

Comments on Draft General Comment 7 of the Convention on the Rights of Persons with Disabilities: Active involvement articles 4.3 and 33.3

Submitting organisations

The Swedish Disability Rights Federation is an umbrella organisation for 41 organisations of persons with disabilities, together representing approximately 400 000 persons. The work of the Federation is based on human rights and its goal is an inclusive society.

Independent Living Institute is a project-based policy and competence development centre that works with promoting self-determination for people with disabilities

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General remarks

The Swedish Disability Rights Federation and Independent Living Institute welcome the initiative from the Committee to draft a General Comment on articles 4.3 and 33.3.

We think that the following parts of the general comment should be emphasized and described in more depth and concrete terms:

- Scope B: describe active involvement, dialogue (not exchange of information), decision-making process and monitoring. Connect participation to examples of involvement also in research, Universal Design, standardisation
- Obligations of state parties: to secure access, transparency, independence, funding and capacity building to ensure participation on an equal basis and avoiding tokenistic approaches to involvement.

A differential approach to levels of participation in different aspects of the scopes of articles 4.3 and 33.3 may be useful, as expressed in Pathways to Participation: Openings, Opportunities and Obligations (CHILDREN & SOCIETY VOLUME 15 2001) pp. 107±117), with eight levels differentiated: manipulation, decoration, tokenism, assigned, consulted, shared decision, initiated and directed by involved group and the highest level initiated and shared decisions.

We particularly endorse the following paragraphs and ideas:

19, 21, 33-34, 75 (b), state obligations to facilitate funding, capacity (i.e. legal and in research and gathering of data) and independence of DPO/OPs, and the idea of sanctions give that they are operationalised in a well reasoned manner in 29 and 75 (j) (k).

Proposed amendments to the general comment 7

Paragraph 11

Rationale and proposal: In conjunction with Paragraph 11 (a), the GC should create a new paragraph in which it further develops what should be understood under "best practices for proper implementation" and some examples are given on such best practices.

Rationale: To recognise tokenistic participation as a specific gap in the remaining implementation.

Proposal: new gap acknowledged in new point "(b) The lack of meaningful participation despite formal invitations and meetings about OPD priorities, as their views are often heard, but not given due consideration and weight in the final decisions nor the motivations therefore."

Rationale: To clarify the language and emphasise that disabled persons may lack support in civil society working for rights of other minorities.

Proposal: "(d) The lack of support and participation of persons with disabilities **in the work of organisations representing** those who experience discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status;"

Paragraphs 18-20

Rationale: In many consultations DPO/ODP:s are asked by policy makers to comment about an issue without information on how the input will be part of a decision-making process.

Proposal: to add guidance on decision-making processes (p 18-20); provide guidance and examples of decision making processes. In the breakdown of the scope other parts of the text in the convention are explained but not decision making processes.

Rationale: to clarify that the duty provide participation for DPO/OPDs include the interests of their members, not limited to organisational interests and includes other processes such as research and design. See also proposals for p 52 and 58.

Proposal p 19: Prior consultations and engagement with DPOs/OPDs at all stages of public decision-making, including before the adoption of legislation, policies and programmes that affect them **and their members' interests**, is a prerequisite. The legal obligation of States parties to ensure consultation of and with DPOs/OPDs is not limited to access to public decision-making spaces, but is automatically extended into the areas of **research, universal design**, partnership, delegated power and citizen control. It is further an obligation which also includes global and/or regional DPOs/ODPs.

Rationale: To clarify the relation between issues relating to persons with disabilities with examples of direct and indirect effect.

Proposal p20: The phrase “concerning issues relating to persons with disabilities”, as referred to in article 4.3, must be broadly interpreted to cover the full range of legislative, administrative and other measures that may directly or indirectly affect persons with disabilities; take into account the protection and promotion of the human rights of persons with disabilities; and refraining from engaging in any act or practice, be it deliberate or otherwise that is inconsistent with the Convention. This is a way for States parties to mainstream disability through inclusive policies, ensuring that persons with disabilities are considered on an equal basis with others. It also ensures that the knowledge of and life experience of persons with disabilities are considered when deciding upon new legislative, administrative and other measures. This includes any decision-making processes, whether disability-specific or mainstream, such as general laws, disability specific laws and the public budget, which might have an impact on their lives. **Examples of issues directly affecting persons with disabilities are de-institutionalisation, social insurance, disability pensions, personal assistance, technical demands on buildings and accessibility in general, and reasonable accommodation policies. Examples of issues indirectly affecting persons with disabilities are general policy making including electoral laws, steering of the administrative authorities governing disability specific rights, constitutional law matters, collective transportation etc and other public policy.**

Paragraph 23

Rationale: Since paragraph 23 aims to clarify “the concept of participation”, it could be beneficial to strike out any indirect references to article 3 here, as there is a specific part on the relation to other articles in the GC.

Proposal: **The concept of participation** is an obligation of immediate application, to be applied not only to decision-making, monitoring and implementation processes **directly related to the implementation of the convention**, but also to be guaranteed the right to due process of law, the

right to participate in political life and the right to be heard. If participation is to be effective and meaningful, it needs to be understood as a process, not as an individual one-time event. **By guaranteeing participation in these situations, DPO/OPDs may better point out issues relating to the implementation of the convention that the process may otherwise have missed.**

Paragraph 29 and 75

Rationale: Failures of states to fulfill the duties under 4.3 och 33.3 vis-à-vis DPO/OPDs are a major democratic problem in the realisation of the convention. Sanctions in such events are an interesting idea, but without guidance on how they may be constructed, the idea carries little capacity for state or DPO/OPD action.

Proposal: Operationalise and give examples of how sanctions against failures to fulfill the duties under 4.3 och 33.3 visavi DPO/OPDs could be constructed, or take out the idea from the GC and return to the issue in a later context.

Paragraph 52

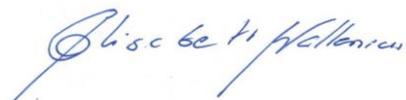
Rationale: Avoid risk of research about persons with disabilities as objects rather than active subjects.

Proposal: Add a sentence about active involvement of pwd in research.

Paragraph 58

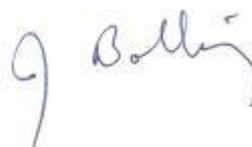
Rationale: important to add active Involvement of persons with disabilities in relation to article 9 in universal design process in addition to standardisation with reference to general comment 2 (paragraph 16, 4th sentence.)

Proposal: Add active involvement of persons with disabilities in universal design process.



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