

# DRAFT STATEMENT – for consultation

20th Session of the Committee on the Rights of Persons with Disabilities

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21 September 2018 | 10h00am - 11h30am | Geneva, Palais des Nations

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Madam Chair and Members of the Committee, Members of the Secretariat, respected colleagues,

Ladies and Gentlemen,

My name is Valentin Aichele; sitting next to me is Susann Kroworsch. We have the honour of addressing you today as representatives of the National CRPD Monitoring Mechanism in Germany, which is an integral part of the German Institute for Human Rights – Germany's A-status National Human Rights Institution.

First, we would like to thank the Committee members for this opportunity. We are especially grateful as we are aware that consultations of this kind are not the standard practice among the UN committees.

We have been monitoring the implementation of the CRPD in Germany since May of 2009. On that basis, we are therefore in a position to attest that Germany has undertaken an enormous array of measures to drive change in several areas. While we must acknowledge that much work remains to be done and that further obstacles may need to be overcome in order to fully implement the rights of persons with disabilities, the perspective gained over the 10 years since the Convention came into force in the country allows us to say that Germany has reached many milestones along the way towards realising that goal.

What stands out most in our eyes is an improved awareness of inclusion in many areas of life.

Nevertheless, as I already mentioned, there is still considerable scope for improvement. Germany consists of 16 Länder (federal states). The Länder are structured as independent state entities with their own governments, legislature and judiciary, and this complexity gives rise to certain challenges for

effective implementation. Then too, there are the challenges inherent in the multiplicity of stakeholders involved, and sometimes challenges arising from overlapping functions and responsibilities among different federal and Land governments or authorities.

In February of 2018, the National CRC Monitoring Mechanism solicited opinions and experience reports from civil society active in the area of disability policy as part of its analysis of the status of UN CRC implementation.

We welcome this opportunity to point out what we believe to be the issues of greatest priority. We will briefly outline ten issues, in order of their priority in our eyes.

- With regard to Article 16: There are still no binding legal provisions at the federal or Land level to protect persons with disabilities against violence and abuse in institutional accommodation settings; no agency has yet been officially mandated to monitor such facilities as an independent mechanism (in accordance with Art. 16 (3) UN CRPD). We recommend that the Committee members take up a question on protective legislation.
- With regard to Article 24: Although all Länder have taken steps towards creating an inclusive education system, the status of transformation and the levels of funding vary greatly across the 16 Länder. Moreover, it is possible to identify a trend towards increased scepticism towards inclusive education or at least a view of it as optional. We recommend that the Committee, in line with its own jurisprudence, request the State Party to specify precisely what deficits still exist in inclusive schooling, and to describe the severity of those deficits.
- With regard to Article 27: The situation in the labour market for persons with disabilities shows some positive trends, especially with regard to the unemployment rate. But more than half of persons with disabilities of working age are excluded from the general labour market. It remains to be seen what effects the Federal Participation Law, adopted in 2016, and its promising new instruments, such as the “budget for work”, will have in practice. We recommend asking Germany what strategy it is pursuing to create an inclusive labour market and guarantee effective access.

Ladies and Gentlemen, please allow me to hand over to my colleague, Dr Susann Kroworsch, who will be reading out six additional priority points to you.

- With regard to Article 23 and supported parenthood: A 2014-2017 study pointed to serious challenges in this area, which concern us greatly. We recommend that the Committee take up the question of the extent to which Germany has enshrined the prohibition against separating children from parents with disabilities in law and of other measures taken since 2015 to prevent such separation.
- With regard to Article 28: We strongly recommend that the Committee address the issue of the risk of poverty among persons with disabilities: the degree of attention paid by the State Party to the prospects of persons with disabilities has not, as yet, been sufficient by any measure. We would like to state our express wish that the Committee use its options to address this issue of implementation and the success of measures taken thus far, to encourage Germany to take a more in-depth and extensive look at the issue of “at-risk-of-poverty” or “poverty among persons with disabilities”.
- With regard to Article 5: Focusing on the need to take effective action against discrimination, we recommend addressing the question of legislative measures taken by Germany since 2015 to protect

persons with disabilities against discrimination by private parties and establish reasonable accommodation as an immediately enforceable right in all areas of law.

- We further recommend taking up questions relating to Article 19: We believe it is important to ask for information on specific progress made towards realising the right of persons with disabilities to choose where and with whom they live, and about progress made towards increasing the number of accessible housing units.
- With regard to Article 12: The Committee formulated a basic point of criticism regarding the need to eliminate of all forms of substituted decision-making in its Concluding Observation of 2015. As the issues concerning legal capacity have not been resolved, we believe it is crucial that the Committee provide a further impetus towards establishing equal self-determination of persons with disabilities in legal matters and drive this forward with a focus on the elimination of substituted decision-making and the high prevalence of guardianship among persons with disabilities in Germany today.
- With regard to Article 9: The reform of the federal Act on Equal Opportunities for Persons with Disabilities (BGG), adopted in July 2016, has brought about some significant improvements (for example the obligations to remove barriers in existing buildings were extended and the right to communication aids and explanations of official communications in easy to read language was strengthened). However, the federal Act on Equal Opportunities for Persons with Disabilities places obligations essentially only on federal authorities and not on the private providers of services to the general public; no appreciable actions to implement Article 9 UN CRPD with respect to such service providers have been noted since 2015.
- And last but not least, with regard to Article 13: To follow up on its 2015 recommendation in this regard, we recommend that the Committee take up the issue of training for personnel of authorities, particularly labour and social authorities and school, building and transport authorities.

We would like to thank you for your attention.