

Parallel report to the UN Committee on the Rights of Persons with Disabilities for Germany's 2nd/3rd State Party review procedure

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**German Institute
for Human Rights**

National CRPD Monitoring Mechanism

Parallel Report

to the UN Committee on the Rights of Persons with
Disabilities for Germany's 2nd/3rd State Party review
procedure

July 2023

The Institute

The German Institute for Human Rights is the independent National Human Rights Institution of Germany (§ 1 DIMRG – GIHR law). It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is financed by the German Bundestag. The Institute is mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child as well of the Council of Europe Conventions on Trafficking in Human Beings and on Violence against Women and Domestic Violence. For these purposes, it has set up monitoring bodies and national rapporteur mechanisms respectively.

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Executive summary

In 2015, the UN Committee on the Rights of Persons with Disabilities reviewed Germany's implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) for the first time. There has since been some progress. Examples include the action plans on the implementation of the CRPD that have been adopted, a disability survey, and reforms in social law, equality law, guardianship law and electoral law.

But the initial momentum of implementation has since lessened considerably at federal, state and local level, and, in the process of weighing up different political priorities, the Convention has declined noticeably in importance. It is fourteen years since the CRPD came into force, yet there has been no real political or societal paradigm shift towards inclusion and self-determination. On the contrary: Germany still has a highly developed system of segregated structures – in school education, in the form of sheltered workshops and in the form of large residential facilities. Inclusion is discussed a lot, but it is not consistently practiced.

It is in this context that the Monitoring Mechanism has observed with concern a misguided rhetoric of inclusion, in which different political and social stakeholders refer to segregated structures as part of an inclusive system. Duplicate structures are maintained unchanged across the board (Article 24: requirements for an inclusive school system; Article 27: vocational training, employment in sheltered workshops; Article 19: deinstitutionalisation). The Committee's 2015 recommendations on dismantling segregated systems step by step have at best been taken up hesitantly, and at worst negated. This demonstrates that the CRPD and its provisions are not being consistently interpreted in compliance with human rights. As a result, few federal states are systemically establishing inclusive school systems for all children with disabilities. The number of employees in sheltered workshops remains high and there are hardly any in-home support services, especially for persons with intellectual and multiple impairments.

Another problem is that in many areas, persons with disabilities and their needs are still given scant consideration, if any. There is a lack of universal awareness about accessibility as a basic prerequisite for equal participation (see for example Article 9: products and services, housing construction; Article 11: disaster management; Article 18: refugees with disabilities; Article 25: accessibility of medical practices; Article 30: cultural participation). Problems such as the lack of obligations under anti-discrimination law to provide accessibility in the private sector have long been recognised, but are not being dealt with politically (Article 5: legal protection against discrimination). The political prioritising demanded by human rights is lacking in this regard.

Furthermore, the actions that are taken are not based consistently on the principle of self-determination. Psychiatric care still does not take human rights into account (Articles 14 and 15: use of coercion on the basis of impairment). Supported decision-making is virtually unknown and is not systematically implemented (Article 12: guardianship law); persons with disabilities are not yet effectively protected against violence and abuse (Article 16: protection against violence) and women with disabilities are often not allowed to decide for themselves about contraception and

parenthood (Article 17: reproductive rights of women with disabilities). Ways of thinking based on the medical model of disability remain prevalent. One of the areas in which this is manifest is health policy (Article 4: prenatal diagnosis; Article 10: pandemic-related triage; Article 25: intensive care at home).

Persons with disabilities and their representative organisations do regularly participate, but not always in appropriate or meaningful formats, nor in all policy areas (Article 4: participation; Article 29: full-time and voluntary political activity). The voices of persons with disabilities and their representative organisations are often not given priority in participation processes.

All in all it can be said – as was stated in the Parallel Report on the first state review procedure in 2015¹ – that the State Party is far from doing all it can and should implement the Convention. The available resources as set out in Article 4 Paragraph 2 CRPD have not been and are still not being exhausted.

Once again, the Monitoring Mechanism sees no sign of a self-critical, in-depth analysis of existing problems and implementation deficits in the State Party's reports in the current review process.

So it is all the more important for the Committee to provide new and emphatic impetus, which might provide new energy for the implementation of the Convention in Germany, and set it on course.

¹ German Institute for Human Rights, CRPD National Monitoring Mechanism (2015), p. 4.

Introduction

1. The Monitoring Mechanism for the UN Convention on the Rights of Persons with Disabilities (Monitoring Mechanism) at the German Institute for Human Rights (GIHR) is Germany's independent monitoring mechanism as defined in Article 33 Paragraph 2 UN Convention on the Rights of Persons with Disabilities (CRPD).
2. In this Parallel Report, the Monitoring Mechanism highlights aspects of the implementation of the Convention that have proven problematic in Germany, and on which the UN Committee on the Rights of Persons with Disabilities (the Committee) should focus at its 29th session in August 2023.
3. Because of the word limit, the report contains neither statements on all of the Convention's articles, nor responses to everything raised in the Committee's list of issues prior to reporting. It focuses instead on those themes which the Monitoring Mechanism considers important and pressing. It is therefore neither a comprehensive nor a conclusive report on the implementation of the CRPD in Germany. If a topic is not discussed, that does not mean it is not relevant to the implementation of the Convention.
4. In compliance with Article 33 Paragraph 3 CRPD, the way the Parallel Report was designed has been presented to and discussed with civil society multiple times in the course of civil society consultations. There were opportunities for written feedback.² The Monitoring Mechanism has striven always to address the pressing concerns of persons with disabilities and their representative organisations in its report, while accommodating their diverse points of view.

² For civil society consultations see: <https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/verbaendekonsultation> (retrieved on 28/06/2023).

Article 4: General Obligations

Participation

Description of the situation

5. Persons with disabilities and their representative organisations cannot participate meaningfully and effectively at every political level, or in every area of responsibility.
6. There have been a number of good initiatives and new formats at federal level, such as the process steered by the Federal Ministry of Justice as a prelude to the latest reform of guardianship law, and – initially – the drafting of the Federal Participation Act (BTHG) which began in 2014.³ With regard to the latter, however, there was no clear explanation as to why many of the outcomes of the participation process did not find their way into the draft legislation presented in 2016. Effective participation is no longer evident in the way the national CRPD action plan is being updated. Disability mainstreaming is barely discernible in the federal government ministries, as was most recently evident in health policy. Despite what were sometimes serious human rights consequences for persons with disabilities, their representative organisations were hardly involved in defining health policy regulations on protection and safety during the COVID-19 pandemic, and when they were involved, it was only with great difficulty, after much persuasion, and often at very short notice.
7. Organisations for persons with disabilities have very limited resources for their work.⁴ They are often voluntary, and there is no adequate framework in which they can participate appropriately. The administration does not make their participation easier by providing accessible formats and enough notice, and persons who are politically engaged on a voluntary basis do not receive the assistance they need.
8. Access to the participation fund at a federal level is hampered by bureaucratic obstacles in the form of application and invoicing formalities; as it stands, this fund does not provide long-term support for self-advocacy structures outside of project work.

Assessment

9. The participation of persons with disabilities and their representative organisations in political and policy processes continues to fall short of the standards set by the Convention. There is a varying degree of willingness to shape political processes towards participation, and a lack of universal awareness of the degree to which the CRPD stipulates participation. The voices of persons with disabilities and their representative organisations are not heard as a priority, and persons with disabilities are rarely addressed in their diversity. For instance, children with disabilities and persons in vulnerable situations remain almost completely left out.

Proposed recommendations

See Annex 1, para. 122

³ Bundesministerium für Arbeit und Soziales (2014).

⁴ Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Behindertenrechtskonvention (2021a); Deutscher Behindertenrat (06.11.2018).

Systematic review of the existing law and ensuring legislation consistent with human rights

Description of the situation

10. Neither the federal government nor the federal states (*Länder*) have undertaken a systematic, comprehensive review of new and existing legislation in light of the CRPD. Legal foundations requiring a review are lacking, as are review matrices which could be used to monitor the compatibility of laws with the Convention, as too are effective regulations defining what to do with the results of reviews. At *Länder* level, there are only occasionally provisions about how new legislation should be reviewed, such as in Hessen, North Rhine-Westphalia, Saxony-Anhalt and Berlin.⁵

11. In reviewing existing law, there are still insufficient concepts defining deadlines and other stipulations about how to implement the results of review. Only three states⁶ have performed systematic review processes. As a consequence, new and existing laws are often inconsistent with the Convention.

Assessment

12. The signatory state's efforts to review existing and new legal norms for compatibility with the Convention continue to fall far short of Art. 4 Par. 1 (a), (b) CRPD, which demonstrates that the importance and implications of the rights of persons with disabilities are still not being thought about enough at a normative level.

Proposed recommendations

See Annex 1, Section 123

Ceasing to encourage harmful developments in social awareness / prenatal diagnostics

Description of the situation

13. The non-invasive prenatal test (NIPT) for chromosomal variances has been available as a statutory health insurance benefit since July 2022. It is used to determine the probability of trisomy 13, 18 and 21 in pregnancy on the basis of a blood sample. The result is not a diagnosis, it merely indicates a probability – and a very inaccurate⁷ one. Abortions have increased significantly since the NIPT was introduced as a statutory health insurance benefit.⁸ There has also been an increase in invasive prenatal tests which the NIPT was actually designed to prevent, but which help to eliminate false positive NIPT results.⁹ Developments in practice to date indicate that the NIPT is being used like a standard procedure, and is giving rise to more invasive tests.

⁵ Section 32 in conjunction with Annex 2 GGO Hessen; Section 6 Paragraph 2 IGG North Rhine-Westphalia; the most far-reaching requirement to date is contained in Section 8 Paragraph 4 of 2021's State Equal Opportunities Act Berlin: "When legislation is drafted, and sub-legislative regulations are enacted – and in existing law – it should be ensured that persons with disabilities are not discriminated against or impeded in their right to equal, full and effective participation in society. Appropriate regulations shall be set out to govern the regular reviewing of standards" (own translation).

⁶ Thüringen 2016, Saxony-Anhalt 2014/15, Berlin 2013/2014.

⁷ In the federal state of Bremen, the rate of false-positive NIPTs was 30% (Bremische Bürgerschaft 13.03.2023, p. 2).

⁸ Landesfrauenbeauftragte der Freien Hansestadt Bremen / Landesbehindertenbeauftragter der Freien Hansestadt Bremen (2023).

⁹ Ibid.

Assessment

14. Reimbursing the cost of the NIPT as a standard health insurance benefit brings with it the risk of growing social pressure to abort children with trisomy. There was no adequate social or political debate about the implications of the procedure, which are highly problematic with respect to Article 8 CRPD. Other prenatal tests for various genetic defects and illnesses are already in development. This is reinforcing the medical model of disability and is an expression of the belief that impairments are incompatible with leading a good life.

Proposed recommendations

See Annex 1, para. 124

Article 5: Equality and non-discrimination

Legal protection against discrimination, enforceability, and the establishment of reasonable accommodation

Description of the situation

15. Protection against discrimination by businesses and other private stakeholders still does not cover all of the legal and life-related issues affecting persons with disabilities. It is primarily regulated in the General Equal Treatment Act (AGG) but still only extends to working life and a limited number of civil law contracts.¹⁰ Other important contracts such as private treatment agreements are still not covered. At *Länder* level, only the *Land* of Berlin has a federal state anti-discrimination law.¹¹ Reasonable accommodation is considered when interpreting the General Equal Treatment Act and in the way justice is administered by the Federal Labour Court (BAG), but it is still not explicitly and legally established in private law.

16. At least nearly all of the *Länder*¹² and the federal government now consider a denial of reasonable accommodation by public bodies to be a form of discrimination against persons with disabilities that is actionable in the courts. But this was only regulated in the respective disability equality laws. The *spezialgesetzliche Normen* (special legal standards¹³), which are in practice much more important, do not mention any such obligations (with some exceptions¹⁴), either in their wording or by explicit reference. The disability equality laws, however, basically only address state bodies. They do now also place some obligations upon private stakeholders, but only on the registration of assistance dogs and the provision of accessible information technology.¹⁵

17. Because many of those affected by discrimination are unable to endure drawn-out court processes, disability equality laws enable legal actions by associations. But this right of associations to take legal action is rarely used in practice. Associations

¹⁰ So-called bulk transactions, insurance policies, and (to a limited extent) residential rental agreements.

¹¹ Berlin State Labour Court; some other states, such as Hessen, Baden-Württemberg and Rhineland-Palatinate, are planning state anti-discrimination laws.

¹² Apart from Brandenburg and Baden-Württemberg.

¹³ For instance in school laws, public transport laws, university laws.

¹⁴ See for example Section 26 Paragraph 7 Berlin Mobility Act.

¹⁵ See Section 12 and Section 12e Equality for Persons with Disabilities Act.

that are entitled to sue say that this is because of a lack of financial and human resources and time, coupled with high risk litigation costs, excessive hurdles which lawsuits have to surmount to be admissible, and the inadequate impact of judgments once achieved. As a rule, associations can merely get courts to state that discrimination has taken place, but that is often not enough to put an end to discriminatory practice and bring about lasting change. To date, only the *Land* of Berlin permits more far-reaching lawsuits such as ones aimed at injunctions, the removal of violations and compensation. The General Equal Treatment Act still does not give associations the right to take legal action against private stakeholders. There has long been a call to change this, and it is currently getting louder.¹⁶

Assessment

18. In Germany, persons with disabilities are not adequately protected against discrimination by private stakeholders. Regulations are not effective enough, either at federal or *Länder* level. At federal level, the General Equal Treatment Act needs to be reformed, so as to afford persons with disabilities effective protection against discrimination. Furthermore, disability equality laws should address private stakeholders much more robustly.

19. The current legal establishment of reasonable accommodation in Germany falls far short of the proactive duty to ensure as formulated in Art. 5 Par. 3 CRPD. An understanding of how reasonable accommodation might be implemented remains largely undeveloped in 2023 – in administration, in the judiciary, and among the providers of social services. This applies especially to granting such provisions to persons with mental and intellectual impairments. Basic research and training are urgently needed in this respect.¹⁷

20. Anti-discrimination law's serious weakness could be remedied by giving associations comprehensive and effective rights to take legal action under the same conditions nationwide. But this has not yet been put in place.

Proposed recommendations

See Annex 1, para. 125

Article 6: Women with disabilities

Empowerment and the promotion of self-advocacy, and collecting data on discrimination risks

Description of the situation

21. Around 6.5 million women and girls with disabilities were living in Germany in 2017. This accounts for around 15 percent of the female population. Of those, around 80,000 lived in residential facilities.¹⁸ Women and girls with disabilities are subject to stigmatisation¹⁹ and discrimination on multiple fronts in Germany. They are limited in

¹⁶ Bündnis AGG Reform–Jetzt! (2022); Berghahn u.a. (2016).

¹⁷ Deutscher Bundestag (11.11.2022), pp. 101, 348.

¹⁸ Bundesministerium für Arbeit und Soziales (2021), pp. 37, 50.

¹⁹ Köbsell (2020).

their sexual and reproductive rights and their right to parenthood, for example.

Universal accessible gynaecological healthcare is lacking. Women and girls are also at greater risk of being subjected to violence, especially in institutional settings. They have fewer opportunities to access an inclusive labour market, they are more likely to work part time, and they are at greater risk of poverty.²⁰

22. Political interest groups representing women and girls with disabilities regularly cite discrimination risks and are committed to improving their living situations. Most of them are only funded on a project basis, which means temporarily. *Weibernetz e. V.* is one such example. This makes it more difficult for them to work continuously on particular areas, and ties up a lot of personnel in the process of applying for forthcoming project phases.

23. The federal government itself admits that the legal duty of public bodies to eliminate the disadvantages that women with disabilities face will come to nothing if not accompanied by more research on their particular concerns and discrimination risks.²¹ There are too few human rights-based data and studies on different areas of particular risk – including on barriers in healthcare, the right of self-determination in family planning, and on the actual existence of parental assistance and parent-child housing services, as well as on the discrimination experienced by women with disabilities, including those affected by racism.

Assessment

24. The steps the State Party has taken so far are not enough to consistently and systematically empower women and girls with disabilities. In particular, there is a lack of reliable and permanent funding for political interest groups at federal or *Länder* level, and there is too little data disaggregated according to the type of impairment and other discrimination markers, which would make visible the particular living situations and discrimination risks to which this group is subject.

Proposed recommendations

See Annex 1, para. 126

Article 7: Children with disabilities

Inclusive child and youth services

Description of the situation

25. The support system for children and young persons with disabilities is currently in two parts: Disability-related services for children with physical, intellectual or complex impairments are financed through integration assistance (SGB (Social Welfare Code) IX), those for children with psychosocial impairments through child and youth services (SGB VIII). Beginning on 01/01/2028, child and youth services are to be remodelled inclusively as a comprehensive service law for all children and young persons.²² The *Kinder- und Jugendstärkungsgesetz* (KJSG, Child and Youth Strengthening Act)

²⁰ Bundesministerium für Arbeit und Soziales (2021); Aktion Mensch (2021).

²¹ See Deutscher Bundestag (11.11.2022), p. 6.

²² KJSG Art. 1 Par. 12 (Amendment to SGB VIII Section 10).

which came into force in June 2021 contains some initial changes of this kind, including the introduction of procedural guides (*Verfahrenslotsen*) for children and young persons with disabilities and their parents, beginning in 2024.²³ Developing child and youth services towards inclusivity will also require multidisciplinary expertise and an awareness of the needs of and services required by disabled children and young persons.²⁴ It is still unclear to what extent this kind of training of the relevant stakeholders – such as the family courts and youth welfare offices – is envisaged.

Assessment

26. Children and young persons with disabilities must be granted access on an equal basis with other children to all general state benefits, without losing their right to the benefits that relate to their disabilities. Alongside legislative changes, this means practical steps must be taken and resources made available. Self-advocacy organisations involving persons with disabilities, especially children and young persons, should be more actively involved in the reform process.

Proposed recommendations

See Annex 1, para. 127

Article 9: Accessibility

Products and services

Description of the situation

27. The Accessible Strengthening Act (*Barrierefreiheitsstärkungsgesetz*, BFGS) was passed in 2021 with a view to implementing the European Accessibility Act (EAA). The Act limits itself to the absolute minimum requirements of the EAA. The leeway that does exist to extend accessibility beyond that (such as in health services, services in the education sector, household appliances or by including the structural environment in which appliances are used) was not taken advantage of.²⁵ Legal enforcement is undermined by long transition periods, far-reaching exceptions and weak sanctions. Market surveillance is also not effectively regulated: the federal government and the *Länder* have been passing this responsibility to each other since 2021 and there is still no functioning structure of market surveillance authority.

28. Generally speaking, universal design and the accessibility of products and services have continued to rely primarily on the market itself taking responsibility and/or placing itself under obligation, even though that has so far proved ineffective.

Assessment

29. When the EAA was implemented, an important opportunity was missed to improve the accessibility of products and services. There were no economic or legal

²³ KJSG Art. 1 Par. 14 (Introduction to SGB XIII Section 10b).

²⁴ This was one of the central demands of experts invited to the event entitled “Together towards the goal: We’re shaping inclusive child and youth services” run by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/gemeinsam-zum-ziel-inklusive-kinder-und-jugendhilfe-gestalten-195938> (retrieved on 28/06/2023).

²⁵ For details see Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Behindertenrechtskonvention (2021b).

reasons why this should not have happened. On top of all that, the State Party regularly chooses only to act when threatened with infringement proceedings by the European Commission.

30. This does not correspond with Art. 4 (2) CRPD, nor is it in line with the duties of the State Party as formulated in General Comment No. 2 of the Committee.

Proposed recommendations

See Annex 1, para. 128

Housing construction

Description of the situation

31. There is a nationwide lack of accessible housing in Germany. Less than 2.5% of the country's existing 37 million or so dwellings are even "barrier-reduced".²⁶ The number of dwellings which can be used without restriction by wheelchair users is even less. Furthermore, only some of the newly built accessible dwellings are actually sold or rented out to persons with disabilities. If occupancy is regulated at all, then only in social housing construction, and apart from that it is left to market mechanisms.

32. In the field of social housing funding, there have clearly been attempts to incorporate accessibility as a fundamental element of social building. In 2022, the federal government launched the *Bündnis bezahlbarer Wohnraum* (Affordable Housing Alliance), part of which was an agreement to take steps to promote affordable and accessible housing.²⁷ These, however, merely refer to existing funding instruments or contain open-ended inspection orders that last until 2024. All in all, there is no sign of any serious effort to make accessible building a universal standard or enforce it effectively.

33. Building regulations at *Länder* level only contain rudimentary provisions on accessibility. In residential buildings, as a rule, only the dwellings on one floor have to be accessible. Furthermore, those responsible for building them can apply for exceptions in the case of "disproportionate extra cost", which they often do. Added to that, the authorities rarely check whether accessibility standards are actually being upheld, either during building or after completion. Again and again, projects which are ostensibly planned to be accessible are wrongly planned or wrongly constructed.

Assessment

34. Existing funding instruments and building regulations are not enough to significantly improve accessibility in housing. Existing regulatory options are not made use of, and this is usually justified by pointing out higher building costs, since accessibility takes up more space. This shows that business interests continue to be given priority over the stipulations of the CRPD in the construction of new housing. This disregard for Articles 9 and 19 CRPD means that enormous barriers continue to be erected in new residential buildings. These will shape the nation's housing in the decades to come.

²⁶ Deschermeier u.a. (2020), p. 35.

²⁷ Bundesministerium für Wohnen, Stadtentwicklung und Bauwesen (2022), pp. 58-59.

Proposed recommendations

See Annex 1, para. 129

Article 10: Right to life

Triage in the event of pandemic-related supply shortages

Description of the situation

35. Since 20/12/2022, the law²⁸ has regulated the way in which resources should be allocated in pandemic-related emergency situations in which intensive care treatment resources are no longer sufficient for everyone. It says that in a triage situation, decisions should be based on a person's current and short-term likelihood of survival, so as to save the maximum number of people. Any kind of categorisation on the basis of disability, age or other characteristics is considered discrimination and is forbidden, as is discontinuing intensive care treatment in favour of another person with a better survival prognosis.

36. This legal intervention only happened after several persons with disabilities successfully filed a constitutional complaint against potentially discriminatory guidelines put out by medical associations.²⁹

Assessment

37. The adopted law is not compliant with the CRPD. Despite including a prohibition against discrimination, it provides an avenue to indirect discrimination against persons with disabilities and older persons. Furthermore, the legal criterion of "current and short-term likelihood of survival" essentially demands the survival of the fittest and crosses a fundamental line in basic and human rights: human dignity does not allow human lives to be weighed against each other in numerical terms, and it prohibits the state from legitimising the assessment of the value of human life.

38. Neither the responsible federal ministry nor parliament sufficiently considered the human rights implication of this regulation during the legislative process. The well-founded legal arguments of persons with disabilities and their representative organisations were given much less weight in the participation process than the medical reasoning of the medical profession.

Proposed recommendations

See Annex 1, para. 130

²⁸ Section 5c Infection Protection Act. <https://www.gesetze-im-internet.de/ifsg/BJNR104510000.html> (retrieved on 28/06/2023).

²⁹ Federal Constitutional Court (*Bundesverfassungsgericht*) (2021): Decision dated 16 December 2021, 1 BvR 1541/20.

Article 11: Situations of risk and humanitarian emergencies

Accessible emergency call services and disaster management

Description of the situation

39. Nearly all emergency call services are now accessible, including for persons with hearing and/or speech impairments. There are still difficulties pertaining to the full integration of German Sign Language in existing emergency call structures.

40. Major shortcomings emerged recently in disaster and emergency management. Persons with disabilities were not involved (or if so, too late) in drawing up, adapting, or implementing emergency plans and concepts, and too little thought was given to them. Very rarely are warnings to the population or information and communication in crises accessible. As a result of a fatal convergence of these factors, twelve persons with disabilities died in a residential home in Sinzig on July 2021 during the floods in Ahrtal (Rhineland-Palatinate).³⁰

41. The State Party's actions during the COVID-19 pandemic (discriminatory restrictions of freedom through quarantine rules and contact restrictions, and prioritisation of vaccinations) were very seldom inclusion-oriented and demonstrated an outdated way of thinking about disabilities in disaster management which does not reflect the CRPD's paradigm shift towards a human rights model.

Assessment

42. The State Party's concerted efforts towards accessible emergency calling are an important step forward. But taken as a whole, provisions for disasters do not meet the requirements of Articles 9, 11 and 21 CRPD and entail discrimination risks, because they fail to consider the diverse scenarios within which persons with disabilities live.

Proposed recommendations

See Annex 1, para. 131

Article 12: Equal recognition before the law

Guardianship law

Description of the situation

43. In Germany, adults with disabilities can be limited in their legal capacity if a legal guardian has been appointed and a significant level of self-risk is assessed.³¹ In 2015 there were an estimated 1.25 million guardianships; more recent nationwide figures

³⁰ Spiegel-Online (16.07.2021): Flutopfer in Rheinland-Pfalz. Zwölf Tote in Wohnheim für Menschen mit Behinderung [Flood victims in Rhineland-Palatinate. Twelve dead in residential home for persons with disabilities]. <https://www.spiegel.de/panorama/sinzig-zwoelf-tote-in-wohnheim-fuer-menschen-mit-behinderung-a-846e8ca7-8687-4e26-b317-903c6a4a54a9> (retrieved on 28/06/2023).

³¹ German Institute for Human Rights (2021), pp. 10ff.

are lacking.³² Guardianship law was reformed on 1/1/2023 following several years of preparation.³³

44. The reformed law makes it clearer than before that legal guardianship is primarily about support rather than representation.³⁴ It codified a stronger connection to the will and preferences of the supported person, and the misleading concept of *Wohl* (welfare or well-being) was removed. But the reform did not deal with all of the aspects relevant to human rights. In particular, involuntary placement, forced treatment and forced restraint are all still allowed.

45. Studies show that in practice, a considerable proportion of guardianships could be avoided through alternative support services³⁵ and that existing guardianships are often not sufficiently oriented towards the subject's self-determination.³⁶ Legal guardians and other support persons have incomplete knowledge as well as reservations about supported decision-making.³⁷ The fact that guardianship law is barely addressed by the relevant training courses in justice, social work and administration only makes things worse.

Assessment

46. The reform was an important step in the implementation of the CRPD. But what is problematic is that legal provisions on the use of coercion were excluded. In practice, there are still considerable barriers to implementation in compliance with human rights and there is no strategy for the nationwide implementation of supported decision-making. The level of data pertaining to guardianship is entirely inadequate.

Proposed recommendations

See Annex 1, para. 132

Articles 14 and 15: Liberty and security of the person / Freedom from torture or cruel, inhuman or degrading treatment or punishment

Use of coercion on the basis of impairment

Description of the situation

47. In Germany, persons with disabilities can be subjected to coercion in the form of forced treatment and involuntary placement, and in the form of deprivation of liberty measures. The basis for this is guardianship law, *Länder* psychiatric laws and *Maßregelvollzug* (forensic psychiatric care). The Federal Constitutional Court

³² Bundesministerium der Justiz und für Verbraucherschutz (2018b), p. 37.

³³ §§ 1804-1881 BGB.

³⁴ See Section 1821 BGB (German Civil Code) new edition

³⁵ Bundesministerium der Justiz und für Verbraucherschutz (2018a), p. 348.

³⁶ Bundesministerium der Justiz und für Verbraucherschutz (2018a).

³⁷ Bundesministerium der Justiz und für Verbraucherschutz (2018b), pp. 285ff.

legitimised coercion as a last resort in 2016.³⁸ As it stands, there is a risk that coercive outpatient measures will be allowed when the guidelines on medical coercion are evaluated in the context of guardianship law (Section 1832 BGB).³⁹

48. In practice, existing legal safeguards protecting disabled persons' right of self-determination are not used enough. In a psychiatric context, the use of coercion varies enormously between different institutions.⁴⁰ In care and integration assistance facilities, legal guardians – who are often not present and have no insight into the situation – can agree to deprivation of liberty measures once court approval has been obtained.⁴¹ In criminal law, the *Maßregelvollzug* (forensic psychiatric care) that can be ordered in cases of diminished responsibility often leads to longer periods without liberty than actual penal imprisonment.⁴² Deprivation of liberty measures applied to children and young persons are often declared to be therapeutically necessary, so as to circumvent the approval legally required in the case of a disability. There are therefore weaker criteria protecting the right to liberty of children and young persons with disabilities than there are for children and young persons without disabilities and adults with disabilities.⁴³

49. Care for persons with psychosocial disabilities and persons with increased support needs is institutionally organised and often involves staying in an institution far away from one's own home. There is a lack of community-based outpatient psychosocial services and crisis support, especially for persons with more complex problems and long-term impairments.⁴⁴ Alternative forms of treatment that avoid coercion have only been implemented in pilot form and are not applied universally.⁴⁵ The situation is exacerbated by the massive shortage of skilled workers in both inpatient and outpatient psychosocial services.⁴⁶ There is not enough data about the application of coercion on the basis of different legal foundations in different support settings.

Assessment

50. Despite tighter laws and pilot trials of alternative approaches, forced treatment and involuntary placement as well as deprivation of liberty measures continue to be legitimised on the basis of special laws. Incomplete data makes it difficult to fully identify particularly serious violations of the law and how these might be connected to structural problems, such as the lack of skilled workers and community-based services.

³⁸ Federal Constitutional Court (*Bundesverfassungsgericht*) (2016): Decision of the First Senate on 26 July 2016, 1 BvL 8/15, paras. 1–103.

³⁹ Federal Constitutional Court (*Bundesverfassungsgericht*) (2021): Decision of the Second Chamber of the First Senate on 2 November 2021, 1 BvR 1575/18, para 4.

⁴⁰ Zinkler (2023), p. 50.

⁴¹ Schmitt-Schäfer / Henking / Brieger (2022), p. 11.

⁴² Feißt / Lewe / Kammeier (01.03.2022).

⁴³ Deprivation of liberty measures applied to children now require family court approval under Germany's law introducing the requirement to obtain permission at a family court before applying deprivation of liberty measures (*Gesetz zur Einführung eines familiengerichtlichen Genehmigungsvorbehaltes für freiheitsentziehende Maßnahmen*) of 17 July 2017, in accordance with Section 1631b Par. 2 BGB. Having said that, protective and therapeutic measures for children with disabilities are not subject to judicial provisos, despite the fact that these too can deprive them of liberty.

⁴⁴ German Institute for Human Rights (2018), p. 6.

⁴⁵ Deutsches Institut für Menschenrechte (2018), pp. 64f.; Zinkler (2023), pp. 52f.

⁴⁶ Brieger (2022), p. 34; Steinhart / Wienberg (2017), pp. 23f.

Proposed recommendations

See Annex 1, para. 133

Article 16: Freedom from exploitation, violence and abuse

Protection against violence

Description of the situation

51. Persons with disabilities in Germany are seriously exposed to violence. They are especially at risk in institutions and when seeking support and care. The experience of violence includes psychological, sexualised and physical violence, as well as structural violence through dependency relationships, unlawful deprivation of liberty measures and forced contraception.⁴⁷

52. There has been legal progress in recent years regarding protection against violence. This includes the duty every service provider has to develop violence protection concepts (Section 37a SGB IX) and to introduce women's representatives at sheltered workshops for persons with disabilities (Section 222 SGB IX).

53. But major omissions and problems remain. Too many political and practical stakeholders fail to take the issue of protection against violence seriously enough. Services are not provided with adequate consideration of self-determination, protection of dignity and the human rights-based model of disability. Violence protection concepts are neither universal nor subject to uniform quality standards, nor are they always implemented. The exchanges between the federal government and the *Länder* (*Bund-Länder-Gespräche*) on protection against violence mentioned in the State Report have not been continued in recent years. There is still no cross-departmental political strategy against violence which encompasses the *Länder* in their responsibilities.

54. The political measures required for protection against violence are known, but not applied. This includes the establishment of independent monitoring bodies with a human rights mandate as defined in Article 16 Paragraph 3 CRPD, adequate provision of accessible women's domestic violence shelters and women's emergency hotlines,⁴⁸ nationwide training of the police and judiciary on how to remove barriers for disabled victims and witnesses in criminal proceedings, ensuring that the Protection Against

⁴⁷ Schröttle u.a. (2013); Schröttle / Hornberg (2014); Regarding the incidents at Wittekindshof, a large residential facility for persons with special support needs, see: *Süddeutsche Zeitung* (12/01/2021): Misshandlungen in Behinderteneinrichtung: Eingesperrt und angebunden [Abuse in a disabled home: Locked up, tied up]. <https://www.sueddeutsche.de/panorama/bad-oeynhaus-wittekindshof-missbrauchsvorwuerfe-behinderteneinrichtung-1.5172416>; Regarding incidents of violence in workshops for persons with disabilities, see: RTL (27/02/2021): Team Wallraff: Diese Zustände können in Einrichtungen für Menschen mit Behinderungen entstehen [These circumstances can come about in facilities for people with disabilities]. <https://www.rtl.de/cms/team-wallraff-diese-zustaende-koennen-in-einrichtungen-fuer-menschen-mit-behinderungen-entstehen-4088154.html> (both retrieved on 28/06/2023).

⁴⁸ There are too few women's shelters in Germany to satisfy demand. Even fewer of them are barrier-free. The UN Committee on the Elimination of Discrimination against Women (CEDAW) already raised this with concern in 2009, and the Istanbul Convention's GREVIO Group of Experts reiterated it in 2022.

Violence Act can be applied in residential facilities for the separation of victims and perpetrators, and the appointment of women's representatives in institutions.⁴⁹

Assessment

55. Despite some statutory improvements, the State Party does not meet the standards under its duty to protect which would require it to effectively link the provision of services in practice to the stipulations of basic and human rights. Protection against violence must be given priority in policy and in practice.

Proposed recommendations

See Annex 1, para. 134

Article 17: Protecting the integrity of the person

Reproductive rights of women with disabilities

Description of the situation

56. In Germany, women with disabilities are more than eight times more likely to be sterilised than women in general.⁵⁰ Women with intellectual impairments are especially hard-hit. In order to persuade women to consent to sterilisation, in some residential facilities information is withheld, women are misinformed and emotional pressure is exerted.⁵¹ Since 01/01/2023 a reform has been in force which, while not wholly prohibiting the sterilisation of persons categorised as incapable of consent, does stipulate that sterilisation must correspond to the "natural" will of the person concerned.⁵² The federal government has announced a study investigating judicial authorisation practices. It remains to be seen whether the reform will actually put a stop to sterilisations performed without free and informed consent.

57. Another common practice used to prevent pregnancy in women with intellectual impairments is the three-month or long-term hormonal contraceptive injection. According to one survey, a third of women in residential facilities who have not been sterilised have received such an injection at some point in the past.⁵³ In contrast, these injections are only used by one percent of women in general because of their considerable side effects, and then only for short periods.⁵⁴

58. Reports also suggest that women with disabilities living in integration assistance residential facilities have been subjected to abortions without free and informed consent. It is unclear to what extent pregnant women with disabilities are pressured into abortions. There is not yet any data or information about the extent to which this is happening.

⁴⁹ See Schröttle, u.a. (2021); Beauftragter der Bundesregierung für die Belange von Menschen mit Behinderungen / Deutsches Institut für Menschenrechte (2022); Expertengruppe zur Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt (GREVIO) (2022).

⁵⁰ Bundeszentrale für gesundheitliche Aufklärung (2019); Zinsmeister (2017).

⁵¹ Zinsmeister (2017).

⁵² Klasen (2023).

⁵³ Zinsmeister (2017).

⁵⁴ Bundeszentrale für gesundheitliche Aufklärung (2019); Leeb / Weber (2015); Zinsmeister (2012, 2017).

59. There are also no nationwide structures enabling or supporting parenthood among persons with disabilities. There is a shortage, for instance, of outpatient parent-child housing services belonging to integration assistance, and services around supported parenthood and parental assistance as set out in Section 78 Par. 3 SGB IX.⁵⁵

Assessment

60. As things stand, the sexual and reproductive rights of women with disabilities are not guaranteed. Indications of contraception and abortions without free and informed consent are concerning. There is no consistent information and education about the right to parenthood as defined in Art. 23 CRPD, nor are there support services to that end.

Proposed recommendations

See Annex 1, para. 135

Article 18: Liberty of movement and nationality

Identifying, accommodating and caring for refugees with disabilities

Description of the situation

61. Germany has still not universally implemented the stipulations that exist under human rights and European law that govern the identification and appropriate accommodation of refugees with disabilities, such as the EU's Reception Conditions Directive.⁵⁶ Federal legislators consider the *Länder* responsible for identifying them in the process of accommodating them.⁵⁷ But as a result this is done inconsistently, and also inadequately in every federal state. Invisible forms of impairment, such as intellectual impairments and chronic diseases, are especially liable to being regularly overlooked, and the needs they entail are therefore not recognised.⁵⁸

62. Accommodation is rarely accessible, either for persons with limited mobility or for persons with other impairments. Shelters are often not central and are poorly connected to infrastructure, reducing opportunities for being included in the community and making disability-specific support services and healthcare services hard to get to.⁵⁹

63. Within the asylum process, there have been major problems in providing healthcare for refugees with disabilities for years; care is limited to acute illnesses and the alleviation of pain. Other needs are met at the discretion of the authorities and only if this is "essential in a given case to secure the subject's livelihood or health." The

⁵⁵ Michel u.a. (2017).

⁵⁶ Directive of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, dated 29/6/2013 (2013/33/EU). <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A32013L0033> (retrieved on 28/06/2023).

⁵⁷ See Section 44 Par. 2a and Section 53 Par. 3 AsylG (Asylum Act); see also Heuser (2021), p. 70.

⁵⁸ See Bundesweite Arbeitsgemeinschaft der psychosozialen Zentren für Flüchtlinge und Folteropfer (BAfF) (2020).

⁵⁹ German Institut for Human Rights (2017), pp. 7-8; Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Behindertenrechtskonvention (2018); Deutsches Institut für Menschenrechte (2022b), p. 2.

provision of disability-related care, such as therapies and aids, is therefore often lacking, which can cause permanent damage to the health.⁶⁰

Assessment

64. The structural problems faced by refugees with disabilities have long been known. At the present time they are primarily affecting refugees from Ukraine. The federal government and the *Länder* should finally comply with the human rights and European legal requirements regulating the identification, accommodation and care of refugees with disabilities, whatever their nationality.

Proposed recommendations

See Annex 1, para. 136

Article 19: Living independently and being included in the community

Deinstitutionalisation and person-centred assistance

Description of the situation

65. Germany has a highly developed range of residential facilities whose systematic importance is as great as ever. In contrast, outpatient and person-centred support services are lacking, especially for persons with intellectual impairments and increased support needs. A purposeful deinstitutionalisation process does not happen.

66. Almost half of all persons with disabilities who receive housing benefits live in residential facilities. That applies especially to persons with intellectual impairments, who make up 64.4% of residents. The number of places in residential facilities has even risen slightly (0.1%) since 2012.⁶¹ Residential facilities consume significantly more state resources than assistance in one's own home or in foster families (2021 8.3 million as opposed to 3 million euros).⁶² Residential facilities often deprive residents of the right to a self-determined life: residents report a lack of privacy, a lack of participation, a lack of choice regarding support persons and a lack of access to the community.⁶³ These forms of housing therefore still bear the hallmarks of institutional living.⁶⁴

67. Benefit legislation relating to housing for persons with disabilities was fundamentally changed when the Federal Participation Act (*Bundesteilhabegesetz*, BTHG) came into force. The central goals of the reform were to make things more person-centred. To this end, an overall planning process designed to determine individual needs was introduced, and person-centred assistance services were included in the catalogue of benefits. The income and assets limit was raised significantly. Despite this, persons with disabilities still have to pay out of their own

⁶⁰ Deutsches Institut für Menschenrechte (2022b), p. 3; Janda (2021), p. 45.

⁶¹ Bundesarbeitsgemeinschaft der überörtlichen Träger der Sozialhilfe und der Eingliederungshilfe (BAGÜS) (2023), pp. 10f.

⁶² Ibid. p. 6.

⁶³ Institut für angewandte Sozialwissenschaft (infas) (2022), pp. 74f.

⁶⁴ See UN, Committee on the Rights of Persons with Disabilities (27.10.2017), para. 16c.

pockets if they wish to claim disability-related services pertaining to housing.⁶⁵ The right of choice and preference with regard to one's place of residence and support arrangements remains limited, as there is an additional cost proviso in place,⁶⁶ and services are allowed to be pooled.⁶⁷ Also, persons living in residential facilities still only have limited access to care services.⁶⁸

68. There are also significant implementation deficits in the law. In many regions, the new participation procedure (*Teilhabeverfahren*) is applied only hesitantly. Supplementary Independent Participation Counselling (*Ergänzende unabhängige Teilhabeberatung*) is funded on a regular basis but not implemented across the board, and specialised counselling services for persons such as the deaf have been abolished.⁶⁹ Preliminary evaluation reports relating to the monitoring of the law's implementation highlight problems in how the right of choice and preference is realised, and in participation in the overall planning process.⁷⁰

Assessment

69. Germany lacks coordinated, far-reaching measures that can achieve deinstitutionalisation. Three years after the Federal Participation Act came into force, its implementation has stalled. There is a risk that its potential for strengthening the right to live independently and to be included in the community will not be realised.

Proposed recommendations

See Annex 1, para. 137

Article 20: Personal mobility

Steps towards accessible mobility

Description of the situation

70. The development of accessible transport infrastructure continues, albeit sluggishly. According to Deutsche Bahn AG, by the end of 2022, more than 80% of platforms could be reached without using steps,⁷¹ over half were equipped with tactile guidance systems, and more than nine out of ten platforms were accessible for persons with hearing impairments.⁷² The company has stated that 42.5% of long-distance trains are largely accessible,⁷³ although it is difficult to assess accessibility: most long-distance trains are not floor-level; they are only accessible using lifts. Even if lifts are permanently installed in the vehicles, independent mobility is restricted by

⁶⁵ As of 01/01/2023, the income limit for employment subject to social security contributions and self-employment is €34,629 and the asset limit is €61,100; see <https://umsetzungsbegleitung-bthg.de/service/aktuelles/neue-beitragsbemessungsgrenzen-fuer-2023/> (retrieved on 28/06/2023).

⁶⁶ Section 104 SGB IX.

⁶⁷ Section 116 SGB IX in conjunction with Section 104.

⁶⁸ Section 43a SGB XI.

⁶⁹ The Monitoring Mechanism was told about the discontinuation of impairment-specific counselling services in the course of its regular consultation with the associations.

⁷⁰ Deutscher Bundestag (23.12.2022), pp. 74f.

⁷¹ Deutsche Bahn (2023).

⁷² Ibid.

⁷³ DB Fernverkehr AG (2022), p. 12.

the need to register one's travel, potential technical breakdowns, a lack of training among rail workers and inadequate staffing.⁷⁴

71. None of the municipalities have succeeded in achieving the legally defined target of accessible public transport by 2022.⁷⁵ The exemptions that exist are too far-reaching. For instance, low-floor busses continue to be the exception, especially in rural areas. They currently make up 26% of all busses, which is only 2% more than last year.⁷⁶ A widespread problem is that reasonable accommodation is often lacking in both local and long-distance transport.

72. Because of the fragmented supplier landscape, data is not available on the extent of digital accessibility in public transport, such as in the form of accessible websites and information on service disruptions. But those affected report that a lot remains to be done, and especially that information in easy-to-read remains the exception.⁷⁷

73. So far, the state has done little to bring about an accessible mobility revolution. For instance, there are no legal regulations stipulating the existence of accessible charging points for electric vehicles. There is also a serious lack of accessibility in the redesigning of public spaces in cities.⁷⁸

Assessment

74. Efforts to date have not been enough to guarantee accessible travel. Equal rights mobility remains a distant hope for persons with disabilities. The slow development of accessible infrastructure and a lack of reasonable accommodation have meant that persons with disabilities cannot change their travel plans flexibly, they face longer journey times, and sometimes they cannot reach their destinations. The implementation of Article 20 CRPD has therefore only been rudimentary thus far.

Proposed recommendations

See Annex 1, para. 138

Article 21: Freedom of expression and opinion, and access to information

Accessibility of information services

Description of the situation

75. Public and private media have expanded their accessible content significantly in recent years. For example, more and more video-on-demand services and livestreams are available with audio descriptions, subtitles and German Sign Language. The Media Amendment Treaty (*Medienänderungsstaatsvertrag*) which came into force in 2022 was the first to legally enshrine the term "barrier-free service" and obliges

⁷⁴ Tolmein (2019), p. 12-18.

⁷⁵ Deutscher Bahnkunden-Verband e.V. (06.09.2021).

⁷⁶ Verband Deutscher Verkehrsunternehmen e.V. (2021), p. 39.

⁷⁷ Landtag von Sachsen-Anhalt (24.06.2020), p. 15.

⁷⁸ Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Behindertenrechtskonvention (2023).

providers to persist in expanding their offerings “within the scope of what is technically and financially possible”.⁷⁹ But with a few exceptions, these additional services do not appear in regular, linear broadcasting; they can only be enjoyed using special applications that require certain equipment and an internet connection, and are therefore not accessible for all persons with disabilities.

76. The spread of COVID-19 exposed major deficits in equal access to public information. For instance, government press conferences on events concerning the pandemic were initially broadcast on television without sign language interpreting, which excluded persons with hearing impairments from obtaining life-saving information. Simultaneous German Sign Language interpreting was only initiated after heavy criticism from organisations representing those affected.⁸⁰

77. The pandemic speeded up the digitalisation of many areas of life, highlighting the need for accessible websites and other digital services. The results produced for the first time at the end of 2021 by the monitoring bodies set up under EU Directive 2016/2102 document significant shortcomings at federal and *Länder* level and among municipalities.⁸¹

Assessment

78. Despite visible improvements, Germany remains far behind the requirements of Art. 21. The obligation to develop accessible services contained in the Media Amendment Treaty is essentially welcome, but lacks specific goals. Furthermore, it barely touches on linear broadcasts, especially live ones. The legal requirements governing accessible internet services are still frequently ignored, both in terms of design and in the way they are implemented by producers. This prevents many people from accessing important content, but those responsible are not at risk of sanction.

Proposed recommendations

See Annex 1, para. 139

Article 24: Education

Inclusive schooling

Description of the situation

79. Germany has a highly differentiated system of special schools for children with disabilities. There is no transformation towards an inclusive school system. The data shows that currently, on average throughout Germany, more than half of pupils with special educational needs are taught at special schools.

⁷⁹ Section 7 of the State Media Treaty (*Medienstaatsvertrag*; MStV) as amended by the Second State Treaty Amending State Media Treaties (*Zweiter Medienänderungsstaatsvertrag*) dated 27/12/2021, in force since 30 June 2022. https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Medienstaatsvertrag_MStV.pdf (retrieved on 28/06/2023).

⁸⁰ Change.org (2020).

⁸¹ Federal Ministry of Labour and Social Affairs (2021), pp. 28f, 190 et seq.

The proportion of children in special schools is even rising in some federal states.⁸² Furthermore, special schools are treated as if they were part of an inclusive system, and parents' right to choose is used to justify the system. Germany pointed this out again recently in a not yet published statement in the individual appeal proceedings Case No. 83/2020 (Ginzburg ./. Federal Republic of Germany) and reiterated the view that the CRPD does not stipulate the abolition of special schools.⁸³ In connection with this, there is no legal entitlement to inclusive schooling and reasonable accommodation except in the federal city states of Bremen and Hamburg – which means two out of sixteen *Länder*. Instead, there are legal provisos regarding resources, the aforementioned parental right to choose, and focus schools for inclusive education (*Schwerpunktschulen*)⁸⁴ which are only available at certain locations and which represent a segregated structure within the mainstream school system. There is not enough data to show the extent to which schools in Germany are accessible.

80. The great majority (72.7%) of special needs pupils leave school without a recognised qualification.⁸⁵ Thus begins a chain of exclusion. These young persons usually move to segregated, less academic forms of vocational training with reduced prospects on the general labour market. Many of them subsequently work in sheltered workshops for persons with disabilities.

81. Germany continues to train special needs teachers for special schools instead of training teachers specifically for inclusion in mainstream schools. Even general teachers do not yet receive compulsory training in inclusive education.⁸⁶ Recent studies also show that many mainstream and special school teachers are reluctant to teach pupils with intellectual or complex disabilities.⁸⁷

Assessment

82. A misguided understanding of inclusion prevails in Germany's politics and much of its society. As a consequence, the majority of children with disabilities are still not schooled inclusively and grow up having no school contact with non-disabled children. This is not the way to achieve an inclusive society. The *Länder* governments should pursue their duties to implement human rights law with greater determination and commitment. The federal government cannot escape its overall responsibility by citing state responsibility in the education sector. The federal government and the *Länder* have a shared obligation to redesign the education system to be inclusive.

Proposed recommendations

See Annex 1, para. 140

⁸² This is the case in Baden-Württemberg, Bavaria, Rhineland-Palatinate and Saarland. In 2021, the highest exclusion levels (the proportion of children in special schools out of all school-age children) were in Saxony-Anhalt (6.6%), Mecklenburg-Western Pomerania (5.7%), Saxony (5.4%) and Baden-Württemberg (5.3%). Across Germany, an average of 4.5% of children were taught in special schools in 2021. This figure has hardly changed since 2009 (2009: 4.9%). Source: Sekretariat der Kultusministerkonferenz (2022).

⁸³ CRPD Case No. 83/2020, Statement of the Federal Republic of Germany (25 May 2023), paras. 15, 36 (not published yet).

⁸⁴ Mainstream schools that are especially well equipped to accommodate pupils with disabilities due to their staff, spatial and material resources.

⁸⁵ Own calculations; data source: Sekretariat der Kultusministerkonferenz (2022).

⁸⁶ Forsa (16.10.2020).

⁸⁷ Bengel (2021), p. 68.

Article 25: Health

Inclusive healthcare

Description of the situation

83. Germany is still far from achieving a fully inclusive healthcare system. As it stands, only 10% of medical practices state that they are accessible to persons of limited mobility and equipped with accessible sanitary facilities; only 7% have orientation aids for visually impaired persons.⁸⁸ The situation in rural areas is particularly worrying. Persons with disabilities have to travel a long way to accessible general or specialist medical practices and cannot freely choose the doctors or practices they visit. There is still no legal obligation to provide accessibility in the private sector such that medical practices would be affected.

84. There are also too few special healthcare services for persons with disabilities. Despite the federal government announcing that it would develop medical centres for adults with disabilities, Germany is still far from covering demand. There is also a lack of healthcare services specifically for women with disabilities, such as specialised gynaecological outpatient clinics.

85. Studies highlight specific discrimination risks affecting persons with intellectual and psychosocial impairments and deaf persons availing themselves of healthcare services, especially in the form of communication barriers and professionals who lack awareness.⁸⁹ When medical professionals are trained, disability-specific knowledge, the human rights-based model of disability and treatment requirements (such as special communication needs) are not adequately taught. Even the Federal Constitutional Court has stated that persons with disabilities are not currently effectively protected against discrimination in the healthcare system because of a lack of awareness among skilled workers.⁹⁰

86. This is exemplified by the Intensive Care and Rehabilitation Strengthening Act (*Intensivpflege- und Rehabilitationsstärkungsgesetz*, IPReG), which came into force in 2020. It states that it is not the person themselves, but their health insurance company, which chooses where out-of-hospital intensive care will be delivered. All insurers have to do is satisfy the “justified wishes of the policyholder”.⁹¹ Persons with disabilities who require intensive care can, if assessed negatively by their home care, be relocated by the health insurance companies’ medical service into a residential care facility. This risk is made even greater by sub-legislative regulations. Demand for out-of-hospital intensive care⁹² can barely be met in home settings because of a lack of outpatient care structures and an acute shortage of skilled workers. The same goes for the legislatively envisaged survey on the potential for reduced artificial respiration.⁹³

⁸⁸ Bundesministerium für Arbeit und Soziales (2021), p. 434; the survey covered just under half of the federal states.

⁸⁹ Bartig u.a. (2021), pp. 44ff.

⁹⁰ Federal Constitutional Court (2021): Decision on 16/12/2021, BvR 1541/20, recital 113, 128

⁹¹ Section 37c Par. 2 Sentence 2 2 SGB V.

⁹² Framework recommendations pursuant to Section 132l Par. 1 SGB V on the provision of out-of-hospital intensive care, 03/04/2023.

⁹³ Section 6 in conjunction with Section 8 of the Out-of-Hospital Intensive Care Guideline (AKI-RL) dated 18 March 2022.

87. In its 2021 coalition agreement, the federal government announced that it would draw up an action plan for a “diverse, inclusive and accessible healthcare system”.⁹⁴ But the ministry responsible has yet to take action despite persistent demands from different sides.

Assessment

88. Germany does not have universal basic care with equal entitlement in an inclusive healthcare system, as required by the Convention. The special needs of persons with disabilities are not considered systematically. There is no disability mainstreaming in healthcare, which became especially evident during the COVID-19 pandemic.

Proposed recommendations

See Annex 1, para. 141

Article 27: Work and employment

Access to vocational training and the general labour market

Description of the situation

89. Despite minor improvements in labour market figures, persons with disabilities continue to be structurally disadvantaged when accessing the general labour market. They have a much lower level of vocational involvement, they are less likely to be able to earn a living using their own vocational income, and they are almost twice as likely to be unemployed than persons without disabilities, and for much longer.⁹⁵

90. One leading reason for this lies in vocational training. Young persons with disabilities are often pressured into certain professions and activities without any real choice, namely those that are supposed to be suitable for them.⁹⁶ Although the law says that persons with disabilities should be trained in generally recognised professions as a priority,⁹⁷ special forms of vocational training that do not lead to generally recognised vocational qualifications remain the default.⁹⁸ 80-90% of all school leavers with disabilities initially undergo a period of at least a year in the so-called ‘transition system’ after finishing school. After that, around a third of them begin to train in lower-ambition special professions for persons with disabilities,⁹⁹ while over half begin their vocational training in a sheltered workshop for disabled persons, or do not learn a vocation at all.¹⁰⁰ The outcome of this is that young persons with disabilities are much less likely to achieve vocational qualifications in line with their school-leaving qualifications than their non-disabled peers.¹⁰¹ One of the barriers in

⁹⁴ See SPD / BÜNDNIS 90/DIE GRÜNEN / FDP (2021), p. 85.

⁹⁵ See Bundesministerium für Arbeit und Soziales (2021), pp. 215ff.

⁹⁶ 61. Konferenz der Beauftragten von Bund und Ländern für Menschen mit Behinderungen (2021), p. 1.

⁹⁷ Section 64 BBiG, Section 42p HwO.

⁹⁸ Bundesministerium für Arbeit und Soziales (2021), p. 157. Only around 10% of school leavers with disabilities in any given year end up in mainstream vocational training for a recognised skilled occupation, compared with approximately 36% of school leavers without disabilities; this underrepresentation is much greater in the academic sector; see German Institute for Human Rights (2020), p. 5.

⁹⁹ There are around 320 mainstream skilled occupations, whereas there are now around 270 special occupations for persons with disabilities that are not recognised professions, but that entail over 1,200 different individual regulations; German Institute for Human Rights (2020), p. 5.

¹⁰⁰ German Institute for Human Rights (2020), p. 5.

¹⁰¹ See Bundesministerium für Arbeit und Soziales (2021), pp. 163-188.

this respect is career guidance and counselling fraught with stereotypes, unclear advice and support services for employers, and insufficient flexibility in the mainstream training system.¹⁰²

91. Another factor which makes it difficult for young persons with disabilities to access mainstream vocational training is that places of work and training are often not accessible. The legal situation has not improved in that respect. There are still not enough obligations placed upon employers to build new, accessible places of work. The duty of public institutions to establish accessibility in existing buildings remains restricted to those areas of buildings that are used by the public. And this does not include parts of buildings used only by employees, even though these are just as important in view of Art. 27 CRPD.

92. With regard to sheltered workshops for disabled persons, the Budget for Work, the budget for training and permanent wage cost subsidies represent new instruments offering potential for improvements in the transition to the general labour market. But regrettably, these instruments remain largely unused. The number of sheltered workshop employees has stagnated at a high level and totalled 312,000 in 2021.¹⁰³ Their pay is well below the statutory minimum wage, which is not applied to sheltered workshops for disabled persons, because they are considered to offer rehabilitation rather than employment. Despite the new instruments, the rate of transition from the sheltered workshops to the general labour market is vanishingly small and has been below 1% for many years.¹⁰⁴

Assessment

93. Structures in vocational training are not inclusive by design. Enabling more young persons with disabilities to receive regular vocational training will require a fundamental structural reform at the transition from school to profession.

94. The legal obligations for employers to make workplaces accessible are inadequate. The State Party is not fulfilling its duty to take effective action to create accessible workplaces.

95. Efforts to improve the transition to the general labour market for sheltered workshop employees have so far borne few fruit. The federal government's position, according to which sheltered workshops for disabled persons are considered part of an inclusive labour market as set out in Article 27 CRPD, is alarming, yet it remains unchanged and has been expressed over and over again in recent years.

Proposed recommendations

See Annex 1, para. 142

¹⁰² German Institute for Human Rights (2020), pp. 6f.

¹⁰³ Bundesarbeitsgemeinschaft Werkstätten für behinderte Menschen e.V. (09.12.2022): Menschen in Werkstätten [Persons in sheltered workshops]. <https://www.bagwfbm.de/page/25> (retrieved on 28/06/2023).

¹⁰⁴ Engels et al. (2022), p. 43.

Article 28: Adequate standard of living and social protection

Risk of poverty and poverty reporting

Description of the situation

96. The federal government presents a poverty and wealth report once in every legislative period.¹⁰⁵ Its fifth report – the one before last, in 2017¹⁰⁶ – does contain a separate sub-section on disability,¹⁰⁷ and persons with disabilities are addressed in other parts of the report as well. But there is nothing approaching a systematic analysis of poverty and disability.¹⁰⁸ And in 2021's sixth poverty and wealth report, the situation of persons with disabilities is not consistently analysed in terms of disability mainstreaming.¹⁰⁹

97. The risk of poverty remains high for persons with disabilities.¹¹⁰ It was 16.7% in 2012 and 19.6% in 2018, while for persons without disabilities it was 11.4% and 13.6% respectively.¹¹¹ The provisions of the Federal Participation Act (BTHG) do not help persons with disabilities to save for their later years and thereby reduce their poverty in old age. Although there is now a more generous asset allowance, the income allowance in integration assistance remains so strict that even if one works, it is barely possible to build up any assets (and therefore any savings) if one has ongoing increased support needs.

Assessment

98. The significantly higher risk of poverty among persons with disabilities contradicts Art. 28. The lack of disability mainstreaming in poverty reporting suggests that the federal government is not sufficiently aware of the intersectional risks faced by persons with disabilities in poverty.

99. The Federal Participation Act's reform of integration assistance has improved the achievement of the right to an adequate standard of living. However, it falls short of the requirements on things like access to material security in old age on an equal basis with others.

Proposed recommendations

See Annex 1, para. 143

¹⁰⁵ General information on the federal government's poverty and wealth report is available here: <https://www.armuts-und-reichtumsbericht.de/DE/Startseite/start.html> (retrieved on 28/06/2023).

¹⁰⁶ See Bundesregierung (2017).

¹⁰⁷ See *ibid.*, pp. 471ff.

¹⁰⁸ See Aichele / Fräßdorf (2019).

¹⁰⁹ See Bundesregierung (2022).

¹¹⁰ See Bundesregierung (2017), p. 473; Bundesministerium für Arbeit und Soziales (2021), p. 279.

¹¹¹ See Der Paritätische (2021), p. 13.

Article 29: Participation in political and public life

Inclusive voting rights and full-time/voluntary political activity

Description of the situation

100. As a result of a number of constitutional court decisions, electoral exclusions were abolished step by step throughout Germany, finishing in October 2020. Since then, everyone with a disability has been eligible to vote in general elections and referendums.

101. As part of electoral reforms, the federal government and the *Länder* have improved opportunities for assisted voting, including procedures in voting booths. An increasing number of electoral information documents are available in easy-to-read. In Schleswig-Holstein, the state election procedures were even amended in 2016 so that the official election documents for the 2017 Landtag election were issued in easy-to-read to everyone who was entitled to vote, by default. However, this consistently inclusive approach was rescinded a year later.¹¹² Regarding the accessibility of polling stations, data from the various federal states continues to indicate serious shortcomings.¹¹³

102. There is no reliable data on persons with disabilities in public and political decision-making positions. A 2017 survey counted 23 members of the Bundestag with disabilities (3.3%) and went on to say that another 43 persons would be required to represent persons with disabilities in proportion with the population as a whole.¹¹⁴

103. The work of persons with disabilities in political parties and offices is made more difficult by the fact that assistance and sign language interpreting is not ensured, since benefits for voluntary work are only provided within narrow limits. The law regards these benefits as subordinate to private support provided free of charge;¹¹⁵ the approval practice is also very restrictive. Both things make it difficult for persons with disabilities to engage in everyday political affairs and acquire the experience needed to be appointed to decision-making positions.

Assessment

104. The rules on eligibility to vote are now compliant with the Convention. However, electoral procedures, facilities and materials are not accessible to all persons with disabilities. The number of accessible polling stations is especially inadequate. The suggestions which the state has made about increasing the representation of persons with disabilities in political offices cannot be looked upon with much optimism as long as the legal provisions for assistance in voluntary work are not amended.

¹¹² For details see Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Behindertenrechtskonvention (2019), p. 52.

¹¹³ Some examples: Hamburg at around 24%, Thüringen at 55% and Saxony-Anhalt at 60%. See *Bürgerschaft der Freien und Hansestadt Hamburg* (24/01/2020), p. 1; *Thüringer Landtag* (15/10/2021), p. 1.; *Mitteldeutscher Rundfunk* (25/09/2021): Federal election: Only 60% of polling stations in Saxony-Anhalt are barrier-free. <https://www.mdr.de/nachrichten/deutschland/wahlen/bundestagswahl/so-steht-es-um-die-barrierefreiheit-von-wahllokalen-in-sachsen-anhalt-zur-bundestagswahl-100.html> (retrieved on 28/06/2023).

¹¹⁴ Bundesministerium für Arbeit und Soziales (2021), p. 726.

¹¹⁵ Section 78 SGB IX.

Proposed recommendations

See Annex 1, para. 144

Article 30: Participation in cultural life, recreation, leisure and sport

Participation in cultural life

Description of the situation

105. The opportunities for persons with disabilities to become creatives and artists are limited in two respects. Firstly, persons can only access the arts and insurable employment in an institution of art or culture if they hold a degree from a college of art or music.¹¹⁶ Secondly, the compensatory allowances usually applied to university studies in the case of health impairments are not applied when places are given out at these institutions.¹¹⁷

106. So few artists and creatives with disabilities are active in the mainstream arts and culture sector that it is impossible to say anything statistically significant about them.¹¹⁸ Research in recent years shows that the film and theatre industries are heavily encumbered by ableist structures and policies.¹¹⁹ Exclusion from the mainstream arts and culture sector has created a sizeable field of “inclusive cultural education and cultural work”. The idea behind this is to enable persons with disabilities to educate and express themselves through culture and art. But at the same time it represents a segregated culture sector existing alongside the mainstream arts and culture sector, one which is partially linked to sheltered workshops for persons with disabilities.¹²⁰

107. Despite a growing level of services around social and cultural participation, far fewer persons with disabilities attend cultural events than non-disabled persons; and even fewer women with disabilities than men with disabilities. A migration background makes participation even more unlikely.¹²¹

108. Despite libraries being important public cultural spaces, the vast majority of them (97.41%) have no budget for accessibility and inclusion.¹²² Public libraries and their services are therefore often not accessible.

Assessment

109. The general arts and culture sector remains highly exclusive despite its importance in an inclusive society and for the social participation of persons with disabilities.

Proposed recommendations

See Annex 1, para. 145

¹¹⁶ Zimmermann (2017).

¹¹⁷ Saner / Vögele / Vessely (2016).

¹¹⁸ Citizens for Europe (24.03.2021).

¹¹⁹ Schmidt (2019); Themis-Vertrauensstelle gegen sexuelle Belästigung und Gewalt e. V. (2020).

¹²⁰ Gerland / Keuchel / Merkt (2016).

¹²¹ Bundesministerium für Arbeit und Soziales (2021).

¹²² Deutscher Bibliotheksverband (dbv) (2022), p. 10.

Promoting the cultural and linguistic identity of deaf persons

Description of the situation

110. Deaf persons in Germany are inadequately recognised and supported in their specific cultural and sign language identity. The state focuses on enabling deaf persons to use sign language for social interaction and to exchange information, and to encourage the cultural participation of deaf persons. But there are few initiatives strengthening or encouraging German Sign Language in its cultural dimension or as a language in its own right. In schools – even in special schools with a focus on hearing impairments – it is often still not treated on an equal level with spoken German.

Assessment

111. Article 30 Paragraph 4 CRPD is largely ignored in Germany, even though the Federal Social Court confirmed as far back as 2012 that this provision is directly applicable to German authorities and courts.¹²³

Proposed recommendations

See Annex 1, para. 146

Article 32: International cooperation

Disability marker, performance profile “Human rights, gender equality and inclusion”

Description of the situation

112. The Inclusion Action Plan of the Federal Ministry for Economic Cooperation and Development (BMZ) was evaluated in 2017, but the recommendations stemming from this¹²⁴ were not adequately translated into the inclusion strategy.¹²⁵ The recommended OECD-DAC disability marker, which is designed to systematically track how the funding in international cooperation aims to implement the CRPD, is now expected to be introduced by 2024.

113. Furthermore, the Federal Ministry for Economic Cooperation and Development is undergoing its Reform Process 2030, which will restructure development policy. This includes the performance profile for the quality criterion “Human rights, gender equality and inclusion”.¹²⁶ As part of the reform process, the Federal Ministry for Economic Cooperation and Development has announced the introduction of a complaints mechanism, but has not yet released further details.

114. Germany, together with Jordan and the International Disability Alliance (IDA), will be hosting the Global Disability Summit in Berlin in 2025 and has begun to plan

¹²³ Federal Social Court (*Bundessozialgericht*) (2012): Judgment of 06/03/2012, B 1 KR 10/11 R, para. 25.

¹²⁴ Deval (2017).

¹²⁵ Federal Ministry for Economic Cooperation and Development (2019).

¹²⁶ Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (2020), p. 10; Deutscher Bundestag (22.06.2021), p. 9.

accordingly. It is not yet possible to say to what degree civil society will be included, and what resources¹²⁷ will be provided to that end.

Assessment

115. Following a long period of stagnation, the Federal Ministry for Economic Cooperation and Development is now undertaking some important projects around the implementation of Article 32. Inclusion and human rights are supposed to be obligatory components of standardised processes within the Federal Ministry for Economic Cooperation and Development (such as country portfolios), and in the implementing organisations (such as during target group analyses and audit processes).¹²⁸ It remains to be seen to what extent the inclusion strategy will be adequately implemented by the performance profile “Human rights, gender equality and inclusion”. The introduction of a complaints mechanism is long overdue. Crucially, this should feature barrier-free accessibility for all target groups, and other important quality criteria should be guaranteed, such as transparency, independence and predictability.¹²⁹

Proposed recommendations

See Annex 1, para. 147

Article 33: National implementation and monitoring

The role of focal points and participation in *Länder* CRPD action plans

Description of the situation

116. All of the federal states have now adopted action plans on the implementation of the CRPD. The ‘focal points’, most of which are situated within the ministry of social affairs, are responsible for coordinating, leading and managing the implementation of the action plans.¹³⁰ The action plans themselves contain various regulations on how civil society will participate in managing implementation, evaluation, and updating the plans.¹³¹ The focal points are doing good work, but often receive insufficient support from the other departments. There is a widespread lack of awareness of disability mainstreaming and engagement, and the focal points have to urge the departments to keep sight of the rights of persons with disabilities and fulfil their obligations. Effective, structurally embedded disability mainstreaming exists in very few ministries.

Assessment

117. The focal points’ resources are not usually enough to manage the implementation of the Convention and to achieve the full participation of civil society in

¹²⁷ See VENRO (2023).

¹²⁸ DEval (2017), pp. 97ff.

¹²⁹ DEval (2021), p. 102.

¹³⁰ See UN, Committee on the Rights of Persons with Disabilities (2021), paras. 324-325; Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Behindertenrechtskonvention (2020), p. 48.

¹³¹ See Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Behindertenrechtskonvention (2019), pp. 64ff.

action plans. Nor do the focal points have enough internal authority or support to steer the implementation of the Convention effectively.

118. Since the adoption of the first action plans shortly after the CRPD was ratified, we have seen a continuous improvement of participation and of the plans themselves.¹³² By and large, state governments can be seen to be making a genuine effort to adequately involve civil society in drawing up action plans.

Proposed recommendations

See Annex I, para. 148

Independent monitoring at *Länder* level

Description of the situation

119. Germany's independent monitoring mechanism, the National CRPD Monitoring Mechanism, is based within the national human rights institution, the German Institute for Human Rights (GIHR), and is institutionally funded by the German Bundestag.¹³³ As well as that, the Monitoring Mechanism is funded by federal and *Länder* projects.¹³⁴

120. There are laws regulating monitoring at *Länder* level in four federal states at this time. In North Rhine-Westphalia, where the GIHR has been exercising its monitoring role since 2017;¹³⁵ in Berlin, where the GIHR has been running the annually funded Monitoring Mechanism Berlin project since 2012;¹³⁶ in Saarland, where the GIHR has been appointed on a project basis since 2020, initially limited until the end of 2024;¹³⁷ in Rhineland-Palatinate, where the law refers to an independent monitoring mechanism, but no entity has yet been appointed.¹³⁸ Schleswig-Holstein has also established a legal obligation to introduce a monitoring mechanism, although it has not appointed an independent institution in line with the Paris Principles. Instead, one additional staff member has been employed at the State Commissioner for the Rights of Persons with Disabilities.

Assessment

121. The establishment of independent monitoring mechanisms at *Länder* level is an important component in the implementation of the Convention. Monitoring the implementation of the CRPD in the sixteen German federal states is a complex affair and cannot be done solely with the institutional resources provided by the federal government. Experience shows how important independent human rights monitoring

¹³² See Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Behindertenrechtskonvention (2019), pp. 62f.

¹³³ See UN, Committee on the Rights of Persons with Disabilities (2021), paras. 328-329. For an overview of projects funded by the states, see „Monitoring auf Landesebene“ at <https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention> (retrieved on 28/06/2023).

¹³⁴ Regarding the funds provided, see: Deutsches Institut für Menschenrechte (2022a), p. 54.

¹³⁵ <https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/nrw>; see also Section 11 Inclusion Principle Act (IGG) North Rhine-Westphalia. https://recht.nrw.de/lmi/owa/br_bes_detail?sg=0&menu=0&bes_id=34845&anw_nr=2&aufgehoben=N&det_id=614926 (both retrieved on 28/06/2023).

¹³⁶ <https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/berlin>; see also Section 35 State Equal Opportunities Act (LGBG) Berlin. https://www.berlin.de/sen/soziales/service/berliner-sozialrecht/kategorie/rechtsvorschriften/lgbg-573403.php#p_1_72 (both retrieved on 28/06/2023).

¹³⁷ <https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/saarland>; see also Section 24 Saarland Disability Equality Law (SBGG). <https://recht.saarland.de/bssl/document/jlr-SBGGSL2003V3P24> (both retrieved on 28/06/2023).

¹³⁸ See Section 18 of the Rhineland-Palatinate State Inclusion Act. <https://msagd.rlp.de/fileadmin/msagd/Inklusion/LandesInklusionsgesetz.pdf> (retrieved on 28/06/2023).

is, including at *Länder* level. But independent means there needs to be a legal basis and permanently secured funding, and this is only guaranteed in one federal state (North Rhine-Westphalia) by means of a long-term contractual agreement.

Proposed recommendations

See Annex 1, para. 149

Annex 1

Recommendations by the Monitoring Mechanism for the Committee's concluding observations

Article 4

Participation

122. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Give sufficient importance to the participation of organisations of persons with disabilities in drawing up political programmes and policies and in legislative and other norm-setting processes; try out new accessible formats and provide sufficiently long time periods for effective and meaningful participation;
- Ensure effective disability mainstreaming in all departments of government and administration by developing and/or revising internal administrative guidelines on the consistent inclusion of persons with disabilities;
- Facilitate and adequately equip organisations of persons with disabilities on a long-term basis;
- Strengthen self-advocacy by children and young persons with disabilities in all areas and at local, *Länder* and federal level. This includes supporting the establishment of such organisations.

Systematic review of the existing law and ensuring legislation consistent with human rights

123. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Establish in law that existing federal and *Länder* laws must be reviewed against the standards of the CRPD by default, and develop a concept to this end, including a time frame and a review matrix;
- Quickly implement the results of the systematic review once done, and bring national legal regulations in line with the Convention.

Ceasing to encourage harmful developments in social awareness / prenatal diagnostics

124. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Introduce comprehensive monitoring of the use of NIPT and the consequences of its approval by the health insurance companies;
- Have the social, ethical and legal implications of NIPT's approval by the health insurance companies assessed by an interdisciplinary expert committee which includes organisations of persons with disabilities;
- Issue a ban on further prenatal testing until the ethical questions have been resolved.

Article 5

Legal protection against discrimination, enforceability, and the establishment of reasonable accommodation

125. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Extend the legal protection of persons with disabilities against discrimination by private stakeholders to all areas of law and life, harmonise it with regulations that apply to public bodies, and develop it effectively into enforceable law with genuine legal consequences;
- Extend the laws regulating reasonable accommodation to the private sector such that there is an active duty to act; introduce systematic training in all areas on the implementation of reasonable accommodation;
- Comprehensively enable legal actions by associations, including against private stakeholders, and develop them effectively, such as by allowing all common types of lawsuit, lowering admissibility thresholds and reducing the risk of legal costs by means of a legal aid fund or other financing instruments.

Article 6

Empowerment and the promotion of self-advocacy, and collecting data on discrimination risks

126. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Actively promote the participation of women with disabilities in public decision-making processes by providing organisations of women with disabilities and networks of women with disabilities with permanent, long-term state funding;
- Strengthen the autonomy of disabled girls and women by establishing the “exercises for strengthening self-confidence” (*Übungen zur Stärkung des Selbstbewusstseins*) in rehabilitation exercises sports provided for by law (Section 64 Par. 1 No. 3 SGB IX) through a nationwide range of services;
- Collect, on a human rights basis, data on stigmatisation, areas of heightened risk of discrimination and/or harmful practices and the experience of discrimination by women with disabilities; include organisations of women with disabilities in this process and disaggregate the data according to type of impairment and other intersectional characteristics;
- Take into account the rights of women with disabilities in disability policy and in women’s and gender equality policy, and include measures pertaining to areas of heightened risk of discrimination and/or harmful practices in action plans on the implementation of the CRPD and women’s policy programmes.

Article 7

Inclusive child and youth services

127. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Involve organisations of persons with disabilities in the SGB VIII reform process, in order to ensure an adequate provision of disability-related and general services for children and young persons with disabilities;
- Set up schemes that sensitise and qualify skilled administrative and field workers in child and youth services with respect to the needs of children and young persons with disabilities.

Article 9

Products and services

128. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Step up legal requirements on the accessibility of products and services, back them with effective enforcement mechanisms, and immediately establish an effective market supervisory structure with sufficient powers and resources.

Housing construction

129. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Significantly expand the obligation to build accessible buildings, and only allow the construction of non-accessible dwellings and buildings open to or provided for the public under narrowly defined exceptional circumstances that have to be justified by the developer, including in the private construction sector;
- Only provide private builders with state support in the form of subsidies, grants, tax relief and other incentive systems if their projects meet the standards of accessible construction, regardless of whether these projects involve new or existing buildings;
- Train the competent supervisory authorities and provide them with the resources and powers they need to monitor compliance with accessibility obligations and penalise violations strongly and effectively.

Article 10

Triage in the event of pandemic-related supply shortages

130. The Monitoring Mechanism suggests making the following recommendations to the State party:

- Push to have the adopted regulation assessed by the Federal Constitutional Court in terms of its compatibility with basic and human rights.

Article 11

Accessible emergency call services and disaster management

131. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Revise its concepts and plans for emergencies and disasters with the participation of persons with disabilities and their representative organisations, and adapt them to the diverse everyday realities of persons with disabilities, paying attention to every aspect of accessible communication;
- Involve persons with disabilities and their representative organisations appropriately in the management of emergencies and disasters, and make organisational arrangements to that end.

Article 12

Guardianship law

132. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Strengthen and expand alternatives to legal guardianship;
- Develop a comprehensive strategy that implements supported decision-making, including the establishment of a centre of expertise, across-the-board qualification of relevant groups, and a differentiated nationwide data survey on guardianship;
- Provide enough resources to ensure that supported decision-making is implemented.

Articles 14 and 15

Use of coercion on the basis of impairment

133. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Reform or abolish legal provisions that permit the use of coercion and deprivation of liberty, in order to bring them in line with the human rights provisions of the CRPD; this, for instance, in the context of the current evaluation of Section 1631b Par. 2 BGB and Section 1832 BGB;
- Expand rights-based, community-based and person-centred support, and provide them with sufficient resources;
- Survey the use of coercion in differentiated terms (such as type, legal basis, place, duration) and summarise it nationwide;
- Define the avoidance and cessation of coercion in institutions for persons with disabilities (psychiatry, integration assistance, child and youth services) as a normative requirement and strategic aim for policy and the practice of granting services and benefits.

Article 16

Protection against violence

134. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Initiate and consolidate a federal government-steered discussion process with the *Länder*, local authorities and service providers, which includes organisations of persons with disabilities; and, within this framework, adopt measures towards a national violence protection strategy for persons with disabilities;

- Evaluate the obligation to establish violence protection concepts in institutions and services (Section 37a SGB IX) in terms of its practical effectiveness and, if necessary, take legislative steps to ensure that protection against violence remains a constant topic of organisational development in the provision of services;
- Ensure by legislative means that the training of skilled integration assistance workers adopts a human rights-based model, following the recommendations of the study on the “Transformation of services for persons with disabilities” by the UN Special Rapporteur on the Rights of Persons with Disabilities.¹³⁹

Article 17

Reproductive rights of women with disabilities

135. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Conduct studies on the extent of contraception and abortion without free and informed consent in integration assistance residential facilities; this also relates to the application of the new legislation on sterilisation;
- Strengthen the right of women with disabilities to make their own decisions about family planning, including by means of accessible education and information and by providing the necessary housing and support services;
- Ensure that all forms of contraception are only used with free and informed consent and without pressure; to this end, professionals in institutions, doctors and staff at counselling centres should be trained and made aware of the reproductive rights of women with disabilities.

Article 18

Identifying, accommodating and caring for refugees with disabilities

136. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Establish legislation at federal government and *Länder* level that defines how to systematically identify persons with disabilities and ascertain disability-related needs;
- At *Länder* and local authority level, provide a sufficient number of accessible places in reception centres and shared accommodation, and link accommodation which complies with the relevant DIN standard for accessible building to the disability-specific support system;
- Legally establish the default provision of health and rehabilitation services for refugees with disabilities from the very outset in the general social welfare system.

Article 19

Deinstitutionalisation and person-centred assistance

137. The Monitoring Mechanism suggests making the following recommendations to the State Party:

¹³⁹ UN, Special Rapporteur on the Rights of Persons with Disabilities (28.12.2022).

- Develop a comprehensive strategy involving specific deinstitutionalisation targets, focusing especially on persons with intellectual and complex impairments; persons with disabilities and their representative organisations must be sufficiently involved;
- Expand person-centred support services, shape inclusive social spaces and promote an inclusive housing market;
- Reform legislation, in particular governing the way services are based on the right of choice and preference, using levers such as:
 - Removing the additional costs proviso (*Mehrkostenvorbehalt*);
 - Removing the income and asset limit;
 - Safeguarding self-determined access to support services outside the constraints caused by the pooling of services;
 - Ensuring unrestricted access to care services pursuant to SGB XI, regardless of the form of housing.

Article 20

Steps towards accessible mobility

138. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Define a CRPD-compliant definition of full accessibility in regulations relevant to transport infrastructure; abolish exceptions; install active monitoring bodies and effectively sanction failure to comply with regulations;
- Continue to develop *Länder* public transport laws such that they ensure the rapid expansion of accessible infrastructure and oblige every provider to grant reasonable accommodation;
- Proactively ensure accessibility within the transformations which mobility and public spaces are currently undergoing. This especially includes closing legal loopholes in the accessible design of electric mobility, and enabling participatory processes relating to the requirements of accessible cities.

Article 21

Accessibility of information services

139. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Enact binding legislation that guarantees accessible daily television content – including linear broadcasting – from public and private providers alike;
- Involve persons with disabilities more closely in programming and media content;
- Expand advisory services relating to digital accessibility and its implementation, provide more information nationwide on complaint and enforcement procedures, and sanction those responsible in the case of sustained shortcomings.

Article 24

Inclusive schooling

140. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Intensify efforts around inclusive school education and overcome school segregation by means of an overall strategy and by intensifying cooperation between the federal government and the *Länder*,¹⁴⁰
- Establish an unconditional legal entitlement to inclusive schooling in all *Länder*, and take specific, scheduled, financially funded steps to achieve goals such as the following:
 - Reallocate human and financial resources from special schools to inclusive schools;
 - Ensure compulsory training and ongoing development in inclusive education for teachers and other professionals;
 - Develop information campaigns promoting an understanding of human rights and the benefits of inclusive education;
 - Collect data on the accessibility of schools specifically in order to eliminate barriers.

Article 25

Inclusive healthcare

141. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Guarantee accessibility of community-based medical facilities and health services, and define binding minimum standards for the accessibility of medical practices, whether existing or newly registered;
- Extend medical centres for adults with disabilities and specialised gynaecological outpatient clinics nationwide, and make it easier to set up new ones and negotiate remuneration;
- Make the education and training of skilled workers in the health sector on disability-specific issues and the human rights-based model of disability legally mandatory, especially by establishing a greater number of regional university teaching and research focuses;
- Interpret the IPReG and sub-legislative regulations in compliance with human rights and review so that the right of self-determination is safeguarded, so as to ensure that the provision of intensive care can be guaranteed in the home environment when needed.

Article 27

Access to vocational training and the general labour market

142. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Transform the vocational training system into an inclusive system, in the process providing low-threshold individual support, ensuring non-discriminatory guidance and an equal opportunity to choose training in a generally recognised profession, and gradually dismantling segregated forms of vocational training;

¹⁴⁰ German Institute for Human Rights (2022), pp. 5f.

- Stipulate accessibility in every aspect of the construction of new workplaces and effectively ensure compliance; provide effective incentives for the accessible conversion of existing workplaces, including places where persons with disabilities are not yet employed;
- Seriously step up efforts to turn away from segregative forms of employment such as sheltered workshops, and take effective steps to enable as many persons with disabilities as possible to find non-discriminatory employment in the general labour market.

Article 28

Risk of poverty and poverty reporting

143. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Include the subject of disability by default as a systematic part of the federal government's poverty and wealth report;
- Implement appropriate measures to address the increased risk of poverty among persons with disabilities and to safeguard the right to an adequate standard of living;
- Restructure the income and asset limit for social security benefits such that persons with disabilities who require permanent personal assistance or other forms of support can put aside enough for old age.

Article 29

Inclusive voting rights and full-time/voluntary political activity

144. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Ensure that the procedures used in elections and referendums are accessible at every stage, from the publicising of voting to the announcing of results, including accessible polling stations nationwide;
- Revise the legal regulations on assistance and sign language interpreting in voluntary offices, so that persons with disabilities receive the assistance services they need to engage in political work;
- Improve the data on the political involvement and representation of persons with disabilities in decision-making positions.

Article 30

Participation in cultural life

145. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Make sure that persons with disabilities have non-discriminatory, sustained access to artistic and cultural professions and to institutions of art and culture;
- Make the general institutions of art and culture inclusive instead of encouraging a segregated art and cultural landscape;

- Research the reasons why institutions of art and culture and libraries are not often used by persons with disabilities, and take steps to make them more accessible and attractive.

Promoting the cultural and linguistic identity of deaf persons

146. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Step up efforts to promote German Sign Language and Deaf culture, including in the education sector.

Article 32

Disability marker, performance profile “Human rights, gender equality and inclusion”

147. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Ensure maximum transparency when introducing the OECD-DAC disability marker, set targets for the implementation of the CRPD and evaluate its application;
- Ensure that criteria and funding quotas are developed for the rights of persons with disabilities and human rights,¹⁴¹ and that inclusion becomes a mandatory component of every target group analysis and sector strategy and country portfolio;
- Ensure that the complaints mechanism that is to be introduced is low-threshold and accessible to every target group;
- Make enough human and financial resources available to plan and host the Global Disability Summit 2025, and involve civil society at an early stage.

Article 33

The role of focal points and participation in Länder CRPD action plans

148. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Equip the focal points with sufficient powers, resources and staff so that they can fulfil their responsibilities as defined in Article 33 CRPD and ensure that civil society can participate effectively and meaningfully;
- Practise disability mainstreaming in all departments, with the leadership embedding it structurally and endorsing it;
- Update action plans in broad, low-threshold participation processes involving persons with disabilities and their representative organisations; involve them also in implementing and evaluating the plans.

Independent monitoring at Länder level

¹⁴¹ As is the case for gender equality, see Federal Ministry for Economic Cooperation and Development (27/09/2022): Pressemitteilung: BMZ führt erstmals Quote für Projekte zur Geschlechtergerechtigkeit ein [Press release: Federal Ministry for Economic Cooperation and Development introduces first ever gender equality project quota]. <https://www.bmz.de/de/aktuelles/aktuelle-meldungen/bmz-fuehrt-quote-fuer-projekte-zu-geschlechtergerechtigkeit-ein-122168> (retrieved on 28/06/2023).

149. The Monitoring Mechanism suggests making the following recommendations to the State Party:

- Enact legal regulations for independent monitoring at *Länder* level in those federal states where this has not yet happened; appoint the national human rights institution to exercise these mandates and provide sufficient funds to that end.

Annex 2

Table of abbreviations

Abbreviation	Meaning
AGG	<i>Allgemeines Gleichbehandlungsgesetz</i> , General Equal Treatment Act
AsylG	<i>Asylgesetz</i> , Asylum Act
BAG	<i>Bundesarbeitsgericht</i> , Federal Labour Court
BBiG	<i>Berufsbildungsgesetz</i> , Vocational Training Act
BGB	<i>Bürgerliches Gesetzbuch</i> , German Civil Code
BMAS	<i>Bundesministerium für Arbeit und Soziales</i> , Federal Ministry of Labour and Social Affairs
BMZ	<i>Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung</i> , Federal Ministry for Economic Cooperation and Development
BTHG	<i>Bundesteilhabegesetz</i> , Federal Participation Act
CRPD	Convention on the Rights of Persons with Disabilities
DEval	<i>Deutsches Evaluierungsinstitut für Entwicklungszusammenarbeit</i> , German Institute for Development Evaluation
EAA	European Accessibility Act
EU	European Union
GIHR	German Institute for Human Rights
IGG	<i>Inklusionsgrundsätze-gesetz</i> , Inclusion Principle Act
IPReG	<i>Intensivpflege- und Rehabilitationsstärkungsgesetz</i> , Intensive Care and Rehabilitation Strengthening Act
KJSG	<i>Kinder- und Jugendstärkungsgesetz</i> , Child and Youth Strengthening Act
LGBG	<i>Landesgleichberechtigungsgesetz</i> , State Equal Opportunities Act
NIPT	non-invasive prenatal test
NRW	North Rhine-Westphalia
OECD-DAC	Development Assistance Committee of the Organisation for Economic Co-Operation and Development
VENRO	<i>Verband Entwicklungspolitik und humanitäre Hilfe</i> , Association of German Development and Humanitarian Aid NGOs

Annex 3

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