



# MASTER THESIS

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## **“A nice idea, at least in theory”<sup>\*</sup> – Inclusive education for refugee children with disabilities in Berlin**

verfasst von / submitted by

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\* Interview with R.A., Berlin, 19 April 2018.

## Abstract:

Inclusive education for persons with disabilities, although an internationally recognised human right, is far from being fully and adequately implemented. Since this crucial human right does not only apply to citizens, the lack of implementation holds true for refugees, too. Therefore, the present Master Thesis elaborates on the extent to which the right to inclusive education is ensured for refugee children with disabilities in Berlin as well as on the obstacles and challenges with regard to access to this right. The first part outlines and discusses the manifold legal frameworks on different relevant levels of law, contextualised by pertinent key concepts such as the social model of disability. Subsequently, the second part presents the results of the empirical research in which context problem-centred expert interviews with social workers in Berlin were conducted. These interviews were evaluated and analysed according to the so-called Grounded Theory. It will be shown that apart from general structural shortcomings and resource shortages – not being specific to refugee children with disabilities – the parents' capacity in terms of, inter alia, knowledge about the education and support system and their personal conditions, is one of the decisive aspects. Due to the fact that it either facilitates or constrains their children's access to inclusive education, social workers' support and consultation measures are focused on strengthening the parents' capacity.

## Keywords:

Inclusive education, refugee children, disability, United Nations Convention on the Rights of Persons with Disabilities, Berlin, social workers, support, Grounded Theory.

Kurzbeschreibung:

Obwohl es sich beim Recht auf inklusive Bildung für Menschen mit Behinderungen um ein international anerkanntes Menschenrecht handelt, steht eine vollständige und angemessene Umsetzung immer noch aus. Einen Anspruch auf dieses Recht haben nicht nur die Staatsangehörigen eines entsprechenden Landes, sondern auch Menschen, die in jenem Land als Flüchtlinge anerkannt sind. Dementsprechend sind auch Flüchtlinge mit Behinderungen von der mangelnden Umsetzung betroffen. Die vorliegende Master Arbeit geht so der Frage nach, in welchem Umfang das Recht auf inklusive Bildung für Flüchtlingskinder mit Behinderungen in Berlin gewährleistet ist, und welche Hindernisse und Herausforderungen hinsichtlich des Zugangs zu diesem Recht bestehen. Der erste Teil der Arbeit stellt die vielschichtigen rechtlichen Rahmenbedingungen auf unterschiedlichen Rechtsebenen, unter Einbezug relevanter Grundkonzepte, wie dem des sozialen Modells von Behinderung, dar. Der zweite Teil präsentiert die Ergebnisse der empirischen Forschung. In diesem Zusammenhang wurden problemzentrierte Expert\_inneninterviews mit Sozialarbeiter\_innen in Berlin durchgeführt, welche anschließend nach der sogenannten Grounded Theory analysiert und ausgewertet wurden. Die Ergebnisse zeigen, dass neben allgemeinen, nicht ausschließlich Flüchtlingskindern mit Behinderungen betreffenden strukturellen Mängeln und fehlenden Ressourcen vor allem die Kapazitäten der Eltern ausschlaggebend sind. Hierbei ist vor allem ihr Wissen über das Bildungs- und Unterstützungssystem, sowie die eigene persönliche Verfassung zu nennen. Da die Kapazitäten der Eltern fördernd als auch hemmend wirken können, liegt der Fokus der sozialarbeiterischen Unterstützungs- und Beratungsangeboten auf der Stärkung dieser Kapazitäten.

Schlagwörter:

Inklusive Bildung, Flüchtlingskinder, Behinderung, Übereinkommen über die Rechte von Menschen mit Behinderungen, Berlin, Sozialarbeiter\_innen, Unterstützung, Grounded Theory.

List of abbreviations:

CESCR	International Covenant on Economic, Social and Cultural Rights
CFR	Charter of Fundamental Rights of the European Union
CO	Concluding Observations
EU	European Union
GC	General Comment
Geneva Convention	Convention Relating to the Status of Refugees
GT	Grounded Theory
NAP 2.0	National Action Plan 2.0
NHRI	National Human Rights Institution
Qualification Directive	Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
Reception Directive	Directive 2013/33/EU laying down standards for the reception of applicants for international protection
SchulG	Berlin Education Law ('Schulgesetz für das Land Berlin')
SGB IX	Ninth book of the German Social Code dealing with rehabilitation and participation of persons with disabilities ('Sozialgesetzbuch Neuntes Buch (IX) – Rehabilitation und Teilhabe von Menschen mit Behinderungen')
SopädVO	Regulation about the special educational support ('Verordnung über die sonderpädagogische Förderung')
UN	United Nations
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNCRPD Comm.	Committee on the Rights of Persons with Disabilities
UNCRC	United Nations Convention on the Rights of the Child

## Table of contents

Introduction.....	7
Chapter I: Approaching key concepts .....	13
I.1. The social model of disability .....	13
I.2. Inclusive education .....	16
I.3. Refugee/s and asylum seeker/s .....	21
I.4. Intersectionality of experience of flight and disability .....	22
I.5. Best interest of the child .....	23
I.6. Interim conclusion .....	25
Chapter II: Legal framework with regard to inclusive education for refugee children with disabilities in Berlin .....	26
II.1. International human rights law .....	26
II.1.1. United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) .....	26
II.1.2. Legal effects of the United Nations Convention on the Rights of Persons with Disabilities' Article 24 in Germany .....	33
II.1.3. United Nations Convention on the Rights of the Child .....	37
II.1.4. International Covenant on Economic, Social and Cultural Rights .....	40
II.2. European Union law .....	41
II.2.1. Charter of Fundamental Rights of the European Union .....	41
II.2.2. Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted .....	43
II.2.3. Directive 2013/33/EU laying down standards for the reception of applicants for international protection .....	44
II.3. Convention Relating to the Status of Refugees .....	45
II.4. German law .....	46
II.4.1. German Constitution .....	46
II.4.2. German Asylum Law .....	47
II.4.3. German Social Code .....	48
II.5. Berlin law .....	49
II.5.1. Berlin Education Law .....	50

II.5.2. Berlin ‘Verordnung über die sonderpädagogische Förderung’ .....	55
II.6. Interim conclusion .....	60
Chapter III: Research design.....	64
III.1. Problem-centred expert interviews as survey method .....	64
III.2. Interview guideline.....	66
III.3. Sample .....	67
III.4. Access to the field .....	68
III.5. Grounded Theory (GT) as evaluation method .....	68
Chapter IV: Research results .....	75
IV.1. Causal conditions.....	75
IV.1.1. Structural shortcomings in general .....	76
IV.1.2. Lacking resources with regard to inclusive education .....	78
IV.2. Phenomenon: Impeded access to inclusive education for refugee children with disabilities ...	80
IV.3. Context: “Field of tension between inclusion and special support” .....	82
IV.4. Intervening conditions .....	86
IV.4.1. Parents’ capacity.....	86
IV.4.2. Perception of refugee children with disabilities.....	90
IV.4.3. Conceptual understanding of impairment/ disability .....	92
IV.5. Action/ Interactional strategies: Social workers’ support and consultation measures .....	95
IV.6. Consequences .....	104
IV.6.1. Social workers’ support as decisive factor.....	104
IV.6.2. Need of structural improvement of the educational system.....	105
IV.6.3. Conceptual understanding of inclusion/ inclusive education .....	107
Conclusion.....	109
Outlook .....	116
Bibliography.....	117
Annex .....	128

## Positioning and personal ambiguities:

Prior to launching into the present Master Thesis' content, it is an important concern to me to say some words about my positioning as a researcher. Although I do not belong to any of the 'groups' I did research on, neither to refugees or persons with disabilities, nor am I a child anymore or a social worker by profession, the Master Thesis I wrote speaks about these 'groups', hence representing them in a way. Therefore, it has to be noted in this context that the Master Thesis does not claim to make generalising statements, or to represent one of the mentioned 'groups' as homogenous. Quite the contrary, it tries to give insights into meaningful perspectives of the subjects I spoke with. I am also aware that, although the work is about refugee children with disabilities' access to inclusive education, not a single child got the chance to speak. During the whole research process, a reflected and informed, as well as a sensitive and self-critical approach was of utmost importance to me.

## Introduction

Although the inflationary use of homogenising terms like ‘the refugees’<sup>1</sup> and ‘the wave of refugees’ suggest otherwise, people seeking asylum, or who have already sought asylum in Germany, constitute a very heterogeneous group. Not only heterogeneity in terms of, for example, countries of origin, reasons of flight, ethnicities, nationalities and religions of the people seeking refuge in Germany, but also in terms of special reception needs<sup>2</sup>. Groups of people with ‘special reception needs’<sup>3</sup> are amongst others minors and persons with disabilities.<sup>4</sup> The exact number of refugees with disabilities in Germany remains unknown, however, according to several studies, the estimated share of refugees with disabilities in Germany amounts to between 16 and 55 percent.<sup>5</sup> In this context it appears somehow symptomatic that, as Germany’s National Human Rights Institution (NHRI), the German Institute for Human Rights’ annual Human Rights Report of 2017 has revealed, the needs as well as the rights of refugees

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<sup>1</sup> In order to facilitate the reading, the term ‘refugee/s’ will be used regardless of the current status within asylum procedures or recognition as refugee under the Convention and Protocol relating to the Status of Refugees, referring to those individuals who left their home country and seeking/ sought protection in Germany. For an explanation of the legal differences between the terms “refugee” and “asylum seeker” see chapter I.3.

<sup>2</sup> At this point it has to be mentioned that the term ‘special (reception) needs’ has to be seen in a critical way because it suggests a certain otherness and dependency of persons with disabilities. The same applies to the term ‘vulnerable’ which puts persons with disabilities in a passive, not self-reliant position instead of seeing them as self-determined persons. Keeping that in mind, yet, they will be used since legal documents refer to them (see in particular chapter II.2.2. and II.2.3.).

<sup>3</sup> According to the European Union Directive 2013/33/EU, “‘applicant with special reception needs’: means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for”, European Union, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, European Union: Council of the European Union, 2013, art. 2 (k), see also chapter II.2.3.

<sup>4</sup> Persons with disabilities “include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” United Nations, Convention on the Rights of Persons with Disabilities, 2006/08, art. 1, see also chapter I.1.

<sup>5</sup> K. Bozorgmehr, A. Mohsenpour, D. Saure et al, ‘Systematische Übersicht und „Mapping“ empirischer Studien des Gesundheitszustands und der medizinischen Versorgung von Flüchtlingen und Asylsuchenden in Deutschland (1990–2014)’ In: *Bundesgesundheitsblatt* 59, 2016, pp. 609-610.

with disabilities regarding adequate accommodation or access to social services were not sufficiently taken into account by the German government.<sup>6</sup>

At this point we are still not talking about aspects of effective participation in different realms of life like work or education. Nevertheless, in particular the latter – education, or in the case of persons with disabilities, inclusive education<sup>7</sup> – is of outmost importance. This holds especially true, since education is “integral to the full and effective realization of other rights.”<sup>8</sup> Although the right to education for everyone is enshrined in several legal documents it is far from being fully realised in Germany; not only for those seeking asylum or who have already sought asylum: Despite Germany’s ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2009, the inclusion rate – indicating the share of pupils with special educational needs being educated at a regular school – still amounts nationwide to 37.7% (in Germany’s capital Berlin to 60.4%).<sup>9</sup> Therefore, it is not exclusively an issue affecting people with disabilities seeking asylum in Germany. In its Concluding Observations (CO)<sup>10</sup> on the initial report of Germany from 2015, the Committee on the Rights of Persons with Disabilities (UNCRPD Comm.) expressed considerable concern about “an education system where the majority of students with disabilities attend segregated special-needs schools.”<sup>11</sup>

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<sup>6</sup> Deutsches Institut für Menschenrechte, *Entwicklung der Menschenrechtssituation in Deutschland Juli 2016 – Juni 2017. Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG*, Berlin, 2017, pp. 64-78.

<sup>7</sup> According to the UNCRPD Comm.’s General Comment No. 4 on the right to inclusive education, it can be understood as a “principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individual’s requirements and their ability to effectively be included in and contribute to society” United Nations, Committee on the Rights of Persons with Disabilities, General Comment No. 4 on the right to inclusive education, CRPD/C/GC/4, 2016, para. 10 (b), see also chapter I.2.

<sup>8</sup> United Nations, 2016, para. 44.

<sup>9</sup> V.Lange, *Ländervergleich Inklusive Bildung in Deutschland*, Berlin, Friedrich-Ebert-Stiftung, 2017, p. 18.

<sup>10</sup> COs are „assessments of the implementation of human rights treaties by a state. They are issued by the respective treaty bodies after their examination of the State Reports.” Deutsches Institut für Menschenrechte, *What are Concluding Observations?* <http://www.institut-fuer-menschenrechte.de/en/topics/development/frequently-asked-questions/8-what-are-concluding-observations/> (accessed 4 May 2018).

<sup>11</sup> United Nations, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Germany*, CRPD/C/DEU/CO/1, 2015, para. 45.

The share of minors of the total amount of people who sought asylum in 2017 (about 220,000 Germany-wide and about 9,300 in Berlin) amounted to 45% in total, 39% in the age bracket of 0 and 15 and 6% between the age of 6 and 17.<sup>12</sup> Hence, minors seeking asylum in Germany make up a considerable group. Since there is a striking number of children with disabilities among those seeking asylum in Germany, as consultations between the German UNCRPD Monitoring Mechanism (a department of Germany's NHRI) and experts from civil society have revealed<sup>13</sup>, the issue of inclusive education for refugee children with disabilities seeking asylum in Germany is of great relevance. I personally took note of this topic while interning at the Germany's UNCRPD Monitoring Mechanism, which subsequently led me to focus on that topic within the geographical area of Berlin. As already mentioned, there is a quite comprehensive legal framework when it comes to inclusive education on the international, the European as well as on the German domestic level.<sup>14</sup> Still, not much is known about how access to inclusive education for refugee children with disabilities actually works in practice in Germany. Whereas work and studies relating to inclusive schooling for children with disabilities and schooling for refugee children exists<sup>15</sup>, there is no particular information (especially for Berlin) when it comes to inclusive education and the access to it for refugee children with disabilities.<sup>16</sup>

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<sup>12</sup> Bundeszentrale für politische Bildung, Zahlen zu Asyl in Deutschland, 2018. <https://www.bpb.de/politik/innenpolitik/flucht/218788/zahlen-zu-asyl-in-deutschland> (accessed 6 April 2018).

<sup>13</sup> Deutsches Institut für Menschenrechte, 2017, p. 67.

<sup>14</sup> According to Article 30 of the German Constitution, education lies within the competences of each "Bundesland", Deutschland, Grundgesetz für die Bundesrepublik Deutschland, 1949, BGBl. S. 1, zuletzt geändert durch Art. 1 d. G. v. 13.6.2017 BGBl. I S. 2347, art. 30.

<sup>15</sup> See for example, inter alia, V. Lange, 2017, S. Mißling, and O. Ückert, *Inklusive Bildung: Schulgesetze auf dem Prüfstand*, Deutsches Institut für Menschenrechte, Berlin, 2014; Autorengruppe Bildungsberichterstattung Bundesministerium für Bildung und Forschung, *Bildung in Deutschland 2016, Ein indikatorengestützter Bericht mit einer Analyse zu Bildung und Migration*, Bielefeld, W. Bertelsmann Verlag GmbH & Co. KG, 2016., or T. Berthold, *In erster Linie Kinder – Flüchtlingskinder in Deutschland*, Köln, Deutsches Komitee für UNICEF, 2014.

<sup>16</sup> Deutsches Institut für Menschenrechte, 2017, p. 78.

Therefore, the present Master Thesis tries to elaborate on the following research question:

*To what extent is the right to inclusive education for refugee children with disabilities ensured in Berlin, and what are the obstacles and challenges with regard to the access to this right?*

After approaching key terms and concepts in Chapter I in order to provide for a contextualisation, among which the social model of disability and the concept of inclusive education, Chapter II will deal with the various legal frameworks in a descriptive manner. This is essential, since an answer to the above research question is attempted by contrasting the intended situation – presented by laws and legal regulations – with the actual state regarding inclusive schooling for refugee children with disabilities. In addition, the legal effects of the UNCRPD in Germany in general, as well as in Berlin in particular, will be presented, giving insights into the implementation in domestic legislation. Therefore, the legal frameworks on international, regional and domestic levels will be compared with the practical implementation on the ground in Berlin (see chapter IV.). Germany's capital Berlin was chosen due to several reasons. As already mentioned, a five-month internship at the UNCRPD Monitoring Mechanism of Germany's NHRI first brought to my attention this topic and provided me with knowledge and insights in terms of legal regulations concerning the situation of persons with disabilities in general and refugees with disabilities in particular. In addition, the internship there facilitated access to the field of research, as I was able to get in contact with potential interviewees via colleagues (see chapter III.4.).

Chapter III describes the design of the qualitative research which was conducted in order to evaluate the way access to inclusive education for refugee children with disabilities takes place. Access to inclusive education was chosen as the focal point because it constitutes one of, if not the very first, step on the whole way towards inclusive schooling. Without ensuring all those aspects and features which are decisive for guaranteeing inclusive education in

general and the access to it in particular, even the most comprehensive and differentiated inclusive school system – not to mention the underlying legal frameworks – would remain without life and ineffective. Providing for access which is in line with a human rights based model of inclusive education (see chapter II.2.) sets the baseline and prerequisite for inclusive schooling for refugee children with disabilities, serving the best interest of the respective child. Conversely, if, for example, in the process of access to inclusive schooling adequate formats of information are lacking, flaws will be inevitable, consequently impede access and subsequently the enjoyment of the right to inclusive education. In order to evaluate the way in which access to inclusive education works on the ground, problem centred expert interviews with social workers, or rather people working in the field of social services, were conducted (see chapter III.). On the one hand, this approach was chosen because, although the sample of six interviewees cannot provide for representativeness, data generated through interviewing social workers allows for a decent insight into the actual state of the implementation of access to inclusive education for refugee children with disabilities. Since social workers reach out to several children in their work as well as to the respective parents, the results achieved a reasonable degree of generalisation (see chapter III.3.). On the other hand, barriers in terms of language and the individual impairment would have exceeded the resources of this research. Additionally, since the target group consists of minors, parental consent would have been a prerequisite for conducting interviews, too.

The interviews were evaluated and analysed according to the so-called Grounded Theory (GT) (see chapter III.5.). Thus, the results of the qualitative research will be presented according to Strauss' and Corbin's paradigm model<sup>17</sup>. It systematically relates causal conditions of the impeded access to inclusive education for refugee children with disabilities, internal and external influences, resulting strategies and consequences with each other. Resulting

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<sup>17</sup> A. Strauss and J. Corbin, *Basics of qualitative research: grounded theory procedures and techniques*, Newbury Park, California, Sage, 1991, pp. 99-112.

from the interviews, general structural shortcomings as well as lack of resources with regard to inclusive education are decisive causal conditions (see chapter IV.1.), impeding access to inclusive education for refugee children with disabilities (see chapter IV.2.). A “field of tension between inclusion and special support” (see chapter IV.3.), the refugee children with disabilities parents’ capacity, the perceptions of refugee children with disabilities as well as the conceptual understanding of impairment/ disability among the social workers (see chapter IV.4.) are important influencing aspects. Putting special emphasis on the parents’ capacity, these do affect the strategies adopted by the social workers in order to support refugee children with disabilities and their parents regarding access to inclusive education (see chapter IV.5.). Consequently, the support and consultation services provided by the social workers do play a special role (see chapter IV.6.1.). Nevertheless, the need for structural improvements cannot be underestimated, since it is not only the very prerequisite for targeting the causal conditions (see chapter IV.6.2.), but can also influence the conceptual understanding of inclusive education (see chapter IV.6.3.); at worst as a failed project.<sup>18</sup>

Concluding the Master Thesis, the theoretical results (the discussion of the manifold legal frameworks in consideration of above all the social model of disability and the concept of inclusive education) and the results of the empirical research will be summed up, focusing on the most important aspects (see Conclusion). Subsequently, a short outlook points to interesting insights which would be worth examining further.

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<sup>18</sup> Interview with R.A., Berlin, 19 April 2018.

## Chapter I: Approaching key concepts

In order to provide for a contextualisation of the current Master Thesis in general, and for the legal framework (see chapter II.) and the presentation of the research result (see chapter IV.) in particular, several key concepts will be approached in this chapter. However, the aim is not to discuss them in an exhaustive manner, but to point at some basic features which are relevant for an enhanced understanding.

### I.1. The social model of disability

One of the key concepts and corner stones the Master Thesis is building upon is the so-called social model of disability. It was formulated and developed by disability studies' activists and writers in Great Britain in the 1980s and 1990s. Rejecting the notion that persons with disabilities "cannot engage in 'normal' activities because of their 'abnormal' bodily or intellectual 'deficit' or 'incapacity'"<sup>19</sup>, the focus was put on the majority society, being predominantly comprised of persons without disabilities. This went hand in hand with the rejection of the so-called medical model perspective on disability which equates the impairment<sup>20</sup> with disability.<sup>21</sup> The social model of disability unravels this equation, pointing to the many restrictions and disadvantages experienced by persons with disabilities "as a consequence of the social relationships between the impaired and the non-impaired, rather than as caused by impairment *per se*."<sup>22</sup>

The significance of the social interactions within the social model of disability is recognised by the UNCRPD, stating in its preamble that "disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society

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<sup>19</sup> C. Thomas, 'Disability Theory: Key Ideas, Issues and Thinkers', in C. Barnes (ed.), *Disability Studies Today*, Cambridge: Polity Press, 2002, p. 38.

<sup>20</sup> Impairment "as the medically defined condition of a person's body/mind", see S. Wendell, 'Unhealthy Disabled: Treating Chronic Illnesses as Disabilities', in: L. J. Davis (ed.), *The Disability Studies Reader*, New York: Routledge, 2017, p. 164.

<sup>21</sup> Disability as "the socially constructed disadvantage based upon impairment", see *ibid.*, p. 164.

<sup>22</sup> Thomas, 2002, p. 40.

on an equal basis with others”.<sup>23</sup> Within the process of implementing the UNCRPD into German domestic law, the aspect of the interaction of persons with impairments with their environment was laid down in Germany’s Social Code, too (see chapter II.4.3.). Therefore, society – in the broader sense, meaning structures, power relations, ideas and attitudes – has to be changed. Importantly, as stated by Oliver, one of the figureheads in the development of the social model, this change has to happen in a process of political empowerment of persons with disabilities.<sup>24</sup> Such an approach also points to the fact that the failure to provide persons with disabilities with appropriate services falls “systematically upon [...] [them] as a group who experience this failure as discrimination institutionalised throughout society.”<sup>25</sup> As a side note, it has to be mentioned in this context that inclusive education functions as a catalyst in this regard, providing the prerequisites for full and effective participation and hence empowerment for persons with disabilities. Inclusive education can contribute to minimise these “disabling” interactions, especially the attitudinal barriers of the respective classmates, providing for the basis for a kind of bottom-up change.

According to Degener’s understanding of the UNCRPD, it “goes beyond the social model of disability and codifies the human rights model of disability.”<sup>26</sup> In this context two interesting points of her notion of the human rights model of disability should be referred to, as they are relevant within the context of the present Master Thesis at hand. Degener, who is the UNCRPD Comm.’s Chairperson at the moment, emphasises that “the human rights model of disability defies the presumption that impairment may hinder human rights capacity.”<sup>27</sup> This is of special importance within the context of education, since the impairment is being used as a kind of an excuse supposedly impeding the capacity of enjoying the right to inclusive education. In the context of denied

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<sup>23</sup> UNCRPD, 2006/08, Preamble (e).

<sup>24</sup> M. Oliver, *The Individual and Social Models of Disability*, Paper presented at Joint Workshop of the Living Options Group and the Research Unit of the Royal College of Physicians on People with established locomotor disabilities in hospitals, 1990, p. 5.

<sup>25</sup> *ibid.*, p. 3.

<sup>26</sup> T. Degener, ‘Disability in a Human Rights Context’, in *Laws*, vol. 5(3), 35, 2016, p. 3.

<sup>27</sup> *ibid.*, p. 4.

access to inclusive education for refugee children with disabilities, which might be based upon the assumption mentioned above, she states that laws prohibiting discrimination can only be a small part of the solution to the problem.<sup>28</sup> A more holistic and long-lasting approach would (also) have to focus on awareness-raising at all levels of society in order to combat discriminatory notions towards persons with disabilities, instead of relying solely on anti-discrimination law to achieve real equality. It is also worth mentioning that Degener points to the fact that the convention “is meant to protect all disabled persons not only those who are ‘fit’ for mainstreaming.”<sup>29</sup> Giving due regard to this, the right to inclusive education has to be ensured for all persons with disabilities and not only for those who might be able to cope with a regular school system. Hence, it is within the state’s responsibility to adapt the school system in a way that all persons with disabilities – regardless of their impairment – can enjoy the right to inclusive education.

Additionally, it is worth mentioning that disability, as it was put by Thomas, is interwoven with cultural ideas and discursive practices.<sup>30</sup> This holds true for education and schooling, too. Generally speaking, there are certain notions of expectations towards certain achievements and issues of performance pressure when it comes to schooling. Already in their early years in school, children start to face competition if only projected by them on their parents. Without disputing that their offspring’s success (however it is supposed to look like) can be of legitimate interest for the parents, this can lead to generating images of those who might be a hindrance on that path to success, such as, for example, young pupils with disabilities. In addition, concepts and understandings of disability can – but do not have to – vary according to specific cultural backgrounds. Hence, certain notions of disability among the parents of refugee children with disabilities (see chapter IV.5.), as well as among the social workers dealing with these children and parents, may affect the children’s access to (inclusive) schooling (see chapter IV.6.3.).

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<sup>28</sup> *ibid.*, p. 5.

<sup>29</sup> *ibid.*, p. 7.

<sup>30</sup> Thomas, 2002, p. 49.

In the further course of the Master Thesis the so-called social model of disability will serve as a guiding line when it comes to approaching laws and regulations and the way access to inclusive education is provided for refugee children with disabilities in Berlin.

## **I.2. Inclusive education**

Beside the social model of disability, the concept of inclusive education constitutes the other main corner stone of this thesis. In this context, the UNCRPD Comm.'s General Comment (GC) No. 4 on the right to inclusive education from 2016 is the key document of reference.<sup>31</sup> According to the UNCRPD Comm. inclusive education is to be understood as:

- (a) A fundamental human right of all learners. Notably, education is the right of the individual learner and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child;
- (b) A principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individuals' requirements and their ability to effectively be included in and contribute to society;
- (c) A means of realizing other human rights. It is the primary means by which persons with disabilities can lift themselves out of poverty, obtain the means to participate fully in their communities and be safeguarded from exploitation. It is also the primary means of achieving inclusive societies;
- (d) The result of a process of continuing and proactive commitment to

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<sup>31</sup> GCs are a treaty body's interpretation of the rights and regulations of the respective human rights treaty, see Office of the High Commissioner for Human Rights, Human Rights Treaty Bodies – General Comments, 2018. <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx> (accessed 2 May 2018).

eliminating barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.<sup>32</sup>

This definition already displays several important aspects related to the topic of access to inclusive education for refugee children with disabilities. First and foremost it is a right to all learners irrespective of status, resources<sup>33</sup> or social background. It is also worth mentioning that it is a right of the individual learner (the refugee child with disabilities) and not his or her parents' right. This aspect will be touched upon later (see chapter 1.5.). Paragraph (b) picks up the social model of disability – by referring to the “individuals' requirements and their ability to effectively be included in and contribute to society”<sup>34</sup> – emphasising that people's disabilities do not result from their impairments per se but through societal barriers. Therefore inclusive education gives due regard to the respective requirements of the pupils and acknowledges their ability to contribute meaningfully. Inclusive education goes beyond sole education, providing for the possibility of an effective participation with and contribution to society, as it is a “means of realizing other human rights”.<sup>35</sup>

An inclusive education system should be directed to the “full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity”.<sup>36</sup> According to the UNCRPD. Comm.'s GC No. 4, four interrelated features –

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<sup>32</sup> United Nations, 2016, para. 10 (a)-(d).

<sup>33</sup> In this context, resources are understood in the sense of Pierre Bourdieu's different forms of 'capital'. Beside the 'habitus', a system of dispositions generated through a specific type of social environmental structures (see P. Bourdieu, *Entwurf einer Theorie der Praxis: auf der ethnologischen Grundlage der kabyrischen Gesellschaft*. Frankfurt a.M.: Suhrkamp, 2009, pp. 164-165.), the scope for action depends on the amount and the type of capital (economic, cultural, social or symbolic) in a certain social field, too. For example, children with disabilities' prospects of adequate education in regular schools (here: field of inclusive education) are reduced through their lack of symbolic capital (social prestige), originating from the long and to a certain extent still lasting denial of their human dignity, equality and human rights. In addition, having a certain cultural capital at one's disposal (non-German language skills) further aggravates access since German-language dominates this field. See P. Bourdieu and L.J.D Wacquant, *Reflexive Anthropologie*. Frankfurt a.M.: Suhrkamp, 2013, p. 128.

<sup>34</sup> United Nations, 2016, para. 10 (b).

<sup>35</sup> *ibid.*, para. 10 (c).

<sup>36</sup> UNCRPD, 2006/08, art. 24, 1. (a).

namely availability, accessibility, acceptability and adaptability – are crucial for such a school system. Availability means that educational institutions and programmes, being either public or private, “must be available in sufficient quantity and quality”.<sup>37</sup> This aspect raises the question of institutional requirements providing for the above mentioned quantity and quality. Regarding the aspect of quality the principle of joint learning is of superordinate nature, obliging the state to ensure that persons with disabilities “are not excluded from the general education system on the basis of disability”.<sup>38</sup> When it comes to the aspect of quantity, binding school development planning can contribute to the availability of adequate school settings being in line with the UNCRPD’s provisions related to education. Nevertheless, this is often an issue of budget allocation and of referrals to progression reservations.<sup>39</sup>

Accessibility is another key feature of inclusive education, meaning that the “entire education system must be accessible, including buildings, information and communications tools [...], the curriculum, educational materials, teaching methods, assessments and language and support services.”<sup>40</sup> In addition, the “whole environment of students with disabilities must be designed in a way that fosters inclusion and guarantees their equality in the entire process of their education”<sup>41</sup>, including, among other things, transport services, sanitary facilities and leisure facilities.<sup>42</sup> This is crucial since available educational institutions still remain unreachable for children with disabilities if they are prevented from accessing them due to barriers of various kinds. Besides the ‘accessibility to the access’ – in terms of physical and content-related access to the school buildings as well as to the learning/ teaching content – there are other issues

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<sup>37</sup> United Nations, 2016, para. 21.

<sup>38</sup> UNCRPD 2006/08, art. 24, 2(a).

<sup>39</sup> “With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources [...] with a view to achieving progressively the full realization of these rights”, UNCRPD 2006/08, art. 4., 2. For more discussion on progression reservations in the context of the UNCRPD’s legal effects in Germany see chapter II.1.2.

<sup>40</sup> United Nations, 2016, para. 22.

<sup>41</sup> United Nations, Committee on the Rights of Persons with Disabilities, General Comment No. 2, Article 9: Accessibility, CRPD/C/GC/2, 2014, para. 39.

<sup>42</sup> United Nations, 2016, para. 22.

requiring attention.<sup>43</sup> As long as there is no individual legal entitlement regarding the assignment to a regular school, or schools having the possibility to deny children with disabilities access by referring to organisational or resource limitations accessibility is not more than an empty shell. The same applies to reasonable accommodation. According to the UNCRPD reasonable accommodation means “necessary and appropriate modification and adjustments [...], where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others”.<sup>44</sup> For instance, this can be compensation in the form of allowing for longer examination time. In particular, reasonable accommodation serves the promotion of equality and the elimination of discrimination against persons with disabilities.<sup>45</sup> Still, accessibility has to be distinguished from reasonable accommodation since the former’s requirements are of a more general nature, whereas the latter aims to overcome barriers in the individual case in relation to a single person in a specific setting.<sup>46</sup>

“Acceptability is the obligation to design and implement all education-related facilities, goods and services taking fully into account and respecting the requirements, cultures, views and languages of persons with disabilities.”<sup>47</sup> This holds especially true for refugee children with disabilities since aspects like culture (different to majority society) and flight have to be considered alongside with disability-related requirements (see chapter IV.). It is of crucial importance within the context of acceptability that participation of persons with disabilities is ensured within the processes of planning and decision making in regard to inclusive education.<sup>48</sup> Ideally, persons with disabilities are provided with the opportunity to act as actors on their own account and that the wishes and

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<sup>43</sup> For more discussion on the aspects of organisational and resource reservations, legal entitlement to reasonable accommodation and assignment to regular schools in the context of the UNCRPD’s legal effects in Germany, see chapter II.1.2.

<sup>44</sup> UNCRPD, 2006/08, art. 2.

<sup>45</sup> See *ibid.*, art. 2 (3).

<sup>46</sup> V. Aichele, *Positionen Nr. 5 Barrieren im Einzelfall überwinden: Angemessene Vorkehrungen gesetzlich verankern*, Berlin, Deutsches Institut für Menschenrechte, Monitoring-Stelle zur UN-Behindertenrechtskonvention, 2012, p.2.

<sup>47</sup> United Nations, 2016, para. 25.

<sup>48</sup> Mißling and Ückert, 2014, p. 36.

interests of refugee children with disabilities are directly heard<sup>49</sup> in the processes of accessing inclusive education. Worth mentioning is also that, as the UNCRPD Comm. has stated, “Inclusion and quality are reciprocal: an inclusive approach can make a significant contribution to the quality of education.”<sup>50</sup>

The last feature of inclusive education is the one of adaptability. Accordingly, persons with disabilities should be provided with the opportunity to go to an inclusive school-setting in or close to the community they are living in.<sup>51</sup> To enable students with disabilities to access these school-settings on an equal basis with others, the respective state parties have to provide them with reasonable accommodation; importantly, unlike resource reservations, “Disproportionality or undue burden cannot be claimed to defend the failure to provide accessibility”.<sup>52</sup> Among accommodation in schooling there are various options such as providing pupils with interpreters of various kinds, assistive services or suitably located classrooms.<sup>53</sup> Linked to the above presented feature of acceptability, accommodation should meet the “requirements, will, preferences and choices of students”<sup>54</sup> in order to ensure a self-determined participation of children with disabilities. Similarly significant are also the employment and the continuing training and awareness-raising of administration staff outside and inside schools, of teachers and other people involved in the process of accessing and implementing inclusive education.<sup>55</sup> Finally, the importance of adaptability has to be underlined, otherwise, instead of inclusion, there would just be integration, focusing “solely on enhancing the ability of the

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<sup>49</sup> United Nations, Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 2009, para. 35.

<sup>50</sup> United Nations, 2016, para. 25.

<sup>51</sup> *ibid.*, para. 27.

<sup>52</sup> *ibid.*, para. 29.

<sup>53</sup> *ibid.*, para. 30.

<sup>54</sup> *ibid.*, para. 30.

<sup>55</sup> *ibid.*, para. 36.

student to comply with the established standards”<sup>56</sup> and not “achieving high-quality education for all learners”.<sup>57</sup>

### **I.3. Refugee/s and asylum seeker/s**

Within this thesis, the term refugee has been used and will be continuously used to facilitate the reading of the text. Still, it is important in this context to shed some light on the differences of the terms refugee/s and asylum seeker/s. On the one hand, legally speaking only those people are considered refugees who fall under the definition laid down in the 1951 Convention Relating to the Status of Refugees<sup>58</sup>, also known as Geneva Convention. In accordance with Article 1 (A) 1 of this convention, the term refugee applies to a person who

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is out-side the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it.<sup>59</sup>

Germany’s asylum law refers to the Geneva Convention in § 3.<sup>60</sup> On the other side asylum seekers are considered to be those people who seek asylum in Germany under Article 16a of the German Constitution. Therefore they have to

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<sup>56</sup> United Nations, General Assembly, Human Rights Council, 25th session, Thematic study on the right of persons with disabilities to education, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/29, 2013(b), para. 4.

<sup>57</sup> United Nations, 2016, para. 2.

<sup>58</sup> It was modified by the 1967 Protocol Relating to the Status of Refugees, eliminating the parts “As a result of events occurring before 1 January 1951” and “as a result of such events”, see United Nations, General Assembly, Protocol Relating to the Status of Refugees, 1967, art. 1, 2.

<sup>59</sup> United Nations, General Assembly, Convention Relating to the Status of Refugees, 1951, art. 1 (A) 1.

<sup>60</sup> Deutschland, Asylgesetz, 1992/ 2008, BGBl. I S. 1798, zuletzt geändert durch Art. 2 d. G v. 20.7.2017 BGBl. I S. 2780, para. 3.

prove that they are subject to political persecution by state actors.<sup>61</sup> In both cases, regarding the recognition as refugee as well as the granting of asylum the Federal Office of Migration and Refugees carries out the examination<sup>62</sup>. In the case that neither refugee status nor an entitlement to asylum can be granted, but a presumption of a risk of being exposed to serious harm exists, people are entitled to subsidiary protection if they can put forward substantial grounds.<sup>63</sup> Since compulsory education applies to children regardless of being already recognized as refugees, having been granted asylum or subsidiary protection as well as still being within the process of recognition<sup>64</sup> the term refugee will be used to refer to all these three groups of people.

#### **I.4. Intersectionality of experience of flight and disability**

Already in 2015, the UNCRPD Comm. raised serious concerns in its CO on the initial report of Germany about the situation of refugee children with disabilities. Especially, it put emphasis on “the unequal access to treatment and opportunities for children with disabilities of migrant or refugee parents.”<sup>65</sup> One year later, in 2016, the same committee acknowledged that Persons with disabilities “can experience intersectional discrimination on the basis of disability, gender, religion, legal status, ethnic origin, age, sexual orientation or language.”<sup>66</sup> Intersectionality, a concept focusing on the overlapping of societal categories (like sex, class, gender etc.) and the resulting discriminatory experiences of the affected people was introduced by the American legal scholar Crenshaw in the late 1990s.<sup>67</sup>

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<sup>61</sup> Deutschland, Grundgesetz für die Bundesrepublik Deutschland, 1949, art. 16a.

<sup>62</sup> Deutschland, Asylgesetz, 1992/ 2008, para. 5.

<sup>63</sup> Deutschland, Asylgesetz, 1992/ 2008, para. 4.

<sup>64</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, GVBl. S. 26, zuletzt geändert durch Art. 5 d. G. v. 02.02.2018 GVBl. S. 160, para. 41 (2).

<sup>65</sup> United Nations, Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Germany, CRPD/C/DEU/CO/1, 2015, para. 17 (c).

<sup>66</sup> United Nations, 2016, para. 13.

<sup>67</sup> D. Baldin, ‘Behinderung – eine neue Kategorie für die Intersektionalitätsforschung?’, in G. Wansing and M. Westphal (ed.), *Behinderung und Migration - Inklusion, Diversität, Intersektionalität*, Wiesbaden, Springer VS, 2014, p. 50.

Without discussing the theoretical concept of intersectionality in a more comprehensive way at this point, it should be mentioned that different aspects of identity – hence different grounds discrimination might be based on – can intersect and interrelate with each other depending on different contexts and situations.<sup>68</sup>

Crenshaw also emphasises that assuming that “exclusion must be unidirectional”<sup>69</sup> distracts from the multi-layered nature of discrimination and exclusion. As a result, discrimination and/ or exclusion can be based on the ground of disability at one point or on the experience of flight/ refuge at another as well as on both in a third situation. It is important to keep this in mind in order to be able to understand the nature and the resulting effects of the obstacles and challenges refugee children with disabilities are facing when it comes to their access to inclusive education (see chapter IV.).

### **1.5. Best interest of the child**

According to the UNCRPD’s article 7.2. “[i]n all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.”<sup>70</sup> This obligation also applies to “all institutions whose work and decisions impact on children and the realization of their rights”<sup>71</sup>, hence to the different actors and institutions in the context of access to inclusive education like administrative and consultative staff or teachers, for example. First of all, as a prerequisite children have to be recognized as “right holders”.<sup>72</sup> It has to be reiterated that inclusive education is the right of the (refugee) child with disability – of the individual learner and not his or her parents’ right (see chapter I.2.) – being superior to the right of a parent or parent’s responsibilities.<sup>73</sup> In addition, the

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<sup>68</sup> K. Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’, in *The University of Chicago Legal Forum*, Volume 1989: Issue 1, Article 8, p. 149.

<sup>69</sup> *ibid.*, p.149.

<sup>70</sup> UNCRPD, 2006/08, art. 7.2.

<sup>71</sup> United Nations, Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 2013(a), IV. A. 2.(a) “public or private social welfare institutions”.

<sup>72</sup> *ibid.*, III (b).

<sup>73</sup> United Nations, 2016, para. 10 (a).

best interests of a child with a disability “must consider the child’s own views and individual identity [...] care, protection and safety of the child, any particular vulnerability, and the child’s right to health and education.”<sup>74</sup>

Since every child and its life is unique, the best interest of the child “should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs.”<sup>75</sup> Giving due regard to the importance of addressing each child and its respective situation and needs individually, it is not my intention to answer the question of whether or not inclusive education is in the best interest of a refugee child with disabilities in a definite manner for each and every single case. Nevertheless, there are many reasons indicating that this is the case, as presented above (see chapter I.2.). Still it has to be mentioned that the best interest of the child is inextricably linked to the right to be heard,<sup>76</sup> codified in the United Nations Convention on the Rights of the Child (UNCRC).<sup>77</sup> For this reason the focus is on the right of the child to be heard and “to express his or her views freely and due weight given to said views in all matters affecting”<sup>78</sup> it, in the context of the discussion of obstacles and challenges regarding access to inclusive education for refugee children with disabilities (see chapter IV. 4.2.).

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<sup>74</sup> *ibid.*, para. 47.

<sup>75</sup> United Nations, 2013(a), 3. “The best interest of the child”.

<sup>76</sup> *ibid.*, IV. B. 3. The child’s best interests and the right to be heard (art. 12).

<sup>77</sup> UNCRC, 1989/90, art. 12.

<sup>78</sup> United Nations, 2013(a), IV. B. 3. The child’s best interests and the right to be heard (art. 12).

## **I.6. Interim conclusion**

Chapter I has introduced several key concepts which have to be known and to be considered in order to have a comprehensive understanding of the issues at stake. Pointing to the influence of power relations within society, the social model of disability reveals that disability is socially constructed. Building on that, what Degener calls the human rights model of disability reiterates that all persons with disabilities are right-bearers and that “human rights do not require absence of impairment.”<sup>79</sup> According to the UNCRPD Comm.’s GC No. 4 inclusive education – as a “fundamental human right of all learners”<sup>80</sup> – consists of four main features, namely availability, accessibility, acceptability and adaptability which are all interrelated. These criteria can and will be used as a benchmark for the legal implementation of the right to inclusive education<sup>81</sup> (see chapter II.1.2.). Furthermore, I pointed out the concept of intersectionality which takes into account that discrimination and exclusion can be based on several aspects of identity or social categories. As criticised by the UNCRPD Comm., intersectional discrimination affects refugee children with disabilities in Germany.<sup>82</sup> The extent to which this holds true regarding access to inclusive education for refugee children with disabilities in Berlin will be discussed later on (see chapter IV.). The concept of the best interest of the child gives due regard to the fact that children are rights-holders, having the right, for example, to be heard when it comes to decisions affecting them. In my discussion of the research results (see chapter IV.4.2.), I will shed light on the way refugee children with disabilities are actively involved in decision making in the context of access to inclusive education.

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<sup>79</sup> Degener, 2016, p. 3.

<sup>80</sup> United Nations, 2016, para. 10 (a).

<sup>81</sup> See United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 13 The Right to Education (Art. 13 of the Covenant), E/C.12/1999/10, 1999, para. 6.

<sup>82</sup> United Nations, 2015, para. 17 (c).

## **Chapter II: Legal framework with regard to inclusive education for refugee children with disabilities in Berlin**

The following presents the various legal frameworks at international, regional and domestic level with regard to inclusive education for refugee children with disabilities in Berlin. To provide for some theoretical context, the frameworks will be discussed with reference to the social model of disability as well as the concept of inclusive education.

### **II.1. International human rights law**

Regarding international human rights law there are several relevant legal documents when it comes to inclusive education for refugee children with disabilities. At this point the UNCRPD, the UNCRC as well as the International Covenant on Economic, Social and Cultural Rights (CESCR) will be reviewed.

#### **II.1.1. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**

The UNCRPD entered into force on 3 May 2008 and was ratified by Germany on 24 February 2009.<sup>83</sup> Article 24 Education is the main article regarding inclusive education. Recognizing the “interrelatedness of all human rights and fundamental freedoms”<sup>84</sup>, there are several articles relating indirectly to the right to inclusive education. Those will be touched upon first. According to Article 3 General principles, the principles of the UNCRPD are:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;

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<sup>83</sup> United Nations Treaty Collection, Convention on the Rights of Persons with Disabilities, 2018. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en) (accessed 5 May 2018).

<sup>84</sup> UNCRPD, 2006/08, Preamble (c).

- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility; [...]
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.<sup>85</sup>

These principles contribute to a an understanding of inclusive education in line with UNCRPD Comm.'s GC No.4; in turn, inclusive education has the power to reinforce and strengthen those principles. Closely related to this is Article 4 General obligations:

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
  - (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
  - (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
  - (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes; [...]
  - (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

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<sup>85</sup> *ibid.*, art. 3, (a)-(f), (h).

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.<sup>86</sup>

In particular, paragraph 1(c) is of importance within the context of inclusive education for refugee children with disabilities, because it expands the scope of protection and promotion of the rights of persons with disabilities to all policy areas, hence also to refugee and migration policies. Thus the right to inclusive education applies to refugee children with disabilities, too.

Article 5 Equality and non-discrimination demands that state parties “shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”<sup>87</sup> It is also stated that in “order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.”<sup>88</sup> Especially reasonable accommodation is necessary since it contributes to accessibility in terms of access to inclusive education for individuals, even if the state “has fulfilled its accessibility duty.”<sup>89</sup>

Another very important aspect is the one of awareness-raising. It aims “to foster the rights and dignity of persons with disabilities; [...] combat stereotypes, prejudices and harmful practices [...] [and to] promote awareness of the capabilities and contributions of persons with disabilities.”<sup>90</sup> The underlying notion of the so-called social model of disability becomes visible in this context, rejecting the notion of persons with disabilities as mere recipients of charity (see chapter I.1.). Awareness-raising does not only apply to administration staff outside and inside schools, teachers and other people being involved in the process of accessing and implementing inclusive education, but also to the

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<sup>86</sup> *ibid.*, art. 4, 1. (a)-(c), (h), (i).

<sup>87</sup> *ibid.*, art. 5, 2.

<sup>88</sup> *ibid.*, art. 5, 3.

<sup>89</sup> United Nations, 2016, para. 29.

<sup>90</sup> UNCRPD, 2006//08, art. 8.

respective parents. The UNCRPD Comm. has noted that there is a “practice of some parents removing their children with disabilities from inclusive schools, on the basis of a lack of awareness and understanding of the nature of disability.”<sup>91</sup> Without rejecting the Committee’s observation, other aspects will be addressed – like lack of resources<sup>92</sup> – which might impact the parents’ decisions (see chapter IV.4.1.).

Article 9 Accessibility stipulates that...

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public [...]. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) [...] schools.<sup>93</sup>

Accessibility as one of the four features of inclusive education (see chapter I.2.) is of crucial importance. Yet, in order to identify those obstacles and barriers hampering access, a certain degree of awareness is indispensable. Within this context, not only awareness about the impeding factors is needed, but also about the “valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities”<sup>94</sup>, for example.

Inclusive education is also closely linked to Article 19 Living independently and being included in society, “the equal right of all persons with disabilities to live in

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<sup>91</sup> United Nations, 2016, para. 48.

<sup>92</sup> See footnote 30.

<sup>93</sup> UNCRPD, 2006/08, art. 9, 1.

<sup>94</sup> *ibid.*, Preamble (m).

the community, with choices equal to others [...] and their full inclusion and participation in the community”.<sup>95</sup> Inclusive education can be seen as a major step towards independent living and inclusion into society of persons with disabilities. Keeping in mind that about 70% of pupils attending special schools leave these schools without having at least a general school-leaving qualification (in Germany: ‘Hauptschulabschluss’)<sup>96</sup>, inclusive education can contribute to the improvement of future prospects. In turn, an inclusive school setting also facilitates the development of awareness among pupils without disabilities towards their classmates with disabilities, hence laying the foundation for a respectful and dignified life together.

Article 24 Education reads as follows:

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:
  - (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
  - (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
  - (c) Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
  - (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not

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<sup>95</sup> *ibid.*, art. 19.

<sup>96</sup> The share of those pupils attending special schools and leaving them without having at least a general school-leaving qualification amounts to 71.2% Germany-wide and to 70.3% in Berlin, see V.Lange, 2017, p. 13.

excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of

communication, educational techniques and materials to support persons with disabilities.<sup>97</sup>

Article 24 mirrors several aspects inherent to the other articles and key concepts presented above. For instance, paragraph 1 (b) reflects the social model of disability. It gives due regard to the capability of persons with disabilities, providing them with the opportunities to engage meaningfully via an inclusive school system which recognises attitudinal and environmental barriers and subsequently sets the steps to dismantle them. Similarly, in conjunction with paragraph 1 (c), it refers to the contribution inclusive education can make to an independent life for persons with disabilities within the community. Article 24 also underpins that the principle of equality and non-discrimination, as well as the obligation to provide for reasonable accommodation apply particularly to the realm of education and learning.<sup>98</sup>

The significance of awareness-raising is echoed, too. Whereas paragraph 4 directly addresses teachers, professionals and other staff as recipients of awareness-raising training, it also relates to awareness-raising more implicitly. In order to recognise “Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills”<sup>99</sup> in a positive way as ‘tools’ providing for participation on the basis of equal opportunity – and not as means for deficit compensation – awareness-raising is key. The same goes for paragraph 3 (b) and the facilitation of “the learning of sign language and the promotion of the linguistic identity of the deaf community”.<sup>100</sup> This, as well as the content-related nature of accessibility, reflects a key feature of inclusive education as indicated by the UNCRPD Comm.’s GC No. 4.

In summary, it can be said that the notion of education laid down in the UNCRPD is of a comprehensive nature. It does not only include access to the

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<sup>97</sup> UNCRPD, 2006/08, art. 24.

<sup>98</sup> See *ibid.*, art. 24, 1, 2 (a), (c).

<sup>99</sup> *ibid.*, art. 24, 3 (a).

<sup>100</sup> *ibid.*, art. 24, 3 (b).

general education system, as referred to in paragraph 2 (a) and (b), hence to acquiring 'classical' school knowledge. Apart from that, education in the UNCRPD's sense also aims to provide pupils with disabilities with the general competencies required to live a self-determined and dignified life, as stipulated in paragraph 3.

### **II.1.2. Legal effects of the United Nations Convention on the Rights of Persons with Disabilities' Article 24 in Germany**

Dealing with the legal effects of the UNCRPD's article on education in Germany, the substantive content and the potentially enforceable entitlements will be under scrutiny. I will briefly consider the implementation of these entitlements within the German legal system.<sup>101</sup> According to Dörschner, two levels have to be distinguished from each other when it comes to an enforceable substantive entitlement regarding inclusive education for persons with disabilities. On the one hand, there is the entitlement of an individual to be provided with an inclusive school system which is the state's obligation to fulfil.<sup>102</sup> Still, the soft formulations of 'recognize' and 'shall ensure' in the UNCRPD's article 24 paragraph 1 ("States Parties recognize the right of persons with disabilities to education [...] [and] State Parties shall ensure an inclusive education system at all levels and life long learning"<sup>103</sup>) indicate a mere obligation without being individually enforceable.<sup>104</sup> Yet it follows from the concretisation in paragraph 2 (a) and (b) – schools should be generally accessible and located nearby<sup>105</sup> – that states should not focus their inclusive schools on a few locations, but should provide for an extensive system in order to enable children with disabilities to attend inclusive schools close to their

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<sup>101</sup> For a more detailed discussion, which would exceed the scope of the Master Thesis, see D. Dörschner, *Die Rechtswirkung der UN-Behindertenrechtskonvention in Deutschland am Beispiel des Rechts auf inklusive Bildung*, Berlin; Münster: Lit-Verlag, 2014, p. 135-194.

<sup>102</sup> Dörschner, 2014, p. 125.

<sup>103</sup> UNCRPD, art. 24, para. 1.

<sup>104</sup> Dörschner, 2014, p. 126.

<sup>105</sup> UNCRPD, art. 24, para. 2 (a), (b).

social environment.<sup>106</sup> Although Dörschner concludes that this entails a detailed state's obligation to establish an inclusive school system, she expresses doubts about an individually enforceable entitlement.<sup>107</sup>

In addition, the already mentioned issue of limited resources (see chapter I.2.) has to be taken into consideration at this point, as with regard to social rights, like the one of inclusive education, "each State Party undertakes to take measures to the maximum of its available resources and, [...] with a view to achieving progressively the full realization of these rights".<sup>108</sup> Dörschner interprets this as being in opposition to an individually enforceable entitlement to inclusive education.<sup>109</sup> Nevertheless, it is important to mention, as emphasised by Valta and Opel, that such a reservation of progressive realisation aims to take the capacity of the respective State Party into account, but is not supposed to function as an excuse for delayed measures.<sup>110</sup>

Only insofar as there are already existing institutions of inclusive education, claims can be asserted via the provision of not being "excluded from the general education system on the basis of disability".<sup>111</sup> In contrast, non-derivative claims towards inclusive schooling – meaning that they are not dependent on the already existing school system – can only be asserted if there is not even a minimum of educational institutions provided by the state.<sup>112</sup> It has to be added that the principle of inclusion has to be considered as a value judgement, too. Thus, as far as already existing national regulations provide for margins

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<sup>106</sup> R. Poschner, J. Rux, T. Langer, *Von der Integration zur Inklusion: das Recht auf Bildung aus der Behindertenrechtskonvention der Vereinten Nationen und seine innerstaatliche Umsetzung*, Baden-Baden, Nomos, 2008, p. 33.

<sup>107</sup> Dörschner, 2014, p. 127.

<sup>108</sup> UNCRPD, 2006/08, art. 4, para. 2.

<sup>109</sup> Dörschner, 2014, p. 127.

<sup>110</sup> S. Valta and A. Opel, 'Inhalt und Umfang der Verpflichtung zur schrittweisen Verwirklichung des Rechts auf Bildung nach der UN-Behindertenrechtskonvention', in *Recht der Jugend und des Bildungswesens: Zeitschrift für Schule, Berufsbildung und Jugenderziehung*, Berliner Wissenschaftlicher Verlag, Berlin, vol. 65, 2017, p 152.

<sup>111</sup> UNCRPD, art. 24, para. 2 (a).

<sup>112</sup> L. P. Rothfritz, *Die Konvention der Vereinten Nationen zum Schutz der Rechte von Menschen mit Behinderungen: eine Analyse unter Bezugnahme auf die deutsche und europäische Rechtsebene*, Lang, Frankfurt am Main, 2010. p. 381.

regarding evaluation and action concerning the system of education, the principle of inclusion has to be adequately considered and acknowledged.<sup>113</sup>

On the other hand, there is the entitlement to a non-discriminatory access to the existing school system. In this regard the UNCRPD provides for the principle of non-discrimination in a general way in article 5 paragraph 1. and 2., and more specifically in article 24, stating that the right to education should be realised “without discrimination and on the basis of equal opportunity”.<sup>114</sup> Also the obligation to provide for reasonable accommodation is highlighted separately within the context of inclusive education. As laid down in article 2 of the UNCRPD, the denial of reasonable accommodation on the basis of disability constitutes discrimination.<sup>115</sup> Taking a look at the second part of article 4 paragraph 2., saying that progressive realisation has to happen “without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law”<sup>116</sup> indicates that resource reservation do not release states from their obligation to provide for non-discriminatory access to the already existing school system. This holds also true since reasonable accommodation does not require extensive structural measures but measures that address deficits within the system and provide for assistance in individual cases.<sup>117</sup>

Summing up, Dörschner identifies three justiciable claims in connection with the right to inclusive education: Firstly, the individual entitlement to a minimum of educational institutions and secondly the consideration of the principle of inclusion in regard to already existing national regulations providing for margins of evaluation and action. Thirdly, there is a justiciable claim to non-discrimination when it comes to access to the general school system, subject to provision of reasonable accommodation.<sup>118</sup>

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<sup>113</sup> Dörschner, 2014, p. 128.

<sup>114</sup> UNCRPD, 2006/08, art. 24, para. 1.

<sup>115</sup> *ibid.*, art. 2.

<sup>116</sup> *ibid.*, art. 4, para. 2.

<sup>117</sup> Dörschner, 2014, p. 131.

<sup>118</sup> *ibid.*, p. 135.

Although the UNCRPD unfolds its applicability with regard to those provisions falling under the federal legislative power, difficulties remain: This holds especially true for those issues that fall within the remit of the so-called ‘Bundesländer’ (Germany’s federal states) such as education.<sup>119</sup> As pointed out by Dörschner, corresponding implementation measures have to be taken on the respective federal state-level regarding inclusive education in order to gain applicability.<sup>120</sup> According to Dörschner, there are two possibilities to guarantee the above mentioned individual entitlements. One option is via article 25 of the German Constitution, stipulating that general provisions of international customary law trump national law.<sup>121</sup> However, only an entitlement to non-discriminatory access to already existing educational institutions can be deduced from international customary law here.<sup>122</sup> The second option also has limitations. In the course of the implementation of the UNCRPD as a treaty of international law<sup>123</sup> there is uncertainty about the need of additional acts of implementation.<sup>124</sup>

Pointing out that this is most probably the case in this context; Dörschner concludes that the UNCRPD can only become significant in a restricted manner – via an interpretation accommodating international law – when there is an implementation measure by the respective federal state legislator.<sup>125</sup> In order to foster the implementation of the UNCRPD the federal government of Germany has adopted the National Action Plan 2.0 (NAP 2.0) in 2016. Yet while the focus was put on, inter alia, the improvement of training of educational staff as well as on increased research about participation of persons with disabilities it does not

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<sup>119</sup> *ibid.*, p. 193.

<sup>120</sup> Upon a request of the author, regarding the need for implementation measures for the UNCRPD in order to unfold applicability in the context of federal state competences, there was no detailed reply from Berlin. However, according to Dörschner, the reply indicated implicitly that such measures are not required. See Dörschner, 2014, p.168.

<sup>121</sup> Deutschland, Grundgesetz für die Bundesrepublik Deutschland, 1949, art. 25.

<sup>122</sup> Dörschner, 2014, p. 194.

<sup>123</sup> For the implementation of treaties of international law, see Deutschland, Grundgesetz für die Bundesrepublik Deutschland, 1949, art. 59 (2).

<sup>124</sup> Dörschner, 2014, p. 194.

<sup>125</sup> *ibid.*, p.194

contain any legal implementation measures with regard to inclusive education.<sup>126</sup>

### **II.1.3. United Nations Convention on the Rights of the Child**

Beside the UNCRPD, another convention, namely the UNCRC, is of relevance when it comes to inclusive education for refugee children with disabilities. The UNCRC was ratified by Germany on 6 March 1992.<sup>127</sup> Generally, the UNCRC, which is nearly universally ratified, defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>128</sup> Regarding the rights set forth in this convention the state shall respect and ensure them “to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's [...] disability [...] or other status.”<sup>129</sup> Of relevance within the context of this thesis is also the refugee status, the entitlement to asylum or to subsidiary protection (see chapter I.3.).

As already mentioned above (see chapter I.5.), the best interest of the child is of paramount importance. It should be a primary consideration in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”<sup>130</sup>. Accordingly, when it comes to the access to inclusive education for refugee children with disabilities in Berlin, this applies to several actors. For instance, to Berlin's Senate Administration for Education, Youth and Family, to schools (both regular and special schools), as well as to the social workers or rather people working in the field of social services.

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<sup>126</sup> See Bundesministerium für Arbeit und Soziales, *„Unser Weg in eine inklusive Gesellschaft“ – Nationaler Aktionsplan 2.0 der Bundesregierung zur UN-Behindertenrechtskonvention (UN-BRK)*, Berlin, 2016, pp. 49-63.

<sup>127</sup> United Nations Treaty Collection, Convention on the Rights of the Child, 2018. [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=\\_en#10](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en#10) (accessed 11 May 2018).

<sup>128</sup> UNCRC, 1989/90, art. 1.

<sup>129</sup> *ibid.*, art. 2, para. 1.

<sup>130</sup> *ibid.*, art. 3, para. 1.

Apart from these more general rights, there are two articles within the UNCRC relating explicitly to education, but containing aspects which can be read in the sense of inclusive education, too. Article 28 states that...

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children<sup>131</sup>

Taking a closer look, several aspects which were already brought up in the part on inclusive education (see chapter I.2.) can be discovered. The paragraphs (a), (b) and (c) mention the aspect of availability, paragraph (b) and (c) accessibility, albeit without more specification. Assuming that accessibility is meant in the sense of physical access, paragraph (d) goes further. It refers to content-related accessibility, being of great importance in order to enable children to gain information on which they can base their will and decisions which will ideally be heard and taken into account by those taking actions which impact them.

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<sup>131</sup> *ibid.*, art. 28, para. 1 (a)-(d).

Article 29 stipulates that...

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin<sup>132</sup>

Similar to the article cited above, again, aspects of inclusive education as well as of the social model/ human rights model of disability are discernible. At this point it is not my aim to find a solution to the heated discussion whether or not inclusive education or special education is best in order to achieve what is stated in paragraph (a). Nevertheless, taking paragraphs (a), (b) and (c) together strongly suggests that an inclusive school setting – comprised of children with and without disabilities – provides for the best circumstances in which respect for the human rights of the respective classmates and hence for the development of a positively perceived personality can flourish. Self-respect as well as respect of others is the essential basis for a child's responsible life in society in the sense of paragraph (d). Article 29 displays those aspects which have to be considered for an approach to education valuing each child's very individual personality, identity and capacity. This could also be understood

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<sup>132</sup> *ibid.*, art. 29, para. 1 (a)-(d).

within the context of Degener's statement about the UNCRPD's human rights model of disability that "all disabled persons' [rights and] not only those who are 'fit' for mainstreaming"<sup>133</sup> should be protected and respected. It therefore provides for a strong coalition with the UNCRPD, its related concepts and understandings.

#### **II.1.4. International Covenant on Economic, Social and Cultural Rights**

Not only UN conventions stipulate regulations regarding the right to education, the CESCR does so too. Regardless of having entered into force more than 40 years ago<sup>134</sup>, if read in line with the above discussed key concepts, it contains relevant details within the context of this thesis. In the CESCR's article 13 the right to education for everyone is enshrined; it likewise notes that "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms."<sup>135</sup> Furthermore, "education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship"<sup>136</sup>. Apart from that "(a) Primary education shall be compulsory and available free to all; (b) Secondary education [...] shall be made generally available and accessible to all by every appropriate means."<sup>137</sup> Although at the time of drafting, not much thought was likely given to inclusive education and the social/ human rights model of disability, the application of the principle of dynamic interpretation<sup>138</sup> displays its validity when it comes to refugee children with disabilities. Hence, the CESCR, too, serves as a source of reference

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<sup>133</sup> Degener, 2016, p. 7.

<sup>134</sup> The CESCR generally entered into force on 3 January 1976, on 17 December 1973 as well in Germany, United Nations Treaty Collection, International Covenant on Economic, Social and Cultural Rights, 2018. [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en) (accessed 14 May 2018).

<sup>135</sup> United Nations, 1966/76, art. 13, 1.

<sup>136</sup> *ibid.*, art. 13, 1.

<sup>137</sup> *ibid.*, art. 13, 2(a), (b).

<sup>138</sup> According to the principle of dynamic interpretation, giving due regard to the fact that terms can change their meaning over time, a treaty is "a living instrument not to be interpreted separately from the circumstances at the time." M. Nowak, *Introduction to the international human rights regime*, Leiden [u.a.]: Nijhoff, 2003, p. 66.

regarding the right to inclusive education for refugee children with disabilities in Berlin.

## **II.2. European Union law**

On the regional European Union (EU) level three legal documents are of interest. The Charter of Fundamental Rights of the European Union (CFR) is relevant since it applies to EU countries when they apply EU directives. Such directives are Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Qualification Directive) and Directive 2013/33/EU laying down standards for the reception of applicants for international protection (Reception Directive).

### **II.2.1. Charter of Fundamental Rights of the European Union**

The CFR brings civil, political, economic and social rights together in one document. It addresses institutions of the EU and applies to national authorities only when implementing EU law.<sup>139</sup> Hence, it is also of relevance when it comes to the issue of inclusive education for refugee children with disabilities in Berlin. Five articles should be addressed at this point.

First of all, Article 14 Right to education stipulates that everyone “has the right to education and to have access to vocational and continuing training.”<sup>140</sup> Secondly, according to Article 18 Right to asylum, the right to asylum “shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees”<sup>141</sup> (see also chapter I.3.). Thirdly, article 21 prohibits discrimination on various

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<sup>139</sup> European Commission, When does the Charter apply?, 2018. [https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/when-does-charter-apply\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/when-does-charter-apply_en) (accessed 14 May 2018).

<sup>140</sup> European Union, Charter of Fundamental Rights of the European Union, European Union, 2012, art. 14.

<sup>141</sup> *ibid.*, art. 18.

grounds, inter alia, on disability.<sup>142</sup> Fourthly, Article 24 The rights of the child stipulates that children “shall have the right to such protection and care as is necessary for their well-being. They may express their views freely [...] on matters which concern them”.<sup>143</sup> Further, in “all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.”<sup>144</sup> Fifthly, apart from the non-discrimination clause there is another article regarding persons with disabilities, called Integration of persons with disabilities. It states that the EU “recognizes and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.”<sup>145</sup>

Nevertheless, it has to be mentioned that there is quite a difference between integration, and the aim of inclusion of persons with disabilities. This holds true for all areas of life. It is also questionable if integration is in the best interest of the child. Real independence for persons with disabilities cannot be achieved by integration (neither social nor occupational or other integration) since it does not imply any “process of systematic reform embodying changes and modifications [...] that best corresponds to their requirements and preferences.”<sup>146</sup> Otherwise it would be dependence, not independence. The same goes for a self-determined participation in life.

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<sup>142</sup> *ibid.*, art. 21.

<sup>143</sup> *ibid.*, art. 24, 1.

<sup>144</sup> *ibid.*, art. 24, 2.

<sup>145</sup> *ibid.*, art. 26.

<sup>146</sup> United Nations, 2016, para. 11.

## **II.2.2. Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted**

As the name already indicates, the Qualification Directive determines certain standards for the qualification for international protection, as well as for the content of the respective protection. Three provisions relevant to the topic of inclusive education for refugee children should be presented here. Generally speaking, the first two provisions relate to the way member states are supposed to implement the third provision, access to education.

According to article 20, 3., member states “shall take into account the specific situation of vulnerable persons such as [...] disabled people”<sup>147</sup>. It is worth mentioning in this regard that it “shall apply only to persons found to have special needs after an individual evaluation of their situation.”<sup>148</sup> Without getting deeper into this it has to be noted that there is no standardised identification procedure for refugees with disabilities in Germany.<sup>149</sup> The other provision is the best interest of the child as primary consideration.<sup>150</sup>

Article 27 Access to education stipulates the following: Member States “shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals.”<sup>151</sup> Keeping the CFR’s article on the integration on persons with disabilities in mind it arguably cannot be assumed that access/ accessibility is meant within the context of inclusive education (see chapter I.2.). Yet it emphasises that refugee children are entitled to have access under the same conditions as nationals, hence refugee children with disabilities have the same right to inclusive education. Therefore, it underlines UNCRPD’s article 4 paragraph 1(c), which expands the scope of

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<sup>147</sup> European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, European Union: Council of the European Union, 2011, art. 20, 3.

<sup>148</sup> *ibid.*, art. 20, 4.

<sup>149</sup> Deutsches Institut für Menschenrechte, 2017, p. 67.

<sup>150</sup> European Union, 2011, art. 20, 5.

<sup>151</sup> *ibid.*, art. 27, 1.

protection of the human rights of persons with disabilities to refugee and migration policies (see II.1.1.).

### **II.2.3. Directive 2013/33/EU laying down standards for the reception of applicants for international protection**

Just as the Qualification Directive lays down certain standards for the qualification of people seeking international protection, the Reception Directive does this in regard to the reception for applicants for international protection. Article 14 Schooling and education of minors, which is part of Chapter II General Provisions on reception conditions, reads as follows:

1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals [...]. Such education may be provided in accommodation centres. The Member State concerned may stipulate that such access must be confined to the State education system. [...]
2. [...] Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1.<sup>152</sup>

In contrast to the Qualification Directive, the Reception Directive stipulates that access to education should be granted under similar and not under the same conditions as to nationals. In addition, there is a possibility for schooling in accommodation centres. Quite apart from the consequent spatial segregation, in the case of Germany, most of the centres do not provide for accessibility for persons with disabilities.<sup>153</sup> On a positive note, paragraph 2 mentions preparatory and language classes, yet they should be provided on a mandatory

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<sup>152</sup> European Union, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, European Union: Council of the European Union, 2013, art. 14, 1, 2.

<sup>153</sup> Deutsches Institut für Menschenrechte, 2017, pp. 69-71.

basis as especially the latter can be considered key in facilitating access to and participation in the educational system.

As a side note, regarding material reception conditions and health care, member states “shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.”<sup>154</sup> This is of particular importance for children with disabilities in order to ensure the maintenance of their health. Related to this is the stipulation that member states “shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21”.<sup>155</sup> This article explicitly states that “the specific situation of vulnerable persons such as minors [...] [and] disabled people”<sup>156</sup> shall be taken into account.

Although the provisions of the Reception Directive are legally binding they have not yet been implemented at a national level in Germany. Instead, the federal government refers the responsibility of implementation to the ‘Bundesländer’, Germany’s federal states.<sup>157</sup> Still, already existing national regulations have to be interpreted in line with the Directive.<sup>158</sup>

### **II.3. Convention Relating to the Status of Refugees**

Within international humanitarian law reference to education can be found as well. Those people who have been granted refugee status under the Geneva Convention (see chapter I.3.) shall be accorded “the same treatment as [it] is accorded to nationals with respect to elementary education.”<sup>159</sup> Although it does not contain any reference to persons with disabilities, taken in conjunction with article 3 of the German Constitution – which prohibits discrimination on grounds

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<sup>154</sup> European Union, 2013, art. 17, 2.

<sup>155</sup> *ibid.*, art. 17, 2.

<sup>156</sup> *ibid.*, art. 21.

<sup>157</sup> Deutscher Bundestag, Antwort der Bundesregierung auf die Kleine Anfrage. Zur Lage von geflüchteten Menschen mit Behinderungen. Bt-Drs. 18/11603, Berlin, 2017, p. 2, 11.

<sup>158</sup> M. Pelzer and M. Pichl, ‘Die Geltung der EU-Aufnahme- und Asylverfahrensrichtlinie. Zu den unmittelbaren Rechten für Asylsuchende’, in, *Asylmagazin* 10/2015, 2015, pp. 331-332.

<sup>159</sup> United Nations, 1951, art. 22, 1. .

as disability<sup>160</sup> (see chapter II.4.1.) – I would argue that it could be regarded as applying to refugee children with disabilities, too.

## **II.4. German law**

With regard to inclusive education of refugee children with disabilities in Berlin, it is important to have a look at the domestic legal framework of Germany. The following legal documents will be reviewed in relation to relevant rights and regulations: The German Constitution, the German Asylum Law and the Social Code. Since education lies within the competence of the respective federal state<sup>161</sup>, chapter II will conclude with the relevant laws in Berlin: The Berlin Education Law ('Schulgesetz für das Land Berlin') (SchulG) (see chapter II.5.1.) and the regulation about the special educational support ('Verordnung über die sonderpädagogische Förderung') (SopädVO) (see chapter II.5.2.).

### **II.4.1. German Constitution**

Interestingly, the German Constitution (in German: 'Grundgesetz') codifies in its very first article that the dignity of man is unassailable and that it is the state's obligation to respect and protect this dignity.<sup>162</sup> Furthermore, it says that the German people acknowledge the inviolable and inalienable human rights as the basis of every community, of peace and justice in the world.<sup>163</sup> These two first paragraphs of the very first article of Germany's most important legal document display a very strong and ambitious commitment towards human rights. Therefore, paragraph 3 states that the subsequent constitutional rights – article 1 to 19 – are directly applicable, binding legislative, executive and judicial power.

At this point I will only refer to the constitution's article 3. It states that everybody is equal before the law and that apart from other protected grounds nobody

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<sup>160</sup> Deutschland, Grundgesetz für die Bundesrepublik Deutschland, 1949, art. 3 (3).

<sup>161</sup> *ibid.*, art. 30.

<sup>162</sup> *ibid.*, art. 1 (1).

<sup>163</sup> *ibid.*, art. 1 (2).

shall be discriminated against because of his or her disability.<sup>164</sup> These two very important aspects have to serve as a guiding principle when dealing with refugee children with disabilities and their access to inclusive education.

#### **II.4.2. German Asylum Law**

The German Asylum Law determines which persons qualify for asylum in Germany. Following from what has already been touched upon earlier (see chapter I.3.) this subchapter aims to sum up the most important aspects in this regard. Therefore, the first four paragraphs of the German Asylum Law will be presented at this point.

Paragraph 1 defines the scope of application of this law. Accordingly, it applies to those people seeking protection against political persecution in accordance with article 16a paragraph (1) of the German Constitution<sup>165</sup> as well as international protection in accordance with the Qualification Directive; including protection against persecution in the sense of the Geneva Convention.<sup>166</sup> In addition, it also covers subsidiary protection.<sup>167</sup>

Paragraph 2 displays the legal status of those being entitled to asylum, stating that these people enjoy the legal status in accordance with the Geneva Convention within the German federal territory.<sup>168</sup> Paragraph 3 elaborates on the conditions required in order to gain refugee status under the Geneva Convention. Within that context there are four central elements which have to be fulfilled. Firstly, there has to be a well-founded fear of being persecuted due to (secondly) one of the following reasons: race, religion, nationality, membership of a particular social group or political opinion.<sup>169</sup> Further, as reaction to the persecution the person in question has to be outside of his or her

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<sup>164</sup> *ibid.*, art. 3 (1), (3).

<sup>165</sup> Deutschland, Asylgesetz, 1992/ 2008, para. 1 (1), 1.

<sup>166</sup> *ibid.*, para. 1 (1), 2.

<sup>167</sup> *ibid.*, para. 1 (1), 2.

<sup>168</sup> *ibid.*, para. 2 (2).

<sup>169</sup> *ibid.*, para. 3 (1), 1.

country of origin.<sup>170</sup> Finally, the person seeking refuge has to be unable or unwilling to avail himself of the protection of that country.<sup>171</sup>

Subsidiary protection according to paragraph 4 can be granted if there is a presumption of a risk being exposed to serious harm exists. This can be the imposition or the execution of the death penalty, torture, inhuman or degrading treatment or punishment as well as serious threat to life or the integrity of the individual person in the context of an international or inner-state armed conflict.<sup>172</sup> At this point it has to be mentioned that there are several reasons leading to an exclusion from the entitlement to protection, like having committed war crimes or crimes against humanity.<sup>173</sup>

### **II.4.3. German Social Code**

The German Social Code consists of 12 parts, called 'books', which regulate different thematic areas of social legislation. This subchapter takes a quick glance at the ninth book dealing particularly with rehabilitation and participation of persons with disabilities ('Sozialgesetzbuch Neuntes Buch (IX) – Rehabilitation und Teilhabe von Menschen mit Behinderungen') (SGB IX). Still, it does not aim at elaborating on the mechanisms and procedures to obtain social benefit in accordance with SGB IX, since this would exceed scope and focus of the Master Thesis. First and foremost, SGB IX provides for the definition of persons with disabilities in German legislation. According to paragraph 2 (1) persons with disabilities are...

Persons having physical, mental, intellectual or sensory impairments which in interaction with attitudinal and environmental barriers may hinder their participation in society on an equal basis with others for a period of very likely longer than six months. An impairment [...] exists if

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<sup>170</sup> *ibid.*, para. 3 (1), 2 a).

<sup>171</sup> *ibid.*, para. 3 (1), 2 a).

<sup>172</sup> *ibid.*, para. 4 (1), 1-3.

<sup>173</sup> *ibid.*, para. 3 (2), 1., 4 (2), 1.

health and body conditions deviate from the condition typical for a person of that age.<sup>174</sup>

It becomes apparent, that the SGB IX' definition is quite similar to the one of the UNCRPD, according to which persons with disabilities “have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>175</sup> Nevertheless, there are two differences, namely the period of six months and the deviation from supposedly typical health and body conditions. Apart from requirement of six months and the legitimate question of what a typical condition looks like, it should just be pointed out here, that the other requirement – the deviation from a typical condition – cannot be assumed to be in line with the UNCRPD's understanding of disability. Instead of taking an approach which includes “[r]espect for difference and acceptance of persons with disabilities as part of human diversity and humanity”<sup>176</sup>, the SGB IX rather reminds of the medical model's deficit-oriented understanding of disability (see chapter I.1.).

## **II.5. Berlin law**

In Germany, as already mentioned, education lies within the competences of the federal states. Therefore, the following two last subchapters will deal with selected aspects of Berlin's legal framework being relevant to the access to inclusive education for refugee children with disabilities. These are the SchulG as well as the SopädVO. At certain relevant points in the discussion of those laws, it will be referred to the extent to which the right to inclusive education is implemented, using the four features of inclusive education (see chapter I.2.) and the respective criteria as a benchmark.

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<sup>174</sup> Deutschland, Sozialgesetzbuch Neuntes Buch (IX) – Rehabilitation und Teilhabe von Menschen mit Behinderungen, 2016, BGBl. I S. 3234, zuletzt geändert durch Art. 23 d. G. v. 17.06.2017 BGBl. I S. 2541, para. 2 (1) (author's translation).

<sup>175</sup> UNCRPD, 2006/08, art. 1.

<sup>176</sup> *ibid.*, art. 3 (d).

### II.5.1. Berlin Education Law

Besides regulations dealing with various aspects of education which will be discussed below, the Berlin Education Law (SchulG) lays down in its very first paragraph the general mission of the school. Its mission is to “unfold the full potential and the valuable assets of the pupils and to impart the maximum of their power of judgment, knowledge and skills.”<sup>177</sup> In addition, it aims to provide the pupils with, inter alia, a strong sense of responsibility to the community, the recognition of the equality of all people, of human dignity as well as of democracy as the basis for a peaceful cohabitation.<sup>178</sup> Within this context, keeping in mind that the SchulG talks about education, and not about inclusive education, the latter could notably contribute to the knowledge sharing being necessary to equip the pupils with the above mentioned values.

In paragraph 2, the SchulG elaborates on its understanding of the right to education. It states that “every young person has the right to a sustainable education regardless of his/ her [...] language, origin, disability [...] and his/ her parents’ economic or social status.”<sup>179</sup> Moreover, “[e]very young person has a right to equal access to all public schools, in accordance with his/ her abilities and talents.”<sup>180</sup> At this point several interesting aspects become visible. For instance, the education provided has to be sustainable, hence of a certain quality providing the individual with the requirements to make his/ her path after graduation. Prohibition of discrimination is contained, too. Therefore, pupils with mother tongues different to German, pupils of non-German origin, pupils with disabilities or with parents of another social status than the majority society (like flight experience for example) should have the same chances to enjoy education in public schools. Although it might be argued that the additive “in accordance with his/ her abilities and talents” means educating children with disabilities in special schools, the opposite has to be the case. Keeping the feature of adaptability in mind (see chapter I.2.), an inclusive school setting

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<sup>177</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 1 (author’s translation).

<sup>178</sup> *ibid.*, para. 1.

<sup>179</sup> *ibid.*, para. 2 (1) (author’s translation).

<sup>180</sup> *ibid.*, para. 2 (2) (author’s translation).

should be adapted to the individual's respective abilities and talents. This aspect will briefly be touched upon later.

According to the SchulG, the educational objectives are that:

The school should impart knowledge, abilities, skills and values. These are aimed at enabling the pupils to make their own choices and to continue learning independently in order to cope with professional and personal tasks, to actively manage their own lives, to participate responsibly in social, cultural and economic life as well as in society and to contribute to a prospering future.<sup>181</sup>

Building on these objectives, education should particularly enable pupils to form relationships with others on the basis of respect, equality and the maxim of encountering everybody in a just way.<sup>182</sup> In my view, it is legitimate in this regard to pose the question whether or not a school system in which children with and without disabilities are separated from each other can honestly provide for such an understanding of respect for human diversity and equality of every human being – at least in the same way a joint education setting does.

Regarding the principles of the realisation of the right to education, paragraph 4 (1) states generally, that the school facilitates a maximum of participation of the pupils in accordance with their age and their level of development in order to provide them with the capacity to shape their course of education in an independent and individual manner and to reach autonomy.<sup>183</sup> More precisely,

the school shall be organised in such a way as to achieve joint teaching and joint learning, the compensation of disadvantages and to provide for equal opportunities. In this context, gender mainstreaming and an intercultural orientation should be taken into account, implying that all measures relevant within the context of education are developed with

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<sup>181</sup> *ibid.*, para. 3 (1) (author's translation).

<sup>182</sup> *ibid.*, para. 3 (3) 1.

<sup>183</sup> *ibid.*, para. 4 (1).

regard to a gender and intercultural perspective. Teaching is to be differentiated in terms of content and organisation to enable all pupils to achieve learning and performance progress.<sup>184</sup>

This text passage reveals aspects being relevant especially within the context of three features of inclusive education, namely availability, accessibility and acceptability. It is positive that joint learning, an especially important aspect of availability (see chapter 1.2.), is intended in Berlins SchulG and additionally mentioned in paragraph 4 (3) as well as in paragraph 37 (1).<sup>185</sup> Nevertheless, as pointed out by Mißling and Ückert, the mere possibility does not meet the principle of the priority of joint learning in the UNCRPD's sense.<sup>186</sup>

With regard to accessibility, it is essential to take a look at measures aiming at the compensation of disadvantages. Although there is no explicit individual entitlement to reasonable accommodation (in order "to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others"<sup>187</sup>) within Berlins state law<sup>188</sup>, there is a 'tool' going in the same direction as adjustment measures, namely the so-called 'Nachteilsausgleich' (meaning measures of support for the compensation of disadvantages due to disability<sup>189</sup>). For instance, such measures can include longer examination time or a sign language interpreter. This approach is directed to provide individual children with disabilities with the possibility to show their competence in an equivalent matter aimed at achieving the same performance objectives as their classmates without disabilities – but under reasonable conditions, tailored to the respective individual case.<sup>190</sup> Yet, it has to be distinguished from the so-called 'zieldifferenzierter Unterricht', a form of joint teaching in which the performance

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<sup>184</sup> *ibid.*, para. 4 (2) (author's translation)

<sup>185</sup> *ibid.*, para. 4 (3), 37 (1).

<sup>186</sup> Mißling and Ückert, 2014, p. 22.

<sup>187</sup> UNCRPD, 2006/08, art. 2.

<sup>188</sup> Mißling and Ückert, 2014, p. 30.

<sup>189</sup> Deutschland, Sozialgesetzbuch Neuntes Buch (IX) – Rehabilitation und Teilhabe von Menschen mit Behinderungen, 2016, para. 209 (1).

<sup>190</sup> Kultusministerkonferenz, Inklusive Bildung von Kindern und Jugendlichen mit Behinderungen in Schulen (Beschluss der Kultusministerkonferenz vom 20.10.2011), 2011, pp.10-11.

objectives are adjusted to the special educational requirements of the children with disabilities.<sup>191</sup>

This format of education, referred to in the last sentence of paragraph 4 (2) of the SchulG (see footnote 179 on page 55), is a means to facilitate joint learning of children with and without disabilities in the same class setting. According to Mißling and Ückert this is a justified and important measure since it provides for joint education despite diverging from binding performance objectives<sup>192</sup>, facilitating inclusive education through individualisation.<sup>193</sup> The legal entitlement to access regular schools for children with disabilities would run the risk of becoming an empty shell, if the prescribed curricula in these schools were not able to take the individual requirements and abilities of those pupils into account.<sup>194</sup> Consequently, this would result in a regular separation of children with and without disabilities within the educational system.<sup>195</sup>

Hence, it can be understood as a criterion of the feature of acceptability, since, as stated in the UNCRPD's Comm. GC No. 4 "[t]he form and substance of education provided must be acceptable to all."<sup>196</sup> At this point it has to be mentioned that the SchulG stipulates this objective-differentiated form is only mandatory for the special education requirements of 'learning' and 'mental development', but not for others like 'seeing' or 'listening'.<sup>197</sup><sup>198</sup> Therefore, this tool should be used as comprehensively as possible to foster the access – in a broad sense of the term – to inclusive education for children with disabilities.<sup>199</sup>

Giving due regard to the interrelatedness of the four features of inclusive education<sup>200</sup>, adaptability plays a role within this context, too. More precisely, a

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<sup>191</sup> Deutschland, Verordnung über die sonderpädagogische Förderung (Sonderpädagogikverordnung - SopädVO), 2005, GVBl. S. 57, zuletzt geändert durch Art. 3 d. V. v. 28.09.2016 GVBl. S. 803, 804, para. 18 (3).,

<sup>192</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 10 (1).

<sup>193</sup> Mißling and Ückert, 2014, p. 34.

<sup>194</sup> *ibid.*, p. 34-35.

<sup>195</sup> *ibid.*, p. 35.

<sup>196</sup> United Nations, 2016, para. 25.

<sup>197</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 37 (1), (2).

<sup>198</sup> For an overview of the existing special educational needs (in accordance with the SopädVO) see Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 6-14.

<sup>199</sup> Mißling and Ückert, 2014, p. 35.

<sup>200</sup> United Nations, 2016, para. 20.

school setting providing for the possibility of objective-differentiated learning, consequently implying adaptable educational-objectives, comes close(r) to the UNCRPD's aspiration of an inclusive school system. Such a system should be directed to "[t]he development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential".<sup>201</sup>

Concerning the intercultural perspectives which should be taken into account, as pointed out above; the SchulG further stipulates that pupils with non-German mother tongues are supposed to be supported through adequate language acquisition. This aims at enabling them to achieve the same degrees and to participate actively within school life.<sup>202</sup> Importantly, their ethnical and cultural identities have to be respected in doing so.<sup>203</sup>

There are several paragraphs remaining which are worth examining, albeit not in the same level of detail as the preceding paragraphs since certain aspects will be subject of discussion in the next subchapter, too. Paragraph 36 defines the principles for special educational support. Accordingly, those "pupils being impaired in regard to their educational, developmental and learning possibilities to such an extent as that they cannot be supported in school without special educational support"<sup>204</sup> are supposed to have special educational needs<sup>205</sup>. (For more insights regarding special educational support and its determination see chapter II.5.2.) Furthermore, special educational support can take place either in regular schools or in special-needs schools.<sup>206</sup> The related decision as to which kind of school the child with disabilities is sent, is taken by the parents or

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<sup>201</sup> UNCRPD, 2006/08, art. 24 1. (c).

<sup>202</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 4 (10).

<sup>203</sup> *ibid.*, para. 4 (10).

<sup>204</sup> *ibid.*, para. 36 (1) (author's translation).

<sup>205</sup> It should be mentioned at this point that 'special educational needs' is the author's translation of the German term 'sonderpädagogischer Förderbedarf' in accordance with the SopädVO. Still, it should be critically referred to the terms' suggestive character of otherness and dependency of persons with disabilities, as it is with the term 'special (reception) needs' (see also footnote 2).

<sup>206</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 36 (2).

the legal guardians.<sup>207</sup> (For a discussion of aspects affecting such decision see chapter IV.4.1).

Concluding, it should be referred to some general provisions. Compulsory education applies to everybody having his or her accommodation or habitual residence in Berlin.<sup>208</sup> This includes also those foreign children residing lawfully in Berlin due to an asylum application or being tolerated within the context of subsidiary protection<sup>209</sup>, hence to refugee children. All children who have already reached the age of six at the beginning of the school year on 1 August, or are reaching the age of six until the following 30 September have to attend school.<sup>210</sup> According to the Federal Statistical Office, about 32,000 children started school in the last year in Berlin.<sup>211</sup>

## **II.5.2. Berlin ‘Verordnung über die sonderpädagogische Förderung‘**

The ‘Verordnung über die sonderpädagogische Förderung‘ (SopädVO) “regulates teaching, education and apprenticeship-support for pupils, children and young people with special educational needs in regular schools and in special-needs schools [...]”<sup>212</sup>. Within this context, certain of those teaching and education related aspects will be discussed in the following. In accordance with paragraph 2 (1) of the SopädVO, special educational support aims at the realisation of pupils with special educational needs’ rights to education pursuant to their personal talents and capacities; thereby enabling them to attain educational and vocational integration, social participation and an independent way of life to the highest degree possible.<sup>213</sup> Compared to the educational objectives of the SchulG (see chapter II.5.1., page 54) several differences become apparent. Apart from the more differentiated content of education in the

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<sup>207</sup> *ibid.*, para. 36 (4).

<sup>208</sup> *ibid.*, para. 41 (1).

<sup>209</sup> *ibid.*, para. 41 (2).

<sup>210</sup> *ibid.*, para. 42 (1).

<sup>211</sup> Statistisches Bundesamt (Destatis), Schulanfänger: Bundesländer, Schuljahr, Geschlecht 2016/17, 2018.

<sup>212</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 1 (author’s translation).

<sup>213</sup> *ibid.*, para. 2 (1).

SchulG<sup>214</sup>, the SopädVO' objectives are less future-orientated and contain fewer aspects of a self-determined life of pupils with disabilities and their capacity to contribute meaningfully to society. Additionally, it is questionable if the mentioned integration approach can really equip the pupils for an independent life, at least to an acceptable degree. That can be doubted, since integration focuses "solely on enhancing the ability of the student to comply with the established standards"<sup>215</sup>, and not on what "corresponds [best] to their requirements and preferences."<sup>216</sup> It is worth mentioning that, in order to achieve the objectives of the SopädVO, staff with the appropriate qualifications should be employed primarily.<sup>217</sup> In my view, that cannot be considered to be taking the feature of adaptability (see chapter I.2.) seriously. Trained staff is an indispensable requirement in reaching the "full development of human potential and sense of dignity and self-worth"<sup>218</sup> of pupils with disabilities. Therefore, adequate qualifications has to be a mandatory recruitment criterion.

These aspects illustrate that the regulations about the special educational support are far off from an inclusive understanding of education for children with disabilities. Paragraph 4 (1) of the SopädVO states that it is intended to provide for joint teaching of pupils with and without special educational needs.<sup>219</sup> As with the same provision in the SchulG<sup>220</sup>, it does not meet the UNCRPD's principle of the priority of joint learning.<sup>221</sup> Hence, it cannot be assumed to meet the requirements of availability (see chapter I.2.). Furthermore, the SopädVO stipulates the possibility for joint teaching in which the performance objectives are also adapted to the special educational requirements.<sup>222</sup>

At this point it is useful to turn the focus a bit towards the issue of special educational needs. According to paragraph 31 (1), the application for the determination of special educational needs can be made (in written form) by the

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<sup>214</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 3 (1).

<sup>215</sup> United Nations, 2013(b), para.4.

<sup>216</sup> United Nations, 2016, para. 11.

<sup>217</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 2 (2).

<sup>218</sup> UNCRPD, 2006/08, art. 24, 1(a).

<sup>219</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 4 (1).

<sup>220</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 4 (3).

<sup>221</sup> Mißling and Ückert, 2014, p. 22.

<sup>222</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 18 (1).

parents respectively, by the legal guardians or by the school in which the child is enrolled.<sup>223</sup> The application can either be made prior to the enrolment, if there are reasonable indications regarding the existence of special education needs; or after the enrolment if it becomes significantly apparent during schooling that there might be special educational needs.<sup>224</sup> Lastly, an application can be made if there is identifiable alteration with regard to special educational needs.<sup>225</sup>

Since recently migrated children require specific support more often when it comes to learning German or acquiring age-appropriate scholastic competences, it is crucial to distinguish their educational support from special educational needs.<sup>226</sup> A potentially existing individual educational support can vary due to personal talents and abilities as well as to previous educational experiences in their respective countries of origin.<sup>227</sup> That's why Berlin's Senate Administration for Education, Youth and Science' Guideline to Integration recommends that those children should be provided with the possibility of attending school on a regular basis and within a stable school environment for at least one year before determination of special education needs takes place.<sup>228</sup> This should give due regard to potential traumata or longer lasting periods without school attendance resulting from war or crisis situations as well as to the importance of providing for enough time for settling in the new living environment.<sup>229</sup> If there is a psychiatrically detected mental illness, like a post-traumatic stress disorder for example, there is a possibility to provide for individual support or 'Nachteilsausgleich' before the expiry of this one year period and without the determination of special educational needs.<sup>230</sup> In the case that after not less than one year of regular school attendance in a stable

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<sup>223</sup> *ibid.*, para. 31 (1).

<sup>224</sup> *ibid.*, para. 31 (2) 1,2.

<sup>225</sup> *ibid.*, para. 31 (2) 3.

<sup>226</sup> Senatsverwaltung für Bildung, Jugend und Wissenschaft, Leitfaden zur Integration von neu zugewanderten Kindern und Jugendlichen in die Kindertagesförderung und die Schule, Berlin, 2016, p. 20.

<sup>227</sup> *ibid.*, p. 20.

<sup>228</sup> *ibid.*, p. 20 (this period of minimum one year without determination applies to the special education requirements of 'learning', 'emotional and social development' as well as to 'language').

<sup>229</sup> *ibid.*, p. 20.

<sup>230</sup> *ibid.*, p. 20.

educational setting and intensive individual support there are still indications for special educational needs, either the respective parents or the school can make an application for determination.<sup>231</sup> Potential negative effects of this reasonable approach towards recently migrated children with (possible) disabilities will be touched upon later again (see chapter IV.3.).

In accordance with paragraph 33 (1), the decision whether or not to enroll the child with special educational needs in a regular or in a special school is taken by the parents, respectively the legal guardians.<sup>232</sup> Still, the school administration can reject the child due to insufficient personnel, material or organisational requirements which cannot provide for adequate support.<sup>233</sup> Such a decision has to be based on a reasoned statement upon which the education authorities decide.<sup>234</sup> With regard to the feature of accessibility (see I.2.) it becomes clear, as emphasised by Mißling and Ückert<sup>235</sup>, that denial of access by referring to organisational or resource reservations is impermissible within the international law standards of UNCRPD's article 24 1. and 2. (see chapter II.1.1., page 34).

The SopädVO provides for the possibility of transport for pupils with disabilities, too. "Pupils not being able to attend school by the usual way due to their disability can apply for special means of transport to the nearest adequate and receptive school [...]"<sup>236</sup> However, there is no legal entitlement to such transport.<sup>237</sup> This can lead to an impeded access to education, especially for those not having the relevant resources<sup>238</sup> to manage the application procedures<sup>239</sup> (see chapter IV.4.1). Hence, the feature of accessibility (see chapter I.2.) can be considered as not being (sufficiently) ensured.

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<sup>231</sup> *ibid.*, p. 21.

<sup>232</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 33 (1).

<sup>233</sup> *ibid.*, para. 33 (1).

<sup>234</sup> *ibid.*, para. 33 (2).

<sup>235</sup> Mißling and Ückert, 2014, p. 32.

<sup>236</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 36 (1) (author's translation).

<sup>237</sup> *ibid.*, para. 36 (1).

<sup>238</sup> See footnote 30.

<sup>239</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 36 (2)-(5).

Completing this subchapter, a quick glance should be taken at measures of support for the compensation of disadvantages due to disability, the so-called 'Nachteilsausgleich'.<sup>240</sup> Generally, it is stated that children with special educational needs are entitled to such measures.<sup>241</sup> Those can include:

1. The presentation of tasks, tailored to the respective disability (e.g. the usage of disability specific prepared media, [...] scaled up copies, tactile materials, communication support through sign language in addition to spoken language [...]),
2. The modification of task-processing, tailored to the respective disability (e.g. oral instead of written processing and vice versa [...]),
3. The approval and provision of technical, electronical or disability specific facilities, tailored to the respective disability (e.g. computer with voice input [...]),
4. The deployment of support-personnel, tailored to the respective disability (e.g. [...] support with regard to provision and handling of working materials),
5. Spatial requirements, tailored to the respective disability (e.g. adequate room acoustics, suitable light conditions [...]),
6. The granting of additional time, tailored to the respective disability (e.g. prolonged time allowance, granting of special appointments or additional individual breaks).<sup>242</sup>

As already mentioned in the previous subchapter, these measures give the children the possibility to prove their competence in an equivalent matter as well as to achieve the same performance objectives as their classmates without

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<sup>240</sup> Deutschland, Sozialgesetzbuch Neuntes Buch (IX) – Rehabilitation und Teilhabe von Menschen mit Behinderungen, 2016, para. 209 (1).

<sup>241</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 38 (1).

<sup>242</sup> *ibid.*, para. 38 (1) 1.-6. (author's translation).

disabilities – yet under reasonable conditions, tailored to the respective individual impairment.<sup>243</sup>

## **II.6. Interim conclusion**

The preceding presentation and discussion of the legal framework regarding the access to inclusive education for refugee children with disabilities has demonstrated its manifold nature: On the level of international human rights law, insights were given to the UNCRPD, the UNCRC and the CDESCR. Along with articles laying down general principles and general obligations<sup>244</sup> of the state parties to ensure respect, protection and fulfilment of persons with disabilities' rights, as well as other relevant and interrelated articles, article 24 on education was in the centre of the UNCRPD's presentation. It codifies a quite comprehensive understanding of education, not only focused on imparting 'classical' school knowledge but skills and abilities required for a self-determined and dignified life (see chapter II.1.1.). Problematically, the legal effects it unfolds in Germany are limited. There are only three justiciable claims in connection with the right to inclusive education – namely, the individual entitlement to a minimum of educational institutions, the consideration of the principle of inclusion with regard to already existing national regulations providing for margins of evaluation and action, as well as to non-discrimination when it comes to access to the general school system.<sup>245</sup> Due to that, it is crucial to adapt legal implementation measures going beyond the steps taken by the up to now quite toothless NAP 2.0 (see chapter II.1.2.).

Being relevant for the issue at hand, the UNCRC stipulates, apart from a non-discrimination-clause which, inter alia, refers to the ground of disability and other forms of status<sup>246</sup>, that “[i]n all actions concerning children [...] the best

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<sup>243</sup> Kultusministerkonferenz, 2011, pp.10-11.

<sup>244</sup> In this context it has to be pointed again to article 1 c), expanding scope of protection and promotion to all policy areas, as to refugee and migration policies. Hence, the right to inclusive education applies to refugee children with disabilities, too. UNCRPD, 2006/08, art. 1 c). See also chapter II.1.1.

<sup>245</sup> Dörschner, 2014, p.135.

<sup>246</sup> UNCRC, 1989/90, art. 2, para. 1.

interests of the child shall be a primary consideration.”<sup>247</sup> Just as the UNCRC in article 28 and 29 does (see chapter II.1.3.), the CDESCR lays down legal standards concerning the right to education (see chapter II.1.4.). With regard to international human rights law, it can be noted that there is quite a multi-layered set of rights and regulations when it comes to inclusive education for refugee children with disabilities.

On the level of EU law, the CFR, the Qualification Directive as well as the Reception Directive were discussed. In regard to the CFR, which applies to national authorities when it comes to the implementation of EU law<sup>248</sup>, focus was put on five articles: the right to Education, the right to Asylum, non-discrimination, the rights of the child and integration of persons with disabilities. Especially the latter has to be viewed critically, since integration and inclusion are quite different approaches (see chapter II.2.1.). Within the context of the Qualification Directive determining standards for the qualification for international protection and its content, article 27 is of particular interest. It states that “full access to the education system [should be granted] to all minors granted international protection, under the same conditions as nationals.”<sup>249</sup> As a result, refugee children with disabilities have the same (unfortunately difficult to enforce) right to inclusive education as children with disabilities who have German citizenship. Although the CFR’s article on the integration on persons with disabilities has to be considered at this point, it links to UNCRPD’s article 4 paragraph 1(c) (see chapter II.2.2.). Also, the Reception Directive regulates schooling, albeit slightly different (see chapter II.2.3.). Importantly, the Reception Directive includes a provision according to which Member States “shall take into account the specific situation of vulnerable persons such as minors, [...] [and] disabled people [...]”<sup>250</sup> Even though it is legally binding, it has not yet been implemented on a national level in Germany (see chapter II.2.3.).

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<sup>247</sup> *ibid.*, art. 3, para. 1.

<sup>248</sup> European Commission, 2018.

<sup>249</sup> European Union, 2011, art. 27, 1.

<sup>250</sup> European Union, 2013, art. 21.

The Geneva Convention refers to education but without mentioning persons with disabilities. As argued, if read in conjunction with article 3 of the German Constitution (see chapter II.4.1.), it can be seen as applying to refugee children with disabilities, too (see chapter II.3.). The German Asylum Law specifies the requirements which have to be fulfilled in order to get asylum respectively protection, in Germany. It covers protection against political persecution, international protection in accordance with the Qualification Directive (including protection against persecution in the sense of the Geneva Convention) as well as subsidiary protection (see chapter II.4.2.). The part on the German law was concluded by taking a quick glance at the German Social Code, which defines persons with disabilities within the domestic legal framework (see chapter II.4.3.).

Besides regulating the general mission of the school, the Berlin Education Law/SchulG stipulates, among other things, the domestic understanding of the right to education and the educational objectives. As already hinted at, it takes a more integrational than an inclusive approach to education. Although the so-called 'Nachteilsausgleich' goes slightly into the direction of the principle of reasonable accommodation (for which there is no explicit legal entitlement in the SchulG), it cannot provide for meeting the feature of accessibility. Similarly, the (mere) possibility of joint learning prescribed in the SchulG does not meet the principle of the priority of joint learning in the UNCPRD's sense. Therefore, availability of inclusive education is not sufficiently ensured in the educational context of Berlin. Since the SchulG provides for the possibility of objective-differentiated learning, consequently implying adaptable educational-objectives, it is fair to talk about an at least gradually acceptable implementation of the feature of adaptability (for all these aspects see chapter II.5.1.). Certain aspects which are brought up by the SchulG get specified further in the SopädVO – regulation about special educational support. Apart from elaborating on the objectives and the organisation of special educational support, it regulates the application procedures for the determination of special educational needs. The SopädVO stipulates that in accordance with its paragraph 33 (1), the decision whether or not to enroll the child with special educational needs in a regular or

in a special school is taken by the parents, respectively the legal guardians.<sup>251</sup> Since the school administration can claim personnel, material or organisational reservations<sup>252</sup>, the features of availability and accessibility lack substance. This holds true in terms of transport to schools, too, because the SopädVO does not allow for a legal entitlement in this regard.<sup>253</sup>

In summary, there are several aspects relevant to the issue of inclusive education for refugee children with disabilities in Berlin, which present frequently. In addition, different legal documents refer to each other. Still, it is crucial to note that the right to education is not tantamount to the right to inclusive education, although certain provisions can be read in such a way. However, willingness and commitment is required for such an endeavor, as it is with the implementation of this complex and comprehensive legal framework.

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<sup>251</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 33 (1).

<sup>252</sup> *ibid.*, para. 33 (1).

<sup>253</sup> *ibid.*, para. 36 (1).

### **Chapter III: Research design**

In order to answer the research question (*To what extent is the right to inclusive education for refugee children with disabilities ensured in Berlin, and what are the obstacles and challenges with regard to the access to this right?*) the description and the evaluation of the manifold legal framework was contrasted with the actual state regarding inclusive schooling for refugee children with disabilities. Therefore, an empirical research design – indicating that especially parents' lack of capacity and 'systemic' flaws (e.g. incomprehensible competencies) are impeding access to inclusive education (see chapter IV.) – was deployed to answer the research question. Prior to the detailed discussion of the results, the research design will be examined. In order to collect the data, problem-centred expert interviews with social workers respectively people working in the field of social services were carried out. These interviews were structured by an interview guideline. Following, the interviews were coded and analysed according to the GT.

#### **III.1. Problem-centred expert interviews as survey method**

Collecting the data necessary to answer the research question, problem-centred expert interviews in accordance with Witzel were conducted, in the German language. These interviews were semi-structured; hence they were structured by an interview guideline. The term 'problem-centred' refers to a socially relevant problem perceived by the researcher (the issue of access to inclusive education for refugee children with disabilities in Berlin), which serves as the point of departure.<sup>254</sup> Subsequently, the knowledge background has to be systemised and embedded in a critical approach towards relevant theory.<sup>255</sup> This step actually happened within the discussion of key concepts (see chapter I.) and the presentation and evaluation part of the legal framework (see chapter II.).

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<sup>254</sup> A. Witzel, 'Das problemzentrierte Interview', in G. Jüttemann (ed.), *Qualitative Forschung in der Psychologie: Grundfragen, Verfahrensweisen, Anwendungsfelder*, Heidelberg, Asanger, 1989, p. 230.

<sup>255</sup> *ibid.*, p. 230.

Although uncontrollable influences in interviews are a much-discussed issue, within the problem-centred interview they are supposed to be positive preconditions for the exploration of subjective and individual perspectives of the interviewees.<sup>256</sup>

According to Witzel, a questionnaire and a guideline are among the problem-centred expert interviews' instruments. On the one side, the questionnaire provides for a smooth start, biographically-loaded questions activate certain memories of the interviewee, which get centred towards the problem area at hand.<sup>257</sup> On the other, it gathers data relevant for the interpretation of further information regarding the interview partner's 'conceptual background' and perspective on the issue under scrutiny.<sup>258</sup> The guideline's objective is to organise the researcher's background knowledge in order to provide a controlled and comparable approach to the research topic.<sup>259</sup> Within the guideline, the subject of interest is divided into several thematic blocks, under which relevant questions – either formulated or in bullet points – are subsumed<sup>260</sup> (see chapter III.2. and annex). It is worth mentioning that Witzel emphasises that "the interviewee's thread is the centre of interest, the guideline merely serves as a blueprint."<sup>261</sup> This held true in the process of conducting the interviews for the Master Thesis at hand, since the interviewees elaborated on their understanding of certain issues, while at specific points it was hooked into their elaborations digging deeper into particular aspects. Similarly, due consideration was given to the procedural aspects of communication within the context of the interviews. By focusing the communication on the reconstruction of the respective personal stance as well as on respective actions in a sensible manner, trust was established, providing for the possibility of uncovering new aspects as well as inconsistencies concerning the issue at stake.<sup>262</sup> This is

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<sup>256</sup> *ibid.*, p. 235.

<sup>257</sup> *ibid.*, p. 236.

<sup>258</sup> *ibid.*, p. 236.

<sup>259</sup> *ibid.*, p. 236.

<sup>260</sup> *ibid.*, p. 236.

<sup>261</sup> *ibid.*, p. 236 (author's translation).

<sup>262</sup> A. Witzel, *Das problemzentrierte Interview*, Forum Qualitative Sozialforschung / Forum: Qualitative Social Research, vol. 1, no. 1, art 22, 2010, pp. 2-3.

especially interesting and important when it comes to polarising and ambivalent topics<sup>263</sup> such as inclusive education. For the purpose of the Master Thesis, the questionnaire and the guideline were combined with each other.

### **III.2. Interview guideline**

As already mentioned, the interviews conducted were structured by an interview guideline. The structure was developed with regard to the issues and aspects relevant to the research question. Therefore, with the theoretical and legal framework (see Chapter II.) in mind, brainstorming was the first step in developing such a guideline. By conducting additional literature research, relevant aspects were filtered, linked to each other and compressed into theoretical concepts.<sup>264</sup> These concepts served as the basis for subsequently formulating and re-formulating questions, which were then grouped in thematic blocks. Finally, the guideline consists of three thematic parts: questions regarding the person and his or her affiliated institution/ organisation, questions about the person's understanding of inclusion (in the broad sense of the term) as well as questions about the process of consultations and the procedures with regard to access to (inclusive) education. There was also a concluding question, giving the interviewees the opportunity to elaborate on what they would do – in the hypothetical case of being the responsible Berlin senator – in order to improve access to inclusive education for refugee children with disabilities. The substantive part of the guideline was framed by a short briefing and debriefing, which provided an introduction and opportunities for unanswered questions and comments (see Annex).

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<sup>263</sup> At this point the term 'ambivalent' should point to the possibility that people (here: social workers) might be in favour of inclusive education in theory, at the same time being sceptical about its implementation due to the obstacles they face within their daily work.

<sup>264</sup> S. Lamnek, *Qualitative Sozialforschung: Lehrbuch*, Weinheim [u.a.]: Beltz, 2005, p. 364.

### **III.3. Sample**

Selecting the sample was determined by the research subject. Although the initial idea was to interview refugee children with disabilities themselves, the focus has been changed for two main reasons: firstly, since the target group would have consisted of minors, parental consent would have been a prerequisite for conducting interviews. Still more decisive were possible barriers in terms of language and the individual impairment. Conducting an interview with a deaf-blind refugee child, for example, would have required a sign language interpreter for the respective language plus an interpreter for translating the respective language into German. This would have exceeded the resources of the research. Secondly, social workers respectively people working in the field of social services were chosen as they are in close contact with the families and children, but in a low-threshold and therefore more trusted way than social welfare office staff for instance. In addition, data generated by interviewing social workers allows for a decent insight into the actual state of the implementation of the access to inclusive education for refugee children with disabilities. Aware of the non-representative sample of six interview partners, social workers reach out to several children in their work as well as to the respective parents, hence interviewing them provides for results with a reasonable degree of generalisation.

The geographical area was limited to the city of Berlin, since interning at the UNCRPD Monitoring Mechanism of Germany's NHRI facilitated the access to the field (see III.4.).

As one interviewee has demanded anonymisation, all interviewees and their respective institutions were anonymised for the sake of consistency. Yet, it can be mentioned that social workers from big social partner organisations, as well as from smaller self-help organisations, were interviewed.

### **III.4. Access to the field**

Generally speaking, access to the field of research was facilitated by a five-month internship at the UNCRPD Monitoring Mechanism of Germany's NHRI, in Berlin. That was also the reason to choose Berlin as research area. It was also during that time that my interest in the issue of inclusive education for refugee children with disabilities began. Interning provided me with deepened insights and knowledge about legal regulations concerning the situation of persons with disabilities generally and refugees with disabilities particularly. There were several opportunities for having highly interesting and fruitful discussions with experienced colleagues at the German Institute for Human Rights. Access to the field was facilitated in this way, since I was provided with useful advice on whom to get in contact with for potential interviews. Additionally, research about the landscape of social services in the context of inclusive education for refugee children with disabilities was conducted. Reaching out to potential interviewees via email, conferring with them concerning open questions and scheduling, six interviews were finally set up, which took place in the middle of April 2018, in Berlin.

### **III.5. Grounded Theory (GT) as evaluation method**

The collected data, the interviews, were analysed and evaluated with the GT. GT, which was initially developed by Glaser and Strauss,<sup>265</sup> is a qualitative research method, using “a systematic set of procedures to develop an inductively derived grounded theory about a phenomenon.”<sup>266</sup> Within this theoretical approach “[t]he research findings constitute a theoretical formulation of the reality under investigation, rather than consisting of a set of numbers, or a group of loosely related themes.”<sup>267</sup> The heart of GT is the procedure of coding the transcribed interviews, representing “the operations by which data are

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<sup>265</sup> Strauss and Corbin, 1991, p. 31.

<sup>266</sup> *ibid.*, p. 24.

<sup>267</sup> *ibid.*, p. 24.

broken down, conceptualized, and put back together in new ways. It is the central process by which theories are built from data.”<sup>268</sup>

Coding starts with open coding that “pertains specifically to the naming and categorizing of phenomena through close examination of data.”<sup>269</sup> Therefore, the transcripts are read carefully and names, hence codes, are given to sentences or single words which represent a phenomenon<sup>270</sup> “in a descriptive way.”<sup>271</sup> If there are very catchy and informative phrases or words, they can be used themselves as so-called in vivo codes.<sup>272</sup> This procedure is done for the whole interview transcript. Following, codes which seem to pertain to the same phenomenon are grouped together into categories, whose labels should already be more abstract than the ones of the initial codes.<sup>273</sup>

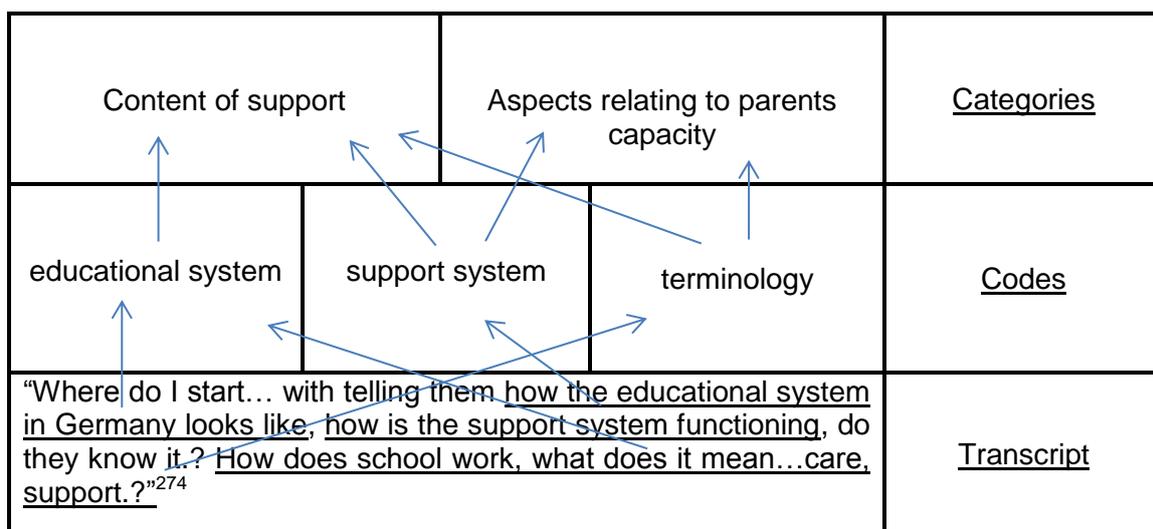


Figure 1: Example of ‘open coding’, in accordance with GT (see chapter III.5.).

<sup>268</sup> *ibid.*, p. 57.

<sup>269</sup> *ibid.*, p. 62.

<sup>270</sup> *ibid.*, p. 63.

<sup>271</sup> *ibid.*, p. 65.

<sup>272</sup> *ibid.*, p. 69.

<sup>273</sup> *ibid.*, p. 65.

<sup>274</sup> Interview with R.A, Berlin, 19 April 2018.

Still, the discovered relationships between codes are considered provisional, since the actual process of identifying (more) comprehensive connections happens in the context of the axial coding.<sup>275</sup> It is worth mentioning that, “while coding an incident for a category, [it is important to] compare it with the previous incidents in the same and different groups coded in the same category.”<sup>276</sup> Comparing the incidents “very soon starts to generate theoretical properties of the category.”<sup>277</sup> Properties mean “characteristics or attributes of [such] a category”.<sup>278</sup> In addition, comparison also leads to the generation of categories’ dimensions, “the conditions under which it is pronounced or minimized, its major consequences, its relation to other categories, and its other properties.”<sup>279</sup> This process of comparison, hence further development of categories produces subcategories.

Each time an instance of a category occurs in the data, it is possible to locate it somewhere along the dimensional continua. Therefore, each specific instance of the same general property [...] will have a different location on the dimensional continua. Hence, each category has several general properties, and each property varies over a dimensional continuum. In effect, this gives each occurrence of a category a separate dimensional profile. Several of these profiles can be grouped to give you a pattern.<sup>280</sup>

By doing so, each category gets more and more differentiated and provides for a more detailed analysis of the phenomenon, when it comes to establishing and carving out connections between core-categories, categories and subcategories.

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<sup>275</sup> Strauss and Corbin, 1991, p. 65.

<sup>276</sup> B. G. Glaser and A. L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research*, New Brunswick, London, Aldine Transaction, 2008, p.106.

<sup>277</sup> *ibid.*, p. 106.

<sup>278</sup> Strauss and Corbin, 1991, p. 69.

<sup>279</sup> Glaser and Strauss, 2008, p.106.

<sup>280</sup> *ibid.*, p. 70.

Aspects relating to parents' capacity		Knowledge about educational system	<u>Category</u>
Personal conditions			<u>Subcategories</u>
<u>Properties</u>	<u>Dimension</u>		
Trauma	traumatised – not traumatised		
Self-sufficiency	self-sufficient - in need of support		
Commitment	proactive - passive		

Figure 2: Example of 'axial coding', in accordance with GT (see chapter III.5.).

What follows after open coding is the axial coding, putting “the data back together in new ways by making connections between a category and its subcategories.”<sup>281</sup> Importantly, from time to time the coding should be suspended, making memos of one’s own thoughts in order to reflect on the upcoming ideas.<sup>282</sup> The “memos provide the content behind the categories”<sup>283</sup>, too.

Categories are specified with regard to initiating conditions, the embedding context, action and interactional strategies as well as their consequences.<sup>284</sup> To achieve a dense and precise theory, subcategories are linked to categories by the so-called paradigm model:

- (A) Causal Conditions → (B) Phenomenon →
- (C) Context → (D) Intervening conditions →
- (E) Action/ Interaction Strategies →
- (F) Consequences <sup>285</sup>

<sup>281</sup> *ibid.*, p. 97.

<sup>282</sup> Glaser and Strauss, 2008, p.107.

<sup>283</sup> *ibid.*, p. 113.

<sup>284</sup> Strauss and Corbin, 1991, p. 97.

<sup>285</sup> *ibid.*, p. 99 (highly simplified schematic diagram), for a more detailed description of the application of the paradigm model, see *ibid.*, pp. 99-112.

The phenomenon is the central idea, actually a category, “which a set of actions/ interactions is directed at managing or handling, or to which the set is related.”<sup>286</sup> It gets identified via the preceded process of open coding, by asking questions like: “[w]hat is the data referring to? What is the action/ interaction all about?”<sup>287</sup> Causal conditions refer “to the events or incidents that lead to the occurrence or development of a phenomenon.”<sup>288</sup> Since it is very seldom that a single condition leads to a phenomenon, it is helpful to look at terms such as ‘when’, ‘while’, ‘since’, ‘because’, ‘due to’ in order to identify causal conditions.<sup>289</sup> The context does not only represent “the specific set of properties that pertain to a phenomenon”<sup>290</sup>, but also “the particular set of conditions within the action/ interaction strategies are taken to manage, handle, carry out, and respond to a specific phenomenon.”<sup>291</sup> As well as causal conditions, there is also another set of conditions relevant to the paradigm model: “[i]ntervening conditions are the broad and general conditions bearing upon action/ interactional strategies. These [...] can include: time, space, culture, economic status, technological status, career, history and individual biography.”<sup>292</sup> Due to the fact that not all conditions will apply to each and every situation relevant to the phenomenon under scrutiny, they have to be identified “by showing how they facilitate or constrain action/ interaction and when appropriate how action/ interaction are managed.”<sup>293</sup> Action/ interactional strategies are a central point within GT since it “is an action/ interactional oriented method of theory building.”<sup>294</sup> They are “directed at managing, handling, carrying out, responding to a phenomenon as it exists in context or under a specific set of perceived conditions.”<sup>295</sup> In addition, action/ interactional strategies can be described as

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<sup>286</sup> *ibid.*, p. 100.

<sup>287</sup> *ibid.*, p. 100.

<sup>288</sup> *ibid.*, p. 100.

<sup>289</sup> *ibid.*, p. 101.

<sup>290</sup> *ibid.*, p. 101.

<sup>291</sup> *ibid.*, p. 101.

<sup>292</sup> *ibid.*, p. 103.

<sup>293</sup> *ibid.*, pp. 103-104.

<sup>294</sup> *ibid.*, p. 104.

<sup>295</sup> *ibid.*, p. 104.

being processual, purposeful and goal-oriented.<sup>296</sup> It is worth mentioning that failed action/ interactions are as important, relevant and interesting to look for as actually occurring ones.<sup>297</sup> Lastly, actions/ interactions have outcomes or consequences, which can be actual as well as potential.<sup>298</sup> Importantly, “consequences of action/ interaction at one point in time may become part of the conditions in another”<sup>299</sup>, too. This complex analytical procedure performs four analytical steps (almost) simultaneously: hypothetically relating subcategories to a category, verifying the hypotheses against the data, continually searching for characteristics of categories as well as subcategories and beginning with exploring variations in phenomena.<sup>300</sup>

The final part is the selective coding. One core category, being abstract enough to encompass all other categories and subcategories, is selected.<sup>301</sup> The integration of the so far worked out results into a theory is quite similar to the process of axial coding, although done on a higher level of abstraction.<sup>302</sup> In order to achieve such an integration, a storyline has to be identified which then serves as guiding narrative.<sup>303</sup> As before, the core categories’ properties have to be developed in detail. Subsequently, the other categories, respectively subcategories, are related to the core category.<sup>304</sup> Within this process of relating the categories to the core category by means of the paradigm model, it has to be identified “which category denotes what part of the paradigm. This identification essentially orders them into subcategories in paradigmatic relationship.”<sup>305</sup> This results in an analytic order which might look like the following: “A (conditions) lead to B (phenomenon), which leads to C (context), which leads to D (action/ interaction, including strategies), which then leads to E

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<sup>296</sup> *ibid.*, p. 104.

<sup>297</sup> *ibid.*, p. 104.

<sup>298</sup> *ibid.*, p. 106.

<sup>299</sup> *ibid.*, p. 106.

<sup>300</sup> *ibid.*, p. 107.

<sup>301</sup> *ibid.*, pp. 120-121.

<sup>302</sup> *ibid.*, p. 117.

<sup>303</sup> *ibid.*, p. 119.

<sup>304</sup> *ibid.*, p. 123.

<sup>305</sup> *ibid.*, p. 124.

(consequences).”<sup>306</sup> Finally, the validation of the theory against the data leads to completing the grounding.<sup>307</sup> By validating, “one is looking to see if they fit in a general sense and in most cases, not necessarily in every single case exactly.”<sup>308</sup>

The subsequent presentation of the results will follow the order of the paradigm model, taking the phenomenon as the intellectual starting point. As already pointed out above, aspects of one part of the paradigm model can also be relevant within another part of it. This will be given due regard within the course of the research results’ presentation.

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<sup>306</sup> *ibid.*, pp. 124-125.

<sup>307</sup> *ibid.*, p. 133.

<sup>308</sup> *ibid.*, p. 139.

## **Chapter IV: Research results**

This last chapter deals with the presentation of the research results. In this context the obstacles and challenges with regard to the access to the right to inclusive education will be to the fore; underpinned by relations and references to the above presented legal framework. As with the legal framework, important aspects of the social model of disability (see chapter I.1.) and the concept of inclusive education (see chapter I.2.) will provide for a contextualisation. The presentation of the results will be structured according to the paradigm model (see chapter III.5.). It serves the purpose of providing for an exemplary model, facilitating the comprehension of the relevant aspects and processes. Since the model does not constitute linear causal relationships, certain aspects being subsumed under one part of the model might also play a (secondary) role in another part. In addition, demarcations between the different parts are not purely impermeable, but to facilitate the theoretical understanding. Actually, they do also overlap each other. It should be noted lastly, that the results displayed below originate from the social workers' subjective opinions and experiences, hence not raising a claim to general validity. Nevertheless, insights into their 'reality' – based on their daily work – are given, displaying strategies and approaches, as well as ambivalences, too.

### **IV.1. Causal conditions**

The causal conditions with regard to the phenomenon of impeded access to inclusive education for refugee children with disabilities (see chapter IV.2.) are first and foremost dealing with aspects on the structural level. Although there might be others as well, these were those aspects leading “to the occurrence or development of a phenomenon”<sup>309</sup> which were highlighted by the interviewees.

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<sup>309</sup> *ibid.*, p. 100.

#### IV.1.1. Structural shortcomings in general

Structural shortcomings were repeatedly mentioned and therefore identified as relevant aspects of the causal conditions. Although these are not explicitly related to inclusive education, they are relevant to the issue under scrutiny for two main reasons: firstly, a generally burdened school system has to struggle with an ‘additional’ resource-consuming task like inclusive education.<sup>310</sup> Secondly, structural deficits with regard to schools’ ‘intercultural equipment’ do have an effect on refugee children with disabilities, too.

Concerning the schools’ occupancy rate, as observed by interviewee A., a lack of school places can be seen as the starting point of the problem at hand<sup>311</sup>, entailing difficulties in supplying the needs of pupils in general.<sup>312</sup> The class size is too high, too.<sup>313</sup> Related thereto, children have to wait for a school place; “all children moving to Berlin have to wait, but especially these children [refugee children with disabilities].”<sup>314</sup> This aspect will be taken up again later on (see chapter IV.). Apart from that, L.S., V.F. and D.J.<sup>315</sup> saw a major problem in the lack of teachers in general as well as a lack of teachers with an immigration background in particular: As put by R.A.:

[i]t’s crucial to get more teachers with an immigration background to the schools. These are the best to build bridges...in regard to children with flight experience, and also because of the culture [...] seeing the family as a whole...they are way more sensitised [...] they can compensate a lot.<sup>316</sup>

Indeed, that is a very interesting point. On the one hand, teachers with an immigration background can provide for refugee children a ‘smoother arrival’ in school. Depending on the respective language of course, they might also be

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<sup>310</sup> Interview with L.S., Berlin, 18 April 2018.

<sup>311</sup> Interview with R.A.

<sup>312</sup> Interview with D.J., Berlin, 17 April 2018.

<sup>313</sup> Interview with R.A., Interview with L.S.

<sup>314</sup> Interview with D.J. (author’s translation).

<sup>315</sup> Interview with L.S., Interview with V.F., Berlin, 19 April 2018., Interview with D.J.

<sup>316</sup> Interview with R.A. (author’s translation).

able to facilitate the communication with the parents and the child. In any case, they can understand better what it means to be somewhere remote from the country of origin and what challenges they might have to face. On the other, they might be more sensitive to culturally specific approaches towards the issue of disability, therefore having a better understanding for possible concerns parents and families might have when it comes to (inclusive) schooling (see chapter IV. 6.2.).

Also important in this context is the need for teachers with enhanced intercultural competences and foreign language skills.<sup>317</sup> Without teachers with adequate intercultural competences, schools are at risk not being able to take the intercultural perspectives in their organisation into account, as it is prescribed in the SchulG' principles of realisation.<sup>318</sup> Apart from the already mentioned aspects of cultural sensitivity, these intercultural and language competencies are important as they facilitate the refugee children with disabilities' parents' capacity to engage and cooperate more effectively with the schools. This is a highly relevant factor when it comes to the access to inclusive education (see chapter IV.4.1), although it should and could not replace parents' (and children's) own language skills. Interestingly, but just as a side-note, E. proposed to utilise available resources by employing qualified teachers among the refugee children's parents.<sup>319</sup> Although a reasonable idea, this could not serve as a short-term solution, since it requires lengthy procedures such as the recognition of foreign qualifications as well as comprehensive German language competence.

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<sup>317</sup> Interview with V.F., Interview with D.J.

<sup>318</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 4 (2).

<sup>319</sup> Interview with T.E., Berlin, 18 April 2018.

#### **IV.1.2. Lacking resources with regard to inclusive education**

Besides the general, not necessarily disability-related structural shortcomings concerning school places and teachers (as well as their intercultural competences), lacking resources with regard to inclusive education have to be considered causal conditions, too<sup>320</sup>. According to D.J., “it [inclusive education] would work, if we would really have enough personnel, but we are still far off. There’s just not enough personnel.”<sup>321</sup> These (lacking) personal resources can be differentiated in terms of teachers and other relevant staff. With regard to the teachers, insufficient qualifications and knowledge regarding inclusive education were mentioned by the interviewed social workers: As a result children with disabilities would not be able to receive the support they need<sup>322</sup>, which – according to the UNCRPD – is “required, within the general education system, to facilitate their effective education”<sup>323</sup>. Consequently, apart from the need to increase the amount of personnel, additional qualifications and trainings including awareness-raising are necessary<sup>324</sup> (see also chapter IV.6.2.). Concerning the non-teaching staff, regular schools are not sufficiently equipped with experts in special needs education<sup>325</sup> or other important professionals<sup>326</sup> like physiotherapists or speech therapists for instance, as special schools are.<sup>327</sup> This shortage of on-site support can influence the refugee parents’ decision where to enrol their child, favouring special schools (see chapter IV.4.1.), hence impeding their children’s access to inclusive education. A lack of teachers has other effects, too: regardless of an inclusive or non-inclusive school setting, it leads to a high occupancy rate and puts teachers at risk of work and emotional overload. Talking about personnel shortages, L.S. stated: “I can feel them, I don’t want to be a teacher. I don’t want to be in their

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<sup>320</sup> Interview with A.T., 17 April 2018.

<sup>321</sup> Interview with D.J. (author’s translation).

<sup>322</sup> Interview with R.A., Interview with L.S.

<sup>323</sup> UNCRPD, 2006/08, art. 24, 2(d).

<sup>324</sup> Interview with L.S.

<sup>325</sup> Interview with D.J.

<sup>326</sup> Interview with L.S.

<sup>327</sup> Interview with L.S., Interview with D.J.

position.”<sup>328</sup> As a consequence of being overloaded, class settings can be tense and the educational quality decreases.<sup>329</sup> As teachers also face a lack of time,<sup>330</sup> refugee children with disabilities are dragged along in terms of educational efforts directed to them.<sup>331</sup> Such conditions have led to great frustration in parents who have fought “for years to get their children’s special educational needs recognised [within a regular school setting] and now their needs are not met.”<sup>332</sup>

In interviews with the social workers it became apparent that resources are also lacking in terms of the schools’ accessibility.<sup>333</sup> This holds true with regard to physical access as well as to content-related access. Especially alarming, T.E. talked about a school where the elevator was repeatedly out of service, resulting in the father carrying his daughter up and down to her classroom on the first floor.<sup>334</sup> In another case, the school’s only elevator was only intended for the transport of food from the school kitchen to the cafeteria. Although the class room of the child with a walking impairment was on the third floor, it took a long time to negotiate and to convince the school management and the parents’ council to relocate the class room into the basement.<sup>335</sup> Although such negative examples are fortunately not in the majority – structural defects apply mostly to old school buildings and not to newly-established ones<sup>336</sup> – they do show a lack of flexibility to practical and simple adjustments as well as a huge backlog regarding awareness towards the needs and requirements of pupils with disabilities. In addition, the way in which the children with disabilities were dealt with in the examples mentioned is anything but enabling them to achieve the

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<sup>328</sup> Interview with L.S.

<sup>329</sup> Interview with R.A., Interview with A.T.

<sup>330</sup> Interview with L.S., Interview with D.J.

<sup>331</sup> Interview with R.A., Interview with A.T.

<sup>332</sup> *ibid.* (author’s translation).

<sup>333</sup> Interview with V.F., Interview with T.E., Interview with D.J., Interview with A.T., Interview with L.S.

<sup>334</sup> Interview with T.E.

<sup>335</sup> *ibid.*

<sup>336</sup> *Ibid.*

maximum participation in class which is supposed to result in the pupils' independence<sup>337</sup>, not to mention human dignity at all.

Regarding content-related access to adequate teaching materials, like worksheets in easy language, for instance, are lacking.<sup>338</sup> In my view, it can be assumed that this is related to overloaded and/ or inadequately qualified teachers, lack of awareness and scarce resources. Within such a context it is actually not very surprising that there is a tendency of regular schools to tell parents of (refugee) children with disabilities at first, that they should better enrol their child in a special school, respectively that schools try to make use of resource reservations.<sup>339</sup>

#### **IV.2. Phenomenon: Impeded access to inclusive education for refugee children with disabilities**

In the following, the phenomenon of impeded access to inclusive education for refugee children with disabilities will be discussed. It will look at the extent to which the four features of inclusive education, namely, availability, accessibility, acceptability and adaptability (see chapter I.2.) are fulfilled, or are not fulfilled, by referring to the just discussed causal conditions.

According to the feature of availability, "educational institutions and programmes must be available in sufficient quantity and quality."<sup>340</sup> As it was shown on the basis of the interviewees' experiences above, quantity and quality are mutually dependent. Due to a high occupancy rate of schools and large class sizes in Berlin, the quality of teaching decreases as the overload cannot be absorbed by additional teachers; since they are lacking themselves, also in terms of 'inclusion'-competences. Consequently, not only the educational needs of (refugee) children with disabilities, but also of their classmates without disabilities, cannot be met. This leads to frustration on all sides: teachers get

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<sup>337</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 4 (1).

<sup>338</sup> Interview with R.A.

<sup>339</sup> Interview with L.S.

<sup>340</sup> United Nations, 2016, para. 21.

overburdened<sup>341</sup>, pupils struggle<sup>342</sup>, schools tend to refuse refugee children with disabilities due to (possibly justified) resource constraints and parents' willingness to enrol their children at inclusive schools declines piece by piece. The latter case holds true for parents of children with as well as without disabilities.<sup>343</sup> Such a situation – apart from improvable educational quality for all learners – is critical since it suggests that inclusion in school is doomed to fail by its nature, although the problems are not that different from those the school system has to deal with in general.

In terms of accessibility, physical barriers to the school buildings are the central obstacles. Apart from that, quality and quantity of content-related accessibility is very capable of development.<sup>344</sup> Closely related to accessibility is the feature of acceptability, according to which all education-related facilities, goods and services should respect and take into account “the requirements, cultures, views and languages of persons with disabilities.”<sup>345</sup> Aside from the teaching materials which are not continuously adjusted to the requirements of children with disabilities in general, teachers without adequate intercultural skills and competences make it more difficult for refugee children with disabilities to cope with a new (educational) environment. In addition, the lack of availability of support measure like sign language interpreters<sup>346</sup> leads to an unacceptable school setting, not providing for the prerequisites for successful inclusive education for refugee children with disabilities.

The shortage of school places does not only result in impeded availability of inclusive education, but also in insufficient adaptability. Due to overcrowded classes and, consequently, overloaded teachers, customised education in terms of the pupils' individual development can become complicated.<sup>347</sup> Thus the “development by persons [respectively refugee children] with disabilities of their personality, talents and creativity, as well as their mental and physical abilities,

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<sup>341</sup> Interview with R.A.

<sup>342</sup> Interview with D.J.

<sup>343</sup> Interview with R.A., Interview with T.E.

<sup>344</sup> Interview with L.S., Interview with T.E.

<sup>345</sup> United Nations, 2016, para. 25.

<sup>346</sup> Interview with T.E., Interview with L.S.

<sup>347</sup> Interview with D.J.

to their fullest potential”<sup>348</sup> gets impeded. Concerning the importance of continuous training and awareness-raising of teachers,<sup>349</sup> it has to be noted that there is a considerable backlog, as identified by the interviewees.<sup>350</sup> Ongoing training is highly significant since inclusive competences are not compulsory in third-level training for teachers; therefore R.A. is convinced that inclusion respectively inclusive education has to become a fixed component for everybody wanting to become a teacher.<sup>351</sup>

To conclude, taking the UNCRPD Comm.’s four features of inclusive education as a benchmark, the access to inclusive education for refugee children with disabilities is impeded. Yet, the above discussed obstacles are not exclusively ‘refugee’-specific – probably most likely the lack of intercultural competences – but mostly apply to children with disabilities in general. Besides ‘arriving’ within an already limited inclusive education environment, refugee children with disabilities’ impeded access is actually due to other factors (see chapter IV.3., IV.4.). These will be under scrutiny below.

### **IV.3. Context: “Field of tension between inclusion and special support”<sup>352</sup>**

As shown above, the access to inclusive education for refugee children with disabilities is complicated through various structural shortcomings and insufficient resources (see chapter IV.1.). This, however, does not change the fact that the parents have the right to decide to enrol their children with disabilities at either a regular or a special school.<sup>353</sup> Without prejudice to the crucial factor of the parents’ capacity with regard to the decision as to which school to choose (see chapter IV.4.1.), it can be observed that the context for such a decision does not look very promising.

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<sup>348</sup> UNCRPD, 2006/08, art. 24, 1(b).

<sup>349</sup> United Nations, 2016, para. 36.

<sup>350</sup> Interview with L.S., Interview with R.A.

<sup>351</sup> Interview with R.A.

<sup>352</sup> Interview with D.J. (author’s translation).

<sup>353</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 36 (4).

Concisely put by D.J., there is a “field of tension between inclusion and special support”<sup>354</sup> concerning refugee children with disabilities. It can be described as follows: regardless of the parents’ decision which school to choose, their children will face segregation, “special schools and ‘Willkommensklassen’, both are segregated systems.”<sup>355</sup> To digress briefly, ‘Willkommensklassen’ – translated literally as ‘welcome-classes’ – are separate classes, aimed at the acquisition of sufficient German language skills for those who newly arrived.<sup>356</sup> Until the children can transition into regular classes (as soon as they have reached reasonable language competences) it is also possible to take part in certain regular classes beforehand, according to the level of German.<sup>357</sup> It is interesting to note that spatial and temporal separation within one school between those pupils in the ‘Willkommensklassen’ and in the regular classes should be avoided.<sup>358</sup> Unfortunately, spatial segregation often takes place, as D.J. explains: welcome-classes were established in the schools’ outbuildings or even the caretaker’s broom cupboard.<sup>359</sup> Whereas special schools are segregated systems by their nature<sup>360</sup>, the welcome-classes do not segregate the refugee children with disabilities on the basis of their impairment, but on the basis of their lacking language skills. Without challenging the crucial importance of language competences as a requirement for successful education, the question may be asked if such an approach is the most appropriate; or if it is not additionally resulting in social segregation of the pupils.

Regarding the above mentioned ‘field of tension’ – beside the aspect of segregation – both models do not really meet the needs of refugee children with disabilities. Whereas special schools are diametrically opposed to inclusive education, they have to be given credit for being consistently better equipped for special educational needs than regular schools are. This holds true with

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<sup>354</sup> Interview with D.J. (author’s translation).

<sup>355</sup> *ibid.* (author’s translation).

<sup>356</sup> Senatsverwaltung für Bildung, Jugend und Wissenschaft, 2016, p. 11.

<sup>357</sup> *ibid.*, p. 11.

<sup>358</sup> *ibid.*, p. 11.

<sup>359</sup> Interview with D.J.

<sup>360</sup> *ibid.*

regard to teachers and staff as well as to supportive services.<sup>361</sup> For instance, there are more teachers and special pedagogues as well as medical personal.<sup>362</sup> In addition, they also provide services such as physiotherapy, ergo-therapy or consultation services on school transport.<sup>363</sup> Depending on their capacity (see chapter IV.4.1.), these might be decisive factors for the parents' decision to enrol their child in a special school.<sup>364</sup> The fact that many children were lacking support and assistance in relation to their impairments due to long periods of flight and repeated changes of location can also have an impact.<sup>365</sup> Apart from their non-inclusiveness, special schools do lack German language support as well as intercultural approaches towards their pupils.<sup>366</sup> Although capable of development as described above (see chapter IV.1.), intercultural competences are given due regard to a greater extent in the so-called 'Willkommensklassen'.<sup>367</sup> Another aspect in favour of the 'Willkommensklassen' in the context of regular schools is the language support which is to the fore in this model.<sup>368</sup> As a consequence, chances for better educational and developmental opportunities increase.<sup>369</sup> Yet, at the same time, it has to be mentioned that the assignment to a welcome-class is temporary and does not entail a right to stay permanently at the same school. This can lead to "kids having fractions all over their educational careers."<sup>370</sup>, in the case that parents have to search again for an adequate school. As the inclusive schools do, the welcome-classes are facing the same resource shortages.<sup>371</sup> On top of the insufficiently accessible school buildings where the welcome-classes are located, there are no clear educational structures due to the great heterogeneity of pupils.<sup>372</sup> This heterogeneity is reflected in terms of huge age

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<sup>361</sup> Interview with L.S., Interview with D.J.

<sup>362</sup> Interview with L.S.

<sup>363</sup> *ibid.*

<sup>364</sup> Interview with R.A.

<sup>365</sup> *ibid.*

<sup>366</sup> Interview with D.J.

<sup>367</sup> *ibid.*

<sup>368</sup> *ibid.*

<sup>369</sup> Interview with L.S.

<sup>370</sup> Interview with D.J.

<sup>371</sup> *ibid.*

<sup>372</sup> Interview with A.T.

differences<sup>373</sup>, diverging previous experiences of school, pre-existing knowledge and language skills as well as in terms of the children's abilities and requirements.<sup>374</sup> Such a setting requires enough qualified teachers and social workers to provide for adequate supervision of and support for the children.<sup>375</sup> "We have social workers in the 'Willkommensklassen' now, 2 to 3 for each district, that's just a bad joke"<sup>376</sup>, is what D.J. commented in this regard. Therefore, there can be no question about support which adequately facilitates refugee children with disabilities' effective education, as stipulated in the UNCRPD.<sup>377</sup>

Another interesting aspect of welcomes-classes which was already raised (see chapter II.5.2.) is that the recently migrated children are given the possibility of attending school on a regular basis and within a stable school environment for at least one year before determination of special education needs takes place.<sup>378</sup> Before this one year period ends, only the parents are able to initiate such a determination.<sup>379</sup> Without specifying if a setting as the above described one can count as a stable environment, a 'risk' remains that impairments do not get detected and subsequently worsen.<sup>380</sup> It is my belief that it is nevertheless a reasonable approach, since parents are repeatedly pushed towards agreeing to a determination of special educational needs as soon as possible<sup>381</sup> (see also chapter IV.5.).

In summary, it can be said that both models do not really meet the needs of refugee children with disabilities when it comes to (inclusive) education. Although D.J. stated that "a refugee child with disabilities enrolled in a special school has more luck, although there is no language support"<sup>382</sup>, the decision remains with the parents. Still, all these factors have to be kept in mind when it

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<sup>373</sup> Interview with A.T., Interview with D.J.

<sup>374</sup> Interview with D.J.

<sup>375</sup> *ibid.*

<sup>376</sup> *ibid.* (author's translation).

<sup>377</sup> UNCRPD, 2006/08, art. 24, 2 (d).

<sup>378</sup> Senatsverwaltung für Bildung, Jugend und Wissenschaft, 2016, p. 20.

<sup>379</sup> Interview with R.A.

<sup>380</sup> Interview with D.J.

<sup>381</sup> Interview with R.A.

<sup>382</sup> Interview with D.J. (author's translation).

comes to the discussion of parents' capacity as intervening conditions in the following.

#### **IV.4. Intervening conditions**

The next part of the paradigm model under discussion is that of the intervening conditions. "These conditions act to either facilitate or constrain the action/ interactional strategies taken within a specific context."<sup>383</sup> Hence, these are factors influencing the objectives, the content as well as the approach to support and consultation measures deployed by the social workers with regard to inclusive education for refugee children with disabilities (see chapter IV.5.).

##### **IV.4.1. Parents' capacity**

The capacity of the parents of refugee children with disabilities plays a decisive role when it comes to their decision to enrol their child in a regular or in a special school. It should be noted that parents cannot be considered to be a homogeneous group. Factors like, for example, personal conditions, educational and cultural background influence the need, extent and substance of the support they require. In accordance with their capacity, the social workers' support and consultation measures get adopted and adjusted. Crucial in this context is the parents' knowledge. Generally speaking, the degree of knowledge depends on the parents' language skills; confidence in the German language can be seen as a 'prerequisite' for acquiring knowledge.<sup>384</sup> In cases in which the parents do not already have sufficient German language skills, the communication works either in their mother tongue (T.E., L.S. and R.A. speak Arabic, V.F. speaks Turkish, for instance) or via an interpreter.<sup>385</sup>

Concerning this knowledge, there are several thematic areas of relevance when it comes to inclusive education. First of all, a lot of parents do not know about the educational system in Germany and how it works.<sup>386</sup> With regard to

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<sup>383</sup> Strauss and Corbin, 1991, p. 103.

<sup>384</sup> Interview with A.T., Interview with T.E.

<sup>385</sup> Interview with A.T., Interview with D.J.

<sup>386</sup> Interview with R.A.

compulsory education, many parents are surprised about the fact that this applies to children with disabilities, too.<sup>387</sup> T.E. reported that “[o]ur biggest challenge in the beginning concerns the compulsory education for children with disabilities...because the parents don’t know about it. That’s also why they [the children] weren’t signed in.”<sup>388</sup> This statement already gives a hint to potential consequences, which will be touched upon again later (see chapter IV.5.). Parents do also lack awareness about everyday school life and side activities apart from regular school lessons:

[t]hen, I always show them [the parents] some videos about school life, what the kids are doing there the whole day. That they are also staging theatre performances, going for a swim...One father was so enthusiastic, he almost started to cry, because he wasn’t aware of that. He thought that his child would have to stay at home, taken care of by the mother.<sup>389</sup>

This statement has to be seen within the context that whereas parents most of the time know or have heard about segregated special schools for children with disabilities – often in relation to their countries of origin<sup>390</sup> – they are often surprised when they got to know about ‘alternatives’.<sup>391</sup> Similarly, there are parents who are not aware of their right to decide in which school system to enrol their child,<sup>392</sup> others are aware of it but not able to enforce their right (without support).<sup>393</sup> Social workers are in demand to inform parents properly about their rights, particularly how to enforce them, since this aspect highly impedes their capacity in regard to inclusive schooling for their children (see chapter IV.5.).

Knowledge about the support system as well as about the terminology – what does impairment and special educational needs mean in a legal sense, for

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<sup>387</sup> Interview with L.S., Interview with T.E.

<sup>388</sup> Interview with T.E. (author’s translation).

<sup>389</sup> Interview with L.S. (author’s translation).

<sup>390</sup> Interview with T.E.

<sup>391</sup> Interview with L.S.

<sup>392</sup> *ibid.*

<sup>393</sup> Interview with D.J.

example – is of importance, too.<sup>394</sup> Often, this requires explanation before education can be discussed at all.<sup>395</sup> It is obviously related to the aspect of knowledge discussed above about the right to choose the school, since it serves the elaboration of the existing options the parents do have. The extent to which parents are aware of the school and the support system, their legal entitlements as well as of the terminologies impact their confidence and, therefore, the way they (proactively) engage: as A.T. has observed, “parents are often ‘afraid’ of all the new stuff, getting flooded by the whole range of information, getting uncertain. Subsequently, they prefer to follow instructions or to ‘delegate decisions’.”<sup>396</sup> (see chapter IV.5.).

Additionally, their knowledge and confidence impacts the extent to which the parents are able to engage with the schools respectively with relevant support services like certain forms of therapy or school transport: due to the fact that special schools are far more equipped (see chapter IV.3.), parents lacking knowledge about how to apply for school transport or who do not know where and how to organise treatment options tend to enrol their child at special schools.<sup>397</sup> Again, that is an important starting point for the social workers’ consultation and support activities (see chapter IV.5.).

As well as the parents’ degree of knowledge, their personal circumstances also influence their capacity. One important aspect in this regard is the parents’ resilience to ‘obstacles of all sorts’, for instance, when it comes to making applications.<sup>398</sup>

As put by L.S.:

[y]ou have to fight for every single application. Ok, not for each, that’s exaggerated. But for many...You have to ask constantly ....what’s about the application, how long does it need, when I can file an appeal...<sup>399</sup>

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<sup>394</sup> Interview with R.A.

<sup>395</sup> *ibid.*

<sup>396</sup> Interview with A.T. (author’s translation).

<sup>397</sup> Interview with R.A., Interview with A.T., Interview with V.F., Interview with L.S.

<sup>398</sup> Interview T.E., Interview with L.S.

<sup>399</sup> Interview with L.S. (author’s translation).

In such situations it is necessary to show perseverance. Another influence on the parents' capacity regarding their children's educational future is the extent to which they are (over)loaded by bureaucratic affairs.

The whole paperwork, residence, job centre, this and that...That's why they [the parents] are searching for some kind of relief...special school... I put my child in a special school, otherwise I would have to run again from one office to the other...<sup>400</sup>

Cases in which parents are additionally burdened by traumatising experiences which have happened before or during their flight from their home countries make it even more difficult for them.<sup>401</sup> Especially in such situations with these different kinds of problematic areas, support becomes even more crucial to prevent them from struggling too hard (see chapter IV.5.).<sup>402</sup> This is of importance for the parents' own well-being but also in terms of their children's opportunity to attend a regular school. "The more support they [the parents] have the better their children's educational careers are. That means that it is a very unfair system."<sup>403</sup>

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<sup>400</sup> Interview with T.E. (author's translation).

<sup>401</sup> Interview with L.S., Interview with R.A.

<sup>402</sup> Interview with L.S.

<sup>403</sup> Interview mit D.J. (author's translation).

#### **IV.4.2. Perception of refugee children with disabilities**

How refugee children with disabilities are perceived also influences the social workers' support strategies. Inextricably linked to the perception is the way "the child's right to express his or her views freely and due weight given to said views in all matters affecting the child"<sup>404</sup> is respected. Generally speaking, the consultation services focus almost exclusively on the parents.<sup>405</sup> As R.A. explained:

[w]e basically tell them [the parents] that they don't need to take their children with them. Because we aren't doctors, we don't make a diagnosis. But many parents still do it, because they think...take a look at my child. Although we say actually no they take them [the children] with them. Many do not know what do to with them in the meantime. But basically, we provide for consultations for relatives and parents.<sup>406</sup>

This statement makes it obvious that the consultation services are directed towards the parents, although the children's (educational) future is concerned. Just as a side note the parents' apparent need to show their children to the social workers (although they are not doctors cannot make diagnosis) can be regarded as an indication of their lacking knowledge about the 'system' and where to go for such a procedure (see also chapter IV.4.1.). Equally conceivable, they might think that it just makes sense to take their children with them, since the consultation is about them. Yet, in cases where children attend with their parents, the social workers make sure that the children comprehend what it is all about; that they are talking about a certain school now, for instance.<sup>407</sup> Still, the children are not present most of the time; sometimes they

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<sup>404</sup> United Nations, 2013(a), IV. B. 3. The child's best interests and the right to be heard (art. 12).

<sup>405</sup> This applied to all institutions the social workers were affiliated to, with the exception of D.J.'s institution (Interview with D.J). One possible reason for that could be the fact that it does not merely focuses on refugee children with disabilities in particular, but on refugee children and youths in general, too.

<sup>406</sup> Interview with R.A. (author's translation).

<sup>407</sup> Interview with R.A., Interview with L.S.

only attend for the very first appointment.<sup>408</sup> Whereas parents also communicate to the social workers what their children would prefer, for example in the case that they have already visited different (kinds of) schools<sup>409</sup>, children are not asked directly on an obligatory basis.<sup>410</sup> The strong orientation of the consultation services towards the refugee parents might also be due to their decisive role with regard to inclusive education for their children (see chapter IV.4.1.). Perhaps children would be involved in a more active and self-determined manner if parents were not so much in need of support.

Concerning the competence of refugee children with disabilities to make own decisions, L.S. stated: “[l]etting the child decide...I think that’s utopian, how should they foresee their decision’s consequences.”<sup>411</sup> While this seems to be somehow understandable with regard to children – irrespective of whether or not being impaired – I believe that children have to learn to make decisions or to participate when it comes to decisions affecting their life. It remains questionable if these procedures meet the standards concerning the child’s best interest<sup>412</sup> and the “right to express their views freely on all matters affecting them, [and that] their views being given due weight”<sup>413</sup>, laid down in the UNCRC respectively the UNCRPD. At least there are no indications that there is a priority in this regard. At this point, it has to be kept in mind that – as emphasised by the human rights model of disability (see chapter I.1.) – impairment does not hinder human rights capacity.<sup>414</sup> It is not the wrongly alleged lack of capacity of (refugee) children with disabilities that is the issue in this context, but the children not being “provided with disability and age-appropriate assistance to realize that right [the right express their views freely].”<sup>415</sup> (see chapter IV.6.1.). Similarly, it is the lack of accessibility, adequately qualified teachers, resources and preparedness due to which

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<sup>408</sup> Interview with T.E.

<sup>409</sup> Interview with L.S.

<sup>410</sup> Interview with L.S., Interview with R.A., Interview with A.T., Interview with T.E.

<sup>411</sup> Interview with L.S. (author’s translation).

<sup>412</sup> UNCRC, 1989/90, art. 12.

<sup>413</sup> UNCRPD, 2006/08, art. 7, 3.

<sup>414</sup> Degener, 2016, p. 4.

<sup>415</sup> UNCRPD, 2006/08, art. 7, 3.

“regular schools are not reasonable for children with disabilities being difficult to educate”<sup>416</sup>, not the children themselves.

Apart from the perspective which is taken on the refugee children with disabilities by the social workers, the educational authorities’ perspective is of interest too. “Within the school registration process nobody looks at [the child’s] resources and strengths...it’s quite deficit-orientated.”<sup>417</sup> D.J. reported similarly:

[t]hey [the educational authorities] just do a language test. But that’s not meaningful...the child is not able to speak German, ok, full stop. But nobody asks, what has it [the child] done before, what is it capable of.<sup>418</sup>

Without being able to answer the question where such perceptions, and hence approaches to refugee children with disabilities originate, there might be two possible reasons. On the one hand, lacking resources, time, efforts and/ or lacking awareness with regard to children with disabilities could be an indicator. On the other hand, refugee children with disabilities might be seen as an additional burden to an already exhausted (inclusive) educational system. Further studies about the interesting role educational authorities play in relation to refugee children with disabilities, what their approaches are and how their resource equipment looks like (also in terms of their staff’s awareness) are necessary to answer this question (see Outlook).

#### **IV.4.3. Conceptual understanding of impairment/ disability**

Concluding the discussion of the intervening conditions, the social workers’ conceptual understanding of impairment respectively disability should be touched upon shortly. Interestingly, none of the interviewees related his/ her understanding of impairment, disability and the conceptual differences between the two terms to the social respectively human rights model of disability (see chapter I.1.). Only one of the interviewed social workers mentioned the

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<sup>416</sup> Interview with R.A. (author’s translation).

<sup>417</sup> *ibid.* (author’s translation).

<sup>418</sup> Interview with D.J. (author’s translation).

UNCRPD as a document of reference, but without further elaborations.<sup>419</sup> Regarding the term impairment, R.A. assumed that “[t]hat’s the politically correct term for disability. In cases in which we’ve said ‘disability’ before...now we always have to say ‘impairment’.”<sup>420</sup> Strictly speaking that is not the case since the two terms have different meanings (see chapter I.1.). Nevertheless, this impression might originate from an environment in which awareness about the fact that disability results from the impairment’s interaction “with various barriers”<sup>421</sup> starts to become more and more present: “[w]hen we are at committee’s meetings everybody takes care not to use the term disability anymore.”<sup>422</sup>

Even if the explicit theoretical knowledge seems to be expandable, interviewees displayed an implicit understanding.<sup>423</sup> V.F. elaborated that a walking impairment is not ‘disabling’ by its nature but the infrastructural conditions are “ending the possibility to participate. In that sense you can also call it ‘disability...I don’t mind. But for me personally, the expression ‘excluding from possibilities’ seems more appropriate.”<sup>424</sup> L.S. explained her understanding as follows:

[d]isability can be understood in two ways. Firstly, that you cannot do things because of an illness, a chronic illness, for example. Or because certain senses are missing, which other people do have. Secondly, there are external factors impeding you from doing things others without impairments are able to do. I think it’s an appropriate term, since you can understand it [disability] in two ways. The term does not only indicate a deficit but the fact that we live in a world which is standardised. And there are people not fitting these standards.<sup>425</sup>

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<sup>419</sup> Interview with D.J.

<sup>420</sup> Interview with R.A. (author’s translation).

<sup>421</sup> UNCRPD, 2006/08, art. 1.

<sup>422</sup> Interview with R.A. (author’s translation).

<sup>423</sup> Interview with V.F., Interview with L.S.

<sup>424</sup> Interview with V.F. (author’s translation).

<sup>425</sup> Interview with L.S. (author’s translation).

Indeed, the comprehensive understanding being displayed in these examples comes very close to what the UNCRPD's preamble stipulates; namely "that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others".<sup>426</sup> The relevant aspects of the attitudinal barriers/ standards (which people allegedly have to fit), the environmental barriers/ infrastructural conditions as well as resulting impeded possibility of participation are covered.

Apart from the actually implicit understanding, it seems like there is a kind of reluctance among the social workers when it comes to (new) terminology: according to L.S. "there are always fights about terminology. It's the same as with the refugees... 'refugees' was at the beginning, then people who fled, then people with flight background."<sup>427</sup> Similarly, R.A. reported that during her vocational training as a nurse for persons with disabilities 19 years ago, it was always about 'disability' and now there is a term called 'impairment'.<sup>428</sup> To my mind, these statements can also be understood as evidence frustration: whereas new terms which do not really bring about noticeable change for the respective people's and the social workers' situation on the ground get 'introduced', the implementation of measures is still proceeding slowly; even though the UNCRPD was ratified almost ten years ago. Measures – regarding persons with disabilities' rights in general or the right to inclusive education in particular – like increases in investment or the introduction of compulsory inclusion classes in teacher training would have much more noticeable effects on the social workers' work, and even more important effects on persons with disabilities, than terminological changes. These thoughts will be touched upon again later when it comes to the conceptual understanding of inclusion/ inclusive education (see chapter IV.6.3.).

Finally, the lack of explicit terminological knowledge might be connected to the low practical applicability of the terms with regard to the social workers' daily

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<sup>426</sup> UNCRPD, 2006/08, Preamble (e).

<sup>427</sup> Interview with L.S. (author's translation).

<sup>428</sup> Interview with R.A.

work routine, too. Such an assumption can be supported by the quite deep and comprehensive understanding the social workers displayed when it came to 'accessibility', being of more practical relevance for them. They elaborated on physical as well as on content-related accessibility and their respective ranges<sup>429</sup>, tactile and acoustic support measures<sup>430</sup> and on the importance of adapting structures to the needs and requirements of individuals.<sup>431</sup> As demonstrated in the context of the causal conditions of the impeded access to inclusive education for refugee children with disabilities (see chapter IV.1.), aspects of this lack of accessibility were taken up regularly and identified as one of the main issues at stake.

#### **IV.5. Action/ Interactional strategies: Social workers' support and consultation measures**

Action/ interactional strategies are "directed at managing, handling, carrying out, responding to a phenomenon as it exists in context or under a specific set of perceived conditions."<sup>432</sup> Thus, a short overview of the most important aspects in this regard should be given before discussing the strategies themselves, followed by the interviewed social workers. Generally speaking, the social workers' strategies are aimed at responding to the phenomenon being investigated, namely, the impeded access to inclusive education for refugee children with disabilities. As shown above, causal conditions for this phenomenon exist on two levels. Firstly, the school system faces structural shortcomings in general – quite apart from any aspirations of inclusive education – like, among other things, high occupancy rates in schools and a lack of teachers (see chapter IV.1.1.). Secondly, resources do lack with regard to inclusive education: at this point, insufficient 'inclusion'-competences, overburdened teachers and the consequent reduction in educational quality, along with deficits in physical and content-related accessibility have to be

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<sup>429</sup> Interview with D.J., Interview with L.S.

<sup>430</sup> Interview with V.F.

<sup>431</sup> Interview with T.E.

<sup>432</sup> Strauss and Corbin, 1991, p.104.

mentioned (see chapter IV.1.2.). These causal conditions do negatively affect access to inclusive education for refugee children with disabilities, exemplified by the features of availability, accessibility, acceptability and adaptability (see chapter IV.2.).

Additionally, with regard to the context, the situation gets complicated through a “field of tension between inclusion and special support”<sup>433</sup>, because both school systems – regular schools as well as special schools – are incapable of adequately meeting the needs of refugee children with disabilities (see chapter IV.3.).

Intervening conditions do play a special role concerning the action/ interactional strategies, since they facilitate or constrain them as well as having an impact on managing them.<sup>434</sup> Above all, the parents’ capacity is of crucial importance. The extent to their knowledge about, inter alia, the support system and the educational system but also their language skills and personal conditions are decisive (see chapter IV.4.1.). Apart from that, the perception of refugee children with disabilities and the focus on the parents, influenced by the important role they play (see chapter IV.4.2.), impact on the social workers’ strategies.

The action/ interactional strategies deployed by the social workers can be distinguished with regard to their objectives, the measures taken as well as to the content of the respective measures. Yet, these different parts overlap with each other to a certain extent. One of the main objectives of the support and consultation is “to achieve parents’ utmost independence...the idea is not to take them by the hand.”<sup>435</sup> In that sense, it is aimed to provide them with the knowledge and the information they need in order to do appointments and applications on their own (as far as possible) and to take a self-determined decision regarding their children’s educational future, for example; not to delegate decisions.<sup>436</sup> Therefore, independence cannot be separated from

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<sup>433</sup> Interview with D.J. (author’s translation).

<sup>434</sup> Strauss and Corbin, 1991, pp. 103-104.

<sup>435</sup> Interview with A.T. (author’s translation).

<sup>436</sup> *ibid.*

knowledge and, hence, as touched upon above (see chapter IV.4.1.) it impacts on the parents' confidence: "and because they don't know how the system works [...] they are grateful about everybody and anything saying 'yes'."<sup>437</sup> This statement can be understood within the context that overburdened parents tend to enrol their children in special schools since they are better equipped, thus the parents do not have to organise that much on their own<sup>438</sup> (see chapter IV.4.1.). In addition, special schools are more eager to take refugee children with disabilities than regular schools are, which regularly invoke resource reservations and other 'excuses'.<sup>439</sup>

Another objective is to allay fears and uncertainties.<sup>440</sup> As with independence, this objective is also closely connected to knowledge. It is very important in this regard, that the parents' 'starting point' – in terms of potentially existing or not existing knowledge, their wishes and needs – is considered, since "getting flooded by the whole range of information"<sup>441</sup> could even be counterproductive. Similarly essential at this point is the accompaniment of the parents when it comes to pre-school visits, appointments or bureaucratic affairs, either physically or from the distance. Especially, this proximity to the clients and the procedures they have to undergo is one of his work's qualities, told D.J., as it contributes to facing and subsequently overcoming fears and uncertainties.<sup>442</sup>

Connected to the two already mentioned objectives, the aspect of assisting the parents in order to provide them with some relief is of relevance, too. This holds generally true with regard to imparting knowledge or explaining bureaucratic procedures for example. Apart from that, it regularly happens that parents are pushed by teachers in regular schools to initiate a determination of special educational needs as soon as possible (see chapter IV.3.), because "It's lucrative for the school, since it consequently gets subsidies."<sup>443</sup> That paints an ambivalent picture considering the lack of adequately qualified teachers and will

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<sup>437</sup> Interview with R.A. (author's translation).

<sup>438</sup> Interview with R.A., Interview with A.T.

<sup>439</sup> Interview with L.S., Interview with T.E., Interview with R.A., Interview with A.T.

<sup>440</sup> Interview with A.T.

<sup>441</sup> *ibid.* (author's translation).

<sup>442</sup> Interview with D.J.

<sup>443</sup> Interview with R.A. (author's translation).

to take refugee children with disabilities (see chapter IV.1. and IV.3.). Besides putting parents and children under pressure – who actually need some time to ‘arrive’, to learn German and to get used to the new (school) environment – this practice has also led to many false diagnoses.<sup>444</sup> In such cases R.A. tells the parents that they should give their children just some more months to arrive in the first place; they can still do it afterwards.<sup>445</sup>

Also, parents’ encouragement is an important element, being closely linked to independence. Since it remains the parents’ decision at which school to enrol their child, having insights into particular schools as well as a general overview is a prerequisite for making an informed and self-determined decision. In this context, parents are encouraged to visit different schools and different school models in order to get an idea how the different schools and systems work in reality and how the schools are actually equipped.<sup>446</sup> Such visits are helpful to visualise what the social workers previously informed them about and to get a more comprehensive understanding of what the different school models mean for their child’s education.

Talking to the parents can also serve the purpose of utilising their knowledge about their child:

[i]t’s naïve to assume that there’s no treatment in other countries. Rather, the children were already under treatment and the parents know about it. The only thing is that nobody asks them here [in Germany/ Berlin]...also when it comes to the enrolment. In addition, it’s always assumed [by the schools] that everything can be done in German and nobody asks what is the child capable of, what has it already done in its home country.<sup>447</sup>

Knowledge of the child’s background can save time and efforts as well as serve to adapt the social workers’ support and consultation measures to the

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<sup>444</sup> *ibid.*

<sup>445</sup> *ibid.*

<sup>446</sup> Interview with T.E.

<sup>447</sup> Interview with D.J. (author’s translation).

respective preconditions. In my opinion, asking parents and involving them more actively also facilitates their independence, their proactive engagement, builds up trust between them and the social workers and gives them the feeling of being heard and taken seriously. Interestingly, language seems to be an obstacle when it comes to communication between parents and schools. Possible reasons might be either the parents' language competences (see chapter IV.4.1.) or teachers' and school staff's lacking resources to accommodate the parents' needs (see chapter IV.1.). In conclusion, the support and consultation measures' objectives together all serve the overarching purpose of strengthening the parents' capacity.

There is a broad range of actual measures deployed by social workers within the context of their support and consultations. As already mentioned above, the social workers accompany parents within different situations. This accompaniment can range from a physical one – when it comes to visiting schools<sup>448</sup> or having an appointment<sup>449</sup> – to one which is provided remotely. The latter can consist of providing the parents with the respective documents they need<sup>450</sup> or of arranging an appointment for them.<sup>451</sup>

Assisting the parents can also take place in the form of language and cultural mediation. With regard to language support, parents can be provided with, among other things, information about German classes<sup>452</sup> or with support in terms of accompanying them to meetings between teachers and parents, assisting the latter when it comes to limited language skills.<sup>453</sup> As there might be cultural differences concerning the understanding of 'disability', mediation and awareness-raising is an important and sensitive part of the social workers' service, too. This aspect will be discussed further shortly.

When it comes to dealing with a violation of the parents' or their children's rights, social workers are essential. Bearing in mind that parents might lack

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<sup>448</sup> Interview with L.S.

<sup>449</sup> Interview with D.J.

<sup>450</sup> *ibid.*

<sup>451</sup> Interview with R.A.

<sup>452</sup> Interview with L.S.

<sup>453</sup> Interview with R.A.

knowledge about the school system and the various options available for benefits (see chapter IV.4.1.), they “can only defend themselves, if they have support, culminating in legal assistance.”<sup>454</sup> Where certain measures for (refugee) children with disabilities – like school transport – are rejected due to a supposedly insufficient justification of its necessity<sup>455</sup> for instance, social workers can provide the parents with support in order to make an appeal. As a ‘precondition’, parents have to be informed about their right to claim certain benefits and about the respective procedures.<sup>456</sup> They then have to be encouraged and accompanied within the course of the appeal.<sup>457</sup> Interestingly, D.J. made the experience that the processing of the appeals takes considerably less time “if pressure is applied [through the social workers’ assistance].”<sup>458</sup> If parents themselves have an impairment, support and consultation measures are adapted. That means

explaining everything in easy language and including more people when it comes to giving support. In such cases it’s not enough to say...well, I made an appointment for you, now you just have to go there.<sup>459</sup>

In such cases it is important to provide for a closer and even more customised support for the parents. Accompanying them physically to an appointment and/ or explaining the procedures step-by-step in easy language are possible strategies in this regard.<sup>460</sup>

Concerning the content of the social workers’ measures, consulting the organisational process is a fundamental but highly important task. After getting to know each other and learning about the children’s and parents’ background, they have to be informed about which office they have to go to in certain matters, where to apply for which services and what possibilities they generally

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<sup>454</sup> Interview with D.J. (author’s translation).

<sup>455</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 36 (4).

<sup>456</sup> Interview with V.F., Interview with R.A.

<sup>457</sup> Interview with V.F., Interview with R.A., Interview with D.J.

<sup>458</sup> Interview with D.J. (author’s translation).

<sup>459</sup> Interview with R.A. (author’s translation).

<sup>460</sup> *ibid.*

have.<sup>461</sup> In the course of this, documents the parents already received within another context and new ones they have to fill in are looked at together and explained.<sup>462</sup>

One of the most important aspects concerning the social workers' tasks is informing the parents and raising their awareness of certain issues. As previously mentioned (see chapter IV.4.1.), this applies to imparting knowledge about the Berlin school system<sup>463</sup> as well as about the existing support system and the related benefits available to them.<sup>464</sup> Relating to what has already been discussed within the context of the parents' capacity as one of the intervening conditions (see chapter IV.4.1.), content has to be conveyed regarding a broad range of issues. First and foremost, it has to be made clear that in Berlin education is also compulsory for refugee children with disabilities.<sup>465</sup> This issue is crucial because most of the parents do not know about it.<sup>466</sup> Additionally, parents need to understand that they have the right to decide to enrol their child either in a regular or in a special school, which is the very prerequisite for the education of refugee children with disabilities.<sup>467</sup> Consequently, the parents' capacity is decisive for their possibilities for action and hence for the extent to which social workers have to assist them. Furthermore, they have to be informed about how schooling functions in terms of daily school life and what kind of educational possibilities exist.<sup>468</sup>

Another important issue which was already touched upon – although not as detailed as the aspect of thematic knowledge (see chapter IV.4.1.) – is about terminology, more precisely about parents' understanding of 'disability'. Before discussing that it has to be mentioned, as it was within the context of the parents' capacity, that parents of refugee children with disabilities cannot be considered as a homogeneous group. Therefore, approaches to and the

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<sup>461</sup> Interview with A.T., Interview with D.J.

<sup>462</sup> Interview with D.J., Interview with L.S.

<sup>463</sup> Interview with R.A., Interview with L.S.

<sup>464</sup> Interview with R.A., Interview with V.F., Interview with D.J.

<sup>465</sup> Interview with L.S., Interview with T.E.

<sup>466</sup> Interview with T.E.

<sup>467</sup> Interview with L.S.

<sup>468</sup> *ibid.*

understanding of 'disability' can vary. Thus, the parents' perspectives depicted by the social workers are subjective and cannot be regarded as universal. T.E. explained the following:

[w]e try to 'embellish' this term ['disability']. Because 'disability'...in our region [the Arabic region] it's like an insult. You only have a disability if it's a mental disability. But if you are chronically ill, nobody will consider you as being impaired. That's why we try...we always have some difficulties with the families at the beginning when it comes to using that term. Although the child has an impairment, the family has always rejected this designation. [...] The parents also have a problem with calling a learning disability 'disability'.<sup>469</sup>

Firstly, this statement indicates that certain cultural understandings do exist among the refugee children with disabilities' parents. For instance, that 'only' mental disabilities are disabilities, but not learning disabilities. Secondly, it points towards a negative connotation of the term 'disability'. In order to circumvent the term being linked to "shame"<sup>470</sup> terminology is adapted to the parents' preferences:

[o]nce, a client even told me...I always used 'disability' in the beginning, in Arabic...then he told me, please use the term 'special needs', for me personally...that's more appropriate for my daughter. Since then, I'm using this term.<sup>471</sup>

Personally thinking, on the one side, it makes sense to adapt to the parents' preferred terminology to a certain extent, since it can contribute to providing for an atmosphere which they can feel familiar with. On the other, this is only reasonable at the beginning of the consultation procedures. Beside the fact that

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<sup>469</sup> Interview with T.E. (author's translation).

<sup>470</sup> *ibid.* (author's translation).

<sup>471</sup> Interview with L.S. (author's translation).

every parent can decide on his or her own which term he or she prefers, it is important to have at least a basic idea about the terminology's legal significance. This holds especially true when it comes to understanding the educational system and the support system in general, or how to apply for benefits, in particular. In addition, irrespectively of the parents' decision whether to enrol their child in a regular or in a special school this is crucial when it comes to being together with other (refugee) children with disabilities: "[t]hen the parents say...well, no...only because my child needs longer to learn how to calculate."<sup>472</sup> Or the parents think that:

[o]ur child does not belong to them [to the other children with disabilities], our child is 'better off'. Because it [the disability] is not visible from outside, so to speak, it doesn't belong to the children in the wheelchairs or to those with Trisomy 21.<sup>473</sup>

Within such contexts it is important to raise awareness with regard to the above mentioned aspects of 'systemic understanding' but also to the existing "diversity of persons with disabilities"<sup>474</sup> and that the right to (inclusive) education applies to all children with disabilities<sup>475</sup>, regardless of the respective impairment.

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<sup>472</sup> Interview with R.A. (author's translation).

<sup>473</sup> Interview with L.S. (author's translation).

<sup>474</sup> UNCPRD, 2006/08, Preamble (i).

<sup>475</sup> *ibid.*, art. 24 (1).

## **IV.6. Consequences**

The last chapter on the research results discusses the action/ interactional strategies' consequences. Importantly, "consequences of action/ interaction at one point in time may become part of the conditions in another"<sup>476</sup>. Therefore, aspects relating back to the causal conditions – this applies especially to the need to structural improvement of the educational system (see chapter IV.6.2) – will be addressed, too.

### **IV.6.1. Social workers' support as decisive factor**

As showed in the proceeding parts of the research results of the Master Thesis at hand, social workers engage in a lot of different areas regarding their support for refugee children with disabilities and their parents. This holds especially true since the parents' capacity is such a crucial factor concerning their children's educational future and its' prospects (see chapter IV.4.1. and IV.5.): "[t]he more support they [the parents] have the better their children's educational careers are."<sup>477</sup> Although the strategies deployed by the social workers are manifold, all of them serve the 'ultimate purpose' of strengthening the parents' capacity. Parents having (at least a certain degree of) knowledge about the school and support system and who are not facing additional burdens through, for instance, their own bureaucratic affairs are more likely to enrol their child in an inclusive regular school.<sup>478</sup> Yet, the decision remains with the parents and can also swing in a certain direction due to reasons which cannot be discussed within this research's resources.

Nevertheless, it has to be noted that social workers' consultation and support measures do also reach their limits with regard to a school system facing shortcomings, apart from any aspirations of inclusive education (see chapter IV.1. and IV.6.2.). Personally thinking, a connection might be possibly drawn between the generally overburdened school system and the social worker's focus on the parents; at the expenses of the attention which should be directed

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<sup>476</sup> Strauss and Corbin, 1991, p.106.

<sup>477</sup> Interview with D.J. (author's translation).

<sup>478</sup> Interview with L.S., Interview with R.A., Interview with D.J., Interview with T.E.

at the refugee children with disabilities. In the case that more money would be invested, also in a more purposeful way<sup>479</sup> – for instance in better qualified staff or in support services towards inclusive education as a whole – social workers might have more resources to focus on the children with disabilities. Additionally, the establishment of clear standards and mechanisms concerning “disability and age-appropriate assistance”<sup>480</sup> guaranteeing the children’s right to express their views freely and being heard would be highly necessary with regard to social workers’ consultation services as well as to educational authorities (see chapter IV.4.2.).

#### **IV.6.2. Need of structural improvement of the educational system**

Recapping the general structural shortcomings regarding education as well as the lacking resources when it comes to inclusive education, the compelling necessity of improving the educational system becomes apparent. Starting with more teaching personnel<sup>481</sup>, more schools<sup>482</sup> and hence lower class sizes<sup>483</sup> would relief the general school system from the already existing pressure. A generally less tensioned educational environment would provide for a basis to build up upon with regard to inclusive education.

More efforts have to be invested in order to make schools more accessible; in terms of physical<sup>484</sup> as well as content-related accessibility.<sup>485</sup> Apart from that, “every teacher should have a basic training”<sup>486</sup> concerning inclusive education, which has to be a compulsory part of the teachers’ training curricula.<sup>487</sup> Consequently, teachers would be more aware and capable of directing their classes and teaching methods towards “persons with disabilities [‘development] of their personality, talents and creativity, as well as their mental and physical

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<sup>479</sup> Interview with D.J.

<sup>480</sup> UNCRPD, 2006/08, art. 7, 3.

<sup>481</sup> Interview with D.J., Interview with L.S., Interview with A.T., Interview with V.F.

<sup>482</sup> Interview with T.E.

<sup>483</sup> Interview with L.S.

<sup>484</sup> Interview with T.E.

<sup>485</sup> Interview with R.A.

<sup>486</sup> *ibid.* (author’s translation).

<sup>487</sup> *ibid.*

abilities, to their fullest potential”<sup>488</sup>. Trainings to enhance teachers’ intercultural competences have to be considered in this context, too.<sup>489</sup>

Recognising that the therefore required major investments in the educational sector are not that foreseeable, D.J. suggested to concentrate resources towards certain selected inclusive schools’ ‘Willkommensklassen’, in order to provide refugee children with disabilities with a ‘real alternative’ to special schools.<sup>490</sup> Yet, noticing at the same, this would mean exclusion again since most probably these welcome-classes would be mainly visited by refugee children with disabilities (due to the enhanced equipment) and not by refugee children/ foreign children, too.<sup>491</sup> R.A. proposed a “more holistic support approach”.<sup>492</sup> Accordingly, this would entail a broader focus on the refugee children with disabilities which includes the respective families and parents, too.<sup>493</sup> Whereas this could be a reasonable idea in order to strengthen the parents’ capacity, thus being able to focus back on the children, personally thinking the prospect of success highly depends on the generally invested resources. Without the required investments, it would run the risk of focusing even more on the parents (and the family) (see chapter IV.4.2.), instead of on the refugee children with disabilities themselves, actually supposed to be the subjects of the respective efforts directed to inclusive education.

As already mentioned shortly (see chapter IV.2.), structural improvements through resource-increase – whether concerning teachers, school buildings, awareness-raising or others – are indispensable in order to ensure the refugee children with disabilities’ access to inclusive education. The contrary does not only impede the access to the right to inclusive education, but is grist to the mills of those suggesting that that inclusion in school is doomed to fail by its nature. Alternatively, it can lead to frustration, too, as well as influence the

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<sup>488</sup> UNCRPD, 2006/08, art. 24, 1.(b).

<sup>489</sup> Interview with V.F., Interview with D.J.

<sup>490</sup> Interview with D.J.

<sup>491</sup> *ibid.*

<sup>492</sup> Interview with R.A. (author’s translation).

<sup>493</sup> *ibid.*

social worker's conceptual understanding of inclusion/ inclusive education (see chapter IV.6.3.).

### **IV.6.3. Conceptual understanding of inclusion/ inclusive education**

With regard to the understanding of inclusion respectively inclusive education, the social workers outlined important aspects within the course of the interviews. The exchange with 'other' pupils and the subsequent experience of human diversity and "differences as something positive"<sup>494</sup> were mentioned.<sup>495</sup> In addition, emphasis was put on the potential for acquiring social skills and competences – applying to (refugee) children with as without disabilities – as helping each other; creating a sense of belonging.<sup>496</sup> "A mixed learning environment that includes persons with disabilities allows their contributions to be valued, and prejudices and misconceptions to be progressively challenged and dismantled."<sup>497</sup> Although, without doubt these are important aspects, the displayed understanding lacks above all the feature of adaptability (the issue of accessibility and availability were repeatedly referred to, see for example chapter IV.1., IV.3., IV.6.2.): Such an approach points more into the direction of 'integration' than 'inclusion', implying the transformation of the school system with regard to children with disabilities abilities and requirements.<sup>498</sup> As similarly shown concerning the conceptual understanding of impairment/ disability (see chapter IV.4.3), this expandable understanding might be linked to a frustration about the inadequate implementation. Bluntly put by R.A., inclusion:

[i]t's a nice new fashion term. It's like that...how to transfer construction sites...by coming up with new definitions. [...] The abolition of special schools didn't work, since the regular schools are not able to cope with the children with disabilities. It says...according to 'inclusion' all children

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<sup>494</sup> Interview with A.T. (author's translation).

<sup>495</sup> Interview with D.J., Interview with L.S., Interview with R.A.

<sup>496</sup> Interview with L.S., Interview with T.E.

<sup>497</sup> United Nations, 2013(b), para.8.

<sup>498</sup> *ibid.*, para.7.

should be in one school. But the teachers aren't adequately qualified, there aren't enough special pedagogues at the schools, the class sizes are too high. [...] It's a failed project, unfortunately.<sup>499</sup>

Without agreeing at all that inclusion is a 'failed project' it is definitely under threat. Lacking resources resulting in miserable implementation does not only impede refugee children with disabilities' educational future but leads to frustration among, inter alia, those who deal with it on a daily basis. The "huge gap between demand and reality"<sup>500</sup> can give the impression that inclusive education is doomed to fail by its nature. That is a misconception which does not consider its complex background in terms of influencing factors. As the UNCRPD Comm. has stated in its GC No.4 on the right to inclusive education "[i]nclusion and quality are reciprocal: an inclusive approach can make a significant contribution to the quality of education."<sup>501</sup> Because "[i]nclusive education is central to achieving high-quality education for all learners"<sup>502</sup>, the necessity for an enhanced implementation has to be much more of general interest.

Unfortunately, such a situation gets more complicated by the fact that inclusive education for refugee children with disabilities is not a very popular topic with which it is easy to win votes, in particular if it is connected to investing a lot of money, said D.J..<sup>503</sup> That is where it starts to come full circle at the causal conditions of the phenomenon of impeded access to inclusive education for refugee children with disabilities, in Berlin.

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<sup>499</sup> Interview with R.A. (author's translation).

<sup>500</sup> *ibid.* (author's translation).

<sup>501</sup> United Nations, 2016, para. 25.

<sup>502</sup> *ibid.*, para. 2.

<sup>503</sup> Interview with D.J.

## Conclusion

Aiming to provide for an understanding of the extent to which the right to inclusive education for refugee children with disabilities is ensured in Berlin, and about the obstacles and challenges with regard to the access to this right, the Master Thesis at hand has displayed a high-contrast situation.

On the one side, there is a highly comprehensive and differentiated legal framework: Within the context of international human rights law (see chapter II.1.), the UNCRPD is of paramount importance. In addition to its' general principles and obligations<sup>504</sup> – providing for a baseline of the understanding of persons with disabilities' human rights and its' corresponding implementation measures – article 24 on education is the main article of reference when it comes to inclusive education. Amongst others, it reflects the social model of disability<sup>505</sup> (see chapter I.1.), refers to the inclusive education's contribution for an independent and dignified life for persons with disabilities<sup>506</sup> as well as to the importance of accessibility<sup>507</sup> and awareness-raising<sup>508</sup>. Worth mentioning, although it is almost ten years ago that the UNCRPD has entered into force, in Germany, only a minimum of educational institutions, the consideration of the principle of inclusion as well as the principle of non-discrimination when it comes to access to the general school system are justiciable (see chapter II.1.2.). With regard to international human rights law, the UNCRC and the CDESCR do relate to the issue of inclusive education for refugee children with disabilities, too: Whereas the former is especially crucial concerning the child's right to be heard<sup>509</sup>, being indispensable for the concept of the best interest of the child (see chapter I.5.), the latter lays down standards regulating education in general (see chapter II.1.4.).

On the level of the European Union the CFR, the Qualification Directive and the Reception Directive have to be mentioned. The legal regulations stipulated in

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<sup>504</sup> UNCRPD, 2006/08, art. 3., 4.

<sup>505</sup> *ibid.*, art. 24, 1 (b).

<sup>506</sup> *ibid.*, art. 24, 1 (c).

<sup>507</sup> *ibid.*, art. 24, 2 (b), 3.

<sup>508</sup> *ibid.*, art. 24, 4.

<sup>509</sup> UNCRC, 1989/90, art. 12.

the CFR apply to national authorities when it comes to the implementation of EU law (see chapter II.2.1.). This holds true for the Qualification Directive laying down standards for the qualification for international protection (see chapter II.2.2.) and its content as well as for the Reception Directive dealing with the reception of applicants for international protection (see chapter II.2.3.). Both documents set out standards with regard to schooling and education, but (apart from other differences) the Qualification Directive speaks about “the same conditions”<sup>510</sup>, whereas the Reception Directive mentions “similar conditions as their own nationals”<sup>511</sup> under which access to the educational system should be granted.

Germany’s constitution stipulates that every person is equal before the law and prohibits discrimination on the ground of inter alia disability<sup>512</sup> (see chapter II.4.). If the Geneva Convention is read in conjunction with this, its article 22, stating that “the same treatment as [it] is accorded to nationals with respect to elementary education”<sup>513</sup> shall be accorded to refugees, would apply to refugee children with disabilities, too. Yet it would only cover those recognized as refugees under the Geneva Convention (see chapter II.3.). Other forms of protection, like protection against political persecution or subsidiary protection<sup>514</sup>, are as well laid down in the German Asylum Code (see chapter II.4.2.).

The Berlin Education Law in which, inter alia, the general mission of the school the domestic understanding of the right to education and the educational objectives are defined (see chapter II.5.1.), refers to aspects being of importance within the context of inclusive education. Although it mentions for instance the “equal access to all public schools, in accordance with the pupil’s abilities and talents”<sup>515</sup> or “joint teaching and joint learning, [and] the

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<sup>510</sup> European Union, 2011, art. 27, 1.

<sup>511</sup> European Union, 2013, art. 14, 1, 2.

<sup>512</sup> Deutschland, Grundgesetz für die Bundesrepublik Deutschland, 1949, art. 3 (1), (3).

<sup>513</sup> United Nations, 1951, art. 22, 1.

<sup>514</sup> Deutschland, Asylgesetz, 1992/ 2008, para. 1 (1), 2.

<sup>515</sup> Deutschland, Schulgesetz für das Land Berlin, 2004, para. 2 (2) (author’s translation).

compensation of disadvantages”<sup>516</sup>, the SchulG takes a more integrational than inclusive approach. It does not include an explicit legal entitlement for the so-called ‘Nachteilsausgleich’ (as a measure of compensating disadvantages) as well as it does not meet the principle of the priority of joint learning in the UNCRPD’s sense. Also the regulation about the special educational support entails aspects being relevant within the context of the access to inclusive education for refugee children with disabilities (see chapter II.5.2.). In particular, these are the parents’ right to take the decision whether or not to enrol the child with special educational needs in a regular or in a special school<sup>517</sup> and the possibility of school transport for pupils with disabilities, but without a legal entitlement.<sup>518</sup>

Relating to each other, the different legal documents on the various levels constitute a manifold legal framework, without doubt. As showed in the course of the Master Thesis at hand, using the social model of disability (see chapter I.1.) and especially the four features of inclusive education (see chapter I.2.) as a ‘blueprint’, several documents are more in line with the UNCRPD Comm.’s understanding of inclusive education than others. In addition, some are lacking full and comprehensive implementation; as the UNCRPD does on the level of international human rights law (see chapter II.1.2.) or the Reception Directive on the European Union level (see chapter II.2.3.).

Interestingly, on the other side, the main obstacles and challenges refugee children with disabilities do face with regard to inclusive education are of a quite ‘practical’ nature. Yet, structural shortcomings not being necessarily specific to refugee children result in an environment which does not provide for ideal preconditions: Apart from any aspirations of inclusive education, the school system in Berlin is overburdened due to a wide range of lacking resources. Notably, social workers identified overcrowded classrooms and a lack of teachers as well as their deficient language and intercultural competences as main problems (see chapter IV.1.1.). With regard to inclusive education (see

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<sup>516</sup> *Ibdi.*, para. 4 (2) (author’s translation).

<sup>517</sup> Deutschland, Verordnung über die sonderpädagogische Förderung, 2005, para. 33 (1).

<sup>518</sup> *ibid.*, para. 36 (1).

chapter IV.1.2.) the scarcity of resources leads to personnel shortage, too. In contrast to the regular school system, it is not only the lack of teachers but also the lack of other relevant staff, which effectively contributes to an impeded access to inclusive education. Apart from the need to increase the number of teachers in general, insufficient knowledge, qualifications and awareness with regard to inclusive education were observed. Concerning non-teaching staff, there are not enough experts in special needs education or other professionals, like physiotherapists for example. In addition, there is a need to further develop the accessibility of inclusive education: this holds true for content-related accessibility as well as for physical accessibility; the latter is especially an issue in old school buildings. It has to be mentioned that these obstacles are not new quite the contrary. Already in 2015, the UNCRPD Comm. has raised these issues in its CO on the initial report of Germany, recommending to “[e]nsure the training of all teachers in inclusive education, increased accessibility of the school environment, materials and curricula, and the provision of sign language in mainstream schools”<sup>519</sup>.

Consequently, the access to inclusive education for refugee children with disabilities is impeded in terms of availability, accessibility, acceptability and adaptability (see chapter IV.2.). The “field of tension between inclusion and special support”<sup>520</sup> is a matching expression regarding impeding factors specific to refugee children with disabilities – apart from the general obstacles summarised above. It points to the situation that neither regular schools nor special schools are able to meet the needs of refugee children with disabilities. Whereas the former are more suitable with regard to German language support but mostly lacking the features of inclusive education, the latter are exclusive by their nature but far better equipped when it comes to, inter alia, support services and accessibility (see chapter IV.3.).

Such conditions put the parents of refugee children with disabilities in a complicated situation and consequently highlight the ‘practical’ obstacles and

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<sup>519</sup> United Nations, 2015, para. 46 (d).

<sup>520</sup> Interview with D.J. (author’s translation).

challenges. As one, if not the, impeding factor with regard to inclusive education for refugee children with disabilities, the parents' capacity was identified (see chapter IV.4.1.). Among important components of this capacity is knowledge – regarding, inter alia, the educational and support system, compulsory education for (refugee) children with disabilities and their right to choose the school in which to enrol the child – confidence and the parents' personal circumstances. All of these are connected and play a decisive role with regard to the decision in which kind of school to enrol their children. Parents who, for example, lack knowledge about where and how to apply for school transport, are more eager to choose a special school, since services are far more concentrated there (see chapter IV.4.1.). The social workers interviewed raised repeatedly that their efforts are largely directed at strengthening the parents' capacity, hence aiming at providing them with consultation and support in order to achieve their 'independence'. This happens in the shape of imparting knowledge, providing language support, legal assistance or accompaniment in the context of bureaucratic affairs (see chapter IV.5.). At the same time, the social workers' efforts are almost exclusively focused on the parents, probably due to the decisive role they have regarding their children's educational future. Nevertheless, there were also social workers among the interviewees whose perspective on the refugee children with disabilities can be questioned with regard to meeting the standards concerning the child's best interest<sup>521</sup> and the "right to express their views freely on all matters affecting them, [and that] their views being given due weight"<sup>522</sup>. The same holds true with regard to educational authorities.

Although the social workers' explicit understanding of impairment/ disability has revealed deficits – which might be connected to its low practical applicability – they displayed a comprehensive implicit understanding, capturing almost all important aspects (see chapter IV.4.3.). More interesting was the reluctance they showed towards adopting the terminology itself, while a similar issue was

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<sup>521</sup> UNCRC, 1989/90, art. 12.

<sup>522</sup> UNCRPD, 2006/08, art. 7, 3.

visible concerning the understanding of inclusion/ inclusive education (see chapter IV.6.3.). In this context, frustration about transferring ‘construction sites’ by introducing new definitions, like ‘inclusive education’, became apparent.<sup>523</sup>

These statements can be read as evidence of frustration about the still inadequate implementation of inclusive education, emphasising again the need of structural improvements (see chapter IV.6.2.).

In summary, it can be said that, apart from the structural shortcomings in the (inclusive) educational system which affect children with disabilities in general, refugee children with disabilities face an even more complicated situation and additional obstacles. Besides the fact that their needs cannot really be met by both special and regular schools (see chapter IV.3.) their chances of attending an inclusive school depends to a large degree on their parents’ conditions and capacity. This results in “unequal [...] opportunities for children with disabilities of migrant or refugee parents”<sup>524</sup>, compared to German children with disabilities, as observed by the UNCRPD Comm. Although the interviews with the social workers in Berlin did not detect examples of explicit discrimination on several grounds, there is an indication that refugee children with disabilities are affected by multilayered forms of exclusion (see chapter I.4.). As with other children with disabilities, refugee children with disabilities face exclusion on the basis of their disability when it comes to education. Yet, the lack of language and intercultural support makes it even more difficult for them and decreases their chances of receiving inclusive education directed at the development of their “personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential”<sup>525</sup> (see chapter IV.1.2., IV.3.). Interestingly though, without referring to ‘disability’, this year’s education report noticed that the resources with regard to education being at the family’s disposal are absolutely crucial for the children’s educational success.<sup>526</sup> Furthermore, educational success depends on the degree to which support is provided by the parental home as

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<sup>523</sup> Interview with R.A.

<sup>524</sup> United Nations, 2015, para. 17 (c).

<sup>525</sup> UNCRPD, 2006/08, art. 24, 1 (b).

<sup>526</sup> Autorengruppe Bildungsberichterstattung Bundesministerium für Bildung und Forschung, 2018, p. 23.

well as on a potential migration background.<sup>527</sup> In my view, this could be transferred to the context of the crucial role of social workers in access for refugee children with disabilities to inclusive education, since they undertake important tasks in order to support the parents; hence ‘supporting them to support their children’. Therefore, apart from generally improving the educational system in terms of teaching personnel, other relevant staff, awareness-raising and accessibility (see chapter IV.6.2.), just to mention some aspects, focus has to be put on support for parents. However, at least equally important, refugee children with disabilities have to be provided with “the support required, within the general education system, to facilitate their effective education”<sup>528</sup>, in order to be able in turn to enhance their own children’s educational prospects in the future. Lastly, there is a crucial need to establish safeguarding mechanisms for (refugee) children with disabilities to be heard and to be involved when it comes to decisions affecting their lives – as the decision in relation to their educational future does; as already recommended by the UNCRPD Comm.’s CO on the initial report of Germany, in 2015.<sup>529</sup>

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<sup>527</sup> *ibid.*, p. 245.

<sup>528</sup> UNCRPD, 2006/08, art. 24, 1 (d).

<sup>529</sup> United Nations, 2015, para. 18 (a).

## **Outlook**

This Master Thesis has provided an overview of the manifold legal framework with regard to the access to inclusive education for refugee children with disabilities, juxtaposed with the obstacles and challenges derived from the interviewed social workers' subjective experiences. Apart from the finding that access is impeded due to 'non-refugee specific' as well as to 'refugee specific' reasons, open questions remain. For instance, it would be very interesting and actually necessary to look closer at how the refugee children with disabilities themselves perceive their situation. The same applies to their parents. In addition, further studies about the approaches of educational authorities to refugee children with disabilities, as well as detailed elaborations on their staff's awareness would be able to contribute meaningfully to an enhanced understanding of the issue of access to inclusive education for refugee children with disabilities. Building on this issue, access for refugees with disabilities to higher education would also be a highly interesting topic.

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#### Interviews:

D.J., Interview, Berlin, 17 April 2018

A.T., Interview, Berlin, 17 April 2018

T.E., Interview, Berlin, 18 April 2018

L.S., Interview, Berlin, 18 April 2018

R.A., Interview, Berlin, 19 April 2018

V.F., Interview, Berlin, 19 April 2018

#### Figures:

Figure 1, p. 71: Example of 'open coding', in accordance with GT (see chapter III.5.).

Figure 2, p. 73: Example of 'axial coding', in accordance with GT (see chapter III.5.).

## Annex

### Interview guideline for expert interviews regarding the access to inclusive education for refugee children with disabilities in Berlin

#### Briefing:

Use of interviews in context of the Master Thesis, interview recording, confidential usage of interview & anonymization upon request (information: possible anonymization afterwards for the sake of consistency), duration: approximately 60 minutes, overview (questions regarding person & institution, questions regarding understanding of inclusion, questions regarding consultation procedures)

#### Topic 1: Questions regarding person & institution:

- What is your professional background?
  - Special education/ qualification/ training in the field of refugee assistance?
  - Special education/ qualification/ training in the field of inclusive education guidance?
- How long have you been working at institution X?
- (How did you come about institution X?)
  - Particular motivation? Persons with disabilities among friends/ family?
  - Own migration background?
- To which extent does your institution provide for consultation concerning inclusive education for refugee children with disabilities?

#### Topic 2: Questions regarding understanding of inclusion:

- What do you mean by the term 'impairment', respectively 'persons with impairments'?
- What do you mean by the term 'disability', respectively 'persons with disabilities'?
  - In your opinion, what is the difference between the term 'impairment' and the term 'disability'?
- What do you mean by the term 'accessibility'?

- Which aspects have to be ensured to be able to talk about (a minimum of) 'accessibility'? Which aspects are the most important for you? Why?
- What do you mean by the term 'inclusion' in general?
  - Which aspects have to be ensured to be able to talk about (a minimum of) 'inclusion'? Which aspects are the most important for you? Why?
- What do you mean by the term 'inclusive education' in particular?
  - Which aspects have to be ensured to be able to talk about (a minimum of) 'inclusive education'? Which aspects are the most important for you? Why?
- What do you consider as the potentials of 'inclusion'?
- What do you consider as the limits/ problems of 'inclusion'?
- What do you consider as the potentials of 'inclusive education'?
- What do you consider as the limits/ problems of 'inclusive education'?

Topic 3: Questions regarding consultation procedures with respect to access to school:

- To which extent do legal guardians/ parents of refugee children with disabilities have (previous) knowledge about their rights and duties with regard to school enrolment?
  - If so, how do they know?
- How did the legal guardians/ parents of refugee children with disabilities come about your institution's consulting and support services?
- How does the consultation of the legal guardians/ parents of refugee children with disabilities take place with regard to school enrolment?
  - Information about rights and duties of the refugee child with disabilities (with regard to inclusive education)?
  - Information about the Berlin school system, the procedures towards school enrolment?
  - Determination of special educational needs (if not done yet)?

- Subsequent steps?
- To which extent do you/ does your institution consult/ support the legal guardians/ parents and the child with disabilities in the course of school enrolment procedures?
    - 'Only' consulting/ providing for information or also in company? If so, to which extent?
  - Which other institutions are involved in the course of school enrolment procedures?
  - How do you assess the skills and qualifications of the involved institutions' staff when it comes to inclusion?
  - With which other institutions do you/ does your institution cooperate? The district's coordination office? The regional school authorities? Schools? Berlin's Senate Administration for Education, Youth and Science, etc.?
    - How do you assess the cooperation with the other institutions? What goes well/ bad and why?
    - How do you assess the institutional prerequisites (range of offers, competences, defined procedures, possibility for complaints) within the context of access to inclusive education for refugee children with disabilities?
  - In what way is/ was your institution involved in the (further) development of an inclusive school system?
    - In what way would your institution like to participate in the (further) development of an inclusive school system?
  - To which extent is the respective child with disabilities and its preferences taken into account when it comes to the consultation procedure? Are the information provided for in an accessible format with regard to the child?
  - Are the information provided for in an accessible format with regard to the legal guardians/ parents?

- Do you consider the perspective on refugee children with disabilities within school enrolment procedures as rather strength-orientated or deficit-orientated?  
→ Why, and in which contexts?
- What significance does (physical and content-related) accessibility have within school enrolment procedures?  
→ Where do you see need to improvement? Are there any examples of best-practices?

Concluding question:

“Imagine you were the Berlin senator for Education, Youth and Family. Which problem would you personally approach first in order to improve refugee children with disabilities’ access to inclusive education?”

Debriefing:

Opportunity for open unanswered questions & comments, information about further procedure concerning the recorded interview (transcription, evaluation, analysis...), “Thank you very much for your time, your trust and the nice and interesting conversation!!!”