

National CRPD Monitoring Mechanism

The right to education, advances and challenges

Submission to the call of the Special Rapporteur on the right to education for contributions

Comments of the National CRPD Monitoring Mechanism of the German Institute for Human Rights are limited to the implementation of the right to inclusive education (Article 24 UN CRPD) and to the questions 5 to 9.

I. Assessing the achievements made by the mandate of the Special Rapporteur on the right to education over the last 25 years

5. Is the right to education considered a justiciable right in your country and if so which aspects of that right? If so, please provide a short summary of emblematic cases.

In a key decision on school closures as a measure against the COVID 19 pandemic, the Federal Constitutional Court recognized in November 2021 for the first time the fundamental right to schooling (BVerfG, Order of the First Senate of 19 November 2021 - 1 BvR 971/21 -, paras. 1-222).

Even though the Federal Constitutional Court had no reason to comment on inclusive schooling in the specific case, it has adhered to its established case law of interpreting fundamental rights in light of human rights under international law. It must be concluded from that that the fundamental right to education recognized in the decision also includes inclusive education, since Germany has clearly committed itself to guaranteeing such by ratifying the UN CRPD.

6. To what extent are the non-discrimination and equality principles respected in implementing the right to education in your country? Have past recommendations made by the Special Rapporteur on the right to education of vulnerable and marginalized populations been taken into account? If so, can you list which ones?

On the violation of the right to inclusive education of children with disabilities, see below the answers to the questions 7-9.

7. In countries where the Special Rapporteur has undertaken visits, have recommendations been implemented? If so, please list recommendations acted upon.

In 2006, the UN Special Rapporteur on the Human Right to Education, Vernor Muñoz, visited Germany and presented his report in 2007 (UN Doc A/HRC/4/29/Add.3). He made several recommendations to Germany with regard to the implementation of the right to education of persons with disabilities (para 91 (c), 93 (c)-(f)). Among other things, he criticized insufficient progress towards the inclusion of students with disabilities and urged to promote their inclusion in the ordinary education system.

16 years after this report and almost 14 years after the UN CRPD entered into force in Germany, only a very few of the Länder (federal states) have demonstrated the political will and desire to establish an inclusive school system of the kind required by human rights and, at the same time, start closing down special schools.¹

Looking at Germany as a whole, more than half of all students with special educational needs are still being taught in special schools. In most Länder, the special school is still firmly anchored in the school system. More than 70 percent of the students leave these schools without a school-leaving certificate.²

Many Länder governments, though ostensibly committed to inclusive education, continue to hold to their system of special schools for students with disabilities. The result: the rate of exclusion, which reflects the percentage of students in special schools, has remained at nearly the same high level nationwide for years. Since 2008/2009, it has only from 4.9 percent to 4.4 percent (2020/2021) decreased.

There are also drastic differences between the individual federal states. Currently, the exclusion rate ranges from 0.9 percent (Bremen) to 6.5 percent (Saxony-Anhalt); in four states (Rhineland-Palatinate, Baden-Württemberg, Bavaria and Saarland) has risen again in the last ten years.³ Here, there is no progression as required by the UN CRPD, but even a regression.

Moreover, the forecast is dramatic: In Germany, no trend reversal is expected until 2030/2031.⁴ According to a forecast by the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany, the rate of exclusion is expected to stagnate at 4.2 percent by the 2030/2031 school year. According to the projections, the individual states will also continue to diverge.

8. In countries to which the Special Rapporteur has sent communications (allegation letters, urgent appeals and other letters) , have measures been adopted to address the issues raised and ensure their non-recurrence? Please provide specifics.

The UN Special Rapporteur on the Right to Education Koumbou Boly Barry issued a joint appeal with the UN Special Rapporteurs on the Rights of Persons with Disabilities Gerard Quinn on January 25,

¹ In 2015, the UN Committee of the rights of persons with disabilities also reprimanded the Federal Republic of Germany for the separative dual structure of general education schools and special schools: Germany was not fulfilling its obligation to implement the UNCRPD as long as it maintained a special school system alongside the general education system, UN Doc. CRPD/C/DEU/Co/1, 45 f.
² Own calculation, data source: Secretariat of the Standing Conference of the Ministers of Education and Cultural Affairs (2022).
³ Own calculation, data source: Secretariat of the Standing Conference of the Ministers of Education and Cultural Affairs (2022).
⁴ Secretariat of the Standing Conference of the Ministers of Education and Cultural Affairs (2018); Secretariat of the Standing Conference of the Ministers of Education and Cultural Affairs (2019).

2021 (AL DEU 1/2021) to the Federal Government to take remedial action against the violation of Article 24 of the UN CRPD in the case of a 15 year old student with learning disabilities who has been denied the right to inclusive and quality education, as well as reasonable accommodation (in Rhineland-Palatinate State). They requested the federal government to comment and to ensure that the student attends an inclusive mainstream school in her place of residence with the necessary individual support as soon as possible.

The Federal German government has denied the allegations and seen no need for action (Note No. 159/2021).

II. Main challenges and crucial issues for the future

9. In your view, what are the main challenges in your country in implementing the right to education?

Currently, several generations of students with disabilities are being denied their right to education in a discriminatory manner. The evaluation of current data and studies shows that, overall, the federal states have made insufficient and uneven progress has been made by the states. Only some of them are implementing the human right to inclusive education with great commitment. In the majority of the federal states, contrary tendencies are evident. Not only is the implementation process of the UN CRPD stagnating there. Rather, the debate about inclusive education has regrettably reached a point in Germany where the importance of the human rights requirements for building an inclusive education system is taken even less seriously than it was a few years ago. To counteract this development, Germany must immediately increase its willingness to fulfill its commitment to create an inclusive education system.

The National CRPD Mechanism of the German Institute for Human Rights advocates that the federal government must assume greater responsibility for establishing an inclusive school system in Germany out of its obligation to act under international law to implement Article 24 of the UNCRPD, taking into account the educational sovereignty of the federal states.