(b)(2); and 6319.

Additionally Executive Order 13160, issued on June 23, 2000, prohibits discrimination on the basis of disability in federally conducted education and training programs. The Executive Order requires the federal government to hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the educational programs and activities of state and local governments or private entities receiving federal financial assistance.

#### *Inclusion*

Article 24(2) requires that persons with disabilities participate in the general education system with a "goal of full inclusion." Integration and participation in the mainstream of society are basic tenets of U.S. disability law and policy and education-related disability rights laws ensure that persons with disabilities are

afforded opportunities for education within the “general education system.” ED’s Section 504 regulations require that services be provided in the “most integrated setting appropriate to the person’s needs.” 34 C.F.R. § 104.33(b)(2). Titles II and III of the ADA require educational services to be provided in the most integrated setting appropriate to the needs of the individual. See 28 C.F.R. § 35.130(d); 28 C.F.R. § 36.203(a). Section 504 of the Rehabilitation Act permits the placement of a student with disabilities in classes only for individuals with disabilities if this placement is necessary to provide the student with a free appropriate public education. See 34 C.F.R. § 104.33 and 34 C.F.R. Part 104, App. A, Free Appropriate Public Education. The IDEA similarly emphasizes educational placement in the least restrictive environment appropriate to the needs of the child and allows students to be placed in disability-only settings if, due to the nature or severity of the child’s disability, education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. See 34 C.F.R. § 300.114(a)(2)(ii). The convention’s language regarding “general education system” includes placements that are outside the mainstream education environment when such placements are necessary to meet a student’s individual education needs.

#### *Educational Environment*

Subparagraphs 2(e) and 3(c) of this article refer to parties’ obligations to provide education “in environments that maximize academic and social development.” Section 504 of the Rehabilitation Act and the IDEA require the education of children with disabilities in the most integrated setting appropriate. In 1982, the Supreme Court, interpreting the Education of All Handicapped Children Act, 20 U.S.C. § 1401 *et seq.* (enacted in 1975), held that school systems in the United States must provide “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982). Enforcement of the IDEA and Rehabilitation Act in supplying the personalized instruction and support services required by Rowley creates educational environments that allow children with disabilities to flourish academically and socially. These enhanced educational environments, whether in public schools or other appropriate, integrated settings, satisfy the convention’s educational environment requirements.



### *Effective Communication*

Existing federal law requires covered entities to take appropriate action to ensure that communication with individuals with disabilities is as effective as communication with non-disabled individuals, see 28 C.F.R. § 35.160, including through the provision of “auxiliary aids and services.” (See also analysis of Article 9, *supra*.) Much of Article 24(3)(a) and (3)(b), setting out States Parties’ obligation to facilitate the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication, orientation and mobility skills, facilitating peer support and mentoring, and facilitating the learning of sign language, would be implemented by existing federal law. Article 24(4), regarding the training of teachers who work with students with disabilities, would be implemented through the provisions discussed above. Finally, the availability of schools such as Gallaudet University and the broad expanse of programs for the signing deaf would serve to implement Article 24(3)(b) by promoting the linguistic identity of the deaf community.

### **Article 25 – Health**

Article 25 sets out provisions related to States Parties’ “recogni[tion] that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.” States Parties are required to take “appropriate measures” to ensure access for persons with disabilities to services, including sexual and reproductive health programs, early identification of disabilities and “intervention as appropriate,” and “care of the same quality for persons with disabilities as to others.” Article 25 also prohibits discrimination in the provision of health and life insurance and “discriminatory denial of health care or health services or foods and fluids on the basis of disability.”

Article 25, like a number of other articles, addresses rights that are comprehensively set forth in the International Covenant on Economic, Social and Cultural Rights (ESC Covenant), a treaty to which the United States is not a State Party. The text and the negotiating history of Article 25 make clear that it is a non-discrimination provision, intended to guarantee to persons with disabilities the same rights to health care as are granted to persons without disabilities on a nondiscriminatory basis. The *travaux préparatoires* is replete with such references, including an express statement during the Seventh Ad Hoc Committee negotiating session that “the Ad Hoc Committee understands draft Article 25(a) to be a non-discrimination provision that does not add to, or alter, the right to health.

Rather the effect of paragraph (a) would be to require States Parties to ensure that where health services are provided, they are provided without discrimination on the basis of disability.” Footnote 4 to draft Article 25, Report 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 on its seventh session, page 30, footnote 4, available at [www.un.org/esa/socdev/enable/rights/ahc7report-e.htm](http://www.un.org/esa/socdev/enable/rights/ahc7report-e.htm).

Similarly the Sixth Ad Hoc Committee made numerous statements during negotiations that the overarching obligation in the convention is to prevent discrimination and that rights granted in the convention are to be provided on a non-discriminatory basis. The Committee therefore added the phrase “on an equal basis with others” in several articles throughout the treaty. The Sixth Ad Hoc Committee, like the Seventh, expressly explained that health care in the area of sexual and reproductive health “was not intended to alter or prejudice the general policies of governments in regard to family planning or related matters, to the extent that these were permitted by national legislation of general application. The phrase was a statement on the right to be free from [d]iscrimination, and its effect was that persons with disabilities would need to be treated on an equal basis with others in this area.” Report 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 on its sixth session, page 18, paragraph 85, [www.un.org/esa/socdev/enable/rights/ahc6reporte.htm](http://www.un.org/esa/socdev/enable/rights/ahc6reporte.htm). *Accord, id.* at page 6, paragraph 6 (“The Committee will also need to address proposals that were made throughout the text to insert language such as ‘on an equal basis with others’”); page 7 paragraphs 11 and 15 (“There was general support to the essence of draft article 15 that persons with disabilities should be free to chose their living arrangements on an equal basis with others.”); pages 10-11 paragraphs 37 and 38 (“The Committee noted that the reference [on free public education] did not create any new obligation for states to provide free and compulsory secondary education. Rather the provision is a non-discrimination one, and means that if a State did provide free and compulsory secondary education to the general population, then it should also be provided to persons with disabilities.”); page 13 paragraphs 51 and 53 (“To ensure that there would be no expectation that states should grant extra political rights to persons with disabilities that others did not enjoy, the Committee agreed to add the phrase ‘on an equal basis with others’. That would ensure that no state would be obliged to give non-citizens with disabilities a right to vote if non-citizens in general would not be entitled to vote.”); page 22 paragraph 112 (“The Committee discussed options to replace or complement ‘social security’ in order to encapsulate the assistance provided by a state, and to ensure that there was no

discrimination against persons with disabilities in the provision of that assistance.”); page 25 paragraph 135 (“There was general support to include the phrase ‘on an equal basis with others’ within the chapeau of paragraph 1”). In a similar vein, when ratifying the Convention, Monaco entered an interpretive declaration that the government “considers that the purpose of the convention is to eliminate all discrimination on the basis of disability and to ensure that persons with disabilities have full enjoyment of all human rights and fundamental freedoms on an equal basis with others, but that the convention does not imply that persons with disabilities should be afforded rights superior to those afforded to persons without disabilities,” available at: [www.un.org/disabilities/default.asp?id=475](http://www.un.org/disabilities/default.asp?id=475).

As the United States has not yet become party to the more comprehensive ESC Covenant but is prepared to undertake not to discriminate on the basis of disability in the provision of such rights as may be accorded under its domestic law, the following understanding would clarify the application of the treaty in this respect:

**Given that under Article 1 “[t]he purpose of the present convention is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities,” with respect to the application of the convention to matters related to economic, social, and cultural rights, including in Articles 4(2), 24, 25, 27, 28, and 30, the United States of America understands that its obligations in this respect are to prevent discrimination on the basis of disability in the provision of any such rights insofar as they are recognized and implemented under U.S. Federal law.**

As elaborated above, Article 25 is a nondiscrimination provision and does not address the matter of abortion. The Convention does not affect United States law with regard to abortion, as the text and *travaux* quoted above make clear. Rather the convention guarantees *equal access* to reproductive health care as provided or permitted under domestic law.

The ADA, and where applicable the Rehabilitation Act, would implement the requirements of Article 25, for these statutes provide that persons with disabilities have the right to access health care and support services on an equal basis with others. Both DOJ and HHS have a comprehensive enforcement program for ensuring compliance with these laws. Hospitals and other residential health care facilities must ensure that some of their patient rooms are fully accessible to persons with disabilities. Examination rooms should contain, or have

available, accessible medical equipment, such as adjustable height examination tables, accessible radiologic equipment, and mechanical lifts. Existing facilities must determine where structural barriers may exist, and remove them to the extent readily achievable. New construction and alterations must be done in compliance with federal accessibility standards. Additionally, healthcare providers must ensure that they are providing effective communication for individuals who are deaf, hard-of-hearing, blind, have low vision, or have speech impairments. Staff involved in direct patient assistance should have proper training on providing equal access for patients with disabilities. Public and private entities must ensure that ambulances and hospital shuttle buses are accessible to persons with disabilities and that health care providers understand that care must be provided without discrimination. The Patient Protection and Affordable Care Act will enhance health care for persons with disabilities by mandating further barrier removal and improved access to wellness for persons with disabilities.

HHS funds and administers a vast array of programs that provide national health care standards and goals, research, technical assistance, and funding that support Article 25's premise that "persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability." For example, HHS has issued educational materials to health care providers and consumers addressing the health and wellbeing of individuals with disabilities. HHS "Healthy People 2010" established national goals to improve health, including specific targets for promoting the health of people with disabilities. HHS's Office on Disability oversees the implementation and coordination of programs and policies that enhance the health and wellbeing of people with disabilities. HHS's Office of Disability, Aging, and Long-Term Care Policy conducts research and analysis of policies and programs that support the independence, health, and long-term care of people with disabilities. The office coordinates research and policies related to nursing home and community-based services, informal care giving, managed care for people with disabilities, and long-term rehabilitation services. HHS's National Institutes of Health (NIH) support and conduct research that lays the groundwork for understanding causes of disability and for developing innovative new treatments or assistance for people with disabilities.

The Department of Defense's Military Health System, which is comprised of its extensive medical system serving active duty service members, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses, is consistent with Article 25. The system brings together the health care resources of the uniformed services and supplements them with networks of

civilian health care professionals, institutions, pharmacies, and suppliers to provide access to high-quality health care services while maintaining the capability to support military operations, without regard to disability.

#### **Article 26 – Habilitation and Rehabilitation**

Article 26(1) provides that States Parties shall “organize, strengthen, and extend comprehensive habilitation and rehabilitation services,” particularly in the areas of health, employment, education, and social services so that the services begin at the earliest possible stage, are based on a multidisciplinary assessment of the individual’s needs and strengths, and support participation and inclusion in the community. Article 26(2) requires States Parties to promote training for professionals and staff working in habilitation and rehabilitation services. Article 26(2) provides that States Parties shall promote the availability of assistive technology for individuals with disabilities.

The United States would implement this Article through a comprehensive set of habilitation and rehabilitation programs, including the Vocational Rehabilitation (VR) State Grants, State Independent Living (IL) Services, Centers for Independent Living (CIL), and Independent Living Services for Older Individuals Who are Blind (OIB) programs, which are authorized under Titles I and VII of the Rehabilitation Act, 29 U.S.C. § 720 *et seq.*, § 796 *et seq.* The primary purpose of the VR, IL, CIL, and OIB programs is to provide the services necessary to enable individuals with disabilities, especially those with the most significant disabilities, to become self-sufficient and independent in education, employment, and community settings.

The federal government is already working to promote training for persons working in habilitation and rehabilitation services by requiring states to comply with comprehensive system of personnel development (CSPD) requirements for staff employed by the state VR agencies (29 U.S.C. § 721(a)(7)). The VR program also satisfies the requirements of subparagraph 3 to promote assistive technology in the habilitation or rehabilitation setting. The VR program provides a broad array of services designed to enable individuals with disabilities to achieve an employment outcome. Assistive technology and the training for these devices are among the services the VR program provides. 29 U.S.C. § 723(a)(14); 34 C.F.R. §361.48(q).

In further support of Article 26 HHS promotes peer support to enable people with mental health disabilities to be independent. This includes funding national

technical assistance centers on peer-operated approaches and developing human resources through educational and training materials and practice guidelines. In partnership with ED, HHS's SAMHSA supports several Research and Rehabilitation Training Centers on psychiatric disability issues.

In addition, Defense provides an extensive array of habilitation and rehabilitation services for wounded service members while they are in active duty or retired status, consistent with this Article. The Department of Veterans Affairs provides ongoing care to disabled veterans.

### **Article 27 – Work and Employment**

Under Article 27(1), States Parties are obligated to “recognize the right of persons with disabilities to work, on an equal basis with others . . .” and “shall safeguard and promote the realization of the right to work, by taking appropriate steps, including legislation” to address a non-exclusive list of specific obligations. Article 27 does not create an “inalienable” right to work. Rather, it simply ensures that persons with disabilities are protected against discrimination in their access to jobs and in the enjoyment of those jobs on an equal basis with other individuals.<sup>12</sup> Article 27(1), at subparagraphs a, b, and c, prohibits discrimination “with regard to all matters concerning all forms of employment” and protects the rights of persons with disabilities, on an equal basis with others, to just and favorable work conditions, including equal pay, safe and healthy work conditions, protection against harassment, and exercise of labor and trade union rights. Article 27(2) requires States Parties to ensure that persons with disabilities are not held in slavery or servitude.

Various federal statutes afford protection of the rights and responsibilities that Article 27 encompasses. The extensive programs and policies available in the United States both to encourage and support the hiring of persons with disabilities by employers as well as services to assist persons with disabilities in becoming qualified for and accessing available jobs, address Article 27's goals and firmly establish the U.S. commitment to promoting the employment of persons with disabilities in substantive, concrete ways. As a result, Article 27 does not impose any obligation not already undertaken by the United States to implement such programs.

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<sup>12</sup> As detailed in the discussion of Article 25, the United States would clarify the scope of its obligations with respect to this article in a formal treaty understanding.

Title I of the ADA prohibits private employers with 15 or more employees, state and local government employers of the same size, employment agencies, and labor unions (collectively referred to as “covered entities”) from discriminating against individuals with disabilities. The ADA requires employers to provide individuals with disabilities who are qualified an equal opportunity to benefit from the full range of employment-related opportunities available to others. It prohibits discrimination in recruitment, hiring, promotions, training, pay, employer-sponsored social activities, and other privileges of employment. It restricts questions that can be asked about an applicant’s disability before a job offer is made and to employees during employment, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.

The ADA’s nondiscrimination standards also apply under three sections of the Rehabilitation Act. Section 501, as amended, 29 U.S.C. §791, applies to employees in the federal sector and to applicants for federal employment. Section 503 prohibits discrimination on the basis of disability by employers with federal contracts or subcontracts that exceed \$10,000 and requires them to take affirmative action to hire, retain, and promote qualified individuals with disabilities. 29 U.S.C. § 793. Section 504, 29 U.S.C. § 794, prohibits discrimination on the basis of disability with respect to all programs and activities, including employment, of entities that receive federal financial assistance.

Both Title I of the ADA and Sections 501, 503, and 504 of the Rehabilitation Act provide broad protection against employment discrimination to persons with disabilities with respect to a wide range of practices, including “job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”<sup>13</sup> 42 U.S.C. § 12112(a); 29 C.F.R. § 1630.4; and 29 U.S.C. §§

<sup>13</sup> The ADA and the Rehabilitation Act define the term “discriminate” broadly. Discriminating against an individual with a disability includes “participating in a contractual or other arrangement that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability” to discrimination, including relationships with labor unions, organizations providing fringe benefits, employment, or referral agencies, and organizations providing training and apprenticeship programs. 42 U.S.C. § 12112(b)(2)-(7). The ADA’s and Rehabilitation Act’s broad definition of the term “disability” also promotes Article 27’s objectives. A “disability” within the meaning of the ADA and Section 501 of the Rehabilitation Act is a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. 42 U.S.C. 12102(1). By overturning several Supreme Court decisions that had construed the definition of “disability” narrowly, the ADA Amendments Act of 2008 (ADAAA) makes it much easier for individuals alleging employment discrimination to establish that they are protected by the ADA and the Rehabilitation Act. See Article 1 & n.4 *supra*.

791, 793, and 794. Harassment of individuals with disabilities and retaliation against individuals who oppose unlawful practices or who participate in any process to vindicate their rights under the law or assist others in doing so are also prohibited. 42 U.S.C. § 12203. The ADA and the Rehabilitation Act also protect individuals who are discriminated against based on an association or relationship with someone with a disability. 42 U.S.C. § 12112(b)(4)<sup>14</sup>.

*Equal Pay for Work of Equal Value*

One means by which States Parties are to accomplish Article 27(1)'s goal of ensuring the right of persons with disabilities to work on an equal basis is to protect the rights of persons with disabilities to "equal remuneration for work of equal value." Discrimination in "employee compensation" is one form of discrimination prohibited by the ADA and the Rehabilitation Act. 42 U.S.C. § 12112(a). Although there have been few occasions for the courts to consider the meaning of "equal pay" under the ADA, the issue has been addressed under the analogous provision of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-2(a)(1) (prohibiting discrimination on the basis of race, color, religion, sex, or national origin with respect to compensation).

Claims of wage discrimination on the basis of sex brought pursuant to Title VII need not involve identical or "substantially similar" jobs, as long as the wage disparity at issue is a result of intentional discrimination. County of Washington v. Gunther, 452 U.S. 161 (1981). However, the Supreme Court emphasized in Gunther that the respondent's claim was not based on the "controversial concept of comparable worth," that is, equal pay for comparable worth. The concept of comparable worth means that jobs which require comparable abilities, knowledge, and skills should be paid the same wage or salary. The concept would permit a claim for increased compensation based on a comparison of the intrinsic worth or difficulty of one job with that of other jobs in the same organization or community. Although the United States has, at various times, considered enacting "comparable

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<sup>14</sup> Other federal laws enhancing the employment rights of persons with disabilities include the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits an employer from requesting, requiring, or purchasing genetic information from the employee or family members; The Family and Medical Leave Act (FMLA) which provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period to eligible, covered employees with serious health conditions; and the Health Insurance Portability and Accountability Act (HIPAA) which offers protections for millions of U.S. workers that improve portability and continuity of health insurance coverage.



worth” legislation, it has not done so. To the extent that the convention’s language regarding equal pay for work of equal value might be interpreted to incorporate the comparable worth doctrine for disability-based equal pay claims, adoption of the following Understanding is recommended:

**Current U.S. law provides strong protections for persons with disabilities against unequal pay, including the right to equal pay for equal work. The United States of America understands the convention to require the protection of rights of individuals with disabilities on an equal basis with others, including individuals in other protected groups, and does not require adoption of a comparable worth framework for persons with disabilities.**

*Promoting Access to Job-Related Services*

Subparagraphs (d) through (h), (j), and (k) of Article 27(1) promote access to and availability of programs or services to assist individuals with disabilities to train for, find, and retain jobs. These provisions direct States Parties to: enable persons with disabilities to have access to technical and vocational guidance programs and placement services; promote employment opportunities; assist in finding employment; promote opportunities for self-employment and entrepreneurship; and promote vocational and professional rehabilitation and job retention. These responsibilities are allocated to various federal agencies and state programs. For example, EEOC’s outreach and education programs provide extensive information and training to thousands of employers and employees annually regarding their rights and responsibilities under the ADA and the Rehabilitation Act. Similarly, DOL’s Office of Disability Employment Policy (ODEP) and Job Accommodation Network (JAN) assist employers and employees with worksite accommodation issues. Several federal departments and agencies provide direct employment services to persons with disabilities. For example, ED provides federal grants under the Rehabilitation Act to states for vocational rehabilitation programs to help individuals with disabilities prepare for and engage in gainful employment. See 29 U.S.C. § 720.

Other laws promote the employment of veterans with disabilities in the private sector.<sup>15</sup> Additionally, the U.S. tax code provides incentives to employers to hire and accommodate qualified individuals with disabilities.<sup>16</sup>

<sup>15</sup> The Vietnam Era Veterans’ Readjustment Assistance Act of 1974 mandates that certain government contracts for personal property and non-personal services, including construction, include a provision requiring the party with whom the United States is contracting to take affirmative action in employment with respect to Vietnam veterans

*Promoting the Employment of Individuals with Disabilities in the Public Sector*

Article 27(1)(g) specifically obliges States Parties to take appropriate steps to “employ persons with disabilities in the public sector.” In addition to its general nondiscrimination obligations, the federal government has affirmative hiring policies and programs that promote the hiring of individuals with disabilities in the public sector. Section 501 of the Rehabilitation Act requires all federal departments and agencies, regardless of their size, to have an affirmative employment plan (AEP) for individuals with disabilities. EEOC requires agencies with 1,000 or more employees to establish a recruitment program with specific goals for the employment and advancement of individuals with severe disabilities. The federal government’s Schedule A Special Appointing Authority allows agencies to prefer applicants with targeted disabilities and hire them outside the competitive service. Executive Orders 12125 & 13124, 5 C.F.R. § 213.3102(u). Additional provisions under Schedule A for preferential hiring by the federal government include preferential hiring of veterans with disability ratings of 30 percent or more. Veterans’ Preference Act of 1944, 5 U.S.C. § 3112. In July 2010, the President issued an Executive Order requiring Federal agencies to design model recruitment and hiring strategies for persons with disabilities and to implement programs to retain these public servants. Lastly, the broad protections of Title I of the ADA apply to state and local government employers with 15 or more employees, and Section 501 of the Rehabilitation Act applies to employees of federal executive branch agencies and applicants for federal employment.<sup>17</sup>

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and other veterans, including individuals discharged or released from active duty due to a service connected disability, veterans with a 30 percent or more disability rating, and veterans with a 10 percent or 20 percent disability rating who are considered to have a serious employment disability. The Act is enforced by DOL’s Office of Federal Contract Compliance Programs. See 38 U.S.C. § 4212, 41 C.F.R. § Part 60-250.

<sup>16</sup> The Work Opportunity Tax Credit provides a credit to employers who hire individuals with disabilities, and Section 44 of the Tax Code provides a tax credit to eligible small businesses to offset the costs of expenses incurred in removing architectural, communication, physical, or transportation barriers that prevent a business from being accessible to, or usable by, individuals with disabilities, or otherwise incurred in providing reasonable accommodations. See 26 U.S.C. §51; 26 U.S.C. § 44.

<sup>17</sup> Many states and localities have agencies that enforce federal and state laws prohibiting employment discrimination which EEOC refers to as Fair Employment Practices Agencies (FEPAs). Some state agencies enforce laws that are broader than federal discrimination laws, covering, in certain instances, employers with fewer than fifteen employees. See, e.g., Massachusetts Commission Against Discrimination at <http://www.mass.gov/mcad/>.

It should be noted that these laws do not apply to members of the uniformed services, *see, e.g., Doe v. Dept. of the Navy*, 903 F.2d 1455 (11<sup>th</sup> Cir. 1990) (upholding the district court's ruling that well-established case law interpreting Title VII of the Civil Rights Act of 1964 to exclude uniformed military personnel from protection applied to Plaintiff's Rehabilitation Act claim), including persons with disabilities at the service academies of the military departments, as defined by 5 U.S.C. § 102. Given the unusual functional requirements related to military service, the continued non-application of such laws would fall within the obligation that the United States take appropriate steps regarding the employment of persons with disabilities in the public sector. The Administration recommends the following Understanding to make clear this interpretation of Article 27:

**Article 27 of the convention provides that States Parties shall take appropriate steps to afford to individuals with disabilities the right to equal access to equal work, including nondiscrimination in hiring and promotion of employment of persons with disabilities in the public sector. Current interpretation of Section 501 of the Rehabilitation Act of 1973 exempts U.S. Military Departments charged with defense of the national security from liability with regard to members of the uniformed services. The United States of America understands the obligations of Article 27 to take appropriate steps as not affecting hiring, promotion, or other terms or conditions of employment of uniformed employees in the U.S. Military Departments, and that Article 27 does not recognize rights in this regard that exceed those rights available under U.S. Federal law.**

*Reasonable Accommodation*

Article 27(1)(i) requires States Parties to take appropriate steps to "ensure that reasonable accommodation is provided to persons with disabilities in the workplace." The United States would implement this provision through the ADA and Section 501 of the Rehabilitation Act, which require employers to provide reasonable accommodation to applicants and employees unless doing so would pose an undue hardship, *see* 42 U.S.C. § 12112(b)(5), a condition also included in the definition of "reasonable accommodation" in the Convention (*see* Article 2). The EEOC's regulations broadly interpret accommodation to include "any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities." 29 C.F.R. Part 1630, App. 29 C.F.R. § 1630.2(o). Refusing to hire someone, or firing

someone, because of the need for a reasonable accommodation is a form of discrimination under U.S. law. ADA, 42 U.S.C. §12112(b)(5).<sup>18</sup>

Article 27(2) requires States Parties to ensure that persons with disabilities are not held in slavery or servitude. Article 27(2) is consistent with, and would be implemented through, the 13th Amendment's prohibition on slavery and related legislation. The Thirteenth Amendment, section one, states that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

#### **Article 28 – Adequate Standard of Living and Social Protection**

Under Article 28, States Parties "recognize the rights of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing, and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability." States Parties also recognize the right of persons with disabilities to social protection without discrimination on the basis of disability.

Paragraphs 1 and 2 of Article 28 require States Parties to recognize the rights contained therein "without discrimination on the basis of disability." In view of the overarching principle of non-discrimination as foundational to the treaty, and as made clear in the recommended Understanding discussed under Article 25 above, the obligation in Article 28 is understood to require the United States to provide access by persons with disabilities to the services and programs outlined in this Article on a non-discriminatory basis. These services and programs include an adequate standard of living, food, clothing, housing, and social protection. Article 28 would be implemented through the vast array of U.S. laws prohibiting discrimination on the basis of disability, described in detail in Tab 1. It would also be implemented through the imposing network of economic and social programs provided in the United States by the Departments of Health and Human Services, Labor, and HUD, some of which are discussed below and under Articles 25, 26, and 27.

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<sup>18</sup> See also Article 2 *supra*. EEOC has provided extensive guidance on reasonable accommodation. See 29 C.F.R. §1630.2(o), 1630.9; 29 C.F.R. pt. 1630 app. §§ 1630.2(o), 1630.9. In addition, DOL's Job Accommodation Network provides counseling to employers and employees regarding specific workplace accommodation issues. The reasonable accommodation provisions of the ADA and Section 501 of the Rehabilitation Act effectuate Article 27(1)(i)'s mandate to "ensure that reasonable accommodation is provided to persons with disabilities in the workplace," and arguably exceed the scope of the article in applying not only to employees, but applicants as well.

With respect to government benefits programs and services, Title II of the ADA prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. Similarly, the Rehabilitation Act bars discrimination based on disability in programs receiving federal funding, in implementation of Article 28(1) and (2)(a), (b), (c), and (e).

HUD enforces Title II of the ADA when it relates to public housing operated by state and local entities, housing assistance, and housing referrals and would thus serve to assist in the implementation of Article 28(1) and (2)(d). HUD also enforces Executive Order 11063, which directs federal agencies to take all necessary and appropriate action to prevent discrimination on the basis of disability in the sale, leasing, rental, or other disposition of residential properties and facilities owned or operated by the federal government or provided with federal funds. HUD funds housing and housing-related programs to benefit low and very low income families and individuals through grants, other assistance and regulatory programs. HUD's programs require compliance with applicable fair housing and civil rights requirements as specified in statutes and program regulations. The majority of HUD's funding recipients are also required to take steps to Affirmatively Further Fair Housing.

Furthermore, there are HUD programs that specifically address the housing and housing-related needs of persons with disabilities and their families. By providing admission preferences, limiting occupancy primarily to this population, or ensuring the availability of supportive services, these programs provide affordable housing options for persons with disabilities. HUD operates numerous housing programs assisting persons with disabilities. For instance, the Housing Opportunities for Persons with AIDS Program, established by the AIDS Housing Opportunity Act, Subtitle D of Title VIII of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. §§ 12901-12, provides rental housing assistance for persons living with HIV/AIDS and their families. HUD also operates the Section 811 Supportive Housing for Persons with Disabilities Program and the McKinney-Vento Homeless Assistance Programs. By ensuring nondiscrimination and equal opportunity in all HUD-assisted programs and activities, persons with disabilities enjoy equal access to participate in and benefit from such programs.

In implementation of Article 28(1) & (2)(a), (b), (c), (d), and (e), there are numerous federal programs designed to ensure that persons with disabilities maintain an adequate standard of living, including social protection, adequate food, poverty reduction, public housing, and retirement benefit programs. The Social

Security Administration provides Social Security retirement benefits to all qualified recipients. In addition, it pays disability benefits through two programs: the Social Security disability insurance program and the Supplemental Security Income (SSI) program. SSI makes monthly payments to persons with disabilities, including children, if their income and resources fall within the eligibility limits, guaranteeing a “minimum income level” for financially needy persons with disabilities. In addition, the Social Security Act authorizes payment for the reasonable and necessary costs of vocational rehabilitation services provided to certain disabled persons entitled to benefits. The Department of Veterans Affairs provides disability benefits to veterans because of injuries or diseases that happened while on active duty or were made worse by active military service. Private-sector retirement benefits are governed by the Employee Retirement Income Security Act (ERISA), administered within the Department of Labor by the Employee Benefits Security Administration (EBSA). The retirement and other benefit plans overseen by EBSA cover more than 150 million Americans, including those with disabilities.

In addition, in further implementation of Article 28(1) and 2(a), (b) and (d), federal, state, and local governments provide many programs designed to help meet the nutritional needs of people with low incomes and their families, including the food stamp program, which is financed by the federal government and administered by the states. The U.S. Department of Agriculture’s Supplemental Nutrition Assistance Program (SNAP, commonly known as the food stamp program) offers persons with disabilities more expansive eligibility criteria than some other applicants. Medicare and Medicaid, which are run by HHS’s Centers for Medicare and Medicaid Services, provide health insurance for certain persons with disabilities. In addition, HHS’s Substance Abuse Mental Health Services Administration supports several efforts to assist people with mental health disabilities who experience homelessness. This includes providing specialized services via the Projects for Assistance in Transition from Homelessness program, demonstrating effective practices to provide supported housing, and technical assistance to meet the needs of this population more effectively. As part of the Interagency Council on Homelessness, in 2003 HUD and the Department of Labor jointly initiated Ending Chronic Homelessness through Employment and Housing pilot program. These five-year demonstration projects enabled disabled persons who were chronically homeless to become employed through the use of customized employment strategies and to obtain permanent housing and self-sufficiency.

### **Article 29 – Participation in Political and Public Life**

Article 29 calls for States Parties to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.” The right to vote is a fundamental right under the U.S. Constitution, subject to strict scrutiny under the Constitution’s equal protection jurisprudence. Title II of the ADA, which prohibits disability-based discrimination by state and local governmental entities, establishes that all persons have the right to vote, hold public office, and otherwise participate in political and public life on an equal basis with others. See 42 U.S.C. § 12132.

Moreover, as required by Article 29(a), U.S. law and regulations have adopted a comprehensive approach to ensure access to all aspects of political participation for persons with disabilities. Generally, U.S. law requires polling places across the United States to be physically accessible to people with disabilities for federal elections, or where no accessible location is available, to provide an alternate means of casting a ballot on the day of the election. Public entities must ensure that their communication is as effective for persons with disabilities as it is for other persons and must make available appropriate auxiliary aids and services for that purpose. 28 C.F.R. § 35.160. Public programs, when viewed in their entirety, must be accessible to persons with disabilities. 28 C.F.R. § 35.150(a). Similarly, Section 504 of the Rehabilitation Act of 1973 requires the accessibility of voting places and procedures. See 29 U.S.C. § 794.

The Help America Vote Act (HAVA), 42 U.S.C. §§ 15301-15545, aims to improve the administration of elections in the United States by creating a new federal agency to serve as a clearinghouse for voting information; providing states funds to replace outdated voting systems and improve elections; and creating minimum standards for holding elections. HAVA requires states to ensure that voters with disabilities can vote privately and independently, accessing at least one direct recording electronic voting system or other accessible device at each polling place. HAVA also provides funding to the congressionally-mandated Protection and Advocacy System in each state to “ensure the full participation in the electoral process for individuals with disabilities.” The Department of Justice has enforcement authority for the uniform and nondiscriminatory election technology and administration requirements that apply to states and has enforced HAVA through litigation and by informing jurisdictions of the Department’s views on the Act’s requirements.

The National Voter Registration Act of 1993, 42 U.S.C. § 1973gg *et seq.*, also known as the “Motor Voter Act,” requires all offices of state-funded programs that are primarily engaged in assisting persons with disabilities to provide all program applicants with voter registration forms, assist them in completing the forms, and transmit completed forms to appropriate state officials.

The Voting Accessibility for the Elderly and Handicapped Act of 1984, 42 U.S.C. § 1973ee *et seq.*, requires polling places to be physically accessible to people with disabilities for federal elections. Where no accessible location is available to serve as a polling place, a political subdivision must provide an alternate means of casting a ballot. This law also requires states to make available registration and voting aids for disabled and elderly voters, including by providing information by telecommunications devices for the deaf (TDDs), which are also known as teletypewriters (TTYs).

Article 29(b), which requires States Parties to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination, would be implemented by existing U.S. law that guarantees the right to participate without discrimination in political parties and nongovernmental organizations, including the First Amendment of the U.S. Constitution, which guarantees the right of free association, the Rehabilitation Act, and the ADA.

### **Article 30 – Participation in Cultural Life, Recreation, Leisure and Sport**

Article 30 recognizes the right of persons with disabilities to take part on an equal basis with others in cultural life, and requires States Parties to take “appropriate measures” to ensure that persons with disabilities have an equal opportunity to fully participate in cultural, recreation, leisure, and sport activities and are entitled to equal support of their cultural and linguistic identity. Article 30(1)(c) requires States Parties to ensure that persons with disabilities “enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries, and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.” Article 30(3) requires States Parties to take “all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.” Article 30(5) guarantees participation “on an equal basis with others in recreational, leisure, and sporting activities.”



### *U.S. Implementation*

The principles of full participation and integration are integral to the ADA and Rehabilitation Act and the United States would implement Article 30 under such existing law. Titles II and III of the ADA and Section 504 of the Rehabilitation Act ensure that persons with disabilities enjoy equal opportunity to benefit from cultural, recreational, leisure, and sport programs and activities that are provided by covered entities. See 28 C.F.R. § 35 (implementing ADA Title II); 28 C.F.R. § 36 (implementing ADA Title III) and various federal agency Rehabilitation Act implementing regulations. Article 30's emphasis on equal access is consistent with the proscriptions against discrimination based on disability in any covered program or activity and the requirements for accessibility and effective communication found in the federal regulations.

Title II of the ADA requires state and local governmental entities to ensure that individuals with disabilities are not excluded from participation in or denied the benefits of the services, programs, or activities of any public entity. 28 C.F.R. § 35.130(a). This provision requires public entities to ensure that the cultural, recreational, leisure, and sport activities it offers are made available to individuals with disabilities. Title III of the ADA, which prohibits discrimination in the full and equal enjoyment of the goods, services, privileges, and other benefits offered by any place of public accommodation, specifically lists a wide variety of places of entertainment, such as theaters, places of public display including art museums, and places of exercise and recreation, including golf courses and health spas, within the definition of places of public accommodation. 28 C.F.R. §§ 36.104 and 36.201(a).

### *Intellectual Property Rights*

U.S. copyright law is in full compliance with, and will serve to implement, Article 30. Section 121 of the Copyright Act includes a narrow exception for the reproduction and distribution of copyrighted materials for use by persons who are blind or have other disabilities. See 17 U.S.C. § 121. The so-called "Chafee Amendment" authorizes entities, such as the Library of Congress, to reproduce and distribute published works in certain specialized formats, such as Braille, audio, or digital texts, exclusively for the use of blind individuals and other persons with disabilities. The exception for such reproductions is limited because it is balanced against the rights of copyright owners and designed to be consistent with our obligations under international treaties.

Article 30(3) requires that States take “all appropriate steps in accordance with international law,” to ensure that intellectual property laws do not create discriminatory accessibility barriers to cultural materials for persons with disabilities. In contrast, Article 30(1), requiring states to take all appropriate measures to ensure persons with disabilities have access to cultural materials “on an equal basis,” does not include an express reference to international law. To the extent that there may be a possible tension between the provision of equal access to cultural materials under Article 30(1) and U.S. obligations under international treaties – including the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), both of which require protection from and remedies against the circumvention of technological protection measures – the directive in Article 30(1) that States Parties “take all appropriate measures” supports the reading that Article 30 would not require any measure inconsistent with U.S. obligations under international law, including international intellectual property agreements.

#### **Article 31 – Statistics**

Section 1 of this Article requires the federal government to collect sufficient data to enable it to develop and implement policies that would give effect to the provisions of this convention. The data collection procedures must comply with established safeguards for data protection and internationally accepted norms for the protection of human rights, fundamental freedoms, and ethical principles.

The federal government has a number of existing mechanisms by which it would implement this article. The Census Bureau collects vast amounts of disability data from four nationwide surveys: the American Community Survey, the Decennial Census of Population and Housing, the Survey of Income and Program Participation, and the Current Population Survey. Using data from the American Community Survey (ACS), the Census Bureau publishes approximately 80 tables on American Fact Finder that describe both the prevalence of disability and selected characteristics of people by disability status. The Census Bureau publishes additional disability statistics based on the data collected in the other surveys it conducts.

ED collects data from its programs serving individuals with disabilities. ED uses the data it collects to monitor the programs for compliance and best practices and develop and implement new policies and initiatives as needed to ensure continued program improvement. ED’s Office for Civil Rights’ Civil Rights Data Collection (CRDC) collects school and district level information on key civil

rights-related education issues from a sample of 7,000 school districts. The data is disaggregated by race/ethnicity, sex, limited English proficiency, and disability. ED's data collections include data on the number of students with disabilities by disability category and educational setting and on discipline of students with disabilities. Additionally, the IDEA requires the collection of data concerning the education of children with disabilities served under the IDEA.<sup>19</sup>

Several agencies within HHS engage in regular data collection and dissemination that support the mandates within this Article to collect appropriate information, including statistical and research data, in accordance with legally established safeguards to ensure confidentiality, and to formulate and implement policies to give effect to the convention. Through routine data collections (National Health Interview Survey-NHIS and National Health and Nutrition Examination Survey-NHANES) the HHS National Center for Health Statistics (NCHS) produces timely and relevant analyses of disability and functioning in the U.S. population. Analyses are presented by major demographic background variables (e.g. age, sex, social-economic status, and race/ ethnicity) allowing for an assessment of disparities in terms of employment, education, the performance of specific tasks, and participation in social activities according to disability status, and these major demographic confounders. NCHS recently produced a report entitled *Disability and Health in the United States, 2001-2005 (2008)* and annually produces a Chartbook on Trends in the Health of Americans (Health US) that includes data on disability and functional status. An area of current and pressing interest is the measurement of child disability. Efforts are ongoing to define and develop better measures that will capture the level of difficulty in functioning among school age children in the United States and the effect that may have on children's level of participation in school, sports, and play activities. NCHS continues to work to improve the collection of and presentation of disability data and statistics to address health disparities in the U.S. population. Numerous of the

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<sup>19</sup> Section 618 of the IDEA, 20 U.S.C. § 1418, requires ED to collect data on the number and percentage of children with disabilities across a number of variables, including race, ethnicity, limited English proficiency status, gender, disability category -- including mental disability, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, and specific learning disabilities -- who: (1) receive a free appropriate education; (2) participate in regular education; (3) are in separate classes, schools, facilities, or public and private residential facilities; (4) for children from age 14 to 21, stopped receiving special education and related services, and the reasons for the termination of services; and (5) were disciplined, with the reasons for discipline. Data is also collected on the number and percentage of children by race, gender, and ethnicity who receive early intervention services (for infants and toddlers with disabilities aged birth through 2) and who stop receiving those services and why; incidence and duration of disciplinary actions; numbers of due process complaints filed and number of hearings conducted; number of mediations held and settlements resulting from mediation; assessment data; data on personnel needs; and other information.

datasets mentioned above are the sources of data that generate indicators for the HHS initiative on Healthy People. SAMHSA also has an array of efforts to collect statistics and data via its Office of Applied Studies and other activities. This includes the National Survey on Drug Use and Health ([www.oas.samhsa.gov/nsduh.htm](http://www.oas.samhsa.gov/nsduh.htm)), partnership with the CDC on the Behavioral Risk Factor Surveillance System (BRFSS), and collaborations with states on a range of data collection.

Additionally, NCHS acts as the Secretariat for the Washington Group on Disability Statistics. The Washington Group on Disability Statistics is a “city group” established by and operating under the aegis of the United Nations Statistical Commission. Acknowledging the scarcity and general poor quality of data on disability, especially in developing countries, the Washington Group was established in June 2001 to coordinate efforts among national statistical offices of developed and developing countries to meet the need for comparable population-based measures of disability for individual country use and cross-nationally.

Finally, the United States would implement the data protection requirements of the Convention, including under Article 31(1), through its wide array of data protection laws discussed under Article 22 and in Tab 1, including HIPAA and the Genetic Information Nondiscrimination Act of 2008 (GINA).

### **Article 32 – International Cooperation**

Article 32 provides that States Parties recognize the importance of international cooperation in support of national efforts to realize the objectives of the convention and will undertake appropriate and effective measures in this regard. Measures may be taken with other states and, as appropriate, with international and regional organizations and civil society, and “could include” (1) ensuring that international development programs are inclusive of and accessible to persons with disabilities, (2) facilitating and supporting capacity-building, (3) facilitating cooperation in research and access to scientific knowledge, and (4) “providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.”

With respect to international construction, the Department of State applies Architectural Barriers Act accessibility standards in the construction and renovation of diplomatic and consular facilities abroad, including modifications to leased properties. With respect to disability-inclusive international assistance,

several government agencies including the U.S. Agency for International Development (USAID), HHS, ED, and the State Department's Bureau of Democracy, Human Rights, and Labor are active in international cooperation that supports the purpose and objectives of the Convention.

USAID is committed to the inclusion of people who have physical and mental disabilities and those who advocate and offer services on behalf of people with disabilities in the design and implementation of USAID programming. USAID's policy on disability seeks to:

Avoid discrimination against people with disabilities in programs which USAID funds and to stimulate an engagement of host country counterparts, governments, implementing organizations, and other donors in promoting a climate of nondiscrimination against and equal opportunity for people with disabilities.

Internationally, USAID supports programs and activities that protect the rights and increase the independence and full participation of people with disabilities in programs related to health, education, economic growth, political participation, and humanitarian aid. USAID focuses on reducing barriers to participation for people with disabilities in ongoing and planned U.S. government development efforts. It also supports the development and implementation of training for staff and its partners overseas. USAID-led disability initiatives are active in over 50 countries worldwide, and the agency is a leader in efforts to institutionalize inclusion in donor, foundation, and U.S. government-partner organizations.

USAID has adopted accessibility standards for any new or renovated construction project that it funds in order to allow access by persons with disabilities. USAID Policy on Standards for Accessibility for the Disabled in USAID-Financed Construction is as follows:

This guidance provides standards for any new or renovation construction project funded by USAID to allow access by people with disabilities (PWDs). The use of these standards is required in all USAID acquisition and assistance for construction and alteration. This guidance includes a provision for a waiver of the application of standards in certain circumstances. . . . USAID seeks to make its development, stability, and humanitarian assistance efforts accessible to all.

This guidance builds upon the agency's policy on disability, found in [USAID Disability Policy Paper](#) dated September 12, 1997. The guidance extends the principles of the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA) to USAID-financed assistance. Available at: [www.usaid.gov/about\\_usaid/disability/construction\\_waiver.html](http://www.usaid.gov/about_usaid/disability/construction_waiver.html)

### **Article 33 – National Implementation and Monitoring**

Article 33 requires States Parties to “designate one or more focal points within government for matters relating to the implementation of the present convention,” “give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors,” and “in accordance with their legal and administrative systems, maintain, strengthen, designate, or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate,” to “promote, protect, and monitor implementation” of the convention.

Through its vast array of federal statutes (Tabs 1 and 2) and effective network of compliance and enforcement mechanisms (Tab 3), the United States maintains a robust “framework” for the promotion, protection, and monitoring of disability rights, as required by Article 33. Under Executive Order 13107, the President established a framework for implementation of international human rights obligations by the executive branch agencies, a framework that would be applicable to this convention upon entry into force, and under Executive Order 12250, the Department of Justice is responsible for developing and maintaining policies on protecting against disability discrimination. Consistent with the foregoing Executive Orders, the Department of State for international matters, and the Department of Justice for domestic matters, would serve as “focal points within government” for matters relating to implementation of the convention.

### **Treaty Articles – Articles 34-50**

Articles 34 through 39 establish a Committee on the Rights of Persons with Disabilities composed of between 12 to 18 independent members, and require reporting by States Parties on measures taken to give effect to the convention. In accordance with Article 34(2), on September 2, 2010, the number of Committee members increased from 12 to 18 because an additional 60 States ratified the convention after its entry into force in 2008. The members of the Committee shall

serve in their personal capacity and shall be of “high moral standing and recognized competence and experience” in the field of disabilities.

The principal measure of treaty oversight, like the ICCPR and the Convention on the Elimination of All Forms of Racial Discrimination, consists of required reporting by States Parties to the Committee on measures taken to give effect to the convention. Conclusions and Recommendations of the Committee with regard to a State Party’s treaty report, and General Comments, Reports, and other documents of the Committee on Disabilities are not binding on the States Parties, and the Committee has no authority to require or compel action by the United States under the convention. The United States may accord to Committee views and reports and to other Committee documents the weight that the United States considers appropriate.

Article 40 provides that the States Parties shall meet regularly in a Conference of States Parties. Articles 41 through 50 constitute the final clauses of the convention, which include Article 46 on Reservations and Article 47 on amendments. Article 46 provides that no reservations may be made that are “incompatible with the object and purpose” of the convention, which reflects the existing rule articulated in Article 19 of the Vienna Convention on the Law of Treaties.

Article 47 sets forth the process for amending the convention. Paragraph 1 specifies that at a conference convened to consider a proposed amendment, if at least two-thirds of the States Parties present and voting adopt it, the amendment will be submitted to the UN General Assembly for approval and thereafter to all States Parties for acceptance (Art. 47(1)). Paragraphs 2 and 3 describe two possible procedures for entry into force after an amendment is adopted and approved in accordance with paragraph 1. The default procedure is that the amendment enters into force on the thirtieth day after two-thirds of the States Parties deposit their instruments of acceptance for those parties that have thus far accepted such amendment. The convention makes clear that the two-thirds threshold is based on the number of parties at the time the amendment was adopted. The Conference of the Parties may decide by consensus, however, to alter the entry into force procedure for amendments that “relate[] exclusively” to Articles 34, 38, 39, and 40 so that, instead, they enter into force for all parties once the requisite two-thirds have deposited instruments of acceptance. The intent was to have this alternative process apply to ministerial actions related to the Committee, such as the number and qualifications of its members, process of election, and duration of appointment, as well as related to the Conference of

States Parties. In the event that an amendment to these articles is proposed that would warrant the advice and consent of the Senate, the Executive Branch would take whatever steps are necessary, including blocking consensus if appropriate, in order to ensure that the amendment did not enter into force for the United States absent such advice and consent.

Article 48 allows a Party to denounce the convention, i.e. to withdraw from it, upon one year's notice, and Article 49 requires that the text of the instrument "be made available in accessible formats."

Consistent with its treaty practice under human rights treaties that the United States has ratified, the Administration recommends that the Senate's advice and consent be subject to the following Declaration, though it is not necessary that such Declaration be included in the instrument of ratification deposited by the President:

**That the United States declares that the provisions of the Convention are not self-executing.**



**Tab 1. Summary of Relevant United States Law**

Existing United States law and practice provide broad and effective protections against and remedies for disability-based discrimination. Over the years, Congress has enacted numerous statutes prohibiting discrimination on the basis of disability in a host of fields, including federal, state, and private sector employment, education, and public accommodations, including the following statutes.

**Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101 *et seq.*)**

The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the U.S. Congress. Certain provisions of Title I of the ADA that regulate employer access to, and disclosure of, medical information protect individuals with and without disabilities, as do the ADA's provisions prohibiting retaliation, interference, coercion, and intimidation directed at individuals who seek to assert rights under the ADA or to aid others in doing so.

**ADA Title 1: Employment**

(29 CFR Parts 1630, 1602 – EEOC's implementing regulation)

Title I requires employers with 15 or more employees to provide individuals with disabilities who are qualified an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship. Religious entities with 15 or more employees are covered under Title I.

Title I complaints must be filed with the U. S. Equal Employment Opportunity Commission (EEOC) within 180 days of the date of discrimination, or within 300 days if the charge is filed with a designated state or local fair employment practice agency. Individuals may file a lawsuit in federal court only after they receive a "right-to-sue" letter from the EEOC. The Department of Justice (DOJ) may file suit against public employers under Title I of the ADA on

referral from the EEOC or under the Attorney General's independent pattern or practice authority.

**ADA Title II: State and Local Government Activities**  
(28 CFR Part 35 – DOJ's implementing regulation)

Title II covers all activities of state and local governments regardless of the government entity's size or receipt of federal funding. Title II requires that state and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in older buildings that are currently inaccessible and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Complaints of Title II violations may be filed with DOJ or other designated federal agencies within 180 days of the date of discrimination. In certain situations, cases may be referred to a mediation program sponsored by DOJ. In addition, DOJ may bring a lawsuit where either it or another federal agency, designated by DOJ to investigate complaints, has investigated a matter and has been unable to resolve violations. Title II may also be enforced through private lawsuits in federal court. It is not necessary to file a complaint with DOJ or any other federal agency, or to receive a "right-to-sue" letter, before going to court.

**ADA Title II: Public Transportation**  
(49 CFR Parts 27, 37, 38 – DOT's implementing regulation)

The transportation provisions of Title II cover public transportation services, including city buses and public rail transit (e.g. subways, commuter rails, and Amtrak). Public transportation authorities may not discriminate against people with disabilities in the provision of their services. They must comply with requirements for accessibility in newly purchased vehicles, make good faith efforts

to purchase or lease accessible used buses, remanufacture buses in an accessible manner, and, unless it would result in an undue burden, provide paratransit where they operate fixed-route bus or rail systems. Paratransit is a service where individuals who are unable to use the regular transit system independently (because of a physical or mental impairment) are picked up and dropped off at their destinations.

**ADA Title III: Public Accommodations**  
(28 CFR Part 36 – DOJ’s implementing regulation)

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation providers, or commercial facilities. Public accommodations are private entities that own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors’ and lawyers’ offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III. Title III of the ADA covers cruise ships, including foreign-flagged cruise ships operating in U.S. waters. However, as pointed out in Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119 (2005), Title III would not require structural changes that would negatively affect safety or cause a vessel to be in noncompliance with its obligation to its flag state under the International Convention for Safety of Life at Sea.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. Public accommodation also must comply with the requirements to provide reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must meet specific requirements related to architectural standards for new and altered buildings and remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation’s resources. Commercial facilities, such as factories and warehouses, must comply with the ADA’s architectural standards for new construction and alterations. Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered.

Complaints of Title III violations may be filed with DOJ. In certain situations, cases may be referred to a mediation program sponsored by DOJ. In addition, DOJ is authorized to bring a lawsuit where there is a pattern or practice of discrimination in violation of Title III, or where an act of discrimination raises an issue of general public importance. Title III may also be enforced through private lawsuits. It is not necessary to file a complaint with DOJ (or any federal agency), or to receive a “right-to-sue” letter, before going to court.

**ADA Title IV: Telecommunications Relay Services**  
(47 CFR 64.601 *et seq.* – FCC’s implementing regulation)

Title IV addresses telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, 7 days a week. TRS enables callers with hearing and speech disabilities who use telecommunications devices for the deaf (TDDs), which are also known as teletypewriters (TTYs), and callers who use voice telephones to communicate with each other through a third party communications assistant. The FCC has set minimum standards for TRS services. Title IV also requires closed captioning of federally-funded public service announcements.

**Architectural Barriers Act of 1968**  
(42 U.S.C. §§ 4151 *et seq.*)  
(41 CFR Subpart 101-19.6 – Access Board’s implementing regulation)

The Architectural Barriers Act of 1968 (ABA) requires that buildings and facilities that are designed, constructed, or altered with federal funds, or leased by a federal agency, comply with federal standards for physical accessibility. ABA requirements are limited to architectural standards in new and altered buildings and in newly leased facilities. They do not address the activities conducted in those buildings and facilities. U.S. Postal Service facilities are covered by the ABA.

**Air Carrier Access Act of 1986**  
(49 U.S.C. § 41.705)  
(4 CFR Part 382 – DOT’s implementing regulation)

The Air Carrier Access Act of 1986 prohibits discrimination in air transportation by domestic and foreign air carriers against qualified individuals with physical or mental impairments. It applies only to air carriers that provide regularly scheduled services for hire to the public. Requirements address a wide

range of issues including boarding assistance and certain accessibility features in newly built aircraft and new or altered airport facilities. People may enforce rights under the Air Carrier Access Act of 1986 by filing a complaint with the Department of Transportation (DOT) or by bringing a lawsuit in federal court.

**Civil Rights of Institutionalized Persons Act**  
(42 U.S.C. §§ 1997 *et seq.*)

The Civil Rights of Institutionalized Persons Act (CRIPA) authorizes DOJ to investigate conditions of confinement at state and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes, and institutions for people with psychiatric or developmental disabilities. Its purpose is to allow DOJ to uncover and correct widespread deficiencies that seriously jeopardize the health and safety of residents of institutions. DOJ does not have authority under CRIPA to investigate isolated incidents or to represent individual institutionalized persons.

DOJ may initiate civil law suits where there is reasonable cause to believe that conditions are “egregious or flagrant,” that they are subjecting residents to “grievous harm,” and that they are part of a “pattern or practice” of resistance to residents’ full enjoyment of constitutional or federal rights, including Title II of the ADA and Section 504 of the Rehabilitation Act of 1973, as amended.

**Copyright Act**  
(17 U.S.C. §§ 101 *et seq.*)

Section 121 of the U.S. Copyright Act includes a narrow exception for the reproduction of copyrighted materials for use by persons who are blind or have other disabilities. See 17 U.S.C. § 121. The so-called “Chafee Amendment” authorizes entities, such as the Library of Congress, to reproduce and distribute published works in certain specialized formats, such as Braille, audio, or digital texts, exclusively for the use of the blind and other persons with disabilities. The exception for such reproductions is limited because it is balanced against the rights of copyright owners and obligations under international treaties.

**Fair Housing Act**

(42 U.S.C. §§ 3601 *et seq.*)

(24 CFR Parts 100 *et seq.* - Department of Housing and Urban Development's implementing regulation)

The Fair Housing Act, as amended in 1988, prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. With some limited exceptions, its coverage includes private housing, housing that receives federal financial assistance, and public housing operated by state and local entities. It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. Other covered activities include, financing, zoning practices, new construction design, and advertising.

The Fair Housing Act requires owners of housing facilities to make reasonable accommodations in their policies and operations to afford people with disabilities equal housing opportunities. For example, a landlord with a “no pets” policy may be required to permit an individual who is blind to keep a guide dog in the residence as a reasonable accommodation. The Fair Housing Act also requires landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space, as well as to common use spaces. (The landlord is not required to pay for the changes.) The Fair Housing Act further requires that covered multifamily dwellings with four or more units be designed and built to allow access for persons with disabilities. This includes accessible common use areas, doors that are wide enough for wheelchairs, kitchens, and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units.

HUD enforces the Fair Housing Act administratively, while DOJ enforces it judicially. DOJ can file cases involving a pattern or practice of discrimination. The Fair Housing Act also may be enforced through private lawsuits.

**Genetic Information Nondiscrimination Act**

(42 U.S.C. §§ 200ff *et seq.*)

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits discrimination based on genetic information by health insurers and employers. Congress enacted GINA to “establish a national and uniform basic standard [that] is necessary to fully protect the public from discrimination and allay their concerns

about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.” Title I of GINA prohibits discrimination based on genetic information in health coverage and protects the privacy of genetic information. In particular, it prohibits use of genetic information as a basis for determining eligibility for or setting rates for health insurance. Title II prohibits use of genetic information in the employment context. It prohibits an employer from requesting, requiring, or purchasing genetic information from the employee or family members.

**Help America Vote Act**  
(42 U.S.C. §§ 15301-15545)

The Help America Vote Act improves the administration of elections in the United States by creating a new federal agency to serve as a clearinghouse for voting information; providing states funds to replace outdated voting systems and improve elections, and; creating minimum standards for holding elections. HAVA requires states to ensure that voters with disabilities can vote privately and independently, accessing at least one direct recording electronic voting system or other accessible device at each polling place. HAVA also provides funding to the congressionally-mandated Protection and Advocacy System in each state and territory to “ensure the full participation in the electoral process for individuals with disabilities.” DOJ has enforcement authority for the uniform and nondiscriminatory election technology and administration requirements that apply to states and has enforced HAVA through litigation and by informing jurisdictions of the Department’s views on the Act’s requirements.

**Individuals with Disabilities Education Act, Part B**  
(20 U.S.C. §§ 1400 *et seq.*)  
(34 CFR Part 300 – Department of Education’s implementing regulation)

The Individuals with Disabilities Education Act (IDEA), Part B (formerly P.L. 94-142 or the Education for all Handicapped Children Act of 1975) requires public schools to make available to all eligible children with disabilities a free appropriate public education in the least restrictive environment appropriate to their individual needs.

IDEA requires public school systems to develop appropriate Individualized Education Programs (IEPs) for each child with a disability who requires special education and related services. The specific special education and related services outlined in each IEP reflect the individualized needs of each student. IDEA also

requires that particular procedures be followed in the development of the IEP. Each student's IEP must be developed by a team of knowledgeable persons and must be reviewed at least annually. The team includes the child's teacher; the parents, subject to certain very limited exceptions; the child, if determined appropriate; an agency representative who is qualified to provide or supervise the provision of special education; and other individuals at the parents' or agency's discretion. If parents disagree with the proposed IEP, they can request a due process hearing and a review from the state educational agency if applicable in that state. They also can appeal the state agency's decision to state or federal court.

**National Voter Registration Act of 1993**  
(42 U.S.C. §§ 1973gg *et seq.*)

The National Voter Registration Act of 1993, also known as the "Motor Voter Act," makes it easier for all Americans to exercise their fundamental right to vote. One of the basic purposes of the Motor Voter Act is to increase the historically low registration rates of minorities and persons with disabilities that have resulted from discrimination. The Motor Voter Act requires all offices of state-funded programs that are primarily engaged in providing services to persons with disabilities to provide all program applicants with voter registration forms, assist them in completing the forms, and transmit completed forms to the appropriate state official.

**Rehabilitation Act of 1973, as amended**

(29 U.S.C. §§ 791 *et seq.*)

(29 CFR § 1614.203 – EEOC's implementing regulation)

(41 CFR Part 60-741 – Department of Labor's implementing regulation for Section 503)

(28 CFR §§ 42.501 *et seq.* – DOJ's implementing regulation for federally assisted programs) (More than twenty federal agencies have implementing regulations for federally assisted programs.)

(28 CFR Part 39 – DOJ's implementing regulation for federally conducted programs) (More than ninety-five federal agencies have implementing regulations for federally conducted programs.)

Title V of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. The



standards for determining employment discrimination under the Rehabilitation Act are the same as those used in Title I of the Americans with Disabilities Act.

Section 501 requires affirmative action and nondiscrimination in employment by federal agencies of the Executive Branch. Section 503 requires affirmative action and prohibits employment discrimination by federal government contractors and subcontractors with contracts of more than \$10,000. Section 504 of the Rehabilitation Act states that “no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under” any program or activity that either receives federal financial assistance or is conducted by any Executive agency or the U.S. Postal Service. Each federal agency has its own set of Section 504 regulations that apply to its own programs. Agencies that provide federal financial assistance also have Section 504 regulations covering entities that receive federal aid. Requirements common to these regulations include reasonable accommodation for employees with disabilities; program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations. Each agency is responsible for enforcing its own regulations. Section 504 of the Rehabilitation Act may also be enforced through private lawsuits. It is not necessary to file a complaint with a federal agency or to receive a “right-to-sue” letter before going to court. Section 508 of the Rehabilitation Act establishes requirements for electronic and information technology developed, maintained, procured, or used by the federal government. Section 508 requires federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.

**Telecommunications Act of 1996**

(47 U.S.C. §§ 255, 251(a)(2))

Section 255 and Section 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, require manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities, if readily achievable. These amendments ensure that people with disabilities have access to a broad range of products and services that often are inaccessible to many users with disabilities such as telephones, cell phones, pagers, call-waiting, and operator services.

**Voting Accessibility for the Elderly and Handicapped Act of 1984**  
(42 U.S.C. §§ 1973ee *et seq.*)

The Voting Accessibility for the Elderly and Handicapped Act of 1984 generally requires polling places across the United States to be physically accessible to people with disabilities for federal elections. Where no accessible location is available to serve as a polling place, a political subdivision must provide an alternate means of casting a ballot on the day of the election. This law also requires states to make available registration and voting aids for disabled and elderly voters, including information by telecommunications devices for the deaf (TDDs), which are also known as teletypewriters (TTYs).

**Tab 2. Select Statutes of General Applicability with Disability Rights Provisions**

Some program statutes of general applicability adopt by reference the disability nondiscrimination obligations found in other civil rights statutes, such as Section 504 of the **Rehabilitation Act** or the ADA, while other program statutes simply prohibit discrimination on the basis of disability without referring to the Rehabilitation Act or ADA. Among these are the: **Food Stamp Act of 1977**, as amended, 7 U.S.C. § 2020(c)(2)(c); **Education Amendments of 1972**, 20 U.S.C. § 1684; **Elementary and Secondary Education Act of 1965**, as amended, 20 U.S.C. § 7914(a); **Emergency Insured Student Loan Act of 1969**, as amended, 20 U.S.C. § 1078(c)(2)(F); **Federal Family Education Loan Program**, 20 U.S.C. § 1087-1(e); **General Education Provisions Act**, 20 U.S.C. § 1221(d); **Higher Education Amendments of 1992**, 20 U.S.C. § 1066c; **Energy Conservation in Existing Buildings Act of 1976**, 42 U.S.C. § 6870(a); **Alcohol, Drug Abuse, and Mental Health Reorganization Act (ADAMHA)**, 42 U.S.C. § 290ff-1(e)(2)(c) and 42 U.S.C. § 300x-57(a)(1); **Community Services Block Grant Act**, 42 U.S.C. § 9918(a)(1); **Community Schools Youth Services and Supervision Grant Program Act of 1994**, 42 U.S.C. § 13791(g)(3); **Family Violence Prevention and Services Act of 1984**, 42 U.S.C. § 10406(a)(1); **Head Start Act**, 42 U.S.C. § 9849(c); **Low-Income Energy Assistance Act of 1981**, 42 U.S.C. § 8625; **Maternal and Child Health Services Block Grant Act**, 42 U.S.C. § 708(a)(1); **Preventive Health and Health Services Block Grant**, 42 U.S.C. § 300w-7; **Stewart B. McKinney Homeless Assistance Act**, 42 U.S.C. § 290cc-33(a)(1); **HOME Investment Partnerships Act**, 42 U.S.C. § 12832; **Housing and Community Development Act of 1974**, 42 U.S.C. § 5309; **Violent Crime Control and Law Enforcement Act of 1994 (Violent Crime Control Act)**, 31 U.S.C. § 6711(b)(2); **Victims of Crime Act of 1984**, 42 U.S.C. § 10604(e); **Workforce Investment Act of 1998**, 29 U.S.C. § 2938; **Domestic Volunteer Service Act of 1973 (Volunteers in Service to America) (VISTA)**, 42 U.S.C. § 5057, and the **National and Community Service Act of 1990**, 42 U.S.C. § 12635(a)(1).

**Tab 3 U.S. Enforcement Efforts on Behalf of Persons with Disabilities**

The United States has a vast enforcement system that ensures compliance with its wide-reaching disability rights protections.

DOJ's Civil Rights Division enforces significant portions of Titles I, II, and III of the ADA. Under Title I (employment), DOJ is the only government entity with authority to initiate litigation against state and local government employers. Under Titles II (state and local government) and III (public accommodations, commercial facilities, and certain professional certification and licensing entities), DOJ, along with other federal civil rights agencies, investigates complaints, initiates and intervenes in litigation, and conducts compliance reviews. DOJ also develops regulations for the enforcement of Titles II and III of the ADA. DOJ operates a Technical Assistance Program that provides free information to businesses, state, and local governments, people with disabilities, and the general public through a toll-free ADA Information Line, which receives more than 100,000 calls a year; develops and disseminates ADA publications; and provides ADA training and outreach to broad and targeted audiences that have included mayors, local chambers of commerce, and millions of businesses. DOJ responds to certification requests from state and local governments regarding accessibility requirements for newly constructed and altered buildings and facilities. DOJ also coordinates federal enforcement of Title II of the ADA, Section 504 of the Rehabilitation Act, and other federal statutes that prohibit discrimination on the basis of disability in programs that receive federal financial assistance. DOJ serves on the Access Board, participating in the development of ADA guidelines for accessible transportation and guidelines applicable to federal buildings under the Architectural Barriers Act.

Because the ADA bifurcates responsibilities for enforcement of Title I regarding employment, the EEOC and DOJ coordinate federal enforcement efforts. The EEOC enforces Title I of the ADA against private employers and DOJ enforces Title I against state and local government employers. In addition, since some private and governmental employers are already covered by nondiscrimination and affirmative action requirements under the Rehabilitation Act of 1973, EEOC, DOJ, and the Department of Labor similarly coordinate enforcement under the ADA and the Rehabilitation Act. Through its administrative enforcement process, the EEOC receives, investigates, and resolves charges of employment discrimination filed under the ADA against private sector employers, employment agencies, labor unions, and state and local governments, including charges of systemic discrimination. Where the EEOC does not

informally resolve these charges, it may litigate against private sector employers, employment agencies, and labor unions. The EEOC conducts an active technical assistance program for employers and workers to promote voluntary compliance with the ADA.

Federal enforcement authority for the Fair Housing Act, which prohibits discrimination based on disability in a wide range of housing transactions, lies with both the Department of Housing and Urban Development (HUD) and DOJ. HUD's Office of Fair Housing and Equal Opportunity investigates allegations of violations of the Fair Housing Act upon receipt of a complaint by an aggrieved person or by filing its own complaint. DOJ has enforcement authority for pattern or practice cases. Alternatively, individuals may file private civil suits in federal or state court. 42 U.S.C. § 3613. HUD also investigates complaints filed by aggrieved persons or by the Assistant Secretary for Fair Housing and Equal Opportunity under Section 504. 24 C.F.R. § 8.56. All applicants for and recipients of HUD assistance in the operation of programs or activities must comply with Section 504. See 24 C.F.R. §§ 8.1-8.2. Such recipients of HUD assistance include states or local units of government and any public or private agency, institution, organization or entity, or any person to whom HUD financial assistance is extended for any program or activity, directly or through another recipient. 24 C.F.R. § 8.3. HUD also may investigate complaints filed under Title II of the ADA. 42 U.S.C. § 12133. Although DOJ has primary enforcement responsibility for the ADA, HUD enforces Title II of the ADA regardless of federal funding as it relates to state and local public housing, housing provided for state colleges and universities, HUD-funded housing assistance, and housing referrals.

DOJ enforces the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997a *et seq.*, which authorizes investigations and litigation relating to conditions of confinement in state or locally operated institutions. DOJ has enforced the rights of institutionalized persons with disabilities to receive adequate habilitation and active treatment and to be served in the most integrated setting appropriate to their needs. In addition, DOJ is undertaking new litigation to comply with the Supreme Court's Olmstead decision and ensure that states end inappropriate institutionalization and instead provide services in integrated, appropriate community settings. *See* 527 U.S. 521 (1999).

DOJ enforces several ADA and Rehabilitation Act provisions requiring equal access to voting, as well as the Voting Accessibility for the Elderly and Handicapped Act of 1984, 42 U.S.C. 1973ee *et seq.*, which requires U.S. polling places to be physically accessible to people with disabilities for federal elections –

or where no accessible location is available, to provide an alternate means of casting a ballot on the day of the election – and requires states to make available registration and voting aids for persons with disabilities, including information by TTY for the deaf. The Help America Vote Act of 2002 (HAVA), 42 U.S.C. §§ 15301-15545, affords additional protections to ensure that persons with disabilities have a full and equal opportunity to participate in the political process. The National Voter Registration Act of 1993, 42 U.S.C. § 1973gg *et seq.*, requires all offices of state-funded programs that are primarily engaged in providing services to persons with disabilities to provide all program applicants with voter registration forms, assist them in completing the forms, and transmit completed forms to the appropriate state official.

The Department of Education (ED) is the primary enforcement agency charged with recognizing and protecting the rights of persons with disabilities to be educated, to the extent appropriate to their needs, with non-disabled peers. Federal laws regulate the states' provision of public education through Section 504 of the Rehabilitation Act, Title II of the ADA and the IDEA See 34 C.F.R. Part 104 (Section 504); 28 C.F.R. Part 35 (Title II); 34 C.F.R. Part 300 (IDEA). In particular, IDEA governs how states and public agencies that accept IDEA funding provide early intervention, special education, and related services to children with disabilities.

DOT's Federal Transit Administration (FTA) Office of Civil Rights is responsible for civil rights compliance and monitoring of public transportation, which includes ensuring that providers properly implement Title II of the Americans with Disabilities Act of 1990 (the ADA), the DOT ADA regulations, and Section 504 of the Rehabilitation Act of 1973. Two DOT offices, the Federal Aviation Administration and the Aviation Consumer Protection Section of the Office of General Counsel, enforce the Air Carrier Access Act of 1986 which prohibits discrimination by domestic and foreign air carriers against qualified individuals with physical or mental impairments. It applies to air carriers that provide regularly scheduled services for hire to the public and requires boarding assistance and certain accessibility features in newly built aircraft and new and altered airport facilities. See 49 U.S.C. § 41705.

The Federal Communications Commission (FCC) enforces the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 251(a)(2) and 255, which requires manufacturers of telecommunications equipment and providers of telecommunications services to

ensure that such equipment and services are accessible to and usable by persons with disabilities, if readily achievable.

HHS, the federal agency responsible for protecting the health of all Americans, administers and funds hundreds of programs and supports research in all aspects of disability that touch upon the underlying principles in the convention – to promote the inherent dignity, nondiscrimination, and equality of opportunity of persons with disabilities and their full and effective participation and inclusion in society. These programs support HHS's extensive work enforcing multiple disability rights provisions.

Total annual HHS expenditures specifically for persons with disabilities in the major national programs that most directly affect them, such as Medicaid, Medicare, the Social Services Block Grant, Substance Abuse Block Grant, and Older Americans Act, currently total more than \$200 billion. The largest of these expenditures is the federal share for Medicaid, which is more than \$188.5 billion for the approximately 12 million individuals with disabilities who receive Medicaid services.

A number of other federal agencies are charged with ensuring compliance by entities that receive assistance from the agencies and with investigating complaints alleging discrimination on the basis of disability under Section 504 of the Rehabilitation Act, program specific statutes that address discrimination on the basis of disability, and the ADA. These agencies include the U.S. Department of Agriculture (for programs relating to farming and the raising of livestock, including extension services), the U.S. Department of the Interior (for programs relating to lands and natural resources, including parks and recreation, water, and waste management, environmental protection, energy, historic and cultural preservation, and museums), the U.S. Department of Labor (DOL) (for programs relating to labor and the work force), and the U.S. Department of Homeland Security (DHS) (for programs relating to immigration, airport security, and emergency management). A number of other federal agencies have established offices with the responsibility to ensure nondiscrimination on the basis of disability, including the General Services Administration, the Environmental Protection Agency, and the Departments of State, Veterans Affairs, Education, and Treasury.

In addition, HHS supports the network of Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP), which is the country's largest provider of legally based advocacy services to people with disabilities. P&As

devote considerable resources to ensuring full access to inclusive educational programs, financial entitlements, healthcare, accessible housing, and productive employment opportunities. They also maintain a presence in facilities that care for people with disabilities, where they monitor, investigate, and attempt to remedy adverse conditions. In addition, P&A programs assist individuals seeking full access to elections and those who receive SSDI or SSI benefits and wish to work.



Convention on  
the Rights of Persons  
with Disabilities and  
Optional Protocol



UNITED NATIONS

CONVENTION ON THE RIGHTS OF PERSONS  
WITH DISABILITIES

Preamble

*The States Parties to the present Convention,*

(a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) *Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) *Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) *Recognizing* that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) *Recognizing* the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) *Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(h) *Recognizing also* that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) *Recognizing further* the diversity of persons with disabilities,

(j) *Recognizing* the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) *Concerned* that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) *Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) *Recognizing* the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) *Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(q) *Recognizing* that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(r) *Recognizing* that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis

with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(s) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(t) *Highlighting* the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(u) *Bearing in mind* that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) *Recognizing* the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) *Realizing* that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) *Convinced* that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) *Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

*Have agreed* as follows:

**Article 1  
Purpose**

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

**Article 2  
Definitions**

For the purposes of the present Convention:

“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non spoken languages;

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

**Article 3**  
**General principles**

The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

**Article 4**  
**General obligations**

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the

human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

**Article 5**  
**Equality and non-discrimination**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

**Article 6**  
**Women with disabilities**

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

**Article 7**  
**Children with disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.



2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

**Article 8**  
**Awareness-raising**

1. States Parties undertake to adopt immediate, effective and appropriate measures:
  - (a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
  - (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
  - (c) To promote awareness of the capabilities and contributions of persons with disabilities.
2. Measures to this end include:
  - (a) Initiating and maintaining effective public awareness campaigns designed:
    - (i) To nurture receptiveness to the rights of persons with disabilities;
    - (ii) To promote positive perceptions and greater social awareness towards persons with disabilities;
    - (iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
  - (b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
  - (c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

**Article 9**  
**Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

(a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

(c) To provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

**Article 10**  
**Right to life**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

**Article 11**  
**Situations of risk and humanitarian emergencies**

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

**Article 12**  
**Equal recognition before the law**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The

safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

**Article 13**  
**Access to justice**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

**Article 14**  
**Liberty and security of person**

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

**Article 15**

**Freedom from torture or cruel, inhuman or degrading  
treatment or punishment**

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

**Article 16**

**Freedom from exploitation, violence and abuse**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

**Article 17**

**Protecting the integrity of the person**

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

**Article 18**

**Liberty of movement and nationality**

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

**Article 19**

**Living independently and being included in the community**

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

**Article 20**  
**Personal mobility**

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

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

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means,

modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages.

#### **Article 22**

##### **Respect for privacy**

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

#### **Article 23**

##### **Respect for home and the family**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;



(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

#### **Article 24** **Education**

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

**Article 25**  
**Health**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

**Article 26**  
**Habilitation and rehabilitation**

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

**Article 27**  
**Work and employment**

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy

working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

#### **Article 28**

##### **Adequate standard of living and social protection**

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by persons with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

#### **Article 29**

##### **Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

**Article 30**  
**Participation in cultural life, recreation,**  
**leisure and sport**

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

### **Article 31 Statistics and data collection**

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of



States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

**Article 32**  
**International cooperation**

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

**Article 33**  
**National implementation and monitoring**

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

**Article 34**  
**Committee on the Rights of Persons with Disabilities**

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as “the Committee”), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall

address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six 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 six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 35** **Reports by States Parties**

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress

made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.
3. The Committee shall decide any guidelines applicable to the content of the reports.
4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.
5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

#### **Article 36** **Consideration of reports**

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.
2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.
3. The Secretary-General of the United Nations shall make available the reports to all States Parties.
4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

**Article 37**

**Cooperation between States Parties and the Committee**

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.
2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

**Article 38**

**Relationship of the Committee with other bodies**

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

**Article 39**

**Report of the Committee**

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make

suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

**Article 40**  
**Conference of States Parties**

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.
2. No later than six months after the entry into force of the present Convention, the Conference of States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General biennially or upon the decision of the Conference of States Parties.

**Article 41**  
**Depositary**

The Secretary-General of the United Nations shall be the depositary of the present Convention.

**Article 42**  
**Signature**

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

**Article 43**  
**Consent to be bound**

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

**Article 44**  
**Regional integration organizations**

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention. Such organizations shall declare, in their instruments of formal

confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, of the present Convention, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

#### **Article 45** **Entry into force**

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

#### **Article 46** **Reservations**

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

#### **Article 47** **Amendments**

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. 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 two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

**Article 48**  
**Denunciation**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

**Article 49**  
**Accessible format**

The text of the present Convention shall be made available in accessible formats.

**Article 50**  
**Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

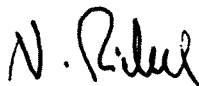


I hereby certify that the foregoing text is a true copy of the Convention on the Rights of Persons with Disabilities, adopted by the General Assembly of the United Nations on 13 December 2006, the original of which is deposited with the Secretary-General of the United Nations.

Je certifie que le texte qui précède est une copie conforme de la Convention relative aux droits des personnes handicapées, adoptée par l'Assemblée générale des Nations Unies le 13 décembre 2006, dont l'original se trouve déposé auprès du Secrétaire général des Nations Unies.

For the Secretary-General,  
The Legal Counsel  
(Under-Secretary-General  
for Legal Affairs)

Pour le Secrétaire général,  
Le Conseiller juridique  
(Secrétaire général adjoint  
aux affaires juridiques)



Nicolas Michel

United Nations  
New York, 8 February 2007

Organisation des Nations Unies  
New York, le 8 février 2007

