

Proposals for draft articles 1-10 of the  
draft International Convention  
submitted by Ireland on behalf of the  
**EUROPEAN UNION**  
May 2004

**Draft Article 1**  
**PURPOSE**

The purpose<sup>1</sup> of this Convention shall be to ensure the full, effective and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.<sup>2</sup>

***EU proposal:*** “*The purpose of the Convention shall be to ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.*”

**Draft Article 2**  
**GENERAL PRINCIPLES**

The fundamental principles of this Convention shall be:

- (a) dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (b) non-discrimination;
- (c) full inclusion of persons with disabilities as equal citizens and participants in all aspects of life,

***EU proposal: Redraft c) as follows:*** “*c) full and effective participation and inclusion in society on an equal basis for persons with disabilities,*”

- (d) respect for difference and acceptance of disability as part of human diversity and humanity;

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<sup>1</sup> Some members of the Working Group suggested that international cooperation should be included as one of the objectives of the Convention. Other members suggested that international cooperation was a means to achieve the objectives of the Convention, and not an objective itself. See also paragraph i) in the preamble.

<sup>2</sup> An alternative formulation that the Ad Hoc Committee may wish to consider is: “The purpose of this Convention shall be to protect and promote the rights of persons with disabilities.”

(e) equality of opportunity.

**EU Proposal: EU proposes the insertion of a new article 2 bis.**

***Insert new paragraph “States Parties shall undertake all appropriate legislative, administrative and other means for the implementation of the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation” ( based on Article 4 of CRC).***

### **Draft Article 3 DEFINITIONS**

***Comment:*** The EU is of the view that it is not necessary for the purposes of the Convention to include a definition of “disability”.

***Further, the EU does not consider that it is necessary to have a separate article on definitions. If definitions are needed, these should be included in the relevant article where the concept is first used.***

“Accessibility”<sup>3</sup>

“Communication” includes oral-aural communication, communication using sign language, tactile communication, Braille, large print, audio, accessible multimedia, human reader and other augmentative or alternative modes of communication, including accessible information and communication technology.<sup>4</sup>

“Disability”<sup>5</sup>

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<sup>3</sup> The need for a definition of “accessibility” and the content of any definition will depend on the outcome of the discussion in the Ad Hoc Committee on draft Article 19 on accessibility.

<sup>4</sup> The Ad Hoc Committee may wish to consider the need for a definition of “communication” (separate from draft Article 13 on Freedom of Expression and Opinion) and, if so, the content of that definition.

<sup>5</sup> Many members of the Working Group emphasised that a convention should protect the rights of all persons with disabilities (i.e. all different types of disabilities) and suggested that the term “disability” should be defined broadly. Some members were of the view that no definition of ‘disability’ should be included in the convention, given the complexity of disability and the risk of limiting the ambit of the convention. Other delegations pointed to existing definitions used in the international context including the World Health Organisation’s International Classification of Functioning, Disability and Health (ICF). There was general agreement that if a definition is included, it should be one that reflects the social model of disability, rather than the medical model.

“Persons with disability”<sup>6</sup>

“Discrimination on the ground of disability”<sup>7</sup>

“Language” includes oral-aural language and sign language.<sup>8</sup>

“Reasonable accommodation”<sup>9</sup>

“Universal Design”, and “Inclusive Design”.<sup>10</sup>

EU Proposal: New Draft Article 3 bis consisting of

- **Former draft Article 7 redrafted as below**
- **Former draft Article 4 redrafted as below**
- **Former draft Article 5 redrafted as below**

## NON-DISCRIMINATION

1. States Parties recognise that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. States Parties shall prohibit any discrimination on the basis of disability, and guarantee to all persons with disabilities equal and effective protection against discrimination. States Parties shall also prohibit any discrimination and guarantee to all persons with disabilities equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, source or type of disability, age, or any other status.

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<sup>6</sup> Some members of the Working Group considered that it was more important to include this definition than the definition of “disability”. Other members were of the view that a definition of this term was not necessary.

<sup>7</sup> This definition is addressed in draft Article 7 on Equality and Non-Discrimination. The Ad Hoc Committee may wish to consider the best placement for this definition.

<sup>8</sup> Some delegations were of the view that the separate draft articles of the Convention specify that language includes sign language, and questioned the need for this definition in the present article. Others expressed the view that the definition was needed.

<sup>9</sup> The definition of this concept was not discussed beyond the definition that is included in draft Article 7, although the Working Group considered necessary to include it.

<sup>10</sup> These definitions were not discussed but the Working Group considered that they would be useful.

***EU Proposal: The EU proposes that references to multiple forms of discrimination should be moved to the Preamble. Therefore, the EU proposes the deletion of the second sentence in Paragraph 1.***

2.

- (a) Discrimination shall mean any distinction, exclusion or restriction which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by persons with disabilities, on an equal footing, of all human rights and fundamental freedoms.
- (b) Discrimination shall include all forms of discrimination, including direct, indirect<sup>11</sup> and systemic, and shall also include discrimination based on an actual or perceived<sup>12</sup> disability.

***EU Proposal: EU proposes replacing paragraph 2 (a) and (b) with the following:***

***“For the purpose of the present Convention, the term “discrimination on the grounds of disability” shall mean any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise on an equal footing by persons with disabilities of all human rights and fundamental freedoms.”***

- a. Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on the grounds of disability;***
  - b. Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put a person having a disability at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary or unless measures are taken to eliminate that disadvantage***
3. Discrimination does not include a provision, criterion or practice that is objectively and demonstrably justified by the State Party by a legitimate aim and the means of achieving that aim are reasonable and necessary.<sup>13</sup>

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<sup>11</sup> Some members of the Working Group considered that the Convention should have a specific reference to both direct and indirect discrimination. Other members considered that the distinction between the two forms of discrimination was not sufficiently clear. They considered that both a reference to “all forms of discrimination” in paragraph 1, and the reference to the “effect” of discrimination in paragraph 2(a), would cover the concept of indirect discrimination.

<sup>12</sup> The Ad Hoc Committee may wish to consider the scope of this term, and whether it should apply to the individual’s perception of themselves, or society’s perception of them.

<sup>13</sup> This paragraph has not appeared in any of core international human rights treaties,

### **EU Proposal: Delete Paragraph 3**

4. In order to secure equality for persons with disabilities, States Parties undertake to take all appropriate steps, including by legislation, to provide that reasonable accommodation,<sup>14</sup> defined as necessary and appropriate modification and adjustments to guarantee to persons with disabilities the enjoyment or exercise on an equal footing of all human rights and fundamental freedoms, unless such measures would impose a disproportionate burden.

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although the concept has been developed in the jurisprudence of the treaty bodies. The Human Rights Committee has included it, for example, in its general comment on Article 26 of the International Covenant on Civil and Political Rights. The Working Group discussed three options for the consideration of the Ad Hoc Committee: 1) The paragraph should not appear in the text at all; 2) the paragraph should be included only as an exception to the specific prohibition on indirect discrimination, and 3) the paragraph should apply to all forms of discrimination. In addition to those options, some members proposed adding the following phrase to the end of the paragraph: "...and consistent with international human rights law;"

<sup>14</sup> The Ad Hoc Committee may wish to consider the following points when considering the term 'reasonable accommodation':

The Working Group considered that there was a need for a concept such as 'reasonable accommodation' in the Convention in order to secure compliance with the principle of non-discrimination.

There was widespread agreement in the Working Group on the need to keep the notion both general and flexible in order to ensure that it could be readily adapted to different sectors (e.g., employment, education, etc.) and in order to respect the diversity of legal traditions.

There was also general agreement that the process of determining what amounted to a 'reasonable accommodation' should be both individualised (in the sense that it should consciously address the individual's specific need for accommodation) and interactive as between the individual and the relevant entity concerned. It was understood that an entity should not be allowed to compel an individual to accept any particular 'reasonable accommodation'. It was also felt, however, that in situations where a range of 'reasonable accommodations' is available – each of which is, by definition, reasonable - that an individual did not have the right to choose the one that he or she preferred.

There was general agreement that the availability of state funding should limit the use of 'disproportionate burden' as a reason by employers and service providers not to provide reasonable accommodation.

Some members of the Working Group supported the proposition that a failure to 'reasonably accommodate' should in itself constitute discrimination, some of whom highlighted General Comment 5 of the Committee on Economic, Social and Cultural Rights as supporting this view.

Other members of the Working Group considered that the Convention should not dictate the manner by which the concept of 'reasonable accommodation' should be achieved or framed under relevant domestic legislation. Specifically, they took the view that it was inappropriate for an international legal instrument designed primarily to engage State responsibility to frame a failure to 'reasonably accommodate' on the part of private entities as a violation of the non-discrimination principle.

***EU Proposal: EU suggests the following rewording of Paragraph 4***

- 4. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, States Parties undertake to take all appropriate steps, including by legislation, to ensure that reasonable accommodation is provided; reasonable accommodation to be defined as necessary and appropriate modification and adjustments, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal footing of all human rights and fundamental freedoms, unless such measures would impose a disproportionate burden.***
5. Special measures<sup>15</sup> aimed at accelerating de facto equality of persons with disabilities shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; those measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.<sup>16</sup>

**Draft Article 4  
GENERAL OBLIGATIONS<sup>17, 18</sup>**

***EU proposal: This Article should be incorporated into new Article 3 bis and delete title and separate article number.***

1. States Parties undertake to ensure the full realisation of all rights and fundamental freedoms for all individuals within their jurisdiction<sup>19</sup> without

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<sup>15</sup> The term “special measures” is used in other international human rights treaties. The Ad Hoc Committee may wish to discuss the appropriateness of using the term in the disability context, and whether alternative terms could be used.

<sup>16</sup> The Ad Hoc Committee may wish to discuss whether special measures in the disability context should be limited in time or more permanent.

<sup>17</sup> Both the Bangkok draft and the Chair’s draft included in this section a paragraph on remedies. Some members of the Working Group noted that while the International Covenant on Civil and Political Rights includes such a provision, the International Covenant on Economic, Social and Cultural rights does not. It may be difficult, therefore, to include such an article in a convention that elaborates the rights contained in both Covenants. The Ad Hoc Committee may wish to consider this issue further.

<sup>18</sup> The issue of progressive realisation of economic, social and cultural rights was raised by several delegations during the Working Group’s discussion. The Working Group noted that, consistent with existing international human rights law, the concept would apply to some of the rights in the Convention (the economic, social and cultural rights), but not to others (the civil and political rights). The Ad Hoc Committee will need to consider how best to incorporate this issue into the Convention, and may wish to note the precedent set in the Convention on the Rights of the Child. The debate was raised in other articles also.

<sup>19</sup> The phrase “within their jurisdiction” will need closer examination by the Ad Hoc Committee. It is taken from Article 2 of the Convention on the Rights of the Child. It may be too inclusive and imply, for example, that rights that are not guaranteed

discrimination of any kind on the basis of disability. To this end, States Parties undertake:

***EU Proposal: EU suggests following rewording: “In order to secure non-discrimination of persons with disabilities, States Parties undertake in particular”:***

- (a) to adopt legislative, administrative and other measures to give effect to this Convention, and to amend, repeal or nullify any laws and regulations and to discourage customs or practices that are inconsistent with this convention;

***EU Proposal: EU suggests following rewording:***

***“to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws or regulations which have the effect or purpose of creating or perpetuating such discrimination wherever it exists; “***

- (b) to embody the rights of equality and non-discrimination on the ground of disability in their national constitutions or other appropriate legislation, if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realisation of these rights;

***EU Proposal: EU suggests replacing “rights” with “principles” on the first line and the last line, and suggests the addition of “of opportunity” after “equality” on the first line.***

- (c) to mainstream disability issues into all economic and social development policies and programmes;

***EU Proposal: “States shall ensure that the needs and concerns of persons with disabilities are incorporated into economic and social development plans and policies, and not treated separately”***

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

***EU Proposal: EU suggests replacing “that is inconsistent with this convention” with “of discrimination against persons with disabilities”, and replacing the word “Convention” with “obligation”.***

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for non-citizens could be extended to non-citizens with disabilities. Article 1(2) of the Convention on the Elimination of all Forms of Racial Discrimination may offer an alternative approach, but that may be too exclusive and imply that non-citizens with disabilities do not enjoy any of the protections of this Convention.

- (e) to take all appropriate measures to eliminate discrimination on the ground of disability by any person, organisation or private enterprise;

**EU Proposal: *EU suggests deleting “private” before “enterprise”.***

- (f) to promote<sup>20</sup> the development, availability and use of universally designed goods, services, equipment and facilities. Such goods, services, equipment and facilities should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities.<sup>21</sup>

**EU Proposal: *Move (f) to Article 19.***

2. In the development and implementation of policies and legislation to implement this Convention, States Parties shall do so in close consultation with, and include the active involvement of, persons with disabilities and their representative organisations.

**EU Proposal: *Move paragraph 2 to Article 25 and reword.***

## **Draft Article 5**

### **PROMOTION OF POSITIVE ATTITUDES TO PERSONS WITH DISABILITIES**

**EU Proposal: *Incorporate the relevant provisions of this Article into new Article 3 bis. Delete title and separate article number.***

1. States Parties undertake to adopt immediate and effective measures to:

**EU Proposal: *EU suggests the deletion of the chapeau.***

- (a) Raise awareness throughout society regarding disability and persons with disabilities;

**EU Proposal: *Add “and foster respect for the rights of persons with disabilities”***

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<sup>20</sup> The Ad Hoc Committee may wish to consider whether a term that places stronger obligations on States Parties should replace “promote”.

<sup>21</sup> The Ad Hoc Committee may wish to consider whether the term “universal design” or its near synonym “inclusive design” should be used here and throughout the Convention. The Ad Hoc Committee may also wish to consider whether this paragraph should remain as part of draft Article 4, be incorporated into draft Article 19, or be a separate article in its own right.



(b) Combat stereotypes and prejudices about persons with disabilities

(c) Promote an image of persons with disabilities as capable and contributing members of society sharing the same rights and freedoms as all others and in a manner consistent with the overall purpose of this Convention.

**EU Proposal: Move 2(c) to here as new (d):**

***(d) encouraging all organs of the media to project an image of persons with disabilities consistent with the purpose of this Convention;***

**EU Proposal: Delete Paragraph 2 (2d is covered by Article 25)**

2. These measures shall include, among others:
- (a) initiating and maintaining an effective public awareness campaign designed to nurture receptiveness to the rights of persons with disabilities;
  - (b) promoting awareness, including in all children from an early age and at all levels of the education system, to foster an attitude of respect for the rights of persons with disabilities;
  - (c) encouraging all organs of the media to project an image of persons with disabilities consistent with the purpose of this Convention;
  - (d) working in partnership with persons with disabilities and their representative organisations in all measures taken to give effect to the obligations contained in this article.

## Draft Article 6

### STATISTICS AND DATA COLLECTION<sup>22</sup>

***EU Proposal:*** *Replace the contents of this Article by the following, and move it to Article 25:*

***“Where necessary, States Parties shall collect appropriate information to enable them to formulate and implement policies to give effect to this Convention. The process of collecting and maintaining this information should:***

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

***(b) comply with internationally accepted norms to protect human rights and fundamental freedoms;***

***(c) where appropriate, be undertaken in collaboration with and following consultation of organisations of persons with disabilities.”***

In order to formulate and implement appropriate policies to protect and promote the rights of persons with disabilities, States Parties should encourage the collection, analysis, and codification of statistics and information on disabilities and on the effective enjoyment of human rights by persons with disabilities. The process of collecting and maintaining this information should:

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<sup>22</sup> There were differing views within the Working Group regarding the inclusion of this draft Article. Some delegations strongly supported the inclusion of an article on statistics and data collection in the text of the convention for several reasons. Data collection is recommended by Rule 13 of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities. Its inclusion could allow States to respond more effectively to the needs of persons with disabilities and to have an accurate assessment of the situation of the persons concerned so as to implement programs for their benefit. General Assembly Resolution A/58/132, in paragraphs 9 and 10, also deals with the issue of data and statistics. In this draft Article, the respect for the right to privacy is fundamental.

Other delegations opposed the inclusion of an article on statistics and data collection in the convention, for several reasons. They expressed a concern for the respect of the right to privacy and the risk of misusing the information, and considered that such an article does not belong in a human rights treaty. They considered that statistics are not useful as a policy tool, and that resources spent in data collection should be used instead in programs for persons with disabilities. There should be a mainstreaming of surveys and not just surveys for persons with disabilities.

Other delegations suggested that the draft article should be re-titled. One suggestion was “Collection and Protection of Statistics and Data”. It was clearly considered that any data collected on disabilities must not infringe on the human rights of persons with disabilities.

- (a) respect the right to privacy, the dignity and the rights of persons with disabilities, and the information collected from persons with disabilities should be on a voluntary basis;
- (b) be kept only in a statistical format without identifying individuals and should be kept secure to prevent unauthorised access or misuse of information;
- (c) ensure that the design and implementation of data collection is done in partnership with persons with disabilities, their representative organisations and all other relevant stakeholders;
- (d) be disaggregated according to the purpose of the collection of information and should include age, sex and type of disability;
- (e) include detailed information on their access to public services, rehabilitation programs, education, housing and employment;
- (f) adhere to established ethics regarding respect for anonymity and confidentiality in the collection of statistics and data.

**Draft Article 7**  
**EQUALITY AND NON-DISCRIMINATION**

***EU Proposal: Delete this Article. Subsumed in new 3 bis***

1.

States Parties recognise that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. States Parties shall prohibit any discrimination on the basis of disability, and guarantee to all persons with disabilities equal and effective protection against discrimination. States Parties shall also prohibit any discrimination and guarantee to all persons with disabilities equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, source or type of disability, age, or any other status.

2.

- (a) Discrimination shall mean any distinction, exclusion or restriction which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by persons with disabilities, on an equal footing, of all human rights and fundamental freedoms.

- (b) Discrimination shall include all forms of discrimination, including direct, indirect<sup>23</sup> and systemic, and shall also include discrimination based on an actual or perceived<sup>24</sup> disability.
3. Discrimination does not include a provision, criterion or practice that is objectively and demonstrably justified by the State Party by a legitimate aim and the means of achieving that aim are reasonable and necessary.<sup>25</sup>
4. In order to secure the right to equality for persons with disabilities, States Parties undertake to take all appropriate steps, including by legislation, to provide reasonable accommodation,<sup>26</sup> defined as necessary and appropriate

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<sup>23</sup> Some members of the Working Group considered that the Convention should have a specific reference to both direct and indirect discrimination. Other members considered that the distinction between the two forms of discrimination was not sufficiently clear. They considered that both a reference to “all forms of discrimination” in paragraph 1, and the reference to the “effect” of discrimination in paragraph 2(a), would cover the concept of indirect discrimination.

<sup>24</sup> The Ad Hoc Committee may wish to consider the scope of this term, and whether it should apply to the individual’s perception of themselves, or society’s perception of them.

<sup>25</sup> This paragraph has not appeared in any of core international human rights treaties, although the concept has been developed in the jurisprudence of the treaty bodies. The Human Rights Committee has included it, for example, in its general comment on Article 26 of the International Covenant on Civil and Political Rights. The Working Group discussed three options for the consideration of the Ad Hoc Committee: 1) The paragraph should not appear in the text at all; 2) the paragraph should be included only as an exception to the specific prohibition on indirect discrimination, and 3) the paragraph should apply to all forms of discrimination. In addition to those options, some members proposed adding the following phrase to the end of the paragraph: “...and consistent with international human rights law;”

<sup>26</sup> The Ad Hoc Committee may wish to consider the following points when considering the term ‘reasonable accommodation’:

The Working Group considered that there was a need for a concept such as ‘reasonable accommodation’ in the Convention in order to secure compliance with the principle of non-discrimination.

There was widespread agreement in the Working Group on the need to keep the notion both general and flexible in order to ensure that it could be readily adapted to different sectors (e.g., employment, education, etc.) and in order to respect the diversity of legal traditions.

There was also general agreement that the process of determining what amounted to a ‘reasonable accommodation’ should be both individualised (in the sense that it should

modification and adjustments to guarantee to persons with disabilities the enjoyment or exercise on an equal footing of all human rights and fundamental freedoms, unless such measures would impose a disproportionate burden.

5. Special measures<sup>27</sup> aimed at accelerating de facto equality of persons with disabilities shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; those measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved;

## **Draft Article 8**

### **RIGHT TO LIFE<sup>28</sup>**

*States Parties reaffirm the inherent right to life of all persons with disabilities, and shall take all necessary measures to ensure its effective enjoyment by them.<sup>29</sup>*

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consciously address the individual's specific need for accommodation) and interactive as between the individual and the relevant entity concerned. It was understood that an entity should not be allowed to compel an individual to accept any particular 'reasonable accommodation'. It was also felt, however, that in situations where a range of 'reasonable accommodations' is available – each of which is, by definition, reasonable - that an individual did not have the right to choose the one that he or she preferred.

There was general agreement that the availability of state funding should limit the use of 'disproportionate burden' as a reason by employers and service providers not to provide reasonable accommodation.

Some members of the Working Group supported the proposition that a failure to 'reasonably accommodate' should in itself constitute discrimination, some of whom highlighted General Comment 5 of the Committee on Economic, Social and Cultural Rights as supporting this view.

Other members of the Working Group considered that the Convention should not dictate the manner by which the concept of 'reasonable accommodation' should be achieved or framed under relevant domestic legislation. Specifically, they took the view that it was inappropriate for an international legal instrument designed primarily to engage State responsibility to frame a failure to 'reasonably accommodate' on the part of private entities as a violation of the non-discrimination principle.

<sup>27</sup> The term "special measures" is used in other international human rights treaties. The Ad Hoc Committee may wish to discuss the appropriateness of using the term in the disability context, and whether alternative terms could be used.

<sup>28</sup> There were different views expressed within the Working Group as to whether the Convention should include an article on the right to life, and if so, its content.

**Draft Article 9**  
**EQUAL RECOGNITION AS A PERSON BEFORE THE LAW**

States Parties shall:

- (a) Recognise persons with disabilities as individuals with rights before the law equal to all other persons;
- (b) Accept that persons with disabilities have full legal capacity on an equal basis as others,<sup>30</sup> including in financial matters;

***EU Proposal: EU suggests replacing (a) and (b) with the following paragraph: “Recognise persons with disabilities as individuals with equal rights before the law and guarantee equality before the law, without discrimination against persons with disabilities;”.***

- (c) ensure that where assistance is necessary to exercise that legal capacity:
  - (i) the assistance is proportional to the degree of assistance required by the person concerned and tailored to their circumstances, and does not interfere with the legal capacity, rights and freedoms of the person;

***EU Proposal: EU suggests ending paragraph (c) (i) after “their circumstances”.***

- (ii) relevant decisions are taken by a competent, independent and impartial authority in accordance with a procedure established by law and with the application of relevant legal safeguards including provisions for review;<sup>31</sup>

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<sup>29</sup> In the context of the discussion on this draft Article, some members of the Working Group suggested that the Convention should contain a separate draft article on the protection of the rights of persons with disabilities in armed conflict, similar to the approach taken in Article 38(4) of the Convention on the Rights of the Child. It was also suggested that such an article could deal more broadly with the protection of the rights of groups at particular risk.

<sup>30</sup> The intent of this paragraph is to acknowledge that children are not generally accepted as having full legal capacity and that neither would, therefore, children with disabilities. In terms of legal capacity, persons with disabilities should be treated without discrimination on the basis of disability.

<sup>31</sup> Paragraph (c) allows for the provision of assistance to a disabled person to exercise their legal capacity, and is based on the assumption of full legal capacity, even if the person needs assistance in exercising that capacity. It is intended that subparagraph (c)(ii) apply only in exceptional circumstances, for which legal safeguards must be provided. The Ad Hoc Committee may wish to consider whether the paragraph is sufficiently clear, and also how best to protect persons with disabilities who cannot exercise their legal capacity. A separate paragraph may be required for this purpose. Some members of the Working Group proposed that where others are exercising legal capacity for a person with disabilities, those decisions

- (d) ensure that persons with disabilities who experience difficulty in asserting their rights, in understanding information, and in communicating, have access to assistance to understand information presented to them and to express their decisions, choices and preferences, as well as to enter into binding agreements or contracts, to sign documents, and act as witnesses;<sup>32</sup>

**EU proposal: Delete 9(d)**

- (e) 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, mortgage and other forms of financial credit;

**EU proposal: Delete 9(e)**

- (f) ensure that persons with disabilities are not arbitrarily deprived of their property.

**Draft Article 10  
LIBERTY AND SECURITY OF THE PERSON**

1. States Parties shall ensure that persons with disabilities:
  - (a) enjoy the right to liberty and security of the person, without discrimination on the basis of disability;
  - (b) are not deprived of their liberty<sup>33</sup> unlawfully<sup>34</sup> or arbitrarily, and that any deprivation of liberty shall be in conformity with the law, and in no case shall be based on disability.<sup>35</sup>

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should not interfere with the rights and freedoms of the person concerned.

<sup>32</sup> The first part of paragraph 4 has more general application than the equal recognition of persons with disabilities as persons before the law and the Ad Hoc Committee may wish to consider its most appropriate placement in the Convention.

<sup>33</sup> The jurisprudence of the Human Rights Committee (see, for example, General Comment 8) notes that States interpret deprivation of liberty too narrowly, so that it applies only to the criminal justice system. The right to liberty and security of persons, however, applies to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness or intellectual disability, vagrancy, drug addiction, educational purposes, or immigration control. The Ad Hoc Committee may wish to consider: 1) whether civil and criminal cases should be dealt with separately; 2) whether the text needs further elaboration on civil cases of deprivation of liberty; and 3) whether, for criminal cases, the clauses in this text dealing with procedural matters need strengthening (see also Article 9 of the International Covenant on Civil and Political Rights).

<sup>34</sup> The Ad Hoc Committee may wish to discuss whether the wording of paragraph 2 does or does not prohibit civil commitment, and whether it should.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty, they are:
- (a) treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs they have because of their disabilities;
  - (b) provided with adequate information in accessible formats as to the reasons for their deprivation of liberty;
  - (c) provided with prompt access to legal and other appropriate assistance to;
    - (i) challenge the lawfulness of the deprivation of their liberty before a court or other competent, independent and impartial authority (in which case, they shall be provided with a prompt decision on any such action);
    - (ii) seek regular review of the deprivation of their liberty;
  - (d) provided with compensation in the case of unlawful deprivation of liberty, or deprivation of liberty based on disability, contrary to this Convention.

***EU Proposal: EU suggests the following wording; “compensated following determination by an appropriate authority that the deprivation of liberty has been unlawful.”***

*EU proposal: new paragraph 3:*

***i. States Parties shall accept the principle that forced institutionalisation of persons with disabilities is illegal, save in exceptional circumstances in accordance with the procedures established by law and with the application of appropriate legal safeguards.***

***ii. The law shall provide that in any case of forced institutionalisation of persons with disabilities, the best interests of the person concerned will be fully taken into account.***

Draft Article 11

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<sup>35</sup> The Ad Hoc Committee may wish to consider adding a provision that obliges states to reform laws and procedures that perpetuate the arrest and detention of persons with disabilities on the basis of disability.



FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT.

1. States Parties shall take all effective legislative, administrative, judicial, educational or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment.
2. In particular, States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned, and shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment.<sup>36</sup>

***EU Proposal: EU suggests the deletion of “and shall protect persons with disabilities from forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment ” from Paragraph 2.***

**Draft Article 12  
FREEDOM FROM VIOLENCE AND ABUSE**

1. States Parties recognise that persons with disabilities are at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse. States Parties shall, therefore, 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 violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.

***EU Proposal: Move the first sentence to the Preamble. Delete the word “therefore” from the second sentence.***

2. Such measures should prohibit, and protect persons with disabilities from, forced interventions or forced institutionalisation aimed at correcting, improving, or alleviating any actual or perceived impairment, and abduction.

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<sup>36</sup> Members of the Working Group had differing opinions on whether forced intervention and forced institutionalisation should be dealt with under “Freedom from Torture”, or under “Freedom from Violence and Abuse”, or under both. Some members also considered that forced medical intervention and forced institutionalisation should be permitted in accordance with appropriate legal procedures and safeguards.

**EU Proposal: Replace by: “States shall take the necessary measures to ensure that medical and related interventions, including corrective surgery, are not undertaken without the free and informed consent of the person concerned” (Moved and reworded from Article 21(k))**

3. States Parties shall also take all appropriate measures to prevent violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, by ensuring, inter alia, support for persons with disabilities and their families, including the provision of information.

**EU Proposal: The bulk of paragraph 3 repeats the content of paragraph 1 of the Article. The EU recommends the deletion of existing paragraph 3, except for the concept of “provision of information”.**

***The EU suggests the following new paragraph 3: “Such measures shall include the provision of appropriate information to persons with disabilities and their families”.***

**EU Proposal: EU suggests the inclusion of new paragraph 3 bis.**

***i. States Parties shall accept the principle that forced intervention of persons with disabilities is illegal, save in exceptional circumstances in accordance with the procedures established by law and with the application of appropriate legal safeguards.***

***ii. The law shall provide that in any case of forced intervention of persons with disabilities, the best interests of the person concerned will be fully taken into account.***

4. States Parties shall ensure that all facilities and programmes, both public and private, where persons with disabilities are placed together, separate from others, are effectively monitored to prevent the occurrence of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.
5. Where persons with disabilities are the victim of any form of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse, States Parties shall take all appropriate measures<sup>37</sup> to promote their physical and psychological recovery and social reintegration.

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<sup>37</sup> Some Working Group members suggested that this paragraph should include an explicit provision of legal remedies.

6. States Parties shall ensure the identification, reporting, referral, investigation, treatment and follow-up of instances of violence and abuse, and the provision, as appropriate, of protection services and, as appropriate, judicial involvement.

**EU proposal: Replace "treatment" with "prosecution".**

**Draft Article 13  
FREEDOM OF EXPRESSION AND OPINION, AND ACCESS TO  
INFORMATION**

States Parties shall take appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion through Braille, sign language,<sup>38</sup> and other modes of communication<sup>39</sup> of their choice, and to seek, receive and impart information, on an equal footing with others, including by:

- (a) providing public information to persons with disabilities, on request, in a timely manner and without additional cost, in accessible formats<sup>40</sup> and technologies of their choice, taking into account different kinds of disability;

**EU Proposal: The EU suggests replacing "public" with "official" and deleting the words "of their choice".**

- (b) accepting the use of alternative modes of communication by persons with disabilities in official interactions;
- (c) educating persons with disabilities to use alternative and augmentative communication modes;
- (d) undertaking and promoting the research, development and production of new technologies, including information and communication technologies, and assistive technologies, suitable for persons with disabilities;

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<sup>38</sup> Some members of the Working Group consider that this draft Article should include a reference to sign language as the natural language of deaf people in their access to information, communication, services, participation and education.

<sup>39</sup> The Ad Hoc Committee may wish to consider the most appropriate terms to use in this draft Article. "Mode of communication", "format" (used in paragraph (a)), and "alternative and augmentative communication modes" (used in paragraph (c)) have related, but not identical meanings.

<sup>40</sup> The Ad Hoc Committee may wish to consider whether it should include mention of specific formats in this paragraph, such as plain language or easy-to-read formats.

***EU Proposal: The EU suggests the following rewording; “promoting and where appropriate undertaking the research, development and production of new technologies, including information and communication technologies, and assistive technologies, suitable for persons with disabilities;”***

- (e) promoting other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;<sup>41</sup>
- (f) encouraging<sup>42</sup> private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities;
- (g) encouraging the mass media to make their services accessible to persons with disabilities.

*Draft Article 14*

***RESPECT FOR PRIVACY, THE HOME AND THE FAMILY***

1. Persons with disabilities, including those living in institutions, shall not be subjected to arbitrary or unlawful interference with their privacy, and shall have the right to the protection of the law against such interference. States Parties to this Convention shall take effective measures to protect the privacy of the home, family, correspondence<sup>43</sup> and medical records of persons with disabilities and their choice to take decisions on personal matters.

***EU Proposal: Replace "privacy" by "private life" in line 2 only. Insert "freedom of" before "choice"..***

2. States Parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage and family relations and in particular shall ensure:
  - (a) that persons with disabilities are not denied the equal opportunity to experience their sexuality, have sexual and other intimate relationships, and experience parenthood;

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<sup>41</sup> The Ad Hoc Committee may wish to consider expanding this sub-paragraph to cover the provision and training of live assistance and intermediaries, such as Braille and caption transcribers, note-takers, sign language and tactile communication interpreters, and readers.

<sup>42</sup> The Ad Hoc Committee may wish to consider whether ‘encourage’ is the best term to use in paragraphs (f) and (g).

<sup>43</sup> The Ad Hoc Committee may wish to consider whether the word “correspondence” should be replaced with the broader term “communications”.

- (b) the right of all men and women with disabilities who are of marriageable age to marry on the basis of free and full consent of the intending spouses, and to found a family;
- (c) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children<sup>44</sup> on an equal basis with other persons<sup>45</sup> and to have access to information, reproductive and family planning education, and the means necessary to enable them to exercise these rights.

***EU Proposal: EU suggests that sub-paragraphs (d), (e) and (f) should be included as separate paragraphs, numbered 3, 4 and 5 respectively.***

(d) the rights of persons with disabilities in regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. For the purpose of guaranteeing these rights, States Parties shall render appropriate assistance to disabled parents in the performance of their child-rearing responsibilities.<sup>46</sup>

***EU Proposal: EU suggests replacing the word “parents” with the word “persons” in the second sentence.***

(e) 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. The child shall not however be separated from parents with disabilities on the basis either directly or indirectly of their disability;<sup>47</sup>

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<sup>44</sup> Members of the Working Group agreed that a prohibition on the sterilisation of persons with disabilities was implicit in the right to decide on the number and spacing of their children, but some members considered that this issue was of such importance that the Ad Hoc Committee should consider making the prohibition explicit.

<sup>45</sup> The understanding of the Working Group is that this draft Article does not deal with the national policies of States Parties on the size of families but simply stipulates that persons with disabilities should not be treated differently from the general population in this respect. The Ad Hoc Committee may therefore wish to consider whether the phrase “on an equal basis with other persons” is necessary in this paragraph.

<sup>46</sup> The Ad Hoc Committee may wish to consider the wording of the second sentence of this sub-paragraph in the light of concerns expressed by some delegations that States Parties might find it difficult to guarantee the resources to “render appropriate assistance”.

<sup>47</sup> The Ad Hoc Committee may wish to consider other formulations for the second sentence of this sub-paragraph, including the deletion of the words “either directly or indirectly” or their replacement by the word “solely”, or the substitution of a positive

***EU Proposal: The EU suggests that the word “solely” be substituted for the words “either directly or indirectly”.***

(f) the promotion of awareness and the provision of information aimed at changing negative perceptions and social prejudices towards sexuality, marriage and parenthood of persons with disabilities.

***Following the EU proposals, (d), (e) and (f) would read as follows:***

***(3) States Parties to this Convention shall ensure that there is no discrimination against persons with disabilities in regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. States Parties shall render appropriate assistance to disabled persons in the performance of their child-rearing responsibilities.<sup>48</sup>***

***(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. The child shall not however be separated from parents with disabilities on the basis solely of their disability;<sup>49</sup>***

***(5) States Parties shall take appropriate measures to change negative perceptions and social prejudices towards sexuality, marriage and parenthood of persons with disabilities***

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formulation for the sentence, such as: “States Parties shall render appropriate assistance to parents with disabilities to enable their children to live with them”.

<sup>48</sup> The Ad Hoc Committee may wish to consider the wording of the second sentence of this sub-paragraph in the light of concerns expressed by some delegations that States Parties might find it difficult to guarantee the resources to “render appropriate assistance”.

<sup>49</sup> The Ad Hoc Committee may wish to consider other formulations for the second sentence of this sub-paragraph, including the deletion of the words “either directly or indirectly” or their replacement by the word “solely”, or the substitution of a positive formulation for the sentence, such as: “States Parties shall render appropriate assistance to parents with disabilities to enable their children to live with them”.

**Draft Article 15**

***LIVING INDEPENDENTLY<sup>50</sup> AND BEING INCLUDED IN THE COMMUNITY***

1. States Parties to this Convention shall take effective and appropriate measures to enable persons with disabilities to live independently and be fully included in the community, including by ensuring that:

***EU Proposal: The EU suggests the following rewording: “States Parties shall take appropriate measures to facilitate persons with disabilities to live independently and be fully included in the community, including measures aimed at ensuring that:”.***

- (a) persons with disabilities have the equal opportunity to choose their place of residence and living arrangements;
- (b) persons with disabilities are not obliged to live in an institution or in a particular living arrangement

***EU Proposal: Insert “Save as provided in Article 10” at end of (b)***

- (c) 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;<sup>51</sup>

***EU Proposal: Delete (c) and replace by new paragraph 2 as below***

- (d) community services for the general population are available on an equal basis to persons with disabilities and are responsive to their needs;

***EU Proposal: The EU suggests replacing “on an equal basis” with “without discrimination”.***

- (e) persons with disabilities have access to information about available support services;

***EU Proposal: EU suggests the inclusion of a new Article 15 (2) as follows:***

***“States Parties shall also take appropriate measures to promote the provision of life assistance in order to enable persons with disabilities to live independently”.***

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<sup>50</sup> Some members of the Working Group expressed the concern that the words “living independently” in the title and chapeau of this draft Article does not reflect the cultural norm in many countries, and that the words might suggest that persons with disabilities should be separated from their families. The Ad Hoc Committee may wish to consider an alternative formulation.

<sup>51</sup> Some members of the Working Group considered that it would be difficult for States Parties to ensure the availability of the services described in sub-paragraphs 1(c) and (d), and in particular the undertaking in paragraph 1(c) to provide personal assistance.