

**Submission by DPI Germany:**

**Response to list of issues and proposed recommendations**

**for the CRC Committee review of Germany, 65th session**

**INTRODUCTION**

This submission provides supplement information from the German and international disability movement to the including responses to the list of issues related to children with disabilities as well as proposed recommendations for consideration by the Committee for the Concluding Observations.

Germany ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 24 February 2009. It is clear that the human rights standards of the CRPD and the CRC intersect and reinforce each other when it comes to the rights of children with disabilities.

The Annex provides more information about the organisations making this submission (p 7).

**REPLIES TO LIST OF ISSUES**

1. **Exclusion due to lack of consolidation of services (LoI Part I, Q11, 14, 15)**

The German social system is characterised by its strictly separated areas and responsibilities. As a result, children with disabilities often do not receive the necessary nor coordinated support they need which negatively impacts on their development. The “**comprehensive early intervention set of measures”** [*Komplexleistung Frühförderung*] that was established in 2001 in the Federal Social Code (SGB Book IX), was targeted at compensating these disadvantages. Moreover, the Federal Government relies on general agreements [*Rahmenvereinbarungen*] at the Länder level between youth and social welfare to clarify the federal regulations. Since this does not work in practice, in 2012 the majority of children with disabilities were still not able to access the necessary services. DPI Germany asserts that the deficiencies with regard to the “Komplexleistung Frühförderung”, which were scientifically proven, must be countered by legal means.[[1]](#footnote-1) However, the Federal Government states in the National Action Plan on the Convention on the Rights of Persons with Disabilities that it simply intends to “assess” and to “discuss” this issue, and dismisses legal solutions.[[2]](#footnote-2)

Children with disabilities and their families face considerable problems in Germany; services for children with disabilities and their families are often not provided in combination with adequate and accessible information about, and due consideration of other services, and therefore often cannot sufficiently cater to individual needs. In many cases, adequate services come at the cost of **segregating disabled children from non-disabled children**. This becomes obvious in early intervention measures, in day-care for children, schools and the transition period between school and working life. For example, within day-care, 80,000 children under the age of three years are looked after, of this number only 1,3% are children with disabilities. Among those aged 3-6 years, there are 21,200 children, of which 2,6 % is a child with a disability.

The most important agencies for children and young adults with and without disabilities are the social welfare agencies [*Sozialhilfe*] and children and youth social welfare agencies [*Kinder- und Jugendhilfe*]. The integration assistance service [*Eingliederungshilfe*] within the social welfare agencies is in charge of children and adolescents with physical and intellectual disabilities, and reacts to the specific needs that result from the given impairments. The youth social welfare agencies are responsible for emotionally disabled children and for educational support. The **separation between these responsibilities**, and the different existing notions of “services”, frequently result in a situation where diagnoses are based on the question of who is responsible. This can be quite stressful for children and adolescents, and further impedes understanding their needs. The separation between disabled and non-disabled children’s lives results in a lack of information, both among parents and among youth social welfare agencies. To that effect, youth social welfare agency services rarely reach out to children with disabilities. In its 2010 comment on Germany’s third and fourth State reports on the implementation of the Convention of the Rights of the Child (CRC) (“Ergänzender Bericht”), the National Coalition[[3]](#footnote-3) also criticized this separation of responsibilities, and called for the so-called “**big solution**” [*große Lösung*], that is, the consolidation of all responsibilities within the same Social Code.[[4]](#footnote-4)

**Proposed recommendation:**

* **Revise, clarify and coordinate the support services for children and adolescents with disabilities and without disabilities into one single services law and one services agency with the allocation of adequate funds and resources. Ensure strengthened and equal access for children with disabilities and their families across all Länder to mainstream support services (including services for early intervention, day-care, etc) and ensure that they are inclusive, accessible, interdisciplinary, coordinated and adapt to and accommodate children with disabilities and do not result in their separation from families nor their segregation from their non-disabled peers.**

1. **Lack of inclusive education for children with disabilities (LOI CRC, Q14)**

The German education system is far from fulfilling inclusive education of children with disabilities; in 2010, only 29% of all students with disabilities attended a regular school.[[5]](#footnote-5) These numbers vary widely across different *Länder*, from 6 % to over 40%,[[6]](#footnote-6) in which the largest numbers are reached within primary level. Integration is extremely uneven within secondary education: 39% are integrated in “Hauptschulen“ but only 5 % into Gymnasiums.[[7]](#footnote-7)

The vast **majority of pupils with disabilities are attending special schools**. 75 % of pupils with disabilities leave school without any diploma.[[8]](#footnote-8) Despite the increasing numbers of integrated students, the number of those in special schools is not decreasing significantly. **Among the EU member states Germany holds the largest percentage of pupils educated in special need schools**.[[9]](#footnote-9)

**The educational sector is lacking engaged cooperation of the Federal government and Federal states (*Länder*). The Government does not understand that it is responsible to implement the right to inclusive education for children with disabilities**.[[10]](#footnote-10) In comparison to other action plans,[[11]](#footnote-11) the German action plan on the implementation of the CRPD neither focuses on the *Länder* nor the communities – whereas both are responsible for education.[[12]](#footnote-12) The German educational system is very selective and leads to injustice at the expense of disadvantaged persons, persons with background of migration and persons with disabilities. The criticism made by the former UN Special Rapporteur on the right to education, Vernor Munoz, in 2006 is still to date and very much relevant: he explained that Germany’s educational system with its several tracks is too selective and leads to discrimination.[[13]](#footnote-13) Inclusion is so far not discussed as a quality characteristic.

**Individual support and the provision of reasonable accommodation[[14]](#footnote-14) in the area of education are not recognised as a right inherent to the right to inclusive education and an obligation upon the educational system. People with disabilities often have to fight for reasonable accommodation even by taking their case to court.[[15]](#footnote-15) And the availability of accessible and adapted curricula is lacking as well as systematic training of all teacher and school personnel on the inclusive approach of education.**

**Proposed recommendations:**

* **Include inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of teacher training and teaching careers of all teachers. Also, ensure the accessibility of educational materials, curricula, and school environments, and for the law to provide enforceable remedies to children with disabilities and their families who have been refused access to inclusive education, or who have been denied the provision of reasonable accommodation with respect to education. Incorporate a definition of inclusive education into the law**
* **Take steps to legally anchor services of school and communicational assistance within education laws and policies and no longer within the Social Code, and coordinate and bring laws, policies and practices on early childhood education and services and schooling for children with disabilities across all Länder in line with the requirements of inclusive education in accordance with the CRC and the CRPD, as well as ensuring the active involvement and close consultation with children with disabilities and their representative organisations in this process.**

1. **Lack of data on children with disabilities (LOI CRC Part III 3.):**

According to **statistical data** from late 2005, 161,555 children with disabilities were living in Germany at that time.[[16]](#footnote-16) However, this figure represents a conservative estimate, since it only includes children who received an identification card for the severely disabled [*Schwerbehindertenausweis*]. There is no recent data on the number of children with disabilities from the years 2009, 2010, 2011. The 13th Federal Government children and youth report states: “Since there is no legal obligation to report disabilities, the actual number of children and young adults with disabilities is difficult to estimate.”[[17]](#footnote-17) The authors of the report think that this lack of data results from “insufficient information and counseling, parental fear and difficulties regarding the relevant forms and applications, ignorance or a lack of awareness about the disability”. For the same reasons, children with disabilities and migrant background often do not receive the same support as children with disabilities who do not have a migrant background.[[18]](#footnote-18)

**Proposed recommendation:**

* **In order to comprehensively inform and ameliorate the formulation of laws and policies, establish a unified database and systematically collect information on all areas which are also disaggregated by gender, age, type of disability, ethnicity, urban/rural population etc (e.g. education, health, violence, employment, institutionalisation, housing, consultation etc.) and actively involve and closely consult with persons with disabilities and their representative organisations in these actions.**

1. **Lack of data on disabled children who became victims of ill-treatment and (sexual) abuse (LOI CRC Part III 4.)**

Likewise, adolescents with disabilities are at a disadvantage when it comes to how they experience and explore their **sexual identity**. Compared to their non-disabled peers, they have less access to sexual education and are less likely to be informed about sexual relations. At the same time, surveys show that girls and women with disabilities are at a significantly higher risk to become **victims of sexual violence**.[[19]](#footnote-19)

They are subjected to violence in the home, in schools, institutions and the community by family, caregivers, professionals and peers. Comprehensive data needs to be collected in order to formulate the policies and ensure the practices to prevent violence against children with disabilities and to ensure their protection in the law, their access to victim support and assistance, complaints mechanisms and access to justice and redress.

**Proposed recommendations:**

* **Amend both mainstream legislation and disability-specific legislation to address the heightened risk for children with disabilities of becoming victims of violence, abuse, and exploitation in the home, community and institutions, and to adopt measures to ensure the accessibility of services and information to victims with disabilities, including training of police and other interlocutors. Ensure the comprehensive collection of data and awareness raising measures, in particular the education and empowerment of girls with disabilities, in order to reinforce prevention.**

1. **Rights of the child (LOI Part I 4.)**

The Federal Government **refuses to include child rights in the German Constitution**.[[20]](#footnote-20) In their suggestion for a new Article 2a in the Constitution, the child rights alliance [*Aktionsbündnis Kinderrechte*] gave a precise outline of the right to support, protection and participation.[[21]](#footnote-21) The Federal Government continues to not comply with the recommendations given by the UN Committee for the Rights of the Child. In its “Concluding Observations”, the Committee already prompted the Federal Government twice, in 1994 and 2004, to include child rights in the Constitution.[[22]](#footnote-22)

In order to strengthen children and adolescents with disabilities and to improve their **participation**, the Federal Government states that it plans to launch the initiative, “Strengthening youth” [*Jugend stärken*][[23]](#footnote-23) and to develop a concept for a children and youth parliament[[24]](#footnote-24) starting in 2013. However, the first program is an unspecific approach and that does not explicitly refer to adolescents with disabilities.[[25]](#footnote-25)

**Proposed recommendations:**

* **Take steps to enshrine children’s rights into the Constitution. With respect to decisions concerning the child him/herself, ensure in the law, policy and practice that children with disabilities have the opportunity to express their views and for their views to be given due weight in accordance with their age and maturity, on an equal basis with other children, and that they are provided with age- and disability-appropriate support to exercise these rights.**

1. **Leisure time**

Empirical experience shows that children and adolescents with disabilities face **severe challenges when they try to organise their leisure time** on their own:

- Children and adolescents with disabilities rely on support in their leisure time. The number of transport services and care assistants is insufficient. Moreover, the Social Code does not provide precise definitions of the right, for example, to have the expenses for transport and care covered. Also, different agencies allocate different budgets for these aids.

- Since social associations, and notably sports clubs, are largely based on a notion of “achievement”, they are a significant hurdle for children with disabilities.

- Most organised leisure facilities and activities for (young) persons with disabilities are affiliated with integration assistance [*Eingliederungshilfe*] services and institutions. Notably, so-called integrative offers are donation-based. Moreover, only few leisure and holiday offers take children and adolescents with disabilities into account to begin with.

Children and youth social welfare schemes must consider children and adolescents with disabilities in their leisure programs. This is an essential part of inclusive child and youth social welfare planning. Every offer provided by youth social welfare must be assessed with regard to inclusion and its adequacy for children and adolescents with disabilities.

Since inclusion also means participation during leisure time, leisure activities and facilities must be shaped according to social accessibility for children from the relevant age groups. The goal should be that children share their activities and experiences. In this way, the social trend towards an erosion of solidarity should be countered.[[26]](#footnote-26) At the same time, children and adolescents with disabilities must have the opportunity to have new experiences within their peer group, even if they are living in rural areas.

**Proposed recommendations:**

* **Take steps to develop and implement programmes and policies for all children with disabilities, including those with migrant backgrounds and those living in rural areas, to enjoy on an equal basis with others inclusive extracurricular, cultural and leisure activities organised by schools and in the community including sports events, play and recreation, with the provision of diverse forms of support to ensure their participation.**

**------**

**ANNEX- About us**

**DPI Germany – Interessenevertretung Selbstbestimmt Leben in Deutschland e.V. – ISL**

The "Interessenvertretung Selbstbestimmt Leben in Deutschland e.V. - ISL" is the umbrella organization of the Centres of Independent Living of People with Disabilities in Germany. ISL was founded in 1990 by disabled women and men. For us, disability is a human rights issue and not a medical problem.

Our guiding ideas are: Independent Living – Self representation – Inclusion – Empowerment!

ISL is the German branch of the international organization of people with disabilities Disabled Peoples´ International - DPI.

**About our aims**

ISL stands up for...

* the realization of all human rights of women and men with disabilities
* independent living of all disabled people
* the full and effective participation and inclusion in society of all   
  people with different disabilities on an equal basis with others
* the realization of the motto- Nothing about us without us!
* a just distribution of the societal prosperities between people with   
  disabilities and people without disabilities

**About our activities**

By the means of Peer Counseling and Peer Support we empower women and men with disabilities to discover their own power and resources so that they can live independently.

By political initiatives and activities we try to alter the legislative and general conditions in a way that women and men with disabilities can fully participate in all areas of political and public life on an equal basis with others. By these activities we contribute to raising awareness for the values and contributions of disabled peoples for their communities.

We contribute to the implementation of the CRPD in Germany and we are getting involved in efforts for inclusion in all areas of public life. In this respect our focal points are currently the personal assistance, the inclusive education and the inclusive labour market

**For further information:** [**www.isl-ev.de**](http://www.isl-ev.de)[**www.dpi-europe.org**](http://www.dpi-europe.org)[**www.dpi.org**](http://www.dpi.org)

1. See Rechtsdienst der Lebenshilfe 3/2012, p. 108/109. [↑](#footnote-ref-1)
2. See NAP, p. 152 et seq. [↑](#footnote-ref-2)
3. The “National Coalition” is an alliance comprised of more than 100 German organizations aimed at implementing the UN child rights convention. [↑](#footnote-ref-3)
4. National Coalition (NC) für die Umsetzung der Kinderrechte in Deutschland (ed.), Ergänzender Bericht zum Dritt- und Viertbericht der Bundesrepublik Deutschland, Berlin 2010, p. 25. [↑](#footnote-ref-4)
5. Federal Education Report “Education in Germany 2012“ (Bildung in Deutschland 2012); group of authors in behalf of the Conference of the Ministers of Education and the Arts, p. 7 [↑](#footnote-ref-5)
6. See above, an indicator based report with an analysis of the perspectives of the educational system regarding demografic change (Ein indikatorengestützter Bericht mit einer Analyse zu Perspektiven des Bildungswesens im demografischen Wandel), chart D 2-7web [↑](#footnote-ref-6)
7. Prof. em. Dr. Klaus Klemm, University Duisburg-Essen, Educational Research and Educational Planning, lecture: “A school for everyone: educational system an inclusion“ Evangelical Academy Tutzing, May 21, 2011 [↑](#footnote-ref-7)
8. This means that these pupils do not even reach the lowest degree of secondary school (Hauptschule) Source: Statistical publication of the Conference of the Ministers of Education and the Arts, Documentation Nr. 196 – February 2012 „Sonderpädagogische Förderung in Schulen“ 2001 - 2010; p. XVI [↑](#footnote-ref-8)
9. Bundesbildungsbericht 2010 / Education in Germany 2010; an indicator based report with an analysis of the perspectives of the educational system regarding demografic change, p. 6 [↑](#footnote-ref-9)
10. The Conference of the Ministers for Education and Arts ignores the need for action in their position papers from 2010 and 2011 on inclusive education as enshrined in Article 24 of the CRPD (Position paper of the Conference of the Ministers of Education and the Arts from 18 November 2010 “pedagogical and legal aspects of implementing the CRPD“, resolution from 18 November 2010; Resolution of the Conference of the Ministers of Education and the Arts from 20 October 2011 “ Inclusive education of children and young adults with disabilities in schools”); The conference claims that German Law already fulfils the standards of the CRPD and that subjective legal claims would not be justified by the CRPD (Position Paper). The conference continues to push forward the plurality of the educational tracks and the preservation of special schools. The conference does not see a contradiction between structural selection and an inclusive school system. This position reduces the right to inclusive education for children with disabilities and acts in contradiction to the right to education enshrined in the CRC and the CRPD. [↑](#footnote-ref-10)
11. Nationaler Action Plan “for a child-friendly Germany 2005-2010“, online available at: <http://www.kindergerechtes-deutschland.de/zur-initiative/nationaler-aktionsplan/> [↑](#footnote-ref-11)
12. The Federal government and some Länder also claim that there would be hardly any need for their action regarding the right to inclusive education as enshrined in Art 24 of the CRPD; Draft law on the UN Convention from 13 December 2006 on the Rights of Persons with Disabilities and to the Optional Protocol, BT-Drs. 16/10808, p. 58:„ […] school political settings of priorities in the several *Länder* of Germany indicate a variety of conformities to the CRPD. “The same objectives by the Conference of the Ministers of Education and the Arts “pedagogical and legal aspects of implementing the CRPD“, resolution from 18 November 2010, p. 2: “Germany’s legal situation meets the requirements of the Convention.” [↑](#footnote-ref-12)
13. Report of the Special Rapporteur on education, Vernor Munoz „Implementation of UN resolution 60/251“ of the Human Rights Council from 15 March 2006 (Addenum Visit to Germany, Section IV challenges of education politics) [↑](#footnote-ref-13)
14. **Neither the Federal German Equal Opportunities Act for Persons with Disabilities (Behindertengleichstellungsgesetz – BGG) nor theGerman Equal Opportunities Acts of the Länderdefine or mention the concept of reasonable accommodation.** “Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Article 2, CRPD) [↑](#footnote-ref-14)
15. For example the case in which a hearing impaired girl, Melissa, and her parents went to court in Bavaria since sign language interpretation was not paid for in a regular school even though the “Inclusion Law” of Bavaria sees the financial responsibility for communities. The argument of the community was that the girl would receive better support and education in a special needs school. Meanwhile a settlement was made and up to March 2013 the interpreter cost is being paid for by the Land Bavaria. Online at: <http://www.welt.de/regionales/muenchen/article108382242/Taubes-Maedchen-kann-Regelschule-besuchen-vorerst.html>. And in a new ruling in July 2013, the Augsburger court ruled that sign language interpretation must also be covered by the community’s social administration during art and sports classes at Melissa’s regular school. Online at: <http://www.kestner.de/n/verschiedenes/presse/2013/Sozialgericht-Augsburg_Melissa_Schwaben.pdf> [↑](#footnote-ref-15)
16. See Germany’s third and fourth state reports on the Convention on the Rights of Children, p. 64. [↑](#footnote-ref-16)
17. 13th Federal Government children and youth report, November 20, 2009, p. 64. [↑](#footnote-ref-17)
18. See Spieß, Katharina: Die Wanderarbeiterkonvention der Vereinten Nationen. Ein Instrument zur Stärkung der Rechte von Migrantinnen und Migranten in Deutschland. Deutsches Institut für Menschenrechte, Berlin 2007, p. 59. [↑](#footnote-ref-18)
19. “Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland”, Universität Bielefeld, 2012. [↑](#footnote-ref-19)
20. See Frankfurter Rundschau, 17 & 18 November 2012. [↑](#footnote-ref-20)
21. http://www.kinderrechte-ins-grundgesetz.de/fileadmin/content\_media/projekte/Themen/Kinderrechte/Formulierungsvorschlag\_KR\_ins\_GG-2012-11-14-js.pdf. [↑](#footnote-ref-21)
22. vgl. http://www.institut-fuer-menschenrechte.de/fileadmin/user\_upload/PDF-Dateien/Pakte\_Konventionen/CRC/crc\_state\_report\_germany\_1\_1994\_cobs\_1995\_de.pdf. [↑](#footnote-ref-22)
23. See State report, p. 19. [↑](#footnote-ref-23)
24. See NAP, p. 153. [↑](#footnote-ref-24)
25. See www.jugend-staerken.de. [↑](#footnote-ref-25)
26. “What are the mindsets of tomorrow’s adults? Sinus Survey 2012: More pressure to perform, deeper gaps between social classes. Some diagnose a new trend to maintain distance to social others, a decrease of solidarity. Many youths, the study states, made derogative statements about unemployment services beneficiaries and adolescents with migrant backgrounds, even if they sometimes chose coded wordings such as ‚Well, somebody has to say that ...'“ See Spiegel online, March 28, 2012. [↑](#footnote-ref-26)