

Draft Article 8
RIGHT TO LIFE³⁴

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.³⁵

³⁴ 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.

³⁵ 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.

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,³⁶ 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;" (2004/2004/WG/1, 2004/2004/WG/1, 2004/2004/WG/1)

(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;³⁷

³⁶ 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.

³⁷ 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 should not interfere with the rights and freedoms of the person concerned.

- (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;³⁸

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. (Not applicable)

³⁸ 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.

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 liberty³⁹ unlawfully⁴⁰ or arbitrarily, and that any deprivation of liberty shall be in conformity with the law, and in no case shall be based on disability.⁴¹
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;

³⁹ 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).

⁴⁰ 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.

⁴¹ 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.

- (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.