



Legal Seat – Helsinki, Finland

WORLD FEDERATION OF THE DEAF

An International Non-Governmental Organisation in official liaison with ECOSOC, UNESCO, ILO, WHO and the Council of Europe. WFD was established in Rome in 1951.

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Submission to the UN Working Group on Arbitrary Detention for consideration in developing Draft Basic Principles and Guidelines on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court

The World Federation of the Deaf (WFD) is pleased to have the opportunity to contribute in developing the basic principles and guidelines. WFD commends taking persons with disabilities into account in several parts of the draft but would like to clarify some issues that concern deaf people. It is important to note that deaf people face communicational barriers in all aspects of life. The provision of professional sign language interpretation in courtrooms is very important for deaf people but communication accessibility needs to be viewed from a wider perspective to cover the whole process starting from a situation that led to a detention until the end of a post-trial detention.

WFD is an international non-governmental organisation representing and promoting approximately 70 million deaf people's human rights worldwide. It was established in Rome, Italy in 1951. WFD has consultative status in the United Nations (UN), including the Economic and Social Council (ECOSOC); the UN Educational, Scientific, and Cultural Organization (UNESCO); the International Labour Organization (ILO); and the World Health Organization (WHO) and it has participatory status with the Council of Europe. WFD is a member of the International Disability Alliance (IDA). Currently WFD has 134 national associations of the deaf from all continents as ordinary members.

The UN Convention on the Rights of Persons with Disabilities (CRPD) includes several aspects that this draft document should take into account. In order to protect and promote the rights of persons with disabilities including the deaf, WFD would like to see more explicit mentions of disability as a ground of prohibited discrimination in paragraphs 22 and 49 of the draft.

Linguistic perspective should be presented more clearly when developing the draft further. WFD stresses the importance of recognising sign language as a primary language choice of the deaf community or deaf people. In paragraph 77(c) of the draft, oral and written information are mentioned while signed information is not noted. WFD would like to see this part of the paragraph to change to “signed, oral and written information” to ensure that information is provided in sign language. Similarly it is vital to note that sign language is a language on its own as directed by Article 2 of the CRPD and should not be seen as an augmentative or alternative means of communication. Aforementioned argument should also be noted in the paragraph 115(i) of the draft to highlight the right of deaf and deaf-blind people to use sign language in court.

Accessibility as per Article 9 of the CRPD needs to be noted in allocating human and financial resources to the administration of justice system (paragraph 19 of the draft). Considering the provision of professional sign language interpretation, the resources must be considered because professional work cannot be expected to be carried on a voluntary basis. WFD is concerned about the possible misunderstanding of “no cost” and “cost-free” interpretation (paragraphs 30 and 116(b)) by national governments that would continue the practise of expecting professional sign language interpreters to volunteer. [WFD Report on Deaf People and Human Rights](#) (page 39) reflects the need for understanding what professional sign language interpretation means. Thus it is not acceptable to ask e.g. family members of a deaf person or a person who knows some sign language to interpret between sign language and spoken language. WFD would like to see terminology “professional sign language interpreter” to be used in the draft, for instance in paragraphs 64, 77(c) and 115(d). Interpretation and translation are different things that should not be mixed with each other (e.g. paragraph 77(c) of the draft).

Even though a country might have legislation ensuring that a deaf person has the right to use sign language interpretation in court proceedings, the implementation is inexistent if the government has not reserved financial resources for the use of professional sign language interpretation or/and if there is no professional sign language interpreter training program.

The provision of professional sign language interpretation is important in all aspects of deprivation of liberty. For instance, the physical appearance of the detainee before the court and the equality of arms (paragraphs 35-37 of the draft) without having professional sign language interpretation available does not ensure that a deaf detainee understands what is happening in the courtroom nor is she or he able to follow the process. It would be good to add the need for recording provided accessibility and reasonable accommodation measures in paragraph 78 of the draft. Through this approach it would be possible to track down whether e.g. professional sign language interpreter was provided during detention, health inspection and other related events.

[The European Court of Human Rights case Jasinskis v. Latvia \(45744/08\)](#) is an example of a situation that led to death of a deaf person due to communication barriers in detention. In order to avoid similar situations happening anywhere in the future and to ensure accessibility as per Article 9 and Article 13 of the CRPD national governments should be obliged to train authorities on various communication methods and different needs of deaf persons. Preferences and wishes of deaf individuals should be taken into account under detention circumstances. “A language that the detained person understands” (paragraphs 24, 73(i), 77(f) and 109(d) of the draft) may mean written language but no one should take literacy skills of deaf people for granted because several deaf people are illiterate or have poor literacy due to limited educational opportunities that they have had in sign language. Even though a deaf person may be literate, she or he might prefer using sign language, which is a wish that needs to be respected. Therefore WFD would like to suggest adding “**a language that the detained person understands or prefers using**” to aforementioned paragraphs.

Public information is rarely accessible in sign language. Information on the rights of a detainee (paragraph 25 of the draft), the procedure of challenging the arbitrariness and lawfulness of detention (paragraph 70 of the draft), decisions regarding detention (paragraph 77(b) of the draft) and information on changes of legal framework (paragraph 77(d) of the draft) should be available in national sign languages. It is equally vital to have the possibility to communicate in sign language when challenging the arbitrariness and lawfulness of detention (paragraph 63 of the draft).

More sensitivity is necessary under some circumstances. When a deaf female is under detention, gender-sensitive measures may include providing female professional sign language interpreter instead of male interpreter (paragraphs 58 and 110 of the draft). WFD would like to propose adding “taking gender-sensitive measures into account in the provision of accessibility and reasonable accommodation” to aforementioned paragraphs.

In case of deaf children it is important to ensure that she or he receives information in sign language and that her or his parents are not used as sign language interpreters (paragraph 109(d) of the draft). Equally important factor is that a deaf child is given the same opportunity to become heard (paragraph 109(e) of the draft) instead of having their parents or other people to speak for them. WFD wishes to see an addition of the provision of accessibility and reasonable accommodation in paragraph 109 of the draft.

Because sign language is a visual language, further measures are necessary to ensure the confidentiality of communication between a deaf detainee and a legal counsel (paragraph 81(e) of the draft). While authorities may observe a meeting between non-deaf detainees and legal counsels through e.g. window, different measures need to be considered for deaf detainees and their legal counsels. Similarly accessibility to legal counsels needs to be ensured for deaf detainees (paragraph 81(a) of the draft). Due to a limited number of deaf lawyers available, the accessibility is usually ensured via the provision of professional sign language interpretation.

WFD hopes that this submission is useful in the development of the basic principles and guidelines, which is an important tool in global implementation of the CRPD.

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