

Questions of the OHCHR concerning the implementation of Article 19 of the UN Convention on the Rights of Persons with Disabilities

1. Does the constitution or national or local legislation, including civil and criminal law, of your country include provisions to avoid institutionalization and promote deinstitutionalization:

Book IX of the Social Code (SGB IX) is an important piece of legislation for promoting deinstitutionalisation.

Section 9 (3) of SGB IX, for instance, provides that benefits, services and institutions shall give persons as much scope as possible for autonomy in shaping their lives and for encouraging their self-determination. Benefit-related decisions and the provision of benefits and services to facilitate participation shall respect the legitimate wishes of the benefit recipients (SGB IX section 9 (1)). Whilst taking account of the beneficiary's interest and mindful of the value of money imperative, ambulant services shall in principle be given priority over institutional services (SGB IX, section 19 (2); see also SGB XII, section 13 (1), second sentence). This complies with the principle of deinstitutionalisation enshrined in Article 19 of the UNCRPD.

2. Does your country have a plan or program that provides for, inter alia, the following services to support community living for persons with disabilities:

With Book IX of the Social Code (SGB IX) Germany already has an important legal instrument supporting persons with disabilities to live in the community. However, occasional difficulties in implementing the legal provisions still come up in administrative practice.

The Federal Government is preparing a Federal Participation Law to improve the opportunities for persons with disabilities to take part in society as required by the UNCRPD.

- a) Personal assistance; and

The personal budget as defined in SGB IX section 17 is an important instrument for self-determined participation and inclusion in society as laid down in Article 19 of the UNCRPD. Those eligible can claim that benefits to facilitate participation be provided in the form of a personal budget rather than as services or benefits in kind. Personal budgets are generally provided as cash benefits or vouchers or as

complex interinstitutional benefits. The objective was to give people with disabilities independence and autonomy in procuring the assistance they need thus giving them concrete possibilities of realising their wishes and preferences. This means that the persons can decide for themselves what kind of assistance they wish to have and when, and they can obtain personalised and tailored assistance.

b) In home and other community-based services.

The integration support provided by the social assistance entities may also include benefits and services to enhance participation in community life (SGB XII, section 54 (1), first sentence, in conjunction with SGB IX, section 55). The purpose of these benefits and services is to enable persons with severe disabilities to participate in the life of the community or to ensure that they continue to participate, and to remove their dependence on care as far as possible (SGB IX, section 55) Enhancing participation in the life of the community means compensating all the impaired functions of an individual that are necessary for interacting and participating in society on an equal basis with others.

3. If so, please respond to the following questions:

a) Are the services paid for by a State entity (central/federal)?

The social assistance entities are responsible for providing the participation benefits and services according to SGB IX, section 55, insofar as there are no other rehabilitation funds (e.g. accident insurance funds, see SGB VII, section 39) that have a primary obligation to provide benefits and insofar as the person concerned does not have the means and resources to provide for his or her needs. In general, the municipalities are the providers of social assistance. In the wake of the integration support reform, the Federation will take over part of the costs.

b) Are the service-providers chosen directly by persons with disabilities or is the choice made by other entities including companies, social security agencies, the government, medical insurance agencies, guardians or other third party?

Under SGB IX, section 9 the person's wishes and choices have high priority. However, the provisions of SGB XII section 13 (1), second sentence, and SGB IX section 19 (2) gives the social assistance provider duty-bound discretion to determine the organisational form of the services provided, with ambulant services being the standard case.

c) Are persons with disabilities entitled to refuse the support offered and choose an alternative support?

The personal budget (SGB IX, section 17) is an instrument which gives the beneficiary the possibility to opt for forms of support other than those on offer - and hence the possibility to realise his/her wishes and choices (SGB IX, section 9).

d) Can family members be service providers?

e) Are there public and private service providers to choose from?

As laid down in SGB IX, section 19 (4) the rehabilitation funds take into account the whole range of rehabilitation facilities and institutions. The services of voluntary and non-profit providers are equally taken into account whenever they are relevant for the rehabilitation and participation of persons with disabilities.

f) Does the provision of services cover the entire country, in urban and rural areas with equal quality services?

From a legal aspect, persons in urban and rural areas are entitled to the support they need. In practice, people in rural areas often have only limited options for support services since rural areas tend to have fewer providers.

g) Are these services available to all persons with disabilities, regardless of their impairment (please use article 1(2) of the Convention on the Rights of Persons with Disabilities as reference for 'persons with disabilities')?

As a rule, these services are available to all people with disabilities regardless of their impairments.

Under SGB IX, section 1 people with disabilities receive "benefits under this Book of the Social Code and under the legislation on benefits applicable to the providers of rehabilitation to help them lead an autonomous life and to promote their full participation in society and to prevent or counteract disadvantages.". "Persons are disabled if their physical functions, mental capacities or psychological health are highly likely to deviate for more than six months from the condition which is typical for the respective age and whose participation in the life of society is therefore restricted. They are in danger of becoming disabled if such restrictions are to be expected." (section 2 (1)).

h) Please, specify what Ministry is in charge of implementing these policies on provision of services,

4. Does your country have an independent accountability mechanism in place to monitor the implementation of deinstitutionalization policies, to avoid abuse in current segregated settings and to ensure access to justice, if needed?
5. Does your country have disaggregated data on persons with disabilities, including women, children and older persons:

In presenting the *Report on Participation with regard to the circumstances of people with impairments* the Federal Government implemented Article 31 of the UNCRPD. Apart from important substantive findings the report highlights the need for developing and expanding the data base on people with disabilities. The Federal government is preparing a survey on participation to better mirror the circumstances of life of people with disabilities over time.

- a) profiting from public housing programs and support services (compared to the general population) that enable them to live in the community, and
- b) institutionalized in psychiatric, social or other institutions? Please provide the available data.