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Inside this issue

- ◆ Effective involvement of national DPOs in the UN human rights monitoring process – by Stefan Trömel
- ◆ Summary of the UN Guidance for monitoring the Convention on the Rights of persons with Disabilities
- ◆ Implementation of the UN CRPD: the German experience – by Valentin Aichele
- ◆ Changes in the monitoring process of the UN CRPD in the UK
- ◆ Detention monitoring project – Mental Disability Advocacy Centre

Message from the Editorial Team

Dear Readers,

Welcome to this second Newsletter of 2010, and the first ECCL newsletter since Ines Bulic went on maternity leave at the end of April. We are pleased to inform those of you who do not know that Ines and her partner Costelle had a baby son called Lucas on the 16th of May. They are all doing very well.

In order to be able to keep the ECCL work going we have been able to employ, on part-time temporary basis, Liliya Anguelova who is Bulgarian and currently based in London. Lili has a background in disability rights work and is a keen advocate in this field. She has been working closely with John Evans the ENIL Member responsible for ECCL. She is indeed a very welcome member of the team supporting us in our important work.

Many of you already know that ECCL held a highly successful seminar in Brussels at the end of March on the structural funds where the ECCL report was launched. We encourage those of you who haven't read this report yet to do so and at the same time take action in your country making sure the structural funds are not used to build new institutions or renovate old ones. In the closing words of this seminar, delivered by Judith Klein, Director of the Open Society Mental Health Institute, Ms Klein highlighted the importance of advocacy work on the use of Structural Funds at both the national and European level. She stressed the need to demonstrate what the alternatives to institutional care are, and how services to support the right of people with disabilities to live in the community can be developed. ECCL will continue to contribute to this crucial area of work.

We are also continuing our work on the Ad Hoc Expert Group on deinstitutionalisation which comprises of many members of different disability NGOs as well as representatives from the Commission. The group is engaged in discussing issues which go towards the development of community based structures in Europe. The NGOs in this group have submitted a proposal to the Commission on the "social experimentation call" to do some work on deinstitutionalisation and drawing up guidelines and other resources to take forward this work.

The central theme of this issue is the **monitoring of the rights of persons with disabilities**. It includes an article from Stefan Trömel, the executive director of the International Disability Alliance.

He argues that the Convention on the Rights of Persons with Disabilities is a powerful advocacy tool at the disposal of the organisations of persons with disabilities (DPOs). Drawing on the Guidance document on the parallel reporting, developed by Disability Alliance, Stefan Trömel provides specific recommendations to DPOs on both the process and the content of the reporting process of the Convention.

Another helpful **guidance document** regarding the monitoring of the Convention was published by the United Nations in April 2010 ('Monitoring the Convention on the Rights of Persons with Disabilities'). It provides an overview of the Convention and proposes a methodology for monitoring the rights of persons with disabilities. It was developed to support the work of 'human rights monitors', which includes DPOs but also a number of other institutions and individuals. A brief summary of the document is included in the current issue.

One of the first countries to establish an independent national mechanism to monitor the UN Convention was **Germany**. The German experience is presented in the article by Dr Valentin Aichele, Head of the CRPD National Monitoring Mechanism at the German Institute for Human Rights. He provides interesting information about the structure, functions, funding and work of the Monitoring Body paying specific attention to the ways in which its independence is ensured and on its cooperation with the civil society.

The description of the German experience is followed by a brief update about the changes in the monitoring process of the UN CRPD in the **United Kingdom**. Recently there have been some positive developments in the UK which hold the potential to make the monitoring process more transparent and to guarantee greater involvement and control from disabled people.

And finally, we have included some brief information provided by **Mental Disability Advocacy Centre** about their project on monitoring of the rights of people with disabilities detained in institutions.

We would like to wish you all happy, peaceful and relaxing holidays and all the best for the new year despite the difficult times and challenges that we will be going through in the current economic climate. Now there is a real need to work closer together in order to support each other during times of pressures on public services and finances in many countries. The vision that unites us – deinstitutionalisation and building of community-based services – is profoundly important. And we remain optimistic because it is very much on the high-level agenda of the Commission and part of their disability strategy and the Council of Europe.

We look forward to hearing from you,

Editorial Team (Liliya Anguelova and John Evans)

Effective Involvement of National DPOs in the UN Human Rights Monitoring Process

By Stefan Trömel

Introduction

The entry into force of the Convention on the Rights of Persons with Disabilities (CRPD) has put at the disposal of organisations of persons with disabilities (DPOs) not only a powerful advocacy tool at national level, but also the possibility to use the international monitoring mechanism established by the Convention as a mechanism that can exert pressure on the States Parties in order to ensure a full and effective implementation of the Convention. (The term 'States Parties' refers to the countries that have ratified the Convention.)

Established in 1999, the **International Disability Alliance** is a network of global and regional organisations of people with disabilities promoting the effective implementation of the UN Convention on the rights of persons with disabilities.

Similar to other human rights treaties, the CRPD establishes a Committee of independent experts that has the role of monitoring the implementation of the Convention in the States Parties.

While the CRPD Committee has not yet started to analyse States reports, the different documents adopted by the Committee and the practices put in place by other similar treaty monitoring bodies, provide a quite clear picture on how the process will work and how national DPOs can be involved and influence this process.

Much of the information reflected in this article is based on the detailed guidance document that has been adopted by the International Disability Alliance (IDA) and which is available on the following section of its website: <http://www.internationaldisabilityalliance.org/projects-and-events/guidance-document-on-parallel-reporting/>

The reporting process

The different steps of the reporting process of the different UN human rights treaty bodies can be summarised as follows:

- ◆ The State Party submits its report to the Committee. According to the CRPD, the first report is due two years after the entry into force of the CRPD in a specific country, and subsequent reports are due every four years. However, the level of compliance with the established deadlines is not very high. By now, the CRPD Committee should have received almost 25 reports and so far only 3 States (Spain, Tunisia and Peru) have submitted their reports.
- ◆ The Committee undertakes a first analysis of the State report and any other information received from other sources (UN agencies, national human rights institutions, NGOs) and produces the so-called list of issues which is sent to the State. This list of issues can be produced during a regular session of the Committee or by a subgroup of the Committee (pre-sessional working group). The list of issues includes those elements on which the Committee will focus its attention during the dialogue with the State Party.
- ◆ The State produces a written reply to the list of issues which should be sent to the Committee at least two months prior to the session in which the constructive dialogue between the Committee and the State is due to take place.
- ◆ The Committee holds a constructive dialogue with the State (usually during two meetings of three hours each) during which the Committee seeks to get a clear picture on the situation in the country.
- ◆ The Committee adopts on the last day of the session Concluding Observations for each of the States that have been under review in this session.

Concluding Observations are uploaded on the Committee website and sent to the State Party, who is supposed to disseminate them widely.

In terms of follow-up some innovative ways have been developed by some Committees lately and it is envisaged that the CRPD Committee will also take up these new ideas.

Traditionally, the follow-up to Concluding Observations by any Committee was linked to the subsequent report to be submitted by the State, which should especially focus on providing information to the Committee on the steps taken to implement the recommendations the Committee had included in its Concluding Observations.

What an increasing number of Committees are doing is to identify among the recommendations made in the Concluding Observations, a small number of recommendations (3-5) which the

Committee considers of particular relevance and for which the Committee expects the State to provide information in written form within one year. The Committees which use this procedure tend to nominate a Rapporteur on follow-up, who is in charge of monitoring the responses from States. It seems that the level of response by States to this short term follow-up procedure is reasonably high and some Committees have created special sections on their websites where one can find the replies from States and any subsequent communications between the Committee and the State.

NGO participation in the reporting process

The first element to highlight is that the UN human rights treaty bodies give much relevance to the information they receive from NGOs, as they are aware that this information provides a very important complementary view to the information to be found in the State report.

It is important for national DPOs to be aware of the different entry points in the reporting process and national DPOs need to organise themselves in such a way that they can influence the different stages of the process. It is not just about producing a parallel report at a given time, but to be prepared to take actions at different moments in time.

A first element to take into account is that representative NGOs of persons with disabilities are supposed to be consulted by the State during the production of the State report. This involvement will vary from country to country.

This should however not lead to a situation in which DPOs decide not to produce their own report. Even if DPOs agree with the content of the State report, the State report would usually focus on measures undertaken by the State to implement the Convention, while the NGO report should focus on the remaining gaps between the Convention and the situation at national level.

DPOs should also find out whether the body in charge of monitoring the national implementation of the CRPD, as foreseen by article 33(2) of the CRPD, will produce a report to the Committee. If so, DPOs should try to exert influence on this report.

A key element to influence the Committee is the production by DPOs of a parallel/alternative report.

In terms of strategy to produce the report, a number of elements should be taken into account:

- ◆ Preferably, parallel reports should be submitted by large DPO-led coalitions and not by individual organisations. Committee members have limited time to acquaint themselves with the situation in a specific country and they will usually prefer to have one comprehensive report submitted by a large coalition. Coalitions should be composed primarily by DPOs, but could also be open to other organisations that might have specific expertise on women, children, youth, indigenous or human rights in general.
- ◆ The DPO report should be submitted after the State report has been submitted. Committees will not look at NGO reports from States that have not submitted the State report. If a State is long overdue in the submission of its report and if the Committee has asked the State to submit the report and has not received a satisfactory reply, the Committee can decide to review the situation in a given country in the absence of a State report. When this occurs, DPOs should present their report.
- ◆ The main focus of DPO reports is not so much to question the State report, but to provide information which the State report would often not include.
- ◆ It is important to submit the DPO report with sufficient time to influence the Committee. The report can be submitted in any of the 6 UN official languages, but DPOs need to be aware

that the UN will not translate the report into other languages. It is therefore important to translate the report, or a summary of the report, into English (and preferably into Spanish) to ensure that the maximum number of Committee members can access the information.

- ◆ It is also useful to launch the report at national level as a way of drawing the attention of the media and of the general public to the situation of human rights of persons with disabilities in their country.
- ◆ The CRPD Committee has produced reporting guidelines which States should follow when preparing the submission of their report. It is therefore advisable for DPOs to follow the reporting guidelines when preparing their own reports.

Usually the Committee produces a list of issues for discussion with States Parties. It is important that DPOs suggest to the Committee issues/questions to be included in this list because points set out in the list of issues are likely to be the focus of the dialogue between the Committee and the State Party.

Many Committees hold a closed meeting with national NGOs when preparing the list of issues. National DPOs should therefore be prepared to send a small delegation to Geneva to meet with the CRPD Committee.

Moreover, DPOs might want to consider submitting complementary information to the Committee in response to the list of issues.

The constructive dialogue between the Committee and the State is an open meeting and it is important that national DPOs attend this meeting. They will not be able to intervene in the formal meeting, but they can contact the Committee members before, during and after the dialogue between the Committee and the State.

The main objective for DPOs in this final stage of the process is to influence the Concluding Observations to be adopted by the Committee. DPOs should preferably submit to the members of the Committee concrete suggestions for Concluding Observations. If the Committee identifies some of the Concluding Observations as priority issues on which the Committee will request feedback from the State within one year, national DPOs should propose those issues that they think should be priority recommendations.

Once the Concluding Observations have been adopted, it is important that national DPOs contribute to their wide dissemination at national level and make these recommendations part of their national advocacy efforts.

If there will be short-term recommendations on which the Committee wants to have feedback, national DPOs should monitor their State response to this and also produce their own complementary response to this.

Content of parallel reports

The content of the parallel reports will obviously vary from country to country. There are however a number of recommendations to take into account:

- ◆ The DPO reports need to provide credible information. Subjective views that cannot be supported by any form of evidence should not be included in the report, as this would undermine the credibility of the whole report.
- ◆ Whenever possible, statistical evidence should be given. Statistical information will not always exist and DPOs should consider how to complement this by undertaking their own surveys, organise focal groups.

UN human rights treaty bodies give much relevance to the information they receive from NGOs, as they are aware that this information provides a very important complementary view to the information to be found in the State report.

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- ◆ It is important that the DPO report reflects the views of the different disability constituencies, the situation in the different regions, and the differences between urban and rural settings.
 - ◆ Special attention needs to be given throughout the report to the situation of women with disabilities. Also the situation of children with disabilities and other subgroups should be adequately considered.
 - ◆ The production process of the DPO report should be based on a large consultation process, including the involvement of grassroots organisations. The process itself of producing this report should be seen as a capacity building and empowerment process of the disability community.

One important precondition for a good report is an advanced understanding of the obligations deriving from the CRPD. If national DPOs do not have a clear understanding of the provisions of the CRPD and in particular those provisions that are especially innovative and groundbreaking, the DPO reports will fail to address these issues adequately, with the result that these issues will not be raised in the Concluding Observations of the Committee.

The guidance document produced by the International Disability Alliance, seeks to support DPOs by proposing detailed questions on each of the articles. These are intended to help national DPOs identify the gaps between the CRPD and the national situation.

Participation in other UN human rights treaty bodies

As mentioned above, the reporting process of the different UN human rights treaty bodies is largely similar.

The entry into force of the CRPD should also result in greater involvement of national DPOs in the reporting process of all other UN human rights treaty bodies.

Monitoring the rights of persons with disabilities is not only an issue for the CRPD Committee, but also all other treaty bodies should pay an increased attention to the rights of persons with disabilities. This requires an increasing participation of national DPOs in the reporting process to these treaty bodies.

Participation in the reporting process to these treaty bodies can be in the form of disability-specific reports prepared by national DPO coalitions, but can also be done through joining existing national coalitions that work with the different UN human rights treaty bodies: women's rights networks, child rights coalitions and other mainstream human rights NGOs.

Often, joining such a coalition will be more effective in influencing the relevant treaty monitoring body. Moreover, DPOs will be able to learn from other NGOs that have more experience in the reporting process and it might also lead to an increasing attention by these other organisations to the rights of persons/women/children with disabilities.

Concluding remarks

The CRPD is an extremely powerful advocacy tool at the disposal of national DPOs in order to promote the rights of persons with disabilities.

However, to be effective, DPOs need to actively engage in capacity building processes that allow them to acquire not only a profound understanding of the CRPD, but also a good knowledge of the international monitoring process established by the CRPD and how to effectively use this to support their national advocacy efforts.

Summary of the UN Guidance for Monitoring the Convention on the Rights of Persons with Disabilities

In April 2010 United Nations published a comprehensive guidance for human rights monitors¹ for monitoring of the Convention on the Rights of Persons with Disabilities ('the Convention'). The main purpose of the publication is to assist individuals, institutions and organisations 'to engage in monitoring the rights of persons with disabilities in line with the Convention' (p.6). It is based on the understanding that human rights monitoring will support the effective implementation of the Convention by States while at the same time it will raise disabled people's awareness of their rights under this Convention. Here we will present a summary of the main topics discussed in the publication.

The Guidance consists of four chapters:

1. Understanding disability as a human rights issue
2. The Convention on the Rights of Persons with Disabilities
3. Monitoring the rights of persons with disabilities: an overview
4. Monitoring in practice

The first chapter sets the background to the development of the Convention, looking at the changing understanding of disability over the last few decades. Traditionally, disability is considered to be a personal medical condition, which limits the participation of the individual in the life of the society (medical model). This means that some people are not able to go to (mainstream) school or get a job because of their disability. Over the last few decades new understanding of disability has developed, which puts an emphasis on the environmental barriers – social, economic, political and cultural – as hindrances to the full participation of disabled people (social model). From this point of view, it is not the medical condition but the inaccessible physical environment, transportation and information that exclude disabled people from education or work. The Convention endorses the social model and goes further to explicitly recognise **disability as human rights issue**.

'Viewing disability from a human rights perspective involves an evolution in thinking and acting by States and all sectors of society so that persons with disabilities are no longer considered to be recipients of charity or objects of others' decisions but holders of rights.' (p.9)

The second chapter begins by explaining **the need for the Convention** pointing to the unused potential of the core human rights instruments, such as the International Covenants on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, to fully protect the rights of persons with disabilities. Therefore the purpose of the Convention is 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity' (Article 1). Although the Convention does not provide strict definitions of 'persons with disabilities' and 'disability' it gives specific guidance on the meaning of the terms. This guidance focuses on the interaction between persons with impairment and the attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others (see Preamble e) and Article 1). This **recognition of the attitudinal and environmental barriers to participation in society as a constituting factor of disability** is underlined as an important step away from the view of disability as a functional limitation (e.g. physical, intellectual or sensory impairment), which was expressed in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (see paragraph 17 in the Introduction).

The Guidance underlines the importance of the **principles of the Convention**, defined in its article 3,

for monitoring purposes as they 'are the starting point for understanding and interpreting the rights of persons with disabilities, providing benchmarks against which each right is measured.' (p. 17). It provides useful clarifications of the meaning of each principle as well as examples of its violation and/or observance. Thus, the principle of full and effective participation and inclusion in the society is explained as meaning that:

'...persons with disabilities are recognized and valued as equal participants. Their needs are understood as integral to the social and economic order and not identified as "special". To achieve full inclusion, an accessible, barrier free physical and social environment is necessary. For instance, full and effective participation and inclusion mean that political election processes do not exclude persons with disabilities, ensuring, for example, that voting locations are accessible and election procedures and materials are available in multiple formats and easy to understand and use.' (p. 22)

The meaning of the principle of equality is described as:

'...creating societal conditions that respect difference, address disadvantages and ensure that all women, men, girls and boys participate fully on equal terms. Equality is denied when a girl with a disability is taken out of school by her parents. Despite her good grades, her parents decide that it is useless to spend money on her education because of her disability...' (p.20)

The rights of persons with disabilities, as defined in articles 10 – 30 of the Convention, are also discussed with specific examples, which provide valuable guidance for the monitoring process. Here are a couple of examples:

'The right to equal recognition before the law requires, inter alia, eliminating disability as a ground for depriving someone of his or her legal capacity—for example, by eliminating the practice of appointing guardians who make decisions on behalf of persons with disabilities and, instead, providing support to persons with disabilities so that they can make their own decisions.' (p.26)

'The right to education requires, inter alia, examining whether pupils and students with disabilities are not excluded from the general education system on the basis of their disability, that reasonable accommodation of the pupil's requirements is provided in the general education system and that effective individualized support measures are provided to maximize academic and social development consistent with the goal of inclusion.' (p.26-27)

The chapter concludes with a description of the Convention **monitoring mechanisms** on the national (article 33) and international (article 34) levels. At national level there are three mechanisms: 1) focal point/s for matters relating to the implementation; 2) coordination mechanism within government to facilitate related action and 3) independent mechanism/s to promote, protect and monitor the implementation of the Convention. At international level the Convention establishes the Committee on the Rights of Persons with Disabilities. The monitoring of the Convention might involve provision of information on its implementation to the national monitoring mechanisms or to the Committee, identification of potential breaches of the rights of persons with disabilities, identification of reliable information on violation of the Convention and follow up on the on recommendations of the national monitoring mechanisms and the Committee.

Chapter 3, which provides an overview of the monitoring of the Convention, stresses the importance of the **involvement of persons with disabilities** and their representative organisations. It also underlines the need for a cross-disability and cross-society focus in the monitoring, which prevents

the exclusion of one particular group. This means that the monitoring should involve people of different ages, sex, type of disability, socio-economic and ethnic backgrounds.

An important step in the monitoring of the Convention is **to identify and map all actors** involved in the monitoring process. That is, to identify 'duty-bearers' (those ministries that have responsibilities related to persons with disabilities), relevant private entities, such as employers' associations, and organisations of persons with disabilities. Broader networks should also be established with different partners, such as NGOs, research institutes, professional organisations, and other.

The Guidance also recommends a **twin-track approach to monitoring** of the Convention. This means that on the one hand the monitoring should have specific focus on the rights of persons with disabilities. This may involve for example monitoring of the implementation of existing laws and policies to establish their compliance with the Convention or more specific monitoring in one area, such as education. On the other hand, the monitoring of the rights of persons with disabilities should be integrated in the general human rights monitoring work.

The last (fourth) chapter looks at the different steps in the monitoring process starting with the **collection of information** about the enjoyment by persons with disabilities of their rights. One way to collect such information is by reviewing relevant documentation, such as legislation and regulations, policies and programmes, legal cases, media publications and other research publications. The legislation and policies can show to what extent the law protects the rights of persons with disabilities. The programmes illustrate the practical measures that are being implemented and the financial resources allocated to ensure the realisation of the rights of persons with disabilities. The legal cases show how judicial and quasi-judicial bodies, such as courts and human rights institutions interpret and enforce the legislation. Media publications can be helpful in determining societal attitudes towards persons with disabilities. However, the monitoring should not be limited to the collection of document-based information. It is crucial to complement this type of information with interviews with persons with disabilities, their organisations and other stakeholders, which can show the real impact that the policies and legislations have on people's life.

The next step in the monitoring process is to **analyse the collected information** and to draw conclusions about the degree to which the States have fulfilled their obligations set in the Convention. The Guidance suggests that a reference to the obligations to respect, protect and fulfil might be useful in the analysis.

Example: Living independently and being included in the community (article 19)

General monitoring question:

Do persons with disabilities have the right to live in the community, with choices equal to others?

Obligation to respect:

- ◆ Are there legal protections recognizing the right of persons with disabilities to choose their place of residence and where and with whom they want to live on an equal basis with others?
- ◆ Are there legal protections to ensure that persons with disabilities are not forced into particular living arrangements?

Obligation to protect:

- ◆ Are there legal protections to ensure that persons with disabilities are not forced by family members or others into particular living arrangements?
- ◆ Are there legal mechanisms and remedies that persons with disabilities can use to challenge barriers to living independently?
- ◆ Has the State taken measures to enforce and monitor the implementation of the right to live independently in the community?

Example: Living independently and being included in the community (article 19) - cont.

Obligation to fulfil:

- ◆ Are there laws, policies and programmes that ensure access for persons with disabilities to a range of in-home and other community services, including personal assistance, necessary to support living and inclusion in the community?
- ◆ Are there laws, policies and programmes to ensure that community services and facilities for the general public are made available on an equal basis to persons with disabilities and are responsive to their needs?

(Guidance for human rights monitors, p. 57)

The last two steps in the monitoring cycle discussed in the Guidance are **reporting and corrective actions and follow-up**. Here again the publication stresses the importance of the participation of persons with disabilities and their organisations. It encourages human rights monitors to discuss with persons with disabilities and their representative organisations the conclusions of the monitoring report as well as suggested recommendations for action.

The full text of the Guidance in PDF can be downloaded from http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf

Endnotes

1. In the Guidance the category 'human rights monitors' include United Nations human rights officers as well as staff in other intergovernmental, regional or civil society organizations, national human rights institutions, human rights defenders and other individuals or organizations engaged in human rights monitoring.

Implementation of the UN CRPD: the German Experience

By Dr Valentin Aichele¹

1. Background

The German Institute for Human Rights (below: 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 the UN Convention for the Rights of Persons with Disabilities (Article 33 (2) of the CRPD). Consequently, it established the National CRPD Monitoring Body ("German CRPD Monitoring Body"), which has been operating in accordance with its full mandate since 2009.

Consultations with civil society

Before the Government decision was issued, the Federal Ministry for Labour and Social Affairs – the Focal Point – consulted with civil society organisations, and in particular the German Disability Council (Deutscher Behindertenrat), an umbrella association of NGOs of and for disabled persons, on the issue of who should take on the task. The Council recommended that the German Institute

should do so. The fact that this consultation took place prior to the agreement has certainly promoted the recognition of the CRPD monitoring body within civil society.

Amendments of the Institute's statutes

The German Institute found it necessary to amend its Statutes regarding two points. Firstly, the Statutes now reflect the task associated with Article 33 (2) of the CRPD. Section 2 (3) of the Statutes addresses that specific task and therefore now reads:

In addition, the Association carries out the function of the independent monitoring agency under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities.

(§ 24 (1) and (2) of the Statutes of the German Institute for Human Rights)

Secondly, the Board of Trustees, formerly consisting of sixteen members, has been enlarged by two additional seats. One seat is now reserved for a representative of the German Disability Council and one for a representative of the Federal Ministry for Labour and Social Affairs (Bundesministerium für Arbeit und Soziales) (the latter seat has no voting rights).

Both representatives are designated by the organisations they represent.

2. The CRPD Monitoring Body

The mandate

The mandate of the CRPD Monitoring Body is based on the wording of the Convention, in particular on Article 33 (2) of the CRPD. The Body is consequently charged with promoting the Convention, protecting Convention rights and monitoring the implementation of the Convention. It monitors implementation at both the federal and the Länder level.

Funding

The German Institute receives additional public funds each year, amounting to € 433,000.00, for the purposes of performing its CRPD-related monitoring duties. The money is provided on top of the Institute's core funding² and is drawn from the annual budget of the Federal Ministry for Labour and Social Affairs.

Staffing structure

The CRPD Monitoring Body has six staff members: in addition to its head, there are two research and policy officers (one for law, one for social science) and one assistant, as well as support from the public relations desks and the administration, each equivalent to one staff member.

The budget of the CRPD Monitoring Body also provides limited funds for the compilation and distribution of publications, organization of conferences and workshops, and the commission of research (to a minor extent), and to cover travel expenses or vocational training.

Independence

The German Institute for Human Rights is an independent National Human Rights Institution and thus the CRPD Monitoring-Body is also independent.

Institutionally, the Institute is not subject to any directive from the Government. Governmental representatives holding seats on the Board of Trustees do not have voting rights. There is no supervision by federal authorities.

The German Institute is only subject to judicial review and is supervised of by Public Audit Authority. It is politically independent. The German Institute is allowed to administer its budget freely and is

free to recruit staff in conformance with labour law. It maintains its own infrastructure, including its office equipment and facilities, which house a public library on human rights documents and literature. It owns a telecommunication system, hosts its own website independently of state servers, and is officially registered as a publisher and issues its own materials and publications, such as studies, policy papers, essays etc.

Regarding the six staffing positions of the CRPD Monitoring Body, the federal government is still working on establishing a sustainable institutional structure to secure funding of the monitoring function on a long term basis.

3. The institutional environment

The CRPD Monitoring Body works in an institutional environment which is favourable for the implementation of the rights of persons with disabilities. Since these existing structures are important to the work of the CRPD Monitoring Body, I will mention them here briefly.

Focal Point at the federal level

The Ministry for Labour and Social Affairs was designated as the Focal Point within the German Federal Government on the grounds of its having general leading responsibility for the CRPD.

The Focal Point is linked with the division within the ministerial organisation charged with issues of equality for persons with disabilities. No other ministry at the federal level has taken the initiative to officially designate a focal point within its realm of competence.

The outstanding initiative that the federal Focal Point has taken is to take the lead to elaborate a plan of action for the federal level and to establish a frame for other plans, from the Länder, for instance.

Some positive developments have been reported from the Länder level. However, as yet only two Länder governments have announced a positive decision in this context. The German Institute has issued a public recommendation to the federal and Länder governments that they designate focal points.

Federal coordination mechanism

It has also been announced that the post of Federal Commissioner for the Affairs of Disabled Persons (Bundesbehindertenbeauftragte) has been assigned the function of a coordination mechanism.

The new coordination mechanism held its inaugural session in October 2010. Its primary function is to coordinate federal policies with civil society. Over the long term, it is highly probable that this body will create a role in connection with the Action Plan.

Framework

There is not formal decision regarding a framework. The understanding of the CRPD Monitoring body is that would be a central part of the framework but however is not identical with the notion of a framework according to the CRPD.

4. Description of mandate

As I have already mentioned, the mandate of the German CRPD Monitoring Body derives directly from the Convention itself, according to which it is to “promote, protect and monitor implementation of the present Convention” (see Article 33 (2) of the CRPD). I would like to elaborate on how this mandate is fleshed out by describing activities in terms of functions.

These are the following:

- ◆ “promotion” means the following: undertaking research, producing and distributing good quality information, sustaining a resource oriented website, doing advocacy work at the federal and the Länder level, organizing conferences or other public events in accessible formats, working with the media, providing training for target groups (human rights education);
- ◆ the following fall within the scope of “protection” for the German Monitoring Body: intervening in court proceedings (third party interventions) in cases which are of fundamental relevance for the CRPD; dealing with incoming complaints in a professional manner;
- ◆ Activities related to “monitoring”: the review of existing legislation; advising law-making institutions; developing a mapping system on the life situations of person with disabilities in all CRPD-related areas of life; producing and submitting parallel reports to the CRPD Committee and doing follow-up on the Concluding Observations stemming from the state reporting procedure and the complaint procedure; cooperating closely with persons with disability; promoting the evolvement of a monitoring framework.

5. Cooperation with civil society

Our understanding of the concept of monitoring according to the CRPD holds that cooperation is necessary, in particular between the independent mechanism, nongovernmental organisations (DPOs) and the UN CRPD Committee.

- ◆ We have therefore institutionalised a regular meeting with civil society organisations that work on the promotion of CRPD in the German context. We call these meeting “Civil society consultations”.

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 five meetings having already taken place, the participant list now includes about fifty originations.

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, we will organise a kick-off workshop on NGO parallel-reporting to the UN CRPD Committee. We hope to be joined by as many as organisations as possible in order a joint report. We will also provide information for NGOs on how to do parallel reporting.

Endnotes

1. This article is based on a presentation delivered by Dr Aichele at the Work Forum for the Implementation of the UN Convention on the Rights of Persons with disabilities, which was held in Brussels on 18-19 November 2010. It is presented here in an abridged version.
2. The additional core funding of the German Institute for Human Rights comes from the Ministry of Justice, the Foreign Office and the Ministry for Economic Cooperation and Development.

Changes in the Monitoring Process of the UN CRPD in the UK

There has been a significant change in the monitoring process of the UN CRPD in the UK. At first the UN CRPD was monitored by the Office of Disability Issues (ODI) which is part of the Department of Works and Pensions, a Government Department and the Equalities and Human Rights Commission (EHRC) which is the Independent organisation monitoring Human Rights for race, gender, disability, culture and religion, sexual orientation and older people. Now the United Kingdom Disabled Persons Council (UKDPC) which is the National representative Disabled Peoples Organisation (DPO) in the UK is also an integral part of this procedure. Disabled People in the UK are now much happier about this important change, and feel they have more control and involvement in playing a positive role in the implementation of the Convention.

There is a feeling that the process now will be much more transparent with the involvement of a Disabled Peoples Organisation and not just a Government Department and an independent Quango, especially when the disability movement is not entirely happy with the work of EHRC in terms of its disability performance and record since it took over from the Disability Rights Commission (DRC) in 2007. The consensus of feeling amongst the disability movement is that much of the momentum built up by the DRC around disability discrimination and case histories has diminished substantially after EHRC took over this responsibility. Now all disabled people's organisations in the UK can feed into the UK DPC about any concerns or complaints around disability discrimination.

Detention Monitoring – Mental Disability Advocacy Centre

Ten to 15% of the total population of Council of Europe member states are persons with disabilities. Of these, an estimated one million children and adults (most of whom have been labelled with mental health or intellectual disabilities) live in long-term residential institutions – in breach of Article 19, Convention on the Rights of Persons with Disabilities.

Council of Europe members states are at differing stages of developing community alternatives to such institutions: a small minority have closed them, relying entirely on community alternatives; the majority have not and the conditions within those institutions that do remain vary wildly between states and institutions themselves.

Whilst institutions exist, the human rights of those detained within them must be monitored. In light of increasing evidence that the quality and effectiveness of monitoring itself varies significantly between states, MDAC has initiated a three year 'detention monitoring' project, funded by Zennström Philanthropies.

The project's principle objectives are (i) to assess the effectiveness of inspectorates of mental health and social care institutions in a number of Council of Europe member states and (ii) to strengthen their capacity. In so doing, MDAC will engage with key stakeholders at the global, regional, national and local level.

For further information on the project or to become involved, please contact Sarah Green at mdac@mdac.info

Join the European Coalition for Community Living

Our membership is open to all organisations, institutions and individuals committed to the promotion, development or provision of community-based services as an alternative to the institutions. Membership of ECCL is free of charge.

The complete list of ECCL members is available on our website www.community-living.info.

If you would like to join ECCL, please visit our website and complete the ONLINE FORM. Please pass the invitation to join to any organisation, institution or individual who shares ECCL's vision of community living. Thank you!

Call for contributions

If you would like to inform ECCL's network about your events, projects or campaigns connected to community living, please send us a short description of such activities and we will include it in the next issue of our newsletter or post it on the website. Please send all contributions to the ECCL Coordinator at coordinator@community-living.info.

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