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**Response from the Government of Denmark with regards to Draft General Comment on article 4.3 and 33.3 – on the participation of persons with disabilities in the implementation and monitoring of the Convention**

Denmark presents its compliments to the Committee on the Rights of Persons with Disabilities and thanks the Committee for the opportunity to comment on the draft General Comment on article 4.3 and 33.3 of the Convention.

Denmark welcomes the Committee’s comprehensive and inclusive work on the elaboration of article 4.3 and 33.3 of the Convention on the Rights of Persons with Disabilities. While not of a binding nature, a General Comment on article 4.3 and 33.3 may assist the States Parties in the interpretation of the substantive content of the obligations under these key provisions. However, there are certain aspects of the current draft which it is imperative that the Committee considers further before it attempts to issue a definitive General Comment on article 4.3 and 33.3.

*General comments*

Denmark welcomes the stance that all levels of government should closely and actively involve persons with disabilities in the development and implementation of legal and regulatory frameworks across all branches that may directly or indirectly affect persons with disabilities. When doing so extensive efforts should be made to include women and children with disabilities as well as persons with intellectual disabilities.

Denmark welcomes the involvement of civil society organizations and herein particularly disabled persons organizations (DPOs)/organizations of persons with disabilities (OPDs).

*Specific comments*

Denmark welcomes the specific mentioning of indigenous peoples in paragraph 3. However, we suggest a uniform language on this important matter in the rest of the general comment (in particular using the term “indigenous peoples” instead of “indigenous communities”), bringing it in line with the standard usage as expressed in inter alia the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

With regard to paragraph 14, the text is quite elaborate. Denmark notes that some of this text does not strictly seem to relate to definitions of terms, but rather appear to have the nature of comments themselves, e.g. paragraphs 14(e) and (f) which – though we do not disagree with the content – in their entirety appear to be comments rather than definitions. It is therefore recommended that the Committee revisits the paragraph in order to focus the text. Shorter, more targeted definitions may also apply more generally, and not – as it is currently stated in the very beginning of the paragraph - only “[i]n this general comment”.

With regard to the scope of article 4.3 as described in paragraph 18, Denmark suggests a moderation of the second sentence of the paragraph by the insertion of the term “when dealing with issues concerning disability” in regards to the obligation of the States Parties. Moreover Denmark suggests deleting the word explicitly in the same sentence. The second sentence will then read as follows “This means that legal and regulatory frameworks and procedures, across all levels and branches of government, should when dealing with issues concerning disability require […].”

In regard to paragraph 21 Denmark finds it reasonable to provide access when needed to all relevant information through sign language, Easy Read text and language etc. Denmark notes that DPOs/OPDs often represent all affected persons with disabilities and in such situations, it should be considered sufficient to disseminate all relevant information through DPOs/OPDs.

Moreover, Denmark recognizes the importance of including DPOs/OPDs in decision making processes, but finds that an obligation for the States Parties to report back to the DPOs/OPDs with explanations on how their views were considered and why, as stated in paragraph 21, falls outside the scope of article 4.3. The same applies to the obligation prescribed in paragraph 34 to duly inform DPOs/OPDs on the outcome of a decision-making process and explicitly explain, in the findings, considerations or reasoning of decisions, how their views were considered and why.

With regard to paragraph 29, we note the sentence “The civil and political rights’ obligations of States parties are immediately applicable”. To the extent this passage is intended to refer to either obligations under other conventions or to the nature of legal effect under national law of a state obligation, it should in our opinion not be in a general comment on the Convention. Given the exact scope and content of this sentence may be subject to some doubt, Denmark recommends that the sentence is removed, thereby leaving the paragraph to focus on participation and consultation.

With regard to paragraph 35, the sentence “As a legal duty, States parties should “give priority” to views of DPOs/OPDs and refrain from adopting measures that would openly contradict the result of close consultations.” It is not clear what the exact consequence of this claimed legal duty entails (note “give priority” in quotation marks). However, in our view, the nature of participation and consultation does not entail an automatic, legal obligation of a State party to follow specific views. We therefore recommend either deleting the sentence as such or reformulating it deleting “As a legal duty” and adding “in matters affecting them” after “DPOs/OPDs”, cf. A/HRC/31/62, para. 34, to which the footnote of the draft also refers.

With regard to “non-conditional” funding mentioned in paragraph 44 and 46, Denmark would welcome a clear definition of this term from the Committee. Denmark suggests that “non-conditional” funding be defined in terms of politically independent funding thus allowing the application of a minimum of objective criteria in relation to all applicants in order to counteract possible discrimination based on disability.

Denmark welcomes the call for mechanisms and effective remedies for challenging decisions made by public bodies in paragraph 48. Denmark recognizes the importance of such complaint procedures, though finds that an obligation to nullify an otherwise correct decision due to the lack and/or insufficient “close and timely consultation and active involvement of DPOs/OPDs”, falls outside the scope of article 4.3.

Denmark also recognizes the importance of full compliance with the Convention in regard to the implementation of laws, policies and regulations as stated in paragraph 49. However Denmark finds that the establishment of penalty-mechanisms, which may be triggered if DPOs/OPDs “feel that public or private entities have failed to comply with adopted policies and programmes, and/or to involve and consult them in the process” is not covered by the wording of article 4.3 and thereby falls outside the scope of the article.

In regard to paragraph 60, Denmark suggests that the general comment acknowledge that article 12 of the Convention permits supported and substitute decision-making arrangements under appropriate circumstances. This allows for the withdrawal of legal capacity or support in exercising legal capacity, and/or compulsory guardianship, in cases where such measures are necessary, as a last resort and subject to safeguards.

In regard to paragraph 67, Denmark emphasizes the importance of being able to differentiate in appropriate cases and in accordance with national legislation. Denmark therefore suggests a moderation of the wording of the last sentence of the paragraph whereby “aim to” is inserted. Thus, the sentence will read as follows “States parties are required to aim to establish an enabling environment […].”

In regard to paragraph 75(k), Denmark suggests a moderation of the wording whereby “meaningful penalties and remedies for non-compliance” is replaced by “the goal of securing”. Thus the sentence will read as follows “Develop and implement, with the involvement of DPOs/OPDs, strong enforcement mechanisms with the goal of securing effective implementation […].”

Denmark suggests including “when needed to ensure DPOs/OPDs or persons with disabilities have access to participate actively in public decision making” in paragraph 75(l). Thus the sentence will read as follows “Ensure the accessibility of all facilities, procedures and information related to public decision-making, consultation and monitoring when needed to ensure DPOs/OPDs or persons with disabilities have access to participate actively in public decision making”.

*Example of best practices*

The Association of the Physically Disabled Youths in Denmark (SUMH) participated in an expert group for the inclusion inspection of a wide range of Danish primary schools from November 2015 to May 2016. Disabled People’s Organisations Denmark (DH) and more agencies were also represented in the reference group and a follow-up group for the inspection.

Several of the Disabled People’s Organisations Denmark (DH) agencies participate as specialists in a project, which aims to improve the Danish digital learning platform for teachers and trainers (EMU) in relation to the dissemination of knowledge on inclusive learning environments.

In 2017, the Danish Parliament passed a bill that authorizes the Minister for Economic Affairs and the Interior to regulate that aids for persons with disabilities must be made available in the voting booth (on Election Day and at advance voting) at national and local elections and national referenda. The purpose of making aids available in the voting booth is to make voters in need of assistance able to cast their vote on their own (without assistance).

In order to decide which aids must be available in the voting booth, the Ministry for Economic Affairs and the Interior has consulted closely with Danish disability organizations at meetings, by telephone messaging and through written communication.

The aids were, for the first time, available at the local and regional election in November 2017. The Ministry for Economic Affairs and the Interior is now in the process of evaluating the aids available at the election. The Danish disability organizations will also be involved in this process.

*Final remarks*

Denmark once again thanks the Committee for the opportunity to present our views and we urge the Committee to take both the issues raised and the examples of best practices into consideration when finalizing the draft General Comment on article 4.3 and 33.3.