

German Statement concerning the Draft General Comment on Article 6 CRPD

Germany thanks the Committee on the Rights of Persons with Disabilities for the Draft general comment and would like to offer the following comments:

The Federal Republic of Germany agrees with the position of the Committee on the Rights of Persons with Disabilities which is of the opinion that provisions permitting forced sterilizations violate human rights and must hence be repealed. The Federal Republic of Germany defines "forced sterilizations" as any kind of sterilization that is performed against the will of the affected woman or girl. German law prohibits forced sterilizations regardless of how the affected woman or girl communicates her objection (verbally/non-verbally) and regardless of whether she is able to grasp the pros and cons of the decision and is able to weigh them up - in other words regardless of her capacity to consent.

But Germany does not share the view of the CRPD committee when it argues that sterilizations may always be performed if the affected woman gives her consent to the surgery after having been provided with all the relevant information (para. 45 et seq. GC). This view is based on the incorrect assumption that every person has the ability to be informed and to consent. However, there are persons who for example as a result of an intellectual disability are unable to comprehend an intervention such as a sterilization and cannot reach a weighed decision on such an issue even after having been provided with all relevant information. It is important to protect this group of persons (who can often easily be influenced) from possibly too lightly giving their consent to an intervention which they do not comprehend. German law, or more specifically section 1905 of the German Civil Code, provides for such (additional) protection. According to this legal provision, a court-appointed attorney ("Betreuer"), who has to be appointed especially for the decision on sterilization, is only allowed to consent to the intervention, if the affected woman or girl does not possess the ability to consent herself and will remain in this state permanently, but does not object on the basis of her natural will after having been provided with all relevant information, and if the sterilization is necessary for preventing a pregnancy that would most likely result in a danger of dying or of serious harm to the physical or emotional condition of the pregnant woman that cannot otherwise be prevented.

With regard to the reference made to general comment No 1 on article 12 of the CRPD (para. 43), we would like to recall the German comment on the draft version of the general comment that was then under discussion.

Beyond this, the draft version of the 3rd general comment on article 6 contains important aspects for strengthening the rights of women and girls with disabilities. The Federal Republic

lic of Germany takes them up in its key objectives for development assistance. In particular, Germany welcomes the continuous application of the human-rights based approach, the emphasis of human rights standards and principles and the use of an expanded, transformative gender approach in interpreting article 6 of the CRPD.

As part of its development assistance, Germany champions causes like combating violence against women and girls, sexual and reproductive health and rights, access to justice and courts as well as to education and paid employment, and economic empowerment to strengthen the rights of women and girls with disabilities. In addition, Germany promotes the targeted reduction of multiple forms of discrimination and of structural inequality between the sexes.

Germany would like to offer the following comments on the draft version of the general comment:

- It would be a good thing if the general comment made greater mention of the topics political participation, involvement in decision-making and representation, access to productive resources such as land and inheritance rights. For example, the following addition could be made to para. 25
*“25. [...], additional measures are necessary to ensure the full development of women with disabilities with regard to health, **access to productive resources and inheritance**, and political and cultural participation for example.”*
- In addition, we would like to see a reference to the contribution of boys and men to realising the rights of women and girls with disabilities (e.g. in para. 37). Men and boys should be involved in programmes as “agents of change”, e.g. in an effort to change discriminating norms and values.
*“37. States parties should adopt effective education and awareness raising programs that inform about gender and disability equality and, the rights of women and girls in particular and combat respective stereotypes. **Such programs should involve men and boys as agents of change.** Public and private mass media need to be encouraged to portray women and girls with disabilities in accordance with the spirit and the rights enshrined in the CRPD.”*
- With regard to para. 3, Germany proposes to eliminate the sentence *“The rights to equality and non-discrimination and equality along with the right to liberty are therefore characterized as the most fundamental human rights in modern international law.”* This sentence suggests that there is a “hierarchy” of the various human rights and is evidently not true. Germany suggests to instead use language from general comment No. 20 (E/C.12/GC/20, Non-discrimination in economic, social and cultural rights, para. 2) of the

UN Committee on Economic, Social and Cultural Rights: **“Non-discrimination and equality are fundamental components of international human rights law.”**

- In para. 14 Germany recommends using the term **“twin-track approach”** instead of “two-track approach”.
- For para. 26 Germany proposes stronger wording that focuses on rights. The sentence *“Appropriate measures are those which are geared towards advancing the situation of women with disabilities in relation to their current situation and environment, in terms of human rights, fundamental freedoms and social development.”* should be replaced by the sentence **“Appropriate measures are those which are geared towards respecting, protecting and fulfilling the rights of women with disabilities.”**

- In para. 27 there could be another explicit reference to the human-rights approach and the term “beneficiaries” could be used.

*„27. **In line with a human rights-based approach** ensuring empowerment of women with disabilities means to shift the paradigm from treating women and girls with disabilities as objects of pity **or beneficiaries** to regarding them as right holders who are entitled to full and equal exercise of all human rights and fundamental freedoms.”*

- Para. 38 should not just cover urban planning but more broadly also spatial planning in an effort to also address accessibility for women with disabilities in rural areas.

*„38. To ensure the rights of women and girls with disabilities, it is necessary to mainstream the gender perspective when designing, developing and executing urban **and spatial** planning policies for public and private facilities, based on accessibility, independence, sociability and habitability criteria. [...]“*

- Germany suggests to refer to structural causes of poverty and exclusion in para. 59: *“59. [...] All strategies, programmes and projects need to be gender and disability sensitive and thus gender and disability mainstreaming must be applied. **Moreover, they need to put the focus on the structural causes of poverty and social exclusion.**”*

- Germany recommends referring to the lobbying and advocacy efforts of representative organisations in para. 67:

*„67. [...] Networks and organisations of women and girls with disabilities need to be adequately facilitated **and they need to be strengthened in advocating for their rights.** “*