

To  
Office of the United Nations High Commissioner for Human Rights  
Development and Economic and Social Issues Branch  
United Nations Office  
CH 1211 Geneva 10

Re:  
**Human Rights of Persons with Disabilities - Human Rights Council Resolution 16/15**

The German Institute for Human Rights (the “German Institute”) is thankful for the opportunity to contribute to your planned Study on the Participation of Persons with Disabilities in Political and Public Life. We believe the Study will be of support of the further implementation of the UN Convention for the Rights of Persons with Disabilities (CRPD) in Germany and other countries.

The German Institute was founded as the National Human Rights Institution in Germany. Formally established in 2001, the German Institute has been accredited as an A-status institution according to the Paris Principles by the International Coordinating Committee of National Institutions for the Promotion and the Protection of Human Rights since 2003. In October 2008, the German Institute was designated by the German Government to perform the function of the “independent mechanism” under Article 33 (2) of the CRPD and consequently established the National CRPD Monitoring Body which has been operating in accordance with its full mandate since 2009.

Against this background, and within the limits of its own knowledge, the German National CRPD Monitoring Body responds to your questions as follows:

**Question 1: Restrictions on the right of persons with disabilities to vote and be elected**

There are no restrictions contained in the German Constitution which would restrict right of persons with disabilities to vote and be elected. However, the *Bundeswahlgesetz* (BWahlG) [Federal Election Act] contains two restrictions which mainly affect persons with disabilities. Section 13 disqualifies from voting: 1) persons for whom, by decision of a civil court, a custodian is appointed to manage all their affairs, not just by temporary order (Section 13 no. 2); this also applies if the custodian's sphere of duties does not include postal and telecommunications and sterilisation; 2) persons who are in a psychiatric hospital on account of a placement order in line with the provisions of the Criminal Code (Section 13 no. 3). Section 6a (1) 2 and 3 of the *Europawahlgesetz* (EuWG) [European Elections Act] contain provisions corresponding with those of the Federal Election Act. Likewise, the Federal States have passed similar legislation concerning elections at state level. We strongly believe that none of the above-mentioned restrictions is in compliance with the CRPD.

## **Question 2: Good practices to ensure that persons with disabilities to participate in political and public life:**

The Federal Electoral Regulations contain the following clause:

### Section 57: Voting by Disabled Persons

(1) A voter who is unable to read or who is prevented from marking or folding the ballot paper or putting it in the ballot box due to a physical limitation shall designate another person of whose assistance the voter wishes to avail himself or herself for casting his or her vote and intimate this to the Electoral Board. The helper may also be a member of the Electoral Board designated by the voter.

(2) The assistance rendered must be limited to the fulfilment of the voter's wishes. The helper may go to the polling booth together with the voter if the nature of the assistance to be rendered so demands.

(3) The helper is bound not to disclose any knowledge obtained while rendering an-other person assistance in casting his or her vote.

(4) A blind or visually impaired voter may also use a ballot paper template for marking the ballot paper.

This section may serve as good practice as it provides as legal basis for support for persons with specific impairments. However, it does not apply to mentally disabled persons who are able to read but still need assistance.

## **Question 4: Involvement in monitoring the CRPD**

The CRPD National Monitoring Body has institutionalized a regular meeting with civil society organizations (so-called “Civil society consultations”) that work on the promotion of CRPD in the German context and the exchange of information and experience.

These consultation meetings take place three times a year. They are open to all organizations pursuing the promotion of CRPD in the German context. At all meetings “reasonable accommodation” is provided. With seven meetings having already taken place since May 2009, the participant list now includes about fifty organizations. The participants develop a common understanding of the Convention and those civil society organizations which are closer to persons with disabilities are able to provide the Monitoring Body with advice and first-hand information.

In order to strengthen and qualify the international monitoring procedure under the CRPD, the CRPD National Monitoring Body organized a Kick-Off Workshop on NGO parallel-reporting to the UN CRPD Committee on 30 June 2011. Information for NGOs on how to do parallel reporting was provided, and potential options in forming an NGO coalition were discussed by more than hundred participants of various representative organizations. The foundation of such coalition is now under way.

Information on the CRPD Monitoring Body in English: <http://www.institut-fuer-menschenrechte.de/en/monitoring-body.html>

Information on the Civil Society Consultations (in German only): <http://www.institut-fuer-menschenrechte.de/de/monitoring-stelle/verbaendekonsultationen.html>

Information on the Kick-Off Conference (in German only): <http://www.institut-fuer-menschenrechte.de/de/monitoring-stelle/parallelberichterstattung.html>

**Question 5: Availability of data collected in relation to enjoyment of the political rights of persons with disabilities:**

To our knowledge, there has not yet been collected relevant such data on a systematic basis.

**Question 6: Involvement in international cooperation programs related to promoting political rights**

No.

**Question 7: Additional note**

We expect the Study of the OHCHR to elaborate on the right to take part in elections in the light of the CRPD and elaborate a standard for interpreting Article 29 of the CRPD. In due course, we would wish the OHCHR to help overcome the existing uncertainties with regard to the interpretation of the right to take part in elections according to Article 25 of the International Convention on Civil and Political Rights.

For example, we find that the Human Rights Committee's notion of "mental incapacity", as expressed in paragraph 4 of its General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25), UN doc. CCPR/C/21/Rev.1/Add.7, 12 July 1996, and its related approach to restricting the right cannot be upheld, and needs further development, in the light of the CRPD which seeks full participation and inclusion in political life of all persons with disabilities regardless their respective impairments.

Berlin, August 2011