

Parallel Report to the UN Committee on the Rights of Persons with Disabilities: in the context of the Initial Report of Germany under Article 35 of the UN Convention on the Rights of Persons with Disabilities

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Parallel Report to the UN Committee on the Rights of Persons with Disabilities

in the context of the examination of the
Initial Report of Germany under Article 35 of
the UN Convention on the Rights of
Persons with Disabilities

Berlin, March 2015

National Monitoring Body for the UN Convention
on the Rights of Persons with Disabilities



Imprint

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Profile

The National Monitoring Body (NMB) is the independent mechanism established in Germany in accordance with the stipulations of Article 33 of the Convention on the Rights of Persons with Disabilities (CRPD) to monitor implementation of the CRPD. It advocates the rights of persons with disabilities and promotes awareness of them in Germany. It advises politicians and governments, carries out applied research and organises events on CRPD issues.

The NMB was established in May 2009 at the German Institute for Human Rights and is funded by the German Federal Ministry of Labour and Social Affairs. It drew up this Parallel Report on the occasion of the examination on 26–27 March 2015 by the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) of the Initial Report¹ submitted by Germany as State Party under Article 35 of the CRPD.

¹ CRPD/C/DEU/1.

Executive Summary

Germany has made steady efforts to implement the UN Convention on the Rights of Persons with Disabilities (CRPD) since it came into force in 2009. The Federal Government, the Länder, and the municipalities are studying the aims of the CRPD and striving (to varying degrees) to promote equal rights and participation for persons with disabilities within their jurisdictions. Numerous steps have been taken in the name of the Convention to promote the rights of persons with disabilities.

It is particularly encouraging that many non-governmental actors, including persons with disabilities, now feel closely involved with the Convention's mandate and are working actively to implement its stipulations. One point of criticism, however, is that these positive developments in many cases have failed to go hand in hand with a paradigm shift in public policy towards more self-determination and equal participation for persons with disabilities. The real structural changes that would lead to this shift have yet to be made.

In the view of the National Monitoring Body (NMB), the State Party (SP) is far from having taken all the possible and necessary steps for the implementation of the Convention in the period from 2009 to 2015.

In many cases, the significance and scope of the Convention have failed to have any legal or practical impact. For example, no human rights perspective is discernible in the development of government programmes (see Article 6: Protection against Violence for Women and Girls, and Article 14: Rights of People in Psychiatric Care), in legislative measures, or in administrative and court decisions (Article 9: Extending Accessibility). Although participation by persons with disabilities and their representative organisations is frequently possible, it does not always take place in suitable and meaningful formats (Article 4: Participation).

Finally, some of the Convention's specifications, such as the principle of inclusion, have a socio-political dimension. A controversial public debate about inclusion is underway in Germany, which is reflected in some parts of this report (Article 24: Requirements of an Inclusive School System; Article 27: Employment in Workshops).

Many leading institutions in the State Party (Federal Government and the provinces (Länder)) are in favour of preserving special facilities for persons with disabilities in their existing form. In some sectors – such as education, housing, and the workplace – this entails the preservation of double structures (Article 19: De-institutionalisation) which, however, carry the danger of segregation and discrimination.

Overall, it is clear that the specifications of the CRPD have not yet had sufficient impact on the everyday reality of persons with disabilities in Germany. Emphatic recommendations from the CRPD Committee will be necessary to prompt policymakers to address the existing problems, known points of conflict, and unresolved implementation issues with the necessary determination.

A further point of criticism concerns the State Party's approach to its reporting obligations in this procedure, which falls well short of its potential. While the Initial Report (2011) mentions a series of initiatives and programmes for promoting the participation of persons with disabilities as well as listing measures to ensure their equality, no sufficiently self-critical analysis of existing problems and deficits in the implementation of the Convention has been carried out so far. Many articles of the State Party's report simply outline the legal situation without addressing its implementation in practice, so that the State Party's portrayal of the situation is ultimately unsatisfactory.

The State Party has not succeeded in responding to the CRPD Committee's List of Issues with sufficient awareness of the problems and necessary solutions and in adequate detail. Some of its answers fail to address the issues at all. Particularly problematic are the responses concerning the jurisdiction of the Länder, some of which do touch on the various problems, but only in greatly simplified form while others are passed over in their entirety. No proper overview emerges from these descriptions.

How to read this document

This Parallel Report addresses 24 problem areas which, in the view of the National Monitoring Body, should receive special attention at the thirteenth meeting of the CRPD Committee in March 2015.

This selection of issues aims to highlight some of the most pressing problems while simultaneously illustrating that all parts of the State Party (Federal Government, Länder and municipalities) are charged with the implementation of the Convention: Successful implementation is largely dependent on whether the entire spectrum of actors adequately performs the tasks that fall into their various spheres of responsibility. The suggested measures address urgent concerns of persons with disabilities and also reflect the wide range of different perspectives they bring to these concerns – the latter being one of the NMB's special objectives.

Owing to constraints of space and the need to do justice to the full complexity of the information and the state of the discourse, this report is limited to selected aspects of the implementation process only. For the same reasons, we were unable to comment on all the items in the List of Issues. Thus, this report does not represent a comprehensive or final evaluation of Germany's implementation of the CRPD. However, the fact that any given issue is not discussed here does not mean that the issue is irrelevant to the implementation of the Convention in Germany.

This report is structured along the numerical order of the CRPD articles, but does not comment on all the articles of the Convention or on each aspect of any individual article.

To provide focus, each section begins with a question formulated by the National Monitoring Body.

This is followed by background information and a brief analysis of the problem, and finally by statements from the CRPD Committee or other UN committees or UN bodies. The paragraphs headed "Representation by the SP" and "Responses from CS" contain those statements by the State Party and civil society actors which we deem crucial or of particular interest. Where appropriate, we have referenced important documents containing information or statements about the aspect in question. The following key explains the abbreviations²:

- CRPD Committee = Committee on the Rights of Persons with Disabilities
- SP = State Party
- CS = Civil Society
- NMB = National Monitoring Body

Finally, each section contains the position and recommendations of the National Monitoring Body.

² For details on the sources cited, please refer to the Bibliography.

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Article 1: Legal Definition of Disability

Does the concept of disability in German law need to be revised in line with Article 1 of the CRPD?

1. Germany defined the legal concept of "disability" long before the CRPD was adopted. Individual provinces (Länder) have adapted or approximated the definition of disability in various ways to the wording of Article 1 CRPD during the course of revising their acts on equal opportunities for persons with disabilities.³ However, the concept has not been changed in all the respective laws. In particular, it has remained unchanged in the sense of being a basis on which decisions about the entitlement of persons with disabilities to social benefits are made (Section 2 para 1 SGB IX).

Representation by the SP (Federal Government / Länder):

2. The SP notes that the current concept of disability is already premised on the ICF (International Classification of Functioning, Disability and Health) and that the German concept of "disability" is not based on health impairments alone but also takes into account constraints on participation (SP (2011), para16).

Responses from CS:

3. See CS (2013), p11.

Position of the NMB:

4. The German legal situation is complex because different mechanisms (including recognition, accessibility and in particular participatory services and other forms of service) are associated with the legally defined concept of disability.
5. However, we find that the SP does not, or does not satisfactorily, reflect the open and dynamic understanding of disability that underlies the CRPD, either in its specified definition of disability or in the existing provisions as a whole. The existing provisions are open to interpretation, but in practice the possibilities are neither uniformly nor satisfactorily exploited. There can and should be a much sharper focus on the human rights approach and understanding of disability as laid down by the CRPD, both in social policy and in associated initiatives (laws, policies, strategies).
6. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) revise the legal definition of disability in German law in line with Article 1 CRPD. Moreover, the human rights understanding of disabilities should be used as a basis for all rights policy initiatives connected with the groups covered by the CRPD, thereby contributing in the medium term to the harmonisation of law and practice.**

³ See, for example, Section 1, para3 BbgBGG dated 11 February 2013.

Article 4: Action Plans

Do the Action Plans of the Federal Government and Länder to implement the CRPD satisfy human rights requirements and do they take the most marginalised and disadvantaged groups sufficiently into account?

7. On 15 June 2011 the Federal Government adopted a 10-year National Action Plan (NAP) for implementation of the CRPD. Twelve out of the sixteen Länder have also published (variously designated) Action Plans. The others are in the process of preparing Action Plans. The plans differ in concept and in content.
8. The CRPD Committee in several Concluding Observations recommended the application of a human rights approach. Recently, it emphasised that an Action Plan for implementing the CRPD should cover all rights and substantive areas of the Convention and should include concrete and measurable goals, allocation of financial resources and indicators for measuring progress.⁴

Representation by the SP (Federal Government / Länder):

9. The Federal Government regards Action Plans as the major instrument for implementing the rights of persons with disabilities (2014a, para2; 2011, para10). It says that all Action Plans have been produced with the involvement of persons with disabilities (2014a, para3; 2014b, p4-10).

Responses from CS:

10. See CS (2013), p8.

Position of the NMB:

11. All Action Plans – of both the Federal Government and the Länder – lack a coherent human rights based approach for implementation. For example, they contain no evidence that in developing and drawing up the Plans all groups in especially vulnerable situations were identified or that measures to overcome their specific difficulties were prepared or priorities set with an awareness of the greatest problems (baseline study) (see NMB (2014a), pp3-4).
12. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) put into effect action plans where this has not already been done and, where they already exist, check, or have checked by an independent party, that they take full account of the CRPD; as they are further developed far more attention should be paid to the human rights approach while recognising differentiated state obligations; political measures should be applied primarily where rights are especially endangered and people in especially vulnerable situations are affected.**

⁴ CRPD/C/DNK/CO/1, para9.

Article 4, 29: Participation

Is the CRPD being implemented with the close and active involvement of persons with disabilities and their representative organisations?

13. In the SP, participation at the federal, state and municipal level as a rule follows established formats, facilitated on the one hand on a permanent basis by disability advisory boards and on the other by written and/or oral consultations or conferences devoted to specific issues on an ad hoc basis. What both forms of participation have in common is that participation often has a very limited, or at least no visible, impact and that the participating persons and/or organisations have only very limited resources at their disposal to support their activities.
14. The CRPD Committee has repeatedly recommended– the creation of structural conditions for genuine, meaningful and effective participation by persons with disabilities and their representative organisations, in order to draw up legislation, policies and programmes for implementing the CRPD.⁵

Representation by the SP:

15. The Federal Government describes the involvement of civil society as an important element (SP (2011), para11) and cites the NAP, which it says was developed and is being implemented with the close involvement of civil society (SP (2011), paras11, 31). Furthermore, it says, all Länder action plans were prepared in cooperation with persons with disabilities (2014a, para3).

Responses from CS:

16. See CS (2013), pp9-10, p90; CS (2015), Issue 2.

Position of the NMB:

17. The way in which participation has been practised until now does not take sufficient account of the requirements of Article 4. As a rule, participants are not sufficiently clear about their respective role or function and their resulting impact, and there is frequently a lack of transparency and accessible communication. Moreover, attempts to address the heterogeneity of persons with disabilities and to integrate their diverse interests are seldom successful. In particular, the interests of children with disabilities are hardly represented, least of all by children and young people themselves.
18. There is therefore a need for new concepts and models of participation so as to guarantee the necessary extent of meaningful and effective participation. There is also a need to boost capacity, competences and resources, especially of smaller self-advocacy organisations.
19. **The National Monitoring Body suggests that the CRPD Committee recommend that, in drawing up and implementing laws, programmes and strategies to implement the CRPD, the State Party (Federal Government and Länder) develop strategies and structures for meaningful and effective participation in order to ensure transparent, inclusive and effective participation of all groups of persons with disabilities. Adopting an empowerment approach, self-advocacy organisations, particularly those of people in especially vulnerable situations, such as institutions, should be strengthened and appropriately equipped.**

⁵ CRPD/C/AUS/CO/1, para11.

Article 4: Systematic Review of the Existing Law

Have current laws and ordinances dating from the period before the CRPD came into effect been checked against the articles of the CRPD and adapted to its requirements?

20. The CRPD was ratified in 2009 on the premise that it would not give rise to any need for legislative action in the SP.⁶
21. In several Concluding Observations, the CRPD Committee has called on State Parties to make systematic efforts to check their laws for compliance with the CRPD standard and to implement its stipulations.⁷ With reference to Germany, the CRPD Committee included this item in its List of Issues⁸.

Representation by the SP (Federal Government / Länder):

22. The SP (Federal Government) (SP (2014a), paras14-17) is still convinced that in principle the existing law does not give rise to any need for legislative action and that there is only a need to evaluate individual points.
23. The picture in the Länder is heterogeneous. For several years, sporadic legal assessments have been carried out (meaning in this context that the prevailing legal norms are checked for their compatibility with the CRPD and the resulting need for legislative action is identified). According to the SP's response of July 2014, "at least ten German Länder are currently looking to bring their state norms into line with the UNCRPD or have already done so. A further two do recognise the need for alignment, however as yet have no plans to review their norms." (SP (2014a), para20; SP (2014b), pp24-30).

Responses of CS:

24. See (CS (2013), p15; CS (2015), Issue 3.

Position of the NMB:

25. Legal provisions at both Federal Government and Länder level do not meet the CRPD requirements.
26. It is to be welcomed that at the Federal Government level individual areas of regulation are being evaluated and that a few Länder are in the process of carrying out, or have commissioned, systematic reviews of existing law. However, the fact that not all Länder are systematically reviewing their laws is an omission, as is the fact that at Federal Government level the SP is still not open to the idea of going beyond sporadic reviews to identify the need for legislative action in respect of federal regulations much more systematically.
27. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) check existing legal provisions against the standards of the CRPD and harmonise them with the CRPD requirements. To work up proposals, an independent body of experts should be established to draw up amendments.**

⁶ Deutscher Bundestag (2008).

⁷ CRPD/C/AUS/CO/1, para11.

⁸ CRPD/C/DEU/Q/1, para3.

Article 4: Ensuring Legislation Consistent with Human Rights

How does the SP ensure in the legislative process that new laws and ordinances concur with the binding specifications of the CRPD?

28. In its Concluding Observations the CRPD Committee repeatedly recommends State Parties to check legal acts systematically against the standards of the CRPD and to implement its requirements in the legislative process.⁹ In its List of Issues it expressly extended the scope of the question of whether legal norms conform with the CRPD to cover draft legislation¹⁰.

Representation by the SP:

29. According to the SP, necessary improvements are being gradually realised within the framework of the legislator's political mandate, and/or existing deficits in law enforcement are being rectified as far as possible (SP (2014a), paras15-16). Currently, "conformity [...] of draft laws is continuously checked against the specifications of the UNCRPD or in individual cases subjected to more detailed examination." (SP (2014a), para17).
30. Concerning the Länder it refers mainly to existing structures for representing the interests of persons with disabilities (SP (2014b), p26-29).

Responses of CS:

31. See CS (2013), pp15-16.

Position of the NMB:

32. Implementation of the CRPD is not a niche subject, but a cross-cutting task. Disability mainstreaming impacts on a large number of legislative initiatives in all regulatory areas of the Federal Government and the Länder.
33. Although structures and processes already exist in the SP that are working towards this goal (for example, for the Federal Government via the Federal Government's Rules of Procedure), however, neither at federal nor Länder level are there sufficient structural guarantees that the rights and obligations arising from the CRPD will be taken into account. This is not least because the significance and scope of the rights of persons with disabilities are not sufficiently recognised in legislative processes.
- 34. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) take additional measures to ensure that all future legal regulations are aligned to the CRPD and particularly the potential for implementing the CRPD is fully utilised when passing new legislation; this includes substantially strengthening existing procedures and structures for monitoring new legal acts against the standards of the CRPD (for example, by means of further education programmes, by expanding capacity, etc.).**

⁹ CRPD/C/AUS/CO/1, para11.

¹⁰ CRPD/C/DEU/Q/1, para3

Article 5: Strengthening Protection against Discrimination/ Reasonable Accommodation

Are there plans to extend statutory protection against discrimination for persons with disabilities in the SP, especially with respect to enshrining appropriate provisions in law that recognise denial of reasonable accommodation as discrimination?

35. Persons with disabilities are protected against discrimination at the federal level by Article 3 of the German Basic Law (GG), by the federal General Anti-Discrimination Act (AGG) and the Act on Equal Opportunities for Persons with Disabilities (BGG). These are supplemented at the Länder level by equal opportunities acts (see SP (2011), paras33-35; CS (2013), pp17ff). However, in aggregate these regulations do not cover all areas of life: the AGG prohibits discrimination by private actors, but only provides protection in labour law and in so-called mass business, when taking out private insurance and to a limited extent in residential letting (Section 19 AGG). Both the federal and the Länder equal opportunities acts for persons with disabilities essentially only affect the public sector, and they do not include all state actors in their area of application.
36. The SP is currently undertaking an amendment to the BGG. The majority of Länder are presumably waiting to see whether the Federal Government does anything, and if so what.

Representation by the SP:

37. In its representations with respect to the List of Issues Germany refers to an evaluation of the BGG and plans to check on the basis of that "as to whether action is needed with regard to the expression 'reasonable accommodation'" (SP (2014a), para 25).
38. This evaluation has now been completed. The independent report recommends inter alia that discrimination prohibitions in public law and civil law should be reordered, coordinated and systematically brought into line with Article 5 of the CRPD. The State Party admits, however, that there is as yet no "fixed schedule for implementing legal requirements." The same applies to the Länder (SP (2014a), para28).

Responses from CS:

39. See CS (2013), pp18f; CS (2015), Issue 4.

Position of the NMB:

40. Existing protection against discrimination in the SP does not cover all areas of rights and life of persons with disabilities. Nor is it designed effectively enough. In particular, there is no statutory definition that sanctions the denial of reasonable accommodation as discrimination.
41. While German law does contain provisions that come close to the concept of reasonable accommodation or that can count as weak implementation – for example in labour law or in the form of compensation for disadvantages in Länder law – a right to reasonable accommodation is in no way sufficiently enshrined so as to be practically enforceable in all areas of regulation and life.
42. Furthermore, in practice the understanding of "reasonable accommodation" and how this can be concretely implemented is still largely underdeveloped, be it in administration, in jurisdiction or among social services providers.

43. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) develop protection against discrimination for persons with disabilities into a comprehensive, cross-cutting right, and in doing so in particular enshrine reasonable accommodation provisions in law as an enforceable right for all areas of regulation and life and the denial thereof as constituting discrimination. It should be ensured that the concept of reasonable accommodation is more generally acknowledged.**

Article 6, 13, 16: Protection against Violence for Women and Girls

Does the SP plan to develop a comprehensive strategy to protect women and girls with disabilities against violence?

44. Current data show that women with disabilities in Germany are subject to a significantly greater extent than people or women without disabilities to physical, sexual and mental violence.¹¹
45. The CRPD Committee has called on the State Parties in several Concluding Observations to investigate cases of violence, exploitation and abuse of people with disabilities in domestic and institutional settings and to ensure that the people affected have barrier-free access to independent complaints bodies and support facilities.¹²

Representation by the SP (Federal Government):

46. The SP reports on statutory provisions (criminal law, protection of victims) and several measures to protect women and children with disabilities against violence (SP (2011), paras126-135). The National Action Plan (NAP) also lists state-funded measures to protect women against violence that have discontinued.¹³

Responses of CS:

47. See CS (2013), pp37-39.

Position of the NMB:

48. Protection against violence, especially against women and girls with disabilities, is attracting increasing attention in the Federal Government and the Länder.¹⁴ The extent to which state-financed temporary measures to protect individuals against violence are to be continued remains unclear, however. The SP has so far failed to develop a comprehensive and effective strategy to provide protection against violence both in the domestic environments and within institutions.¹⁵
49. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) develop a cross-competence strategy to ensure that women and girls with disabilities are effectively protected against violence in domestic and institutional settings.**

¹¹ Cf. Schrötle (2013); BMAS (2013), pp. 228–237; for how men with disabilities are affected see Hornberg (2013).

¹² CRPD/C/HUN/CO/1, para32; CRPD/C/NZL/CO/1, para36.

¹³ BMAS (2011), p157.

¹⁴ Few if any measures address the special situation of men and boys with disabilities.

¹⁵ NMB (2014b).

Article 7, 12, 17, 16: Rights of Intersexual Children

Has legal protection for intersexual children been sufficiently developed by the SP?

50. An estimated 80,000 to 120,000 intersexual people live in Germany.¹⁶ About 150 to 340 people a year are born with a gender that is not clearly female or male.¹⁷
51. In Germany parents or guardians can still decide, taking into account the child's "best interest" ("Kindeswohl"), whether their child should be subjected to gender-determinative surgical procedures. Studies and surveys have shown that this highly controversial practice of performing gender-determinative surgical procedures and treating intersexual children without the children's consent and usually before they reach school age exists in Germany.

Representation by the SP (Federal Government):

52. The State Report contains no information about the situation of intersexual children in Germany. In response to a question by the CRPD Committee¹⁸ as to how many people are affected, the SP provides no data (SP (2014a), para73). It does not yet appear to share the opinion that the practice of gender-determinative surgical procedures on intersexual children without their consent should be prohibited (SP (2014a), paras75-77).

Responses of CS:

53. See CS (2013), p36-37 (under Article 15); CS (2015), issue12.

Position of the NMB:

54. The SP's response testifies to a lack of awareness of the existing problem.
55. Irreversible surgical procedures for the purpose of assigning a specific gender to intersexual children are highly dubious in human rights terms if the child's consent has not been given – unless, that is, they are necessary to save the child's life.¹⁹
56. In view of the situation in Germany the question arises for the NMB whether the CRPD Committee in view of its General Comment No. 1 on Article 12 CRPD²⁰ is of the opinion
 - that the decision on an irreversible gender determination is a highly personal one at any age and that substituted decision-making is therefore categorically ruled out;
 - that an exception to the requirement of a free and informed decision by a minor may only apply if the surgery and treatment are undertaken because of a specific danger to that person's life;
 - that intersexual minors (i.e. before reaching the age of full majority) have the right to decide for themselves, on the basis of their degree of maturity, on irreversible gender determination that is not required in order to save their lives.
57. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government) prohibit the practice of irreversible, non-lifesaving gender-determination by means of surgical procedures or treatment prior to reaching the age of majority unless the minor in question has made a free and informed decision on the basis of his**

¹⁶ Intersexuelle Menschen e.V. / XY-Frauen (2011).

¹⁷ Woweries (2010).

¹⁸ CRPD/C/DEU/Q/1, para12.

¹⁹ DIMR (2013).

²⁰ CRPD/C/GC/1.

or her degree of maturity and this decision-making has been accompanied by suitable and effective safety precautions.

Article 8: Raising General Awareness

Has the SP through its measures achieved a destigmatisation of people with disabilities, especially people with psychosocial and mental disabilities?

58. The SP (Federal Government and Länder) has drawn up at a general level, especially via the media, measures to raise general awareness aimed at contributing to a positive perception of people with disabilities in society (cf. SP (2011), paras56–65). By contrast, research findings show that there has been no success over the past two decades in increasing the social acceptance by the general public of people with psychosocial disabilities.²¹
59. The CRPD Committee has underscored in several Concluding Observations the important contribution to be made by measures to raise general awareness.²²

Representation by the SP (Federal Government):

60. The SP attaches great importance to raising general awareness. Its 2011 report already listed a large number of measures (SP (2011), paras56–65).

Responses of CS:

61. See CS (2013), pp24–25.

Position of the NMB:

62. The wide range of measures undertaken since 2009 merits a positive mention. It is not, however, known whether they have actually reduced negative attitudes towards people with disabilities. Furthermore, large sections of the population are still unaware of their human rights with regard to inclusion in society.²³ Government public relations work designed to destigmatise persons with disabilities is not evidence-based and seems to have failed to apply research evidence to policy formulation.
63. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) take the elimination of stereotypes and prejudices forward on the basis of an evidence-based research strategy and that it focus on especially stigmatised groups in society such as people with psychosocial and/or intellectual disabilities, and place the preparation and implementation of measures to raise awareness on an evidence basis.**

²¹ Angermeyer (2014).

²² CRPD/C/AUT/CO/1, paras21 and 22.

²³ Bundesvereinigung Lebenshilfe (2014).

Article 8: Role of the Media

How does the SP encourage the public broadcasting media to uphold their human rights responsibilities in order to implement the CRPD?

64. The SP (Federal Government and Länder) has a special public media structure (radio, television and Internet) that is not subject to direct state supervision or influence. The institutions and services of the public media are, however, legally subject to the CRPD.
65. The current Interstate Broadcasting Treaty²⁴ (Rundfunkstaatsvertrag) applies to the broadcasting and media bodies organised across Länder boundaries, such as the ARD, ZDF and Deutschlandfunk channels. While it does not make specific reference to the CRPD and its implementation, it does include a general requirement that "barrier-free offerings [should] increasingly" be provided within technical and financial constraints. On this basis positive developments have taken place, such as the "simplified news" ("nachrichten leicht") portal in the services sector. The SP, however, has no effective measures to show for itself with respect to the private media.

Responses of CS:

66. See CS (2013), pp24-25.

Position of the NMB:

67. There may have been positive developments in the public broadcasting media with regard to the accessibility of services, but they have not fulfilled sufficiently the CRPD's remit with respect to raising public awareness, participation by people with disabilities and access to services and institutions.
68. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) encourage the responsible public broadcasting bodies to evaluate their work comprehensively with respect to the implementation of the CRPD and on this basis develop further measures (accessibility of programmes through different forms of communication including sign language, participation of persons with disabilities, elimination of stereotypes and negative images of persons with disabilities, etc.). The State Party should furthermore encourage the private media to accept their human rights responsibility and urge them to implement the CRPD.**

Article 9: Extending Accessibility

Are additional endeavours required on the part of the SP to ensure that institutions and services of private legal entities that are open to or provided for the general public become more accessible (Article 9, para. 2 b) CRPD)?

69. In 2015 the SP will amend at federal level the Act on Equal Opportunities for Persons with Disabilities (BGG), which will play a key role in ensuring accessibility and with it the implementation of Article 9 CRPD.
70. At present, federal and Länder legislation on equal opportunities for persons with disabilities provides for accessibility using almost identical wording in Article 9, as do a number of special laws. For the

²⁴ Section 3 of the RStV dated 31 August 1991 in the December 2010 version.

most part, however, they are binding only in the public sector. There are very few binding obligations for private entities to avoid new barriers and eliminate existing barriers because the SP relies on voluntary commitments in the private sector. Where standards do apply, such as building regulations, state inspection is inadequate. An expert review is now completed (cf. remarks on Article 5) and recommends inter alia making the regulations governing accessibility more precise, increased involvement of the private sector and significant strengthening of the implementation instruments.²⁵

71. The CRPD Committee has stated unequivocally in the past that State Parties are obliged to ensure that the private sector contributes to the accessibility of institutions and services for the general public because failure to provide access is discriminatory irrespective of the operator's legal status.²⁶
72. The SP has already received a clear recommendation on this point as part of the UPR (Universal Periodic Review) process and has acknowledged and accepted it.²⁷

Representation by the SP:

73. The SP's response concentrates on outlining the existing provisions without mentioning shortcomings. At the Federal Government level it notes that the BGG has been the subject of an expert review but that at the time of the report a decision had not yet been taken on its "how to take it forward" (SP (2014a), para37).
74. With respect to the private sector it refers mainly to the instrument of target agreements (SP (2014a), para37).

Responses from CS:

75. See CS (2013), p5, p9, p18, pp25-30; CS (2015), Issue 5.

Position of the NMB:

76. In practice, regulations governing accessibility have been inadequately implemented. The problem is not merely one of developing functional and practicable sector-related standards but also of organising a gradual implementation process and providing resources for it. No significant progress has been achieved since 2009, especially with respect to the private sector (NMB (2014a), p9). The tendency is for non-governmental actors to be subject only to soft requirements, such as target agreements, without consistent checks. Reliance on voluntary undertakings has achieved only modest progress, if any. Instead of putting inspection arrangements in place and imposing sanctions for infringements, the SP – both the Federal Government and the Länder – relies on target agreements and collective legal actions instituted by persons with disabilities and their representative organisations. This imposes the burden of progress in implementation on civil society. Also these methods have proven to have little if any effect in their present form. The suitability of these measures is accordingly very dubious.
77. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) introduce targeted measures to structurally extend accessibility for people with disabilities in all sectors and areas of life, and especially to encourage the private sector to ensure accessibility, to enforce compliance with accessibility standards strictly and to impose effective sanctions for infringements.**

²⁵ Welte (2014), pp506–510.

²⁶ CRPD/C/GC/2, paras13, 28–29, 32.

²⁷ A/HRC/24/9, paras124,175.

Article 12: Guardianship

Does German guardianship conform in law and practice with the CRPD, especially with respect to Article 12?

78. The SP (Federal Government) abolished statutory custodianship ("Vormundschaft") for adults in 1992 (which formally deprived the person of legal capacity), replacing it with the instrument of guardianship ("rechtliche Betreuung"), as outlined in and governed by the German Civil Code (BGB).

Representation by the SP (Federal Government):

79. The SP notes in the State Report that although present German law on guardianship "is in conformity with the Convention and there is no need for legislative action, (...) all concerned are endeavouring in applying the law to take advantage of potentials for improvement" (SP (2011), para103). This is also shown in current statements such as the SP's reply to the CRPD Committee's List of Issues (SP (2014a), paras38-45) and the SP's statement of 20 February 2014 in the hearing on General Comment No. 1 as referred to the Committee.

Responses from CS:

80. CS seems to be agreed on the practical challenges faced by guardianship but there does not, according to the NMB, appear to be a uniform opinion on whether or not a legal reform is required.²⁸ The BRK-Allianz criticises the SP for not having taken sufficient note of the clear requirements of General Comment No. 1 (CS (2015), Issues 6 & 7). It advocates subjecting guardianship law to a specific legal review (CS (2013), pp32-33).

Position of the NMB:

81. The SP sets itself apart from other countries with its current guardianship regulations. As a rule legal capacity is fully maintained and the legal guardians are obliged to abide by the wishes of the persons they represent. However, in practice the existing supported decision making component for persons with disabilities is neglected. In practice, the guardianship remuneration system for professional guardians is problematic, for example, because it offers incentives to neglect the existing support component in the guardianship relationship.

82. Legal questions nevertheless remain with respect to the CRPD and, especially, the CRPD Committee's General Comment No. 1. Contradictions, or at least elements of considerable tension that are difficult to resolve, exist between the CRPD approach as outlined in General Comment No. 1 and existing provisions of the SP. For example: (a) a guardian can be appointed against the "natural will" (different from the "free will") of the person (Section 1896, para. 1a) BGB); (b) the legal concept of "best interest" ("Wohl") insofar as it may override the will and preferences of the person (Section 1901 BGB); (c) the reservation of consent (Section 1903 BGB).

83. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government) subject the law and practice of guardianship to a systematic review; in practical terms the supported decision making component in the law and practice of the State Party must be strengthened and further developed by means of adequate measures (such as law reform, empirical legal research, data and statistics, model projects on supported decision-making, professional quality standards, and further training programmes for professional groups).

²⁸ BGT (2014).

Article 13: Access to Justice

Is the SP obliged to make judicial processes, institutions and services more accessible?

84. The question of access to the judicial system raises many different issues in Germany. In addition to physical access to buildings and communicative access to information it involves the competences of the administration of justice in dealing with persons with disabilities and the flexibility of procedural law to shape procedures appropriately.
85. Legal terminology, procedures and the formal and written requirements of judicial proceedings are especially difficult to understand for people with intellectual disabilities and constitute barriers to communication for them. As matters stand, the procedural and legal costs framework conditions leave little scope for the provision of any individual assistance that might be required.
86. The CRPD Committee states that access to judicial services, information and communication are – along with physically accessible buildings and institutions of law enforcement agencies and courts – fundamental prerequisites for equal access to justice.²⁹

Representation by the SP:

87. The SP refers to procedural regulations that require accessible information and communication aids for people with impaired hearing and speech and the blind and visually impaired (SP (2014a), paras47-50), and to regulations relating to the right to fair trial (SP (2011), paras104-112).

Responses from CS:

88. See CS (2013), pp33-34); CS (2015), Issue 8.

Position of the NMB:

89. The SP's existing procedural law provides unilaterally for specific aids for certain impairments, such as for blind and visually impaired plaintiffs. The current procedural rules fail to make sufficient provision for the needs of people with psychosocial and/or intellectual disabilities because communicating in easy-to-read language is not covered.³⁰
90. There are also justified misgivings as to whether sufficient provision is made for the rights of people with disabilities in criminal justice, an area in which legal protection is especially relevant.³¹ Limiting issues to procedural law in the narrower sense of the term falls short of what is required overall. Realisation of equal access to effective legal protection requires a more in-depth consideration of the actual problems. What is needed is, for example, disability-friendly provisions with regard to legal costs and court organisation, low-threshold advice and complaint facilities and a consistent enshrinement of appropriate provisions. What is required is both taking the additional cost requirement into account and providing targeted further training in order to develop practical competences for dealing with people with disabilities for professional groups involved in the administration of law.³²
91. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) introduce targeted measures to improve the physical**

²⁹ CRPD/C/GC/2, para37.

³⁰ Welti (2014), p465, 469, pp475-476, 508.

³¹ Pollähne (2013).

³² CRPD/C/SLV/CO/1, para12.

and communicative accessibility of courts, judicial authorities and other bodies involved in administering the law and to adopt all the relevant provisions to effectively cater for the rights of people with disabilities; in particular, reasonable accommodation should be made for all people with disabilities and extended to all aspects of legal proceedings; access to justice for people with disabilities and the resulting practical requirements should form part of legal training and of training programmes for everyone associated with the judicial system.

Article 13: The Role of the Judiciary in Implementation

Is there a potential for better implementing the rights of persons with disabilities in court rulings requiring the application of the CRPD?

92. Whether and to what extent the rights outlined in the CRPD are put into effect in Germany often greatly depends on how the applicability of the CRPD, the meaning of its contents and the consequences for administrative and legal procedures are appraised. Since it came into effect the CRPD has been invoked by many persons with disabilities – with very limited success. For the period between 2009 and 2014 alone, we have identified about 230 court rulings in which the CRPD played a role.
93. In its Concluding Observations the CRPD Committee has until now never explicitly addressed the question of the national application of the CRPD.³³ In the List of Issues pertaining to the German court proceedings the Committee enquired directly about the binding powers of the CRPD in the German federal legal system³⁴.

Representation by the SP (Federal Government / Länder):

94. The SP's response to the List of Issues contains jurisprudential statements on the legal status and meaning of the CRPD in the German legal system (SP (2014a), paras51-52).

Responses from CS:

95. See CS (2015), Issue 9.

Position of the NMB:

96. In practice problems occur in the application of law by public authorities. Government agencies and courts, for example, often find it difficult to deal appropriately with the Convention because of a lack of clarity surrounding its legal status, effects, contents and methods of interpretation. Decisions that could be considered good practice are rare.³⁵ In particular the potential of the judiciary to enforce the standards of the CRPD in the national legal system is not being sufficiently exploited.
97. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (German Federal Government and Länder) take targeted measures to ensure the appropriate application of the CRPD in administrative proceedings and to promote it in the administration of justice in compliance with the division of powers. Also, with regard to practical implementation, it is necessary to ensure effective training of personnel in the German justice and prison system on the application of human rights standards, in particular with regard to persons with disabilities, to provide the legal practitioner with suitable tools (such as**

³³ CRPD/C/AUS/CO/1, para28; CRPD/C/GC/1, para38.

³⁴ CRPD/C/DEU/Q/1, para9.

³⁵ BAG, ruling from 19 December 2013, 6 AZR 190/12.

practical online-information on the CRPD und CRPD-related human rights jurisprudence) and to offer such training to professionals in the judicial system on a regular basis.

Article 14, 17, 25, 12, 8: Rights of People in Psychiatric Care

In view of widespread involuntary placement and involuntary treatment in the SP, is a fundamental reform of psychiatric care necessary?

98. In Germany the question of whether and how the rights of persons with disabilities can be enforced in the field of psychiatric care has been the subject of controversial political and professional debate since 2009.
99. Involuntary placement and involuntary treatment are widespread in Germany.³⁶ In acute psychosocial crises experienced by persons with emotional, intellectual or cognitive impairments the spectrum of psychiatric diagnosis is generally used to override the will of the individual. Data concerning highly sensitive issues such as involuntary placement and treatment is very poor, even by the SP's own admission.³⁷
100. One positive example worth mentioning is the psychiatric inquiry carried out in the 1970s ("Psychiatrie-Enquete"), commissioned by parliament, that provided an important political impetus in Germany and contributed to structural changes in the psychiatric care system.³⁸

Representation by the SP:

101. In its report the SP (German Federal Government and Länder) essentially defends the practice of involuntary placement and involuntary treatment as an unavoidable last resort (*ultima ratio*). Citing new regulations that followed from high court decisions it adheres to the concept of "illness-related inability to consent" ("krankheitsbedingte Einwilligungsunfähigkeit").

Responses from CS:

102. See CS (2013), p34-36; (2015), Issue 14. In the wider spectrum of civil society the issue is the subject of controversial debate.³⁹

Position of the NMB:

103. To date the SP has failed to recognise that the psychiatric care system faces considerable challenges despite this having been pointed out by the NMB.⁴⁰ It is deeply regrettable that in the light of the CRPD the legal amendments give more leeway and weight to the powers of intervention by public and private actors than to strengthening legal protection for the individual. A shift in perspective in favour of the holders of rights is entirely absent.
104. Currently, neither politicians nor organisations of professional groups involved in psychiatric care – the medical profession, for example – are pushing for the development of alternatives that move away from involuntary placement and involuntary treatment. In the SP any sustainable and systematic development that would lead to structural changes, new strategies, laws and programmes capable of preventing coercion is lacking.

³⁶ Deutscher Bundestag (2012).

³⁷ BMAS (2013), pp381-398.

³⁸ See Deutscher Bundestag (1975).

³⁹ DGPPN (2014).

⁴⁰ NMB (2012).

105. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (German Federal Government and Länder) introduce targeted measures for a human rights-based radical overhaul of psychiatric care for persons with disabilities. The system must be practically enabled at every level in order to prevent coercion in connection with placement and treatment, such as physical and chemical restraint, and instead ensure free, informed and self-determined decision-making by the individual through the provision of appropriate support. The State Party (legislature) should implement an initiative launched and supported by the German Parliament (for example in the form of an inquiry with recommendations) aimed at introducing the necessary structural changes.

Article 16: Institutional Protection against Violence

What demands does Article 16, para. 3 make on the SP?

106. Recent data show that in Germany, women, men and children with disabilities are far more likely to experience physical, sexual and psychological violence than persons without disabilities.⁴¹

107. In several Concluding Observations the CRPD Committee asked the State Parties to investigate cases of violence, exploitation and abuse against persons with disabilities both in and outside institutions and to ensure the affected persons have barrier-free access to independent complaints bodies and support facilities.⁴²

Position of the NMB:

108. The SP (Länder) has yet to name an independent body which, in accordance with Article 16 paragraph 3 CRPD, would closely monitor institutions for persons with disabilities (as recommended in the Concluding Observations of Mexico⁴³). The majority of the existing monitoring authorities in the Länder have not yet focussed specifically in their inspection framework on incidents of violence in institutions for persons with disabilities.

109. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Länder) formally name the state agencies which, in line with Article 16, para. 3, are responsible for monitoring institutions for persons with disabilities, and equip them with the personnel, material resources and authority necessary for that specific task.

Article 17, 20: Use of Physical Restraint in Older Persons Care Facilities

Does the SP need to do more to reduce the use of physical restraint in older persons care facilities and to guarantee physical integrity?

110. In December 2011, 2.5 million people in Germany were in need of care.⁴⁴ One third of care recipients live in 12,400 residential care homes nationwide.⁴⁵ SP law permits the use of physical restraint only with the authorisation of the courts and as a final resort (§ 1906 para. 4 BGB). However, empirical

⁴¹ Schröttle/Hornberg (2013); Hornberg (2013); BMAS (2013), pp228–237.

⁴² CRPD/C/HUN/CO/1, para32; CRPD/C/BEL/CO/1, para31; CRPD/C/DNK/CO/1, para41; CRPD/C/NZL/CO/1, para36.

⁴³ CRPD/C/MEX/CO/1, para36c.

⁴⁴ More current figures have not been published by the Federal Statistical Office.

⁴⁵ Statistisches Bundesamt (2013a), p. 5; Statistisches Bundesamt (2013b), p7.

surveys assume that physical restraint is used on almost one quarter of patients in German care homes.⁴⁶

111. Although inspectors observed a decline in physical restraint in 2013, the practice was still widespread with 75,727 court orders issued for fixation. This does not include the numerous practices that have no legal legitimisation. For example, in 8.1 percentage of confirmed cases patients were physically restrained without consent or a court order.⁴⁷

Representation by the SP (Federal Government):

112. The SP portrays physical restraint as an exception (SP (2011), para114); however, the human rights dimension of the problem of widespread use of physical restraint is not acknowledged.

Responses from CS:

113. See (CS (2013), pp39-41.

Position of the NMB:

114. The decline in the use of physical restraint in Germany as recorded in recent reports is to be welcomed. However, respect for dignity in geriatric care, where physical restraint is used only in the rarest cases, is still a long way off in residential care homes. Efforts should therefore be stepped up and strategically underpinned in order to further limit the use of physical restraint in geriatric care.

115. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (German Federal Government and Länder) develop a strategy to guarantee the rights of older people to dignity in care, which includes freedom of mobility and personal integrity.

Article 19: De-institutionalisation

Has the SP sufficiently adopted Article 19 CRPD and the remit for de-institutionalisation it entails?

116. The SP has at its disposal a sophisticated system of special (and segregated) institutions for persons with disabilities, not only in the area of residential accommodation. These specific facilities have been built up over decades with the backing of statutory requirements for their construction and maintenance.

117. Of critical importance here is the regulatory framework for so-called "integration assistance services" ("Eingliederungshilfe") (§§ 53-60 Sozialgesetzbuch XII, in connection with other statutory requirements), whose amendment the SP has been debating intensively for the past year.

118. In order to support the statutory goal of social participation for persons with "considerable" disabilities, the SP in 2013 provided 14 billion euros for "integration assistance services". Of the 14 billion euros, only 2.5 billion euros were deployed 'outside institutions', the remainder spent 'in institutions'.⁴⁸

119. Owing to the lack of alternatives to residential care homes and the numerous obstacles in infrastructure (accessible apartments, mobility etc.) persons with disabilities have limited choices when deciding whether to live in the community and enjoy full participation in the community. The

⁴⁶ Meyer (2009).

⁴⁷ MDS (2014); BfJ (2013).

⁴⁸ Note: the external costs even include workshops.

SP indicates that the number of persons living in residential care homes has remained "almost constant" and thus there is no indication of any movement towards de-institutionalisation.

120. The CRPD Committee has expressed scepticism about institutional, residential nursing homes on numerous occasions.⁴⁹ In the List of Issues it put two questions to the SP in relation to Article 19 CRPD.⁵⁰

Representation by the SP (Federal Government / Länder):

121. The SP reports that since 2003 the "scope of care" in residential care homes (per 1000 inhabitants) has remained virtually unchanged (SP (2014a), para82). The Länder, however, report a trend towards other forms of living (SP (2014b), pp42-46).

Responses from CS:

122. Some organisations, among them the major charities, warn against calling all residential care homes into question because, as they say, it can also be a free decision to live in special forms of housing and many persons with disabilities like living in them. The BRK-Allianz however points to the various obstacles to living in the community (CS 2013), pp43-46). Further Reading see (CS (2015), Issues 15&16).

Position of the NMB:

123. To date the SP has failed to develop a programme for implementing Article 19. There is no strategy that could be developed and implemented in coordination with the Länder.

124. With respect to the SP's plans to introduce a key reform on integration assistance (Eingliederungshilfe) the decisive factor will be whether it is possible to reorganise state services to support living in the community in line with the CRPD, instead of continuing to run counter to it. Only if this happens can structural change be promoted designed to create a more inclusive society.

125. In its current form, the integration assistance scheme ("Eingliederungshilfe") has spawned numerous forms of housing that are associated with potential segregation and discrimination.

126. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (German Federal Government and Länder) work with persons with disabilities to instigate a structural shift in the area of housing. It is important to add here that pending legal reforms, particularly regarding the social participation of persons with disabilities (reform of Eingliederungshilfe), should be strictly tied to the principles of inclusion and self-determination.

Article 24: Requirements of an Inclusive School System

How can the expansion of an inclusive school system be promoted while simultaneously overcoming educational segregation?

127. Germany has a highly differentiated, and in some cases segregated school structure. Of an estimated 500,000 school students with disabilities in 2012/13, 28% attended a regular school and 72% attended a special-needs school.⁵¹

⁴⁹ CRPD/C/AUT/CO/1, para36.

⁵⁰ CRPD/C/DEU/Q/1, paras15 and 16.

⁵¹ Bertelsmann Stiftung (2014).

128. Since 2009 it has been observed that the regular schools are increasingly open to children and young people with disabilities. However, there are major differences between the Länder, with the integration rate in the regular schools ranging from 15 to 63%, depending on the federal state.⁵² Of the persons completing special-needs schools in Germany in 2012, almost three quarters had no secondary school leaving qualification.⁵³
129. In the past the CRPD Committee has promoted inclusive education.⁵⁴ However, its Concluding Observations leave open whether, and under what circumstances, it considers it permissible to maintain special-needs schools, and whether these can be harmonised with the approach of an inclusive system.

Representation by the SP (Länder):

130. In its report the SP has presented the advantages of special-needs schools in Germany (SP (2011), paras188-205). The response to the List of Issues indicates that the Länder recognise the joint teaching of people with and without disabilities as a task to be undertaken. However, they do not interpret the aim of an inclusive system as meaning that segregated special educational institutions should be called into question as such; almost all the Länder continue to maintain separate structures in the area of school education (SP (2014b), pp67-68).

Responses from CS:

131. See CS (2013), p54-59; CS (2015), Issue 18 and 19.

Position of the NMB:

132. The SP is a long way from an inclusive education system. A number of Länder clearly refuse to see inclusion as a restructuring task, firmly adhering to the double structure of regular schools and special-needs schools. Although, for example, the examination of the legal framework resulted in statutory amendments, none of the federal states have adequately developed their legislation.⁵⁵
133. Adhering to a double structure prevents the necessary transformation process in Germany, by means of which the existing resources and competences of special-needs schooling could be transferred to the regular schools.
134. It will only be possible to speak of a change of course towards an "inclusive system" once special-needs schooling and the resources assigned to it have been systemically and structurally anchored in the regular schools and segregational structures within school education have simultaneously been overcome.
- 135. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Länder), in so far as this has not already occurred, embark on the development of an inclusive education system and increase its efforts with respect to inclusive school education and overcoming educational segregation.**

⁵² Bertelsmann Stiftung (2014).

⁵³ Autorengruppe Bildungsberichtserstattung (2014), p181.

⁵⁴ CRPD/C/AUT/CO/1, para43.

⁵⁵ Mißling/Ückert (2014).

Article 27: Employment in Workshops

In light of the growing number of persons employed in workshops, what must the SP do in order to meet the requirements of Article 27 CRPD?

136. Since the CRPD came into force, and in light of the demand for an inclusive labour market, there has been a heated debate in Germany as to whether, and under what conditions, sheltered workshops for persons with disabilities (workshops) operating parallel to the primary labour market and as part of a labour and employment structure are permissible with respect to human rights.
137. The growth in the number of persons employed in workshops has continued unabated. In 2013 this affected around 300,000 people. Furthermore, the workshop system is exclusive: access is granted only to those persons who are capable of producing a minimum amount of economically productive work output.⁵⁶ The law stipulates that workshops should prepare people for the primary labour market; however, transition to the primary labour market is only successful for one percentage of those employed in workshops.
138. The CRPD Committee has expressed its concern with respect to Austria where a large number of citizens are employed in workshops outside the general labour market, among other reasons because of the low wages they receive.⁵⁷ With respect to Germany, the Committee addressed the growing number of persons employed in workshops in the List of Issues.⁵⁸

Representation by the SP (Federal Government / Länder):

139. The SP takes the view that "there is still a place for workshops offering services to help people participate in working life" (SP (2014a), para117). However, workshops are only justified if they also provide opportunities for participation in working life outside the workshop and introduce measures to promote the transition to the general labour market (SP (2014a), para117).

Responses from CS:

140. See CS (2013) p75, pp78f; CS (2015), Issue 20.

Position of the NMB:

141. The SP is a long way from an inclusive labour market. In the pursuit of this goal, workshops, in as far as they comply with human rights, can assume a temporary bridging function, i.e. are justified as long as some persons with disabilities support them in the absence of an alternative.
142. However, the workshop system cannot be seen as part of an inclusive labour market – not least because it does not offer the same opportunity to earn one's livelihood as the general labour market. The differences are evident in the fact that attending a workshop is not considered to be employment, and for this reason is not covered by the general minimum wage introduced by the SP in 2015. Measured in terms of the goals and requirements of Article 27, the workshops are under continual pressure to justify their existence.
- 143. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) intensify its efforts to create an inclusive primary labour market. The trend towards increasing numbers of persons employed in workshops should be decisively reversed in favour of employment opportunities in the primary labour market. The**

⁵⁶ Section 136, Para2, Item 1 SGB IX.

⁵⁷ CRPD/C/AUT/CO/1, para44.

⁵⁸ CRPD/C/DEU/Q/1, para20.

State Party should proceed further in the direction of inclusion and participation, guaranteeing non-discriminatory access and an adequate wage, and the supported transition of persons to the primary labour market.

Article 29: Extending the Right to Vote to all Persons with Disabilities

Is the SP obliged to remove the exclusion of persons with disabilities from the electoral law at federal and Länder levels?

144. By law, the SP (Federal Government) excludes two groups of persons with disabilities from the right to vote and from standing for election. In most Länder comparable regulations exist with respect to state parliament and municipal elections.
145. Those affected are, on the one hand, persons who are subject to legal guardianship in all their affairs: persons with severe physical disabilities and additional intellectual disabilities, comatose persons or those suffering from dementia, persons with severe cranio-cerebral injuries and persons with psycho-social impairments; the number of persons in this category is estimated to be in the five-figure range.
146. The second group is composed of persons with psycho-social impairments who were placed in psychiatric care by a criminal court for having committed a crime while exempt from criminal responsibility – according to the available data, at least 6,600 persons.⁵⁹
147. The CRPD Committee has demanded the universal right to vote on numerous occasions and repeatedly declared legislative exclusions to be in breach of the Convention.⁶⁰

Representation by the SP:

148. The SP argues that it does not exclude persons with disabilities from the right to vote solely on the basis of their disability, but only when further narrowly defined conditions arise (SP (2014a), para126). It says that these affected persons also lack the ability to take a highly personal, responsible decision on who to vote for (SP (2011), para253). The SP refers to an empirical study currently being conducted on the necessity of legislative changes. No legislative changes at the federal level will be made before its completion. A number of Länder are explicitly waiting for this as well.

Responses from CS:

149. See CS (2013), p6; pp88-90; CS (2015), Issue 22.

Position of the NMB:

150. The SP's insistence on legal disenfranchisement constitutes discrimination on grounds of disability. Although legislative changes have been called for since 2011, the disenfranchisement has not been revoked.⁶¹
151. **The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government and Länder) extend the right to vote to all persons with disabilities. In particular, all regulations which exclude persons with disabilities from the right to vote are to be revoked immediately.**

⁵⁹ Deutscher Bundestag (2012), pp5ff.

⁶⁰ CRPD/C/GC/1, para48.

⁶¹ Palleit (2011).

Article 31: Statistics and Data Collection

To what extent has the SP fulfilled its obligation to develop a system of human rights-based indicators and a system of comprehensive data collection?

152. The SP (Federal Government) is currently bringing its reporting on persons with disabilities into line with a data-based format in order to increasingly orient its policies to findings about the actual life situation of persons with disabilities. Within this framework it is examining existing data sources and official statistics to assess whether they can provide insights into the lives of persons with disabilities.

153. Furthermore, it is clarifying the methodological preconditions for a comprehensive, representative survey on participation ("Disability Survey"),⁶² in order to further improve the database. However, a decision on whether and in what form the survey will be conducted has still not been made. To date there are no plans to combine these initiatives with the development of human rights-based indicators to measure the implementation of state obligations; instead the focus is exclusively on "participation" indicators.

154. The CRPD Committee has repeatedly referred to these obligations arising from Article 31⁶³ and questioned the SP about its efforts in this respect.⁶⁴

Representation by the SP (Federal Government):

155. In its answer the SP referred to the Federal Government Report on Participation with regard to the circumstances of persons with impairments, published in 2013, and is of the opinion that it has "a structure and methodology similar to that in the CRPD" and that "the indicators were presented with reference to the UNCRPD articles" (SP (2014a), para 128).⁶⁵ The statements in the answer would indicate that the SP considers its obligations from Article 31 to have been fulfilled.

Responses from CS:

156. See CS (2013), p91-93; CS (2015), Issue 23.

Position of the NMB:

157. The Federal Government's initiatives for improving the availability of data are to be welcomed. An important step in this direction would be the introduction of the Disability Survey in an extensive format as a representative long-term survey.

158. One shortcoming is that the SP (federal government) has no plans for the independent development of human rights indicators which would provide information on the fulfilment of state obligations. This would include, for example, data on the effects of state benefits, programmes and laws connected with the CRPD – for example, the extent to which companies comply with the legal requirements for accessible workplaces (there are currently no data on this issue, see also the Federal Government's response to question 21, SP (2014a), para120).

159. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government) commission the development of human rights indicators within the framework of a non-governmental process and in accordance with the conceptual guidelines of the UN High Commissioner for Human Rights, and utilise them in compiling the Government

⁶² Hornberg/Schröttle (2014).

⁶³ For example CRPD/C/AUS/CO/1, para54.

⁶⁴ CRPD/C/DEU/Q/1, para23.

⁶⁵ BMAS (2013).

Report on participation. Measures for improving the availability of data, especially the introduction of a representative survey on participation, should be systematically pursued.

Article 32: Inclusive Development Cooperation

Has the SP succeeded in systematically implementing the rights of persons with disabilities in the area of international development cooperation?

160. In January 2013 the Federal Government adopted an "Action Plan for the Inclusion of Persons with Disabilities" (2013-2015), in order to take a step in the direction of inclusive development cooperation.⁶⁶ The choice of the strategy paper format ensures that the orientation it provides is binding for the implementing institutions. The first measures of the Action Plan have already been implemented, however, reports (interim and final report) and an external evaluation are still pending.

Representation by the SP (Federal Government):

161. Although the State Report still refers to the inclusion strategy (SP (2011), para275), surprisingly, in its answer to the List of Issues the SP does not discuss it in any further detail. It is recognised as a weakness that it is currently "impossible to collate a systematic record or monitor the inclusion of persons with disabilities in general programmes and projects"; however, this is now being looked into (SP (2014a), para134).

Responses from CS:

162. See CS (2013), p93-95; CS (2014), p1-3; VENRO (2013); CS (2015) Issue 24.

Position of the NMB:

163. With the Action Plan the SP has taken an important step; however, it is still a long way from a consistently inclusive development policy.

164. Despite its deficiencies (for example the low verifiability and degree of integration of persons with disabilities) and its slow implementation, the Action Plan is to be welcomed on principle and deserves more political support from the heads of the Federal Ministry for Economic Cooperation and Development (BMZ).

165. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Federal Government) continue to systematically anchor the rights of persons with disabilities in the field of development cooperation on the basis of a twin track approach. This includes the complete implementation of the Action Plan, a systematic and independent assessment as well as the extension of the strategies and programmes specifically for the inclusion of persons with disabilities. The improved coordination of the state authorities responsible for development cooperation should be pursued.

⁶⁶ BMZ (2013).

Article 33, para. 1: Institutional Measures

Has the SP (Federal Government and Länder) met the institutional requirements in accordance with Article 33, para. 1 CRPD to ensure that the implementation of the CRPD is competently managed and coordinated?

Representation by the SP (Federal Government / Länder):

166. In its report the SP presents the implementation structure at the federal level (SP (2011), paras284-290) as it essentially exists today. However, the report leaves it open whether the Länder also have corresponding structures. In response to the CRPD Committee's questions the SP provides further information on the working methods of the Commissioners for Matters relating to Disabled Persons at Federal Government and Länder level (SP (2014a), paras142-143).

Responses from CS:

167. See CS (2015), Issue 25.

Position of the NMB:

168. The structural solution adopted by the SP at the federal level for the implementation of Article 33, para1 CRPD can be considered fundamentally successful.

169. However, at the Länder level the implementation cannot be considered stable or complete in all 16 Länder. On the basis of our survey (as of 2013) it is clear that not all of the Länder formally recognise specific Focal Points and that the existing administrative units, in light of a wealth of implementation-related tasks, are often severely under-resourced.

170. With respect to the Länder Commissioners for Matters Relating to Disabled Persons, which are to be distinguished institutionally from the Focal Points, their legal status and resources, especially the conditions required for the independent exercise of their office, are, in many places, in serious need of improvement. In the implementation process the Commissioners for Matters Relating to Disabled Persons have greatly increased responsibilities with respect to the CRPD. However, in the vast majority of cases this is not reflected in the current legal framework.

171. The National Monitoring Body suggests that the CRPD Committee recommend that the State Party (Länder) consolidate the institutional structures in accordance with Article 33 (1) of the CRPD and formally implement the designation of Focal Points and their counterparts in other areas of responsibility. With respect to the Länder Commissioners for Matters Relating to Disabled Persons, the conditions for their independent activity, including their legal status (tasks, powers) should be strengthened and their available resources improved.

Abbreviations

AGG	General Anti-Discrimination Act (Allgemeines Gleichbehandlungsgesetz)
ARD	Association of Public Broadcasting Corporations in the Federal Republic of Germany (Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland)
BAG	Federal Labour Court (Bundesarbeitsgericht)
BbgBGG	Brandenburg Act on Equal Opportunities for Persons with Disabilities (Brandenburgisches Behindertengleichstellungsgesetz)
BfJ	Federal Office of Justice (Bundesamt für Justiz)
BGB	Civil Code (Bürgerliches Gesetzbuch)
BGBI.	Federal Law Gazette (Bundesgesetzblatt)
BGG	Act on Equal Opportunities for Persons with Disabilities (Behindertengleichstellungsgesetz)
BGT	Guardianship Day (Betreuungsgerichtstag e.V.)
BMAS	Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales)
BMZ	Federal Ministry for Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung)
BRK-Allianz	Alliance of German Non-Governmental Organizations Regarding the UN Convention on the Rights of Persons with Disabilities (Allianz der deutschen Nichtregierungsorganisationen zur UN-Behindertenrechtskonvention)
CAT	UN Convention against Torture
CAT Committee	UN Committee against Torture
CRPD	UN Convention on the Rights of Persons with Disabilities
CRPD Committee	UN Committee on the Rights of Persons with Disabilities
CS	Civil Society
DIMR	German Institute for Human Rights (Deutsches Institut für Menschenrechte)
DGPPN	German Association for Psychiatry, Psychotherapy and Psychosomatics (Deutsche Gesellschaft für Psychiatrie und Psychotherapie, Psychosomatik und Nervenheilkunde)
ed.	editor
eds.	editors
etc.	et cetera
ff	and following
GG	Basic Law (Grundgesetz)
ICF	International Classification of Functioning, Disability and Health
MDS	Medical Advisory Service of the German Association of Statutory Health Insurance Funds (Medizinischer Dienst des Spitzenverbandes Bund der Krankenkassen)
NMB	National Monitoring Body (Monitoring-Stelle zur UN-Behindertenrechtskonvention)

No.	Number
NAP	National Action Plan (Nationaler Aktionsplan)
p	page
para	paragraph
para.	paragraph
paras	paragraphs
pp	pages
RStV	German Interstate Broadcasting Treaty (Rundfunkstaatsvertrag)
SGB	Social Code (Sozialgesetzbuch)
SGB IX	Social Code, Book IX (Neuntes Buch Sozialgesetzbuch)
SGB XII	Social Code, Book XII (Zwölftes Buch Sozialgesetzbuch)
SP	State Party
UN	United Nations
UPR	Universal Periodic Review
VENRO	Association of German Development NGOs (Verband Entwicklungspolitik deutscher Nichtregierungsorganisationen)
ZDF	Second German Television (Zweites Deutsches Fernsehen)

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