**UN Human Rights Council Resolution 37/20 “Rights of the Child”**

**40th session of the HRC**

**Inclusive education in Germany**

**1.** **Ensuring access to inclusive education for children with disabilities is one key way in which they can be empowered.**

1. **Please identify laws and policies in your country intended to ensure the inclusion of children with disabilities in the general education system and the transition from segregated to inclusive settings.**

Germany ratified the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as the “Convention” or “CRPD”) in 2009. **The ratification of the Convention was an important milestone for a human rights-based and participatory approach to disability.** At the same time, it was a signal that disability policy is not only a social policy issue, but a horizontal issue touching upon all areas of life, thereby including all political areas.

The Federal Government considers equal participation of persons with disabilities and their protection from discrimination in all areas of life an ongoing task to be accomplished in the spirit of the Convention. This philosophy is also reflected by the **Federal Government’s National Action Plan (NAP**), whose second edition (NAP 2.0) with 175 new measures was adopted by the German cabinet on 28 June 2016.

The NAP 2.0 includes 13 areas for action. One of them is entitled “children, youth, family and partnership”. Children and juveniles with disabilities shall be strengthened by increased participation, better benefits and more effective protection measures. The vast majority of measures in this area for action aim at the instrumental targets of developing regulations further and implementing compensation for disadvantages. Priority areas in this context include:

* Promoting the development of children with disabilities from the outset
* **Strengthening the quality of inclusive early-childhood education and care**
* Removing overlaps in the benefit systems as far as possible
* Improving the protection of girls and boys with disabilities against (sexualised) violence in institutions
* Strengthening human and personality rights of intersex people
* Improving the situation of mothers and fathers with disabilities

In the area for action entitled “women” the measures include talks between the Federal Government and the Länder (federal state) governments on the protection of people against violence, including women and girls with disabilities. Here, the Federal Government also puts a particular focus on combating violence against children with disabilities. The aim of the comprehensive talks between the Federal Government and the Länder, which have been held since 2017, has been to take stock of the current situation and to identify areas where action is necessary based on the reporting on No. 36 of the concluding observations of the UN Committee on the Rights of Persons with Disabilities in the context of the first German country review. An interministerial working group shall now draft a cross-level, comprehensive concept for the protection of persons with disabilities, and here in particular of women and girls with disabilities. This concept shall also include the establishment of independent monitoring and/or complaint mechanisms.

**According to the German Constitution, the legislative competence in regards to the area of education lies with the federal states (Länder).** Upon ratification of the Convention, the Länder have started to establish an inclusive education system at all levels.

The federal states (Länder) aim to integrate pupils with special educational needs in mainstream schools with the same learning objectives as other pupils (in some cases with different learning objectives). Overall, the educational institutions are in a transition phase at the moment. All Länder have begun to work towards the goal of creating a different institutional framework geared towards inclusion. The promotion of inclusive education is based on the recommendation of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (KMK) entitled “Inclusive Education for Children and Young People with Disabilities in Schools” (2011). This recommendation, among others, has been instrumental in changing understanding of the task of establishing an inclusive education system. The agreements of the Standing Conference (KMK) on inclusion will be gradually adopted by the Länder in specific state regulations.

The German Länder have also taken measures to adapt teacher training:

* + In 2012, the Standing Conference (KMK) adopted a decision which stipulates that all teachers are supposed to acquire the knowledge, capacities and attitudes needed for inclusive education. The teacher training guidelines were revised between 2014 and 2017.
  + University-level training for special education teachers lasts 6 to 7 years in Germany. Prospective special education teachers follow two special education tracks. During their training, particular emphasis is put on diagnostics, counselling and teaching in inclusive settings. The common objective is promoted through joint professional development courses organised for teachers of all school types at central level, or close to or within schools.
  + In March 2015 the Standing Conference (KMK) and the German Rectors’ Conference (HRK) adopted a joint recommendation on “Teacher Training for a School of Diversity” (“Lehrerbildung für eine Schule der Vielfalt”) on the topic of inclusion. The teacher training courses should be further developed so that the future teachers are better prepared for the challenges of a diversified body of pupils.

Moreover, there are specific measures for children with disabilities according to the **German federal law** which should enable children with disabilities to obtain appropriate school education (“*Eingliederungshilfe”)*. This form of assistance is based on two federal laws: Book VIII of the German Social Code (*SGB VIII*) - Section 35a - and Book XII of the German Social Code (*SGB XII*) - Sections 53 and 54, and is also provided by two different welfare systems: emotionally disabled children (*seelisch behindert*) children or children with educational needs are provided by the assistance under Book VIII of the German Social Code as part of the services provided by child and youth welfare system, while physically or mentally disabled children (*körperlich oder geistig behindert*) obtain assistance according to the Book XII of the German Social Code as part of services provided by social welfare system. For years, there have been discussions on merging the two different welfare systems into one federal law; they will likely continue within the upcoming modernization process of the German child and youth welfare system, which shall start in the fall 2018.

1. **Please identify any specific measures or actions being taken in your country to empower children with disabilities in education settings, particularly children with disabilities with psychosocial and intellectual impairments.**

Cooperation between special education institutions and mainstream schools exists independently of more recent attempts at inclusive teaching. When a pupil is transferred from one type of school to another the teachers and head teachers of the schools concerned work together. It is always possible for pupils to return to mainstream schools. In the majority of the Länder, the education authority makes the decision on whether to transfer a pupil following a request from the special education institution or from the parents or legal guardians.

Inclusive education provides a chance for empowerment especially for children with psychosocial and intellectual impairments. Learning and living among children without disabilities and impairments has the potential to improve their self-esteem. The number of these children learning in inclusive settings is on the rise.

**2. The empowerment of children with disabilities depends upon an environment in which they are fully included and supported in claiming their rights. Please identify laws, policies and good practices in your country aimed at the inclusion and empowerment of children with disabilities, including through:**

1. **Awareness-raising and capacity building on the human rights of children with disabilities, both broadly to the general population and their families, and to children with disabilities themselves.**

Awareness-raising is of the areas highlighted by the NAP 2.0 of the German Federal Government. It is the Federal Government’s objective to share knowledge about the Convention and inclusion at large with a wider public, authorities and special target groups. This is intended to trigger a rethinking process in society in the spirit of a human rights based approach.

Education is one of the important fields of action of NAP 2.0, which is why the Länder pay a lot of attention to the development of inclusive school systems.

1. **Ensuring close consultation with and active involvement of children with disabilities in decision-making processes affecting them.**

A determination of the special educational needs of the child must also take into account the environment of the child, including the school as well as the pupil’s personal abilities, interests and expectations for the future. Enabling pupils to reflect critically on their talents and capabilities and to act accordingly is a main learning objective of special needs education. Thus, children are empowered to make responsible decisions in society and for their own development.

1. **Ensuring provision of support to families, support networks and care-givers to enable the participation of children with disabilities in decision-making processes according to their evolving capacities.**

The procedure of determining special educational needs may be applied for by the parents or legal guardians of the pupil, by the pupil provided he is aged 18 or above, by the school or, if applicable, by other competent services, and is to take into account the competences of the persons who participate or are to participate in the measures of support and instruction in a suitable manner. All along the way multiprofessional teams support parents/pupils and provide advice. Also, children’s evolving capacities are analysed regularly in order to adapt their participation in decision-making processes.

1. **Ensuring participation of children with disabilities in society and interconnectedness in their communities, promoting deinstitutionalization and combating isolation and segregation.**

The Länder are developing different forms of access to the mainstream school system or joint teaching also for pupils who are taught according to different learning objectives. Within the framework of inclusive education diverse forms of institutional and educational cooperation between mainstream schools and special education institutions have recently developed. The increase of all-day programmes in primary schools also adds to this development. As inclusive education is continued in the afternoon, children with and without disabilities spend more time together in sport teams, music clubs etc. Thus, any possible separation can be overcome.

**3. Realizing the rights of children with disabilities can be particularly challenging in certain circumstances, such as conflict and humanitarian situations. If relevant to your country, what measures are in place to empower children with disabilities in such circumstances?**

Not applicable.

**4. Please provide information on policies and programmes in your country aiming at respecting the participation in decision-making processes of children with disabilities according to their evolving capacities.**

A determination of the special educational needs of the child must also take into account the environment of the child, including the school as well as the pupil’s personal abilities, interests and expectations for the future.

**5. Does your country have independent accountability mechanisms to monitor the situation of children with disabilities and their access to essential services, including to inclusive education in the general system without discrimination?**

In Germany, all young people with or without a disability have the right and the obligation to attend school. This includes general schools and schools tailored to students with special educational needs (special schools). The Standing Conference (KMK) regularly collects and publishes data about recent developments in the educational system. The implementation of inclusive education is thus monitored on an annual basis.

**6. Does your country monitor the inclusion of children with disabilities through disaggregated national data?**

1. **Please provide information on how the number of children with disabilities enrolled in education is recorded in national data.**

Data on inclusive education in Germany, disaggregated by support priority (e.g. reading, listening, physical development, socio-emotional development), by type of school (special/mainstream), by Land (federal state) and by nationality (German/foreign) can be found at <https://www.kmk.org/dokumentation-statistik/statistik/schulstatistik/sonderpaedagogische-foerderung-an-schulen.html>.

Over the past few years, the share of children with special needs attending mainstream schools has risen continuously. In 2016/17, almost 206,000 pupils with special needs were taught at mainstream schools, compared to 85,000 in 2007/08.

1. **Please provide any available data on the number of children with disabilities living in institutions or care facilities in your country.**