



**Deutsches Institut
für Menschenrechte**

National CRC Monitoring Mechanism

List of Issues on Germany

submitted by the National CRC Monitoring Mechanism
Germany to the CRC Committee on the Rights of the
Child on the occasion of the preparation of a list of
issues by the Committee

11 February 2021

Contents

A. General measures of implementation (arts. 4, 42 and 44, para. 6)	4
Legal status of the Convention and comprehensive policy and strategy	4
Coordination	4
Data collection	5
Independent monitoring	5
Awareness-raising	6
B. General principles (arts. 2, 3, 6 and 12)	7
Voting age	7
Child-sensitive justice system	7
C. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a))	8
Registration of births	8
Children of incarcerated persons	8
Freedom of religion	9
D. All forms of violence against children (arts. 19, 37 (a) and 39)	10
Children with variations of sex characteristics (“Intersex children”)	10
Protection against violence in institutions for refugee children	10
Gender-Based Violence (Istanbul-Convention)	11
E. Family environment and alternative care (arts. 5, 18, 19-21, 25, 27, 39)	11
Measures that deprive children in their liberty	11
F. Disability, basic health and welfare (arts. 6, 18 (3), 23, 24, 26, 27 (1-3))	12
Standard of living/Poverty	12
G. Education, leisure and cultural activities (Art. 28, 29 and 31)	13
Access to education for refugee children	13
Inclusive education	13
H. Other special protection measures (arts. 22, 30, 32- 36, 37)	14
Refugee and asylum-seeking children – Family reunification	14
International cooperation	15

Introduction

By ratifying the United Nations Convention on the Rights of the Child and its Optional Protocols, Germany committed itself to upholding the rights of the child. The German Institute for Human Rights, in its role as Germany's National Human Rights Institution, monitors and assesses the implementation of this United Nations convention in Germany. Thus in 2015, the Institute set up the National CRC Monitoring Mechanism, which is supported with funds from the Federal Child and Youth Plan by way of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The National CRC Monitoring Mechanism shares information and experience with the National Human Rights Institutions of other countries and informs the UN Committee on the Rights of the Child about the implementation of children's rights in Germany. It works closely with civil society organisations, government bodies, research institutions and, last but certainly not least, directly with children and young people¹ themselves.

As in many European countries, Germany sees itself confronted to authoritarian political movements, which seek to undermine the rule-of-law institutions and procedures and call into question the tripartite division of power and the obligation to respect fundamental and human rights. As a result, in Germany too, the number of racist and inhuman violence and crimes is at an alarmingly high level. Those affected, experience discrimination in numerous areas of life. This is also accompanied by a perceived uncertainty on the part of persons working with children to critically address racist and right-wing extremist positions of political parties. Bearing in mind these movements, it is important that the UN Convention on the Rights of the Child is implemented comprehensively, and that the history of the Convention is seen as an enrichment that is considered in discussions in Germany, especially in new legislation – without the wording of the laws and discussions falling short of the progress made so far.

Having considered the discussion at the pre-sessional working group, the National CRC Monitoring Mechanism wishes to suggest certain aspects, set out in the form of suggestions herein, that the Committee may wish to consider including in the List of Issues it is currently drawing up in preparation for its constructive dialogue with the German Government. The National CRC Monitoring Mechanism would also like to point out that, in view of the parliamentary elections scheduled for the autumn of 2021 in the Federal Republic of Germany, the Committee may wish to consider requesting that its list of issues be addressed by the Federal Government formed following those elections, if possible, as that Government is likely to be act as the Committee's principal partner in the constructive dialogue to take place in May 2022.

¹ The wording "children and young people" is sometimes used herein as an alternative to the word "children" as defined in the UNCRC despite the fact that, in other contexts, the term "young people" often refers to both older children and young adults. The consideration here is twofold: (1) many older children prefer this term and (2) it allows this text to reflect the distinction commonly drawn in Germany, and German law, between Kinder (younger children) and Jugendliche (persons aged 14-18).

A. General measures of implementation (arts. 4, 42 and 44, para. 6)

Legal status of the Convention and comprehensive policy and strategy

Background

In mid-January 2021, the Federal Government put forth a draft bill aimed at incorporating children's rights into the Basic Law, Germany's constitution. In principle, we welcome the intention to incorporate children's rights in the Basic Law, but we are concerned that the wording of the bill, in its current form, falls significantly short of the standards in the Convention.²

Suggestion

- 1. Please explain to the Committee what measures the State party is taking to incorporate the Convention into the Basic Law in a manner ensuring that the wording in the Basic Law does not fall short of European or international law, and please specify the timeframe involved.**

Coordination

Background

Germany still lacks an effective body with adequate authority to coordinate the implementation of the Convention across the various federal ministries and between the federal and Länder levels. We should also point out that, at present, only two Länder have bodies of this kind (Hesse and Saxony-Anhalt). The absence of such coordination bodies was painfully evident during the efforts to stem the coronavirus pandemic: initially, the rights of the child played no role in that context.³ The legislative impact assessment project Youth-Check (Jugend-Check), is a tool that the CRC monitoring Mechanism welcomes. The youth-check was put in place to assess the impact of legislation on young people aged between 12 and 27 years. A legislative impact assessment – expanded to include the assessment of legislative impacts on children under 12 and in conjunction with central coordinating body at the federal level – could constitute an important tool for coordinating the implementation of children's rights at the federal level.

Suggestion

- 2. Please indicate when the State party intends to create a permanent national coordination body with adequate authority at the federal level, and please inform the**

² See detailed information in English: National CRC Monitoring Mechanism Germany: - Factsheet Children's Rights into the Basic Law. Questions on the current legislative proposal for Article 6 (2) of the Basic Law under: <https://www.institut-fuer-menschenrechte.de/publikationen/detail/childrens-rights-into-the-basic-law> (retrieved: 10 Feb. 2021).

³ This topic is addressed in greater depth in the National CRC Monitoring Mechanism's parallel report, pp. 15-17: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Parallel_Report_CRC_October_2019.pdf (retrieved: 03 Feb. 2021) and in the supplement to that report: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Supplement_to_the_Parallel_Report_of_the_National_CRC_Monitoring_Mechanism.pdf (retrieved: 03 Feb. 2021).

- Committee about measures the Federal Government intends to undertake to promote the establishment and development of corresponding structures at the Länder level.**
- 3. Please indicate when the legislative impact assessment project Youth-Check, will be expanded to include an early assessment of legislative impacts on children under 12 years of age and how it will be put on a statutory basis.**

Data collection

Background

In paragraph 16 of its 2014 Concluding Observations, the Committee called on the State party to establish a comprehensive and integrated system to collect data and to introduce indicators that can be used to analyse and assess progress in the realization of children's rights. Germany still does not have a comprehensive system in place for the collection of data across all the areas covered by the Convention. This means that governments at both the Länder and federal level continue to lack key information necessary to obtain a comprehensive picture of the status of the Convention's implementation. Likewise, data and information that would greatly facilitate independent monitoring of implementation by the National CRC Monitoring Mechanism and a monitoring by civil society is simply unavailable.⁴

Suggestion

- 4. Please describe the steps involved in the Federal Government's strategy to implement a comprehensive system for the collection of data based on children's rights. Please indicate the specific measures through which progress is being made in the development of children's rights indicators.**
- 5. Please provide information on whether the State party is calling for corresponding efforts on the part of the Länder, and if so, what action it is taking to do so.**

Independent monitoring

Background

The 2014 Concluding Observations included the recommendation that the German Federal Government establish an independent monitoring body with a mandate that includes the possibility of receiving, investigating and effectively addressing complaints of children's rights violations in a child-sensitive manner. The National CRC Monitoring Mechanism was set up within the German Institute of Human Rights in 2015. It is funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) as a fixed-term project whose current funding term expires at the end of 2022.

⁴ This topic is addressed in greater depth in the National CRC Monitoring Mechanism's parallel report, p. 17: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Parallel_Report_CRC_October_2019.pdf (retrieved: 03 Feb. 2021) and in the supplement to that report: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Supplement_to_the_Parallel_Report_of_the_National_CRC_Monitoring_Mechanism.pdf (retrieved: 03 Feb. 2021).

Suggestion

- 6. Please indicate when the Federal Government intends to place the work of the independent National CRC Monitoring Mechanism on a permanent basis. Please specify the timeframe within which the funding for the German Institute of Human Rights at the German Bundestag will be increased to support monitoring of the Convention.**

Germany was one of the first States to ratify the Optional Protocol on a Communications Procedure (OPIC). In order to access the OPIC mechanism though, children in Germany must overcome substantial hurdles. Normally, they must first take their case to court and continue to pursue it up through to the highest instance in Germany, and ultimately to the European Court of Human Rights as well. The National CRC Monitoring Mechanism was not provided with a mandate to receive and handle complaints of children's rights violations. We believe that establishing a structure in the direct environment of children and young people – hence, at the local level – should take precedence.⁵ A complaint mechanism at the national level should be a long-term objective. It should be noted that complaint mechanisms are being established both in the context of anti-discrimination work and in the area of child and youth services, such as the ombuds offices (*Ombudsschaft*) in the latter.⁶ However, there is no evidence yet on the part of the State party to establish and/or further develop complaints procedures for children at the national level, or even that this is a long-term goal.

Suggestion

- 7. Please explain to the Committee the processes through which the federal government and the Länder are moving forward with the much-needed creation and expansion of child-sensitive complaint mechanisms for children in their immediate environment and at the Länder.**
- 8. Please explain to the Committee what action the Federal Government is taking to facilitate access to the OPIC mechanism for children and what mechanisms and structures it intends, in the longer-term perspective, to create at the national level in order to make a national complaints mechanism for children in Germany a reality.**

Awareness-raising

Background

In its 2014 Concluding Observations, the Committee reiterated its earlier recommendations calling on the federal and Länder governments to raise awareness of the Convention among the public in Germany and to actively set about awareness raising and continuing professional training activities concerning the Convention for all groups that work with children.

⁵ This topic is addressed in greater depth in the National CRC Monitoring Mechanism's parallel report, p. 18: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Parallel_Report_CRC_October_2019.pdf (retrieved: 03 Feb. 2021) and in the supplement to that report: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Supplement_to_the_Parallel_Report_of_the_National_CRC_Monitoring_Mechanism.pdf (retrieved: 03 Feb. 2021).

⁶ That the child and youth services ombuds offices should take on the function of accepting complaints is a stipulation in the draft legislation "Gesetz zur Stärkung von Kindern und Jugendlichen (Kinder- und Jugendstärkungsgesetz - KJSG)" (retrieved: 10 Feb. 2021)

Suggestion

- 9. Please describe measures undertaken by the State party and the Länder to raise the awareness of the Convention of all of those who work with children in Germany, particularly those in the media, education, justice and health sectors. Please describe action taken to actively involve children and their parents or guardians.**

B. General principles (arts. 2, 3, 6 and 12)

Voting age

Background

There is increasing discussion in Germany about the idea of lowering the voting age, with reference to article 12 of the Convention and the principle of participation. Under Article 38 (2) of the Basic Law and section 12 (1) of the Federal Electoral Act (*Bundeswahlgesetz*), children under the age of 18 are not entitled to vote in federal elections. Developments at the Länder and local levels– the voting age has already been lowered to 16 in some Länder ⁷ – have made it apparent that the principles of universal and equal suffrage need not necessarily always be tied to a specific age. Reducing the voting age was also the subject of a recommendation voiced by Austria within the framework of the Universal Periodic Review of the human rights situation in Germany.⁸

Suggestion

- 10. Please indicate whether the State party intends to take measures to further lower the minimum voting age for local elections, parliamentary elections at the Länder and federal level and European elections as well as for referendums and public petitions, and if so, please describe these measures.**

Child-sensitive justice system

Background

There are many respects in which the situation of children and young people in administrative and judicial proceedings in Germany does not conform either with international human rights requirements or with the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice⁹. Many children feel that they do not receive adequate information during or after proceedings, are not perceived as capable of exchange on an equal footing and not provided with appropriate support.

⁷ Cf. in German: <https://landkarte-kinderrechte.de/maps/wahlberechtigung-u18.html> (retrieved: 03 Feb. 2021).

⁸ Cf. Recommendation 155.147, Recommendations issued within the Universal Periodic Review of Germany, 30th Session of the UN Human Rights Council.

⁹ [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) (retrieved: 03 Feb. 2021).

Moreover, a lack of data and key information renders it impossible to obtain a comprehensive picture of the status of Convention implementation on a regular basis.

Suggestion

11. Please explain the strategic approach that Germany is pursuing to ensure better implementation of children’s rights in the systems of justice and the administration, with reference to legislative amendments, continuing training in the justice system and targeted research within the meaning of the European and international standards on “child-friendly justice”.

C. Civil rights and freedoms (arts. 7, 8, 13-17, 19, 37 (a))

Registration of births

Background

Problems associated with the registration of children born in Germany to parents who are unable to present adequate proof of identity (for instance, parents’ birth and marriage certificates, official identification) continue to occur. There have been reports of children who received only a print-out from the birth registry containing a qualifying remark concerning the identity of their parents or merely a certificate confirming that the birth was reported to the registry office. Particularly problematic in this respect is the fact that these official documents issued in lieu of a birth certificate are not recognised by all of the authorities that require that parents present a birth certificate in order to register their child or draw benefits for them. This means that the children concerned are unable to exercise all of their rights or claim benefits to which they are entitled.¹⁰

Suggestion

12. Please describe the measures that the State party intends to take to ensure that a birth certificate can be issued without delay to any child, irrespective of the parents’ legal status and/or country of origin.

Children of incarcerated persons

Background

The right of the child to contact with both parents is laid down in article 9 of the Convention. This right applies even when action initiated by the state, such as the imprisonment of a parent, has rendered such contact difficult. In Germany, the Länder are responsible for regulating and implementing policies on children’s visits to and contact with their imprisoned parents. Although the Conference of Ministers of Justice of the Federal States has taken up this issue, there are still no nation-wide minimum standards

¹⁰ Based on the responses to a written enquiry by the National CRC Monitoring Mechanism addressed to advising services in all Länder, April 2017.

for child-sensitive visitation and contact possibilities. Moreover, most of the few offerings that do exist were suspended during the coronavirus pandemic. Further, there has been no provision for the systematic exchange on good-practice experiences among the Länder.¹¹

Suggestion

- 13. Please update the Committee on developments since the 5th/6th State-party report relating to the realisation of nation-wide minimum standards for regular, direct contact between children and an incarcerated parent.**
- 14. Please explain to the Committee when the Federal Government plans to promote systematic exchange on good-practice experiences relating to child-sensitive visitation and contact opportunities.**

Freedom of religion

Background

Calls at the Länder level for a ban on wearing headscarves at schools for Muslim girls have been gaining ground since 2019. The aims of protecting against gender discrimination and the protection against parental coercion are put forth as justifications for such prohibitions. However, children's religious freedom must be the starting point for any assessment of a head-scarf ban from the perspective of fundamental and human rights. When examining, in the context of the German legal order, a question in which the tensions between school and the practice of religion are manifest, one must bear in mind with that the Basic Law (*Grundgesetz*) is characterised by a liberal understanding with respect to religious constitutional principles (*Religionsverfassungsrecht*):

The Basic Law is not secularist in design: rather, it presumes relation of supportive neutrality between the state and religion/religious communities. For the school context, article 29, paragraph 1(d) of the Convention must also be applied: this provision gives rise to an obligation on the State to ensure that the school environment itself provides conditions conducive to diversity, including with respect to religion. General bans on headscarves at schools thus violate the religious freedom of children guaranteed by fundamental and basic rights.¹²

Suggestion

- 15. Please describe for the Committee what action the Federal Government intends to take to protect the religious freedom of children guaranteed by fundamental and human rights in the light of Art. 29 paragraph 1(d) of the Convention and the religious constitutional principle of supportive neutrality.**

¹¹ This topic is addressed in greater depth in the National CRC Monitoring Mechanism's parallel report, pp. 23-24: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Parallel_Report_CRC_October_2019.pdf (retrieved: 03 Feb. 2021).

¹² Further information in German - Monitoring-Stelle UN-Kinderrechtskonvention. Die Religionsfreiheit von Kindern im schulischen Raum. Zur Diskussion über Kopftuchverbote für Schülerinnen (retrieved: 10 Feb. 2021).

D. All forms of violence against children (arts. 19, 37 (a) and 39)

Children with variations of sex characteristics (“Intersex children”)

Background

The medical practice in Germany of performing surgical procedures on the internal or external sex characteristics of children in order to bring the physical appearance of the child in line with that of the male or female sex has been the target of criticism by numerous UN treaty bodies and the European Parliament for some time now.¹³ Draft legislation was put forth by the Federal Government in 2020 that would ban the performance of targeted sex-adaption procedures on children with variations of sex characteristics, with only a few exceptions. For these few exceptional cases, the draft provides for a hearing by an interdisciplinary commission. However, so far none of the members of this commission are persons representing the interests of the child concerned or qualified intersex persons. Moreover, the bill does not address the need for a central registry that would facilitate access to patient records by persons affected even years after the fact.

Suggestion

- 16. Please specify the individual steps currently being taken – in view of the gravity of the irreversible interventions on children with variations in sex characteristics – to ensure that the interests of children who are born intersex are represented in all cases.**
- 17. Please inform the Committee when and through what measures – aside from the extension of the retention period for patient records – the State party plans to ensure that persons affected can obtain access to their patient records.**

Protection against violence in institutions for refugee children

Background

Almost half of all asylum requests submitted in Germany relate to children. Many of these children have to live in collective accommodation, and the length of time they remain there is increasing. In recent years, the efforts of many partners active within the federal initiative, led by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and UNICEF, to protect refugees in refugee accommodation centres have resulted in the improvement of protections in these centres, for instance through the development of minimum standards for the protection vulnerable groups in refugee accommodation centres. However, reception centres and collective accommodation facilities are still far from being safe places for children, due to structural factors. While legislation imposing an obligation on the Länder to take steps to protect women and other vulnerable groups, thus also children, (§ 44 (2a)

¹³ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Germany, 09 Mar. 2017, para. 24 (d) and (e) (CEDAW/C/DEU/CO/7-8); UN Committee against Torture, Concluding observations: Germany, 12 Dec. 2011, para. 20 (CAT/C/DEU/CO/5); UN Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Germany, 13 May 2015, para. 38 (d) (CRPD/C/DEU/CO1); UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Germany, 27 Nov. 2018, paras. 24 and 25 (E/C.12/DEU/CO/6); European Parliament, B8-0101/2019.

and §53 (3) of the Asylum Act (AsylG)) entered into force in August 2019, this has not contributed to an improvement in the situation so far.¹⁴

Suggestion

18. Please inform the Committee whether binding minimum standards for all types of accommodation facilities will be introduced through legislation at the federal level, and if so, when. Please specify the types of accommodation facilities that will come under an obligation to draw up, apply and further improve a facility-specific violence protection plan.
19. Please specify measures the State party intends to take to ensure that it always has basic data and statistical information available about persons living in reception centres, and when will these measures be in place.

Gender-Based Violence (Istanbul-Convention)

Background

Thanks to the *Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul-Convention)*, the issue of gender-based violence has received an increased attention in public interest in Germany.¹⁵

Suggestion

20. Please report to the Committee, what concrete measures the Government will take to identify the remaining protection gaps for the protection of children from gender-based violence and exploitation and what measures it will take to close them.

E. Family environment and alternative care (arts. 5, 18 (1and 2), 19-21, 25, 27 (4) and 39)

Measures that deprive children in their liberty

Background

During the period under report, the federal legislation known as the Child and Youth Services Act (*Kinder und Jugendhilfegesetz*, also known as *Sozialgesetzbuch, Achtes Buch/ Book VIII of the Social Code*) was the subject of several very welcome amendments that strengthened the position of children as right holders. As the National CRC Monitoring Mechanism, we have observed with considerable

¹⁴ The study on this topic "Gewaltschutz in Unterkünften für geflüchtete Menschen" is available from www.unicef.de/presse and at www.institut-fuer-menschenrechte.de/publikationen/detail/gewaltschutz-in-unterkuenften-fuer-gefluechtete-menschen (retrieved: 08 Feb. 2021).

¹⁵ The German Institute for Human Rights conducted a survey from February 2019 – July 2020 in order to identify challenges and develop recommendations.

concern, however, the increase in the number of child and youth services institutions operating with measures that deprive children of their liberty.¹⁶

Suggestion

- 21. Please explain to the Committee how the State party justifies the increase in the number of institutions providing care in the use of measures that deprive children in their liberty on children and youth in Germany.**
- 22. Please provide information on action being taken to prevent the further expansion of such measures and to move forward with deinstitutionalisation and the establishment of outpatient assistance as the preferred form of care.**
- 23. Please provide the Committee with disaggregated data on the situation of children who have been affected by measures that deprive children in their liberty and on the receipt of complaints within the last three years.**

F. Disability, basic health and welfare (arts. 6, 18 (3), 23, 24, 26, 27 (1-3))

Standard of living/Poverty

Background

The coronavirus pandemic had a particularly severe impact on children living in poverty and has exacerbated pre-existing disadvantages. Additional material benefits are not adequate to compensate for the extra expenses caused by the coronavirus pandemic and are linked only to the family. This linkage carries with it the danger that children who do not live with their families will not profit from such additional benefits.¹⁷ In addition, the social security administration was not flexible enough to permit an appropriately response to the pandemic's consequences: additional benefits to cover expenses that were obviously necessary to support participation and education – e.g., the provision of a mobile device – had to be obtained through the courts¹⁸ in some cases or were only granted after delays.

Suggestion

- 24. Please specify individual actions that the State party plans to undertake to establish a coherent policy to combat child poverty that will have an effect during and after the coronavirus pandemic and be based on children's rights and sensitive to discrimination.**

¹⁶ Cf. for instance, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl117s2424.pdf (retrieved: 08 Feb. 2021). Fendrich, S. et al. (2018): Neue Daten des Statistischen Bundesamtes erschienen. Ed. Arbeitsstelle Kinder- und Jugendhilfestatistik. p. 1 f.

¹⁷ While children living in residential facilities or child and youth services institutions can obtain the child bonus, refugee families and unaccompanied minors are often excluded. For more detail on this see <https://b-umf.de/p/kinderbonus-viele-gefluechtete-familien-bleiben-ausgeschlossen-dabei-sind-diese-besonders-stark-belastet/> [retrieved: 19 Oct. 2020].

¹⁸ See, for instance, the judgement of 25 May 2020 of the Higher Social Court of North Rhine Westphalia: LSG NRW, L 7 AS 719/20 B ER. In this case, a school pupil succeeded in getting the cost of a tablet to use for schoolwork recognised as a covered extra expense caused by the pandemic.

- 25. Please describe how the State party will assess these measures. Please specify the actions the State party is taking to ensure the participation of children, young people and their family environments.**
- 26. Please describe action taken by the State party to place children as the subjects of entitlements at the focus of its efforts.**

G. Education, leisure and cultural activities (Art. 28, 29 and 31)

Access to education for refugee children

For most children in reception centres for asylum seekers, it is frequently the case that no possibility exists de jure or de facto for them to attend a regular school. Thus, since a considerable percentage of these children live¹⁹ in a reception centre for several months, the access to education²⁰ that is guaranteed by human rights is being denied to children for prolonged periods of time. From a legal perspective, this is primarily due to the fact that while compulsory schooling exists everywhere in Germany, this legal obligation does not apply to children in reception centres in the vast majority of the Länder. In practice, the circumstance that the schools in the area around the reception centre do not have sufficient places available renders authorities unable to ensure school attendance or only able to do so after some delay. In addition, there are frequently delays the flow of information from the reception centre to the schools authority responsible for registering new students. The instruction offered in some centres as an alternative is no substitute for a regular school.

Suggestion

- 27. Please explain to the Committee what specific measures are planned to comprehensively ensure access to education in regular schools to all refugee children nationwide.**

Inclusive education

Background

The UN Committee on the Rights of the Child has urged Germany to pursue the establishment of an inclusive education system nation-wide, to ensure that the necessary resources are available and to undertake all necessary legislative and structural reforms. Only a few Länder (Berlin, Bremen, Hamburg and Schleswig-Holstein) can point to a declining rate of exclusion coupled with an increase in the rate of

¹⁹ § 47 (1) of the Asylum Act provides for a maximum duration of stay in reception centres of six months in the case of minor children and their parents or other guardians and their adult, unmarried siblings. Refugees from so-called safe countries of origin often remain periods at a reception centre for much longer.

²⁰ Articles 28 and 29 of the Convention, Article 26 of the Universal Declaration of Human Rights, article 13 of the International Covenant on Economic, Social and Cultural Rights, article 24 of the UN Convention on the Rights of Persons with Disabilities, article 2 of Protocol No. 1 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14 of the Charter of Fundamental Rights of the European Union.

inclusion. In addition, efforts to protect against violence and discrimination in education institutions should be intensified.²¹

Suggestion

- 28. Please indicate to the Committee the timeframe within which the State party expects the Länder to have developed their own comprehensive plans for ensuring the right to inclusive education (including early childhood education in institutions providing day-care), and what measures are being used for this purpose.**
- 29. Please indicate how the Länder will assess experiences during the coronavirus pandemic in conformance with children's rights and how they will integrate any insights gained into the necessary legislative and structural reforms.**

H. Other special protection measures (arts. 22, 30, 32- 36, 37 (b)-(d) + optional protocols)

Refugee and asylum-seeking children – Family reunification

Background

Beneficiaries of international protection in Germany seeking reunification with their families continue to encounter serious legal and practical problems.²² Extensive restrictions on family reunification apply in the cases of unaccompanied children and young people recognised as refugees under the Geneva Refugee Convention. Under German law, the siblings of unaccompanied children are not members of the nuclear family of the latter. These siblings can only obtain a residence permit on family reunification grounds²³ under very limited and exceptional circumstances, and even then, the child beneficiary of protection has to show sufficient living space for the family and, normally, sufficient means to secure subsistence. It is often impossible for the persons concerned to meet these requirements. In practice, this regularly results in the rejection of applications for visas for siblings, placing parents in the intolerable situation of having to decide whether to leave their children behind in their country of origin or country of first reception or to stop seeking reunification with a child living in Germany, or to split up to make it possible for each their children to live with a parent.²⁴

Suggestion

- 30. Please inform the Committee when the State party, bearing in mind the principle of the best interests of the child, will allow reunification with siblings.**

²¹ Cf. CRPD Monitoring Mechanism Germany: Pre-List of Issues on Germany – right to inclusive education on page 16 (regarding article 24 UN-CRPD. For further information see also: German Institute for Human Rights: The human right to education in the German school system - What will it take to reduce discrimination: <https://www.institut-fuer-menschenrechte.de/publikationen/detail/the-human-right-to-education-in-the-german-school-system> (retrieved: 08 Feb. 2021).

²² Cf. press release on this topic of 16 Dec. 2020: Das Recht auf Familie gilt auch für Geschwisterkinder. Deutsches Institut für Menschenrechte (institut-fuer-menschenrechte.de).

²³ When necessary to prevent exceptional hardship or when the child may be eligible for a visa for the purposes of reunification by way of the parents under the terms of section 32 of the Residence Act (AufenthG).

²⁴ Position paper: Hürden beim Familiennachzug – Das Recht auf Familie für international Schutzberechtigte.

31. Please explain how the State party ensures that the best interests of the child are a primary consideration in proceedings concerning family reunification involving children.

International cooperation

Background

The Federal Ministry for Economic Cooperation and Development (BMZ) published the first action plan “Agents of change – Children and youth rights in German development cooperation activities” in 2017. We welcome the envisioned expansion of participation mechanisms for young people.

The global challenges for the realisation of the rights of children and young people are increasingly formidable, due, in part, to the coronavirus pandemic and to the effects of climate change. German development cooperation should assign the highest priority to supporting the realisation of children’s rights around the world and stock its portfolio with respective effective measures. Development Cooperation should expand its support for children’s rights also financially and attempt to make funding amounts and purposes transparent.

The BMZ should develop clear quality requirements and corresponding systems to monitor impacts and financial volumes. A child protection policy providing extensive protections for children against abuse, violence and exploitation in projects commissioned by the BMZ is necessary to flank an increase in the number of projects aimed at realising children’s rights. The adoption of a policy of this kind for the BMZ youth advisory board is a step in the right direction; one that should be followed in the medium term by a corresponding policy for all projects commissioned by the BMZ.

Suggestion

32. Please describe measures the State party is planning to promote children’s rights more intensively through German Development Cooperation, above all in response to the coronavirus pandemic and the effects of climate change.

33. Please indicate what steps the Government, led by the Federal Ministry for Economic Cooperation and Development (BMZ), intends to take to ensure that children are effectively protected from abuse, violence and exploitation in all of the projects commissioned by the BMZ.

Imprint

German Institute for Human Rights
Zimmerstrasse 26/27, 10969 Berlin, Germany
Phone: +49 30 25 93 59-0
Fax: +49 30 25 93 59-59
un-krk@institut-fuer-menschenrechte.de
www.institut-fuer-menschenrechte.de/en

CONTACT: Judith Feige, Sophie Funke, Claudia Kittel

LICENSE: Creative Commons (CC BY-NC-ND 4.0)
<https://creativecommons.org/licenses/by-nc-nd/4.0/deed.en>
February 2021

German Institute for Human Rights

The German Institute for Human Rights is the independent National Human Rights Institution of Germany. It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organizations. It is financed by the German Federal Parliament (Deutscher Bundestag). In addition, the Institute is specifically mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and has established Monitoring Bodies for these purposes.