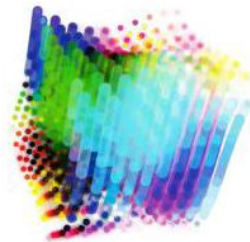


**International Symposium on the Implementation of the
Convention on the Rights of People with Disabilities
into Practice**

**Diakonie RWL and Evangelische Fachhochschule RWL,
Bochum, 6–8 June 2013**

Rights of Children with Disabilities in Germany and South Africa



**MENSCHEN
RECHT
INKLUSION**



Rights of Children with Disabilities in Germany

Structure

- Young people in Germany – some figures
- The history of children's rights in Germany – some figures
- Rights of children with disabilities - Key Issues
- The current debate on inclusion
- The schools and the care system

Young people in Germany

some figures

- Overall population of 81,8 million
- A total of 24,6 % was less than 26 years old (19.9 million)
- 16.2 % was less than 18 years old (13.2 million)
- Since 1997, in Germany there are more elderly (persons over 60) than younger residents (persons under 20 years).

(Source: Destatis, year 2011)

Young people in Germany

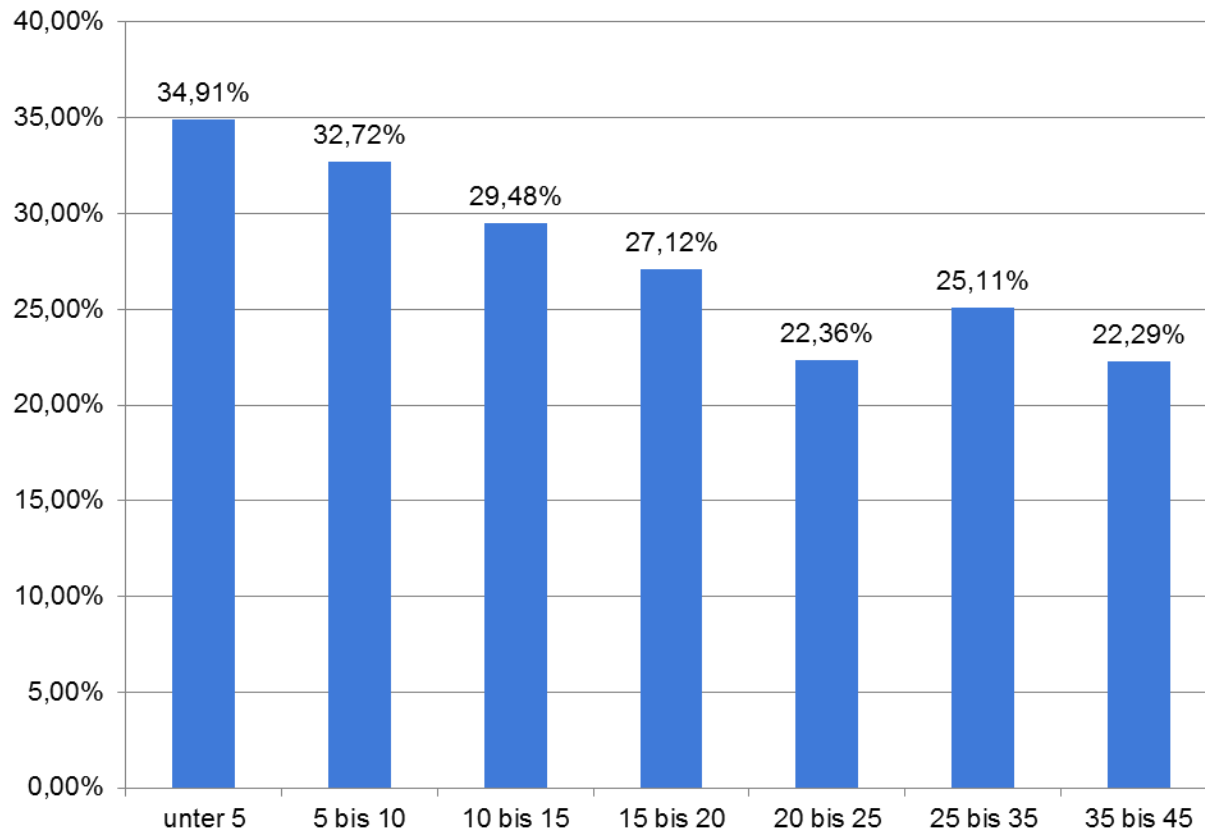
some figures

- 184.800 young people under 18 and their families received integration assistance (rate 1.4% in 2011)
- 365.719 in schools for children with special needs; 121.999 in regular schools with an integration assistance (overall rate 6.4% in 2011/2012)
- Nearly 1 million (998.847) young people and their families receive social provisions for children and families with problems (rate: 6.3% 2011)

Source: destatis, Bertelsmann Foundation and www.akjstat.tu-dortmund.de
Monitor Hilfen zur Erziehung 2012 p. 6

In 2011, the share of migrants in the total population amounted to **13.04 %**. With **28.6%**, the share is even higher among the under 25-year-olds (5.7 million persons).

Demographic share of persons with a migrant background according to age group (2011):

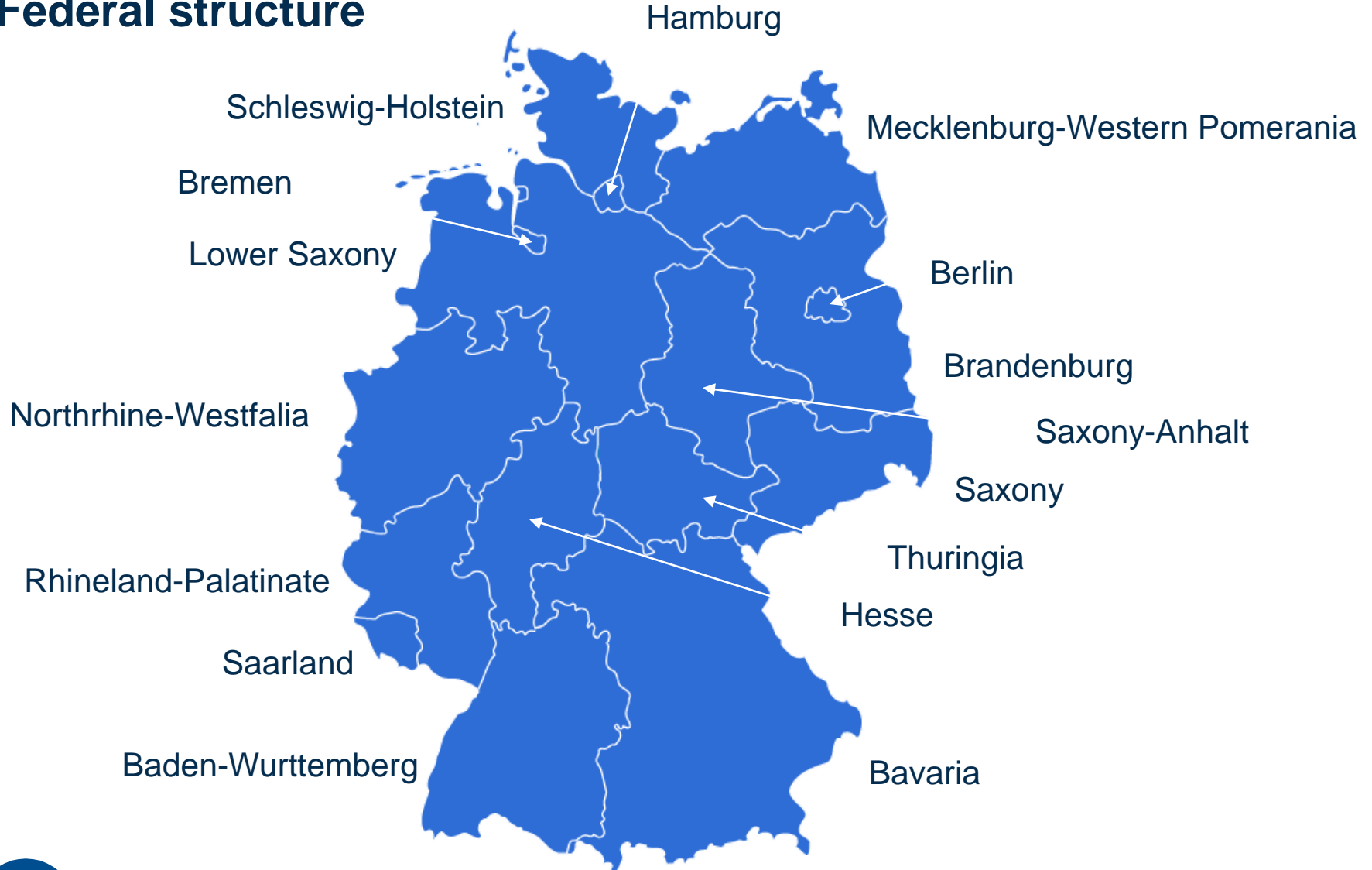


Characteristics of young migrants

- Uneven social and geographical distribution and concentration in certain regions and neighbourhoods (socio-geographical segregation).
- Considerable heterogeneity of national origins in this population of children and youth.
- Differing immigration experiences in various groups of young migrants.
- Wide differences in the levels of education of persons with a migrant background versus non-migrants.
- A third of all second-generation and third-generation migrants does not have a vocational education certificate.
- (Statistically,) the opportunities of German youths for completing their vocational education is higher by a factor of at least 2 to 5.
- Youth unemployment among migrants is significantly higher than for young people without a migrant background.



Federal structure



The history of children's rights in Germany

- 1949 - Basic Law: Protection of the family (Article 6 GG) & Right to the free development of personality (Article 2 GG) - but children were not mentioned as independent legal entities.
- Influenced by the anti-authoritarian movement corporal punishment was banned in German schools in 1973 (in the GDR since 1949)
- Reform of custody law in 1980: "parental care" replaced the "parental authority/control" and § 1626 (2) was added to the Civil Code (BGB): The right for young people to be heard on all aspects concerning them.

The history of children's rights in Germany

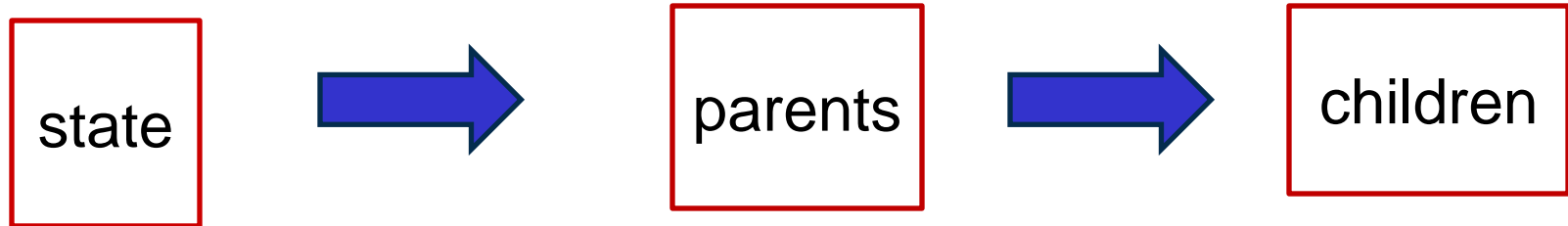
- After the reunification 1990/1991: **Child and Youth Services Act** (Social Code VIII) explicitly understood young people as subjects of their own rights e.g.:
 - The right to be counseled by the youth office
 - The right on a place in a kindergarten for children above 3 (1996)
- 1992: **Ratification of the UN Convention** on the Rights of the Child with reservations (priority of the German aliens law: e.g. pending deportation)
- **The Children's Rights Reform Law** of 1998:
 - Equalization of the status of legitimate and illegitimate children
 - The right to contact both parents (§ 1684 (1) German Civil Code)
 - The possibility to get an "lawyer of the child" in custody proceedings

The history of children's rights in Germany

- 2000: Act to prohibit violence in the upbringing of children which prohibits corporal punishment within the family
- The Children's Rights Reform Law of 2002: Law of decent, Law on names
- Reform of the right of contact and access 2004: rights of access to a child's father and to bonded persons
- Reform of the right of maintenance 2007: material security regardless of the parents' status
- 2010: redemption of the reservation of the UN CRC
- 2012: New child protection Act: Rights of participation and appeal for children in foster care and residential care

The history of children's rights in Germany

The serious change:



From granted rights of children as a response to the parental rights to children as bearers of (some) subjective rights

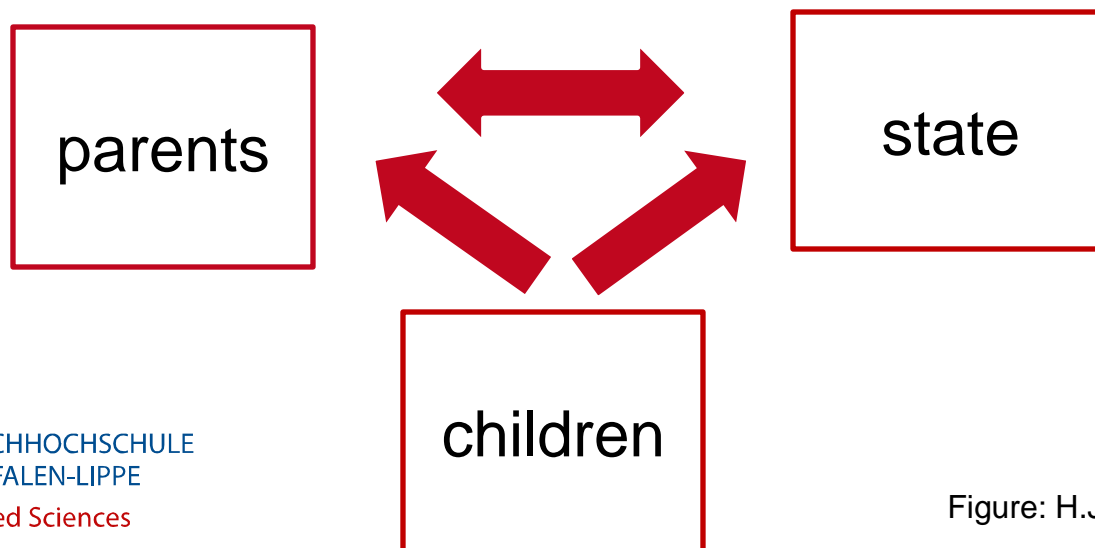


Figure: H.J. Schimke

Still a long way to go...

UNICEF demands: Still no constitutional status of children's rights within the Basic Law (vs. Art 4 UN CRC)

Article 6, paragraph 2 GG, children in an object status: "Care, upbringing and education of children are the natural right of parents and their primary duty. The state polity monitors the fulfilment of that duty."



States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. Art 4 UN CRC9

Still a long way...

Disparate childhoods in Germany

Most children in Germany grow up in well circumstances

- Infant mortality is one of the lowest in the world (0.4%)
- 95% attend a kindergarten
- Nearly all children go to school
- Many have learning opportunities and recreational activities, a dream for their peers in a lot of countries
- Youth unemployment is low in European comparison



Still a long way...

Disparate childhoods in Germany

Good conditions – but not for everyone

Child poverty: 2.6 million children are living on social assistance level, which is almost one of six children

Lack of educational opportunities: The educational level of the parents strongly influences the school career and educational success. Much more than in most other developed nations

Refugee children: The situation is particularly difficult for children who are living as refugees in Germany. Refugees without a secure residence status have limited access to care and medical treatment

Violence against children: Approximately 150,000 children under 15 are physically abused by their parents each year

No reliable environment: Germany is one of the "poorest kids" countries



Rights of children with disabilities - key issues

Legal rights and entitlement to benefits

Children with disabilities have the same rights as other children.

- But it's often hard to get them

UN CRC

- Right to a family, parental care and a safe home
- Right to privacy and a nonviolent upbringing in the sense of equality and peace
- Right to education
- Right to leisure, play and recreation
- Right to immediate help in disasters and emergencies and protection from cruelty, neglect, exploitation and persecution
- Right to equality and protection from discrimination regardless of religion, race and gender
- Right to care for handicapped children

CRPD: Special rights of children with disabilities

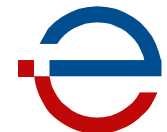
- Children with disabilities shall not be exposed, neglected or isolated.
- They have the right to know their parents and to live in the family or a family-like environment.
- Children with disabilities also have the right to a name and nationality from birth.
- Children with disabilities have the right to equal access to public schools and the right to an education system that includes all children.
- They have the right to preserve their identities.
- The parents of children with disabilities have the right to comprehensive information and support.

The National Action Plan

As a result of the final document "A World Fit for Children "of the United Nations, 2002, the German Federal Government initiated a National Action Plan

The National Action Plan "for a child-friendly Germany," contains a number of measures, bundled in six key areas:

- Equality of opportunity through education
- Growing up without violence
- Promote a healthy life and a healthy environment
- Participation of children and young people
- Development of an adequate standard of living for all children
- International commitments



Results: a database of good practice & 10 guidelines

e.g.

responsibility of all: the implementation of children's rights is a cross-cutting issue of all political and social actors

Every child is important, every child is different: Achieve equality of opportunity for all children: "inclusive education".

Promote the participation of young people

General quality standards and recommendations for the fields childcare centers, schools, communities, socio-educational care

Database: <http://www.kindergerechtes-deutschland.de/gute-beispiele/>

Quality Standards: http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/kindergerechtes-deutschland-brosch_C3_BCRe-qualit_C3_A4tsstandards,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf

The current debate on inclusion

The 13th Children and Youth Report from 2009

Title: "More opportunities to grow up healthy - Health prevention and health promotion for children and youth."

Criticism: The use of services is (too) difficult because of:

- highly differentiated care systems
- the subsystems of youth care, social welfare, schools and health care often work in isolation and competition instead of cooperation

Result: A non-sensical sorting and separating, in particular of children with disabilities

The current debate on inclusion

The care systems and the schools:

- Health insurance system (SGB V)
- Nursing care insurance (long term care insurance SGB XI)
- Compensations for disadvantages and rehabilitation (SGB IX)
- Provincial act for the blind
- Tax advantages by German Income Tax Act
- Labour administration (SGB II; SGB III)
- Social service system SGB XII (here: integration assistance für physical and intellectual handicapped children)
- Child and youth welfare SGB VIII (here: benefits for emotional/mental handicapped children)
- Regular schools and schools for children with special needs

The current debate on inclusion

The federal government picked up the approach:

- *All measures have to be adjusted to the concept of an inclusive growing up*
- *A segregation is not acceptable*
- *Children with disabilities are primarily children (!)*
- *From a child´s perspective it is useful to integrate all services for children under the umbrella of the child and youth care system.*

(In focus: integration service SGB XII and child and youth care SGB VIII)

The current debate on inclusion

The federal government picked up the approach:

- *According to Art. 24 of the CRPD an including educational system is to be established*
- *This also applies to care and education in early childhood*
- *Learning and living together should become the rule*

2008-2013 Working groups:

Conference of Ministers for Labour and Social Affairs (ASMK), and for Youth and Families (JFMK)

- Analyze interface problems
- Develop new responsibilities
- Describe structural, financial, organizational and personal consequences

Conclusion of the final report 2013:

- One service system for all children: “big solution” SGB VIII
- Care to encourage development and participation
- Children and youth as entitled persons
- Right of veto and participation for parents

educational policy concerns to the states (Länder)

- Target: The Northrhine-Westphalian government wants to expand the common learning of children and youth with and without disabilities
- The assistance of students with different disabilities in public schools should become the rule
- Teaching in special schools should be possible at request of the parents

Development steps in NRW

- Options since the 1980s
- Administrative rule 2010: common teaching whenever wanted and possible
- 33.6% of children with disabilities in (regular) primary schools; 18.4% in secondary schools

Currently:

- Draft law for a reform of the school law (march 2013)
- introducing a legal entitlement for inclusive education, step by step from 2014 on
- Special schools can still be chosen by the parents
- Expert hearing on Wednesday: Quality standards? Class sizes? Training for teachers? Ressources for building modifications? etc.

Conclusion:

- We are on the way...
- Inclusion is a task of a generation
- Inclusion is not for free
- If a society accepts that heterogeneity is the standard – it needs much more than common services...
- Who talks of inclusion must also speak of exclusion
- Who wants inclusion, finds ways.

Who wants to prevent inclusion, finds reasons. (Hubert Hüppe, commissioner of the federal Government for the belongings of disabled people)

Thank you!

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