

German Disability Council (DBR)

Position Paper on the United Nations' Draft Convention on the Protection and Promotion of the Rights of Persons with Disabilities

Statement on recent state of discussion in May 2005

Generally

The German Disability Council (DBR) as a platform for actions of German organizations of disabled people is accompanying the process of drafting the UN Convention for disabled people since the beginning of discussions. German organizations of disabled people are involved in a ministry working group, have a representative person within the German delegation at the Ad Hoc Committee, have founded a working group within the German Disability Council (DBR) and are actively promoting a visibility of disabled women in the UN-Convention.

DBR always supported the broad approach of the Convention, including civil and political human rights as well as social, economic and cultural rights. The convention is a great opportunity for disabled people, since it contributes to the recognition that disability issues are not only a matter of social welfare, but an issue of human rights. Thus, the Convention reflects the progress and paradigm shift achieved in many societies and disability policies.

However – as we already stated in our position paper in May 2004 - some aspects have not been fully included into the Convention by the time being.

Right on development and combat against poverty

One of the most important issues not being included at the time, is the right to development and the combat against poverty in developing countries. 70 per cent out of 600 million people having disabilities worldwide is living in developing countries, without a possibility of having the most basic participation access. Without a society development and a consequent combat against poverty, participation in society, equal opportunities and fulfillment of human rights do remain unreachable for a vast majority of disabled women and men, girls and boys. Therefore, DBR is renewing its demand to include the need for development cooperation in the Convention, e.g. as a general obligation in draft article 4.

The gender perspective

Another aspect still missing is a clear gender perspective throughout the Convention. A general discussion on that matter shows us that many States refer to older treaties. Furthermore, the argument is that a lean treaty with a neutral language would more easily become widely accepted.

Notably, political developments and achievements in policy of female rights during the last years can not be ignored: The Fourth World Conference on Women took place in 1995, later on the General Assembly adopted the resolution 53/100 in 1998 and in the meanwhile a majority of Member States committed themselves to the strategy of Gender Mainstreaming. Thus, there is an international consensus that would have to have an immediate influence, on binding international legislation, and especially on disability policy.

Disabled people are generally seen as a homogenous group – without sex. This is one of the reasons, why the individuality, the gender and personality of same is ignored to a large extent. The consequence is that disabled women are more isolated, underprivileged and invisible than disabled men and able women as well.

Language is one important instrument to make women present at all. Neutral language used by authorities, in legislation and in policies is one of the reasons why authorities easily overlook specific needs of disabled women and men, girls and boys. In addition, in many States – due to historical or cultural backgrounds – laws are tailored to cover the needs according to a typical male life.

DBR is convinced that women's issues need to be covered throughout the Convention. Many actions are still needed to achieve the fulfillment of human rights for disabled women. To identify and address their needs, the Convention must include the gender perspective. It is the only way to motivate States Parties to consider gender issues while taking action and reporting about the same.

Some countries (e.g. Korea) and organizations are want a specific article on women with disabilities. Such an article should be positioned at the beginning of the Convention and it should contain basic principles and obligations. Or these issues are integrated in article 2 and 4. But beside this, first disabled girls and women have to be mentioned in the preamble, to highlight their importance, and following their issues must be specifically addressed in all articles of the Convention.

Monitoring

Again, DBR underlines the need for an effective monitoring system which is crucial for the efficiency of the convention. This includes the inclusion of disabled men and women into the monitoring system at every level.

Draft article 9 – Equal Recognition as a person before the law

DBR is highly concerned that the draft Convention's text loses significance as far as the Convention also aims on protection and promotion of people with mental and/or psychic disabilities and impairments.

Draft article 9 has been one of the most important proposals of the AHC's Working Group in January 2004. The headline of draft article 9 reveals the importance of this paragraph for the inclusion of people with mental disabilities, psychic impairments and mental diseases into the Convention's sphere: "Equal recognition as a person before the law".

This signals that national legal systems must not divide disabled persons into first and second class groups: on the one hand persons who are included in the convention and who are enjoying and exercising human rights, and on the other hand persons who are allowed to experience these human rights only with help of a third person (legal agent/personal representative).

The Working Group tried to avoid this dispartment of disabled people into a two-part-society. It insisted to codify expressively that all disabled people have a legal capacity on an equal basis with non disabled people.

The Working Group realized that the reality of life is completely different in many parts of the world: In no way people with mental disabilities and diseases are equally acknowledged as persons before the law. Worldwide many laws regulating tutelage have their origin in the 19th century. Mentally retarded people are put down as people without legal capacity, and a participation of those persons at legal relations is only permitted when a third person acts for them, so called legal agents or personal representatives.

Trying to connect this reality with the targets of draft article 9 the Working Group proposed an assistance-model. People having difficulties to exercise their rights individually shall have the right to ask for assistance helping them to use their legal capacity and to make and understand legal declarations.

The AHC's version of draft article 9 from January 2005 dilutes this concept. Now States Parties shall have the possibility to install legal agents ("personal representation") exercising the rights of disabled people in their stead.

Though this personal representation is intended to be a "matter of last resort", it is still undeclared:

- For whom is this paragraph for? For people with mental disabilities or also for physically and sensorial retarded people?
- When and by which principles and requirements is a personal representative appointed as a matter of last resort?

This indetermination gives room for many interpretations. For example, it would be possible to reintroduce the proceeding of incapacitation which has been put out of force in Germany in 1992. This indeed would be a step backwards given the fact that in Germany since 1992 the legal capacity of a person is basically not questioned when care is ordered for that person.

Which worth does a convention have which gives the possibility to exclude a certain group of disabled people from exercising their human rights by ordering personal representation?

Example:

The draft Convention's text provides in articles 17 ff. the right to education, the right to participate in political and public life, the right to health and rehabilitation, the right to work etc. On national level the possibility of personal representation will lead to the question whether these rights can be exercised personally by a disabled person even when he or she has a legal representative.

This example reveals that article 9 is a key paragraph for people with mental and psychic disabilities and impairments. If the basic principle of equal recognition as a person before the law is breached, it is taken into account that people with mental disabilities, but also people with psychic and mental diseases are excluded from enjoying the human rights in this convention.

In the end, the Convention on the Protection of the Rights of Persons with Disabilities would hardly differ from the UN-Declaration of the Rights of Mentally Retarded Persons from 1971 (UN-GA Resolution 2856(XXVI) from 20.12.1971). This UN-Declaration included a “qualified guardian” as well as the possibility of procedures to deny or restrict the rights of mentally retarded persons, and it has been criticized by international NGO’s during the last decades.

DBR is expecting a strong resistance of delegations against the latest version of draft article 9, as far as it reintroduces the concept of legal guardians and does not deal with alternative proposals of the international organizations of disabled people, who want to include the model of supported decision making.

International Disability Caucus (IDC): Draft Caucus Convention

IDC, uniting NGOs of disabled people being accredited to the AHC’s session, has developed a common paper, a Draft Caucus Convention. It is highly commendable that IDC has achieved to bundle the expertise’s of diverse organizations of disabled people.

DBR expects that delegations respect the experience and knowledge of the organizations’ experts in their own matter, and that the IDC’s text is taken into consideration during the next sessions.

DBR is convinced that the Working Group’s draft Convention has to stay the basis for negotiations.

Especially concerning **draft article 17 (Education)** DBR prefers the Working Group’s text. This version emphasizes the need for inclusive education first and foresees alternative forms for learning, when the general education system does not adequately meet the needs of persons with disabilities.

The Draft Caucus Convention includes a special paragraph to the education needs of deaf, deaf blind, blind and partially sighted children and young persons into article 17. DBR considers that such a specific paragraph unilaterally focuses on a certain group of disabled people and that it furthermore might disturb the concept of an inclusive education.

But DBR strongly support the Draft Caucus Convention as very good contribution.

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