

Imprint

Implementation of the UN Convention on the Rights of the Child in Germany 5th/6th supplementary report to the United Nations

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NETWORK FOR THE IMPLEMENTATION OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD

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Implementation of the UN Convention on the Rights of the Child in Germany

5th/6th supplementary report to the United Nations

Foreword

**“If you want to go quickly, go alone.
But if you want to go far, go together.”** proverb

To complete this report on children’s rights in Germany, 101 organisations have been working together for two years. The National Coalition Germany was founded in 1992 as a network of organisations active in Germany to raise awareness on children’s rights and promote the implementation of the UN Convention on the Rights of the Child.

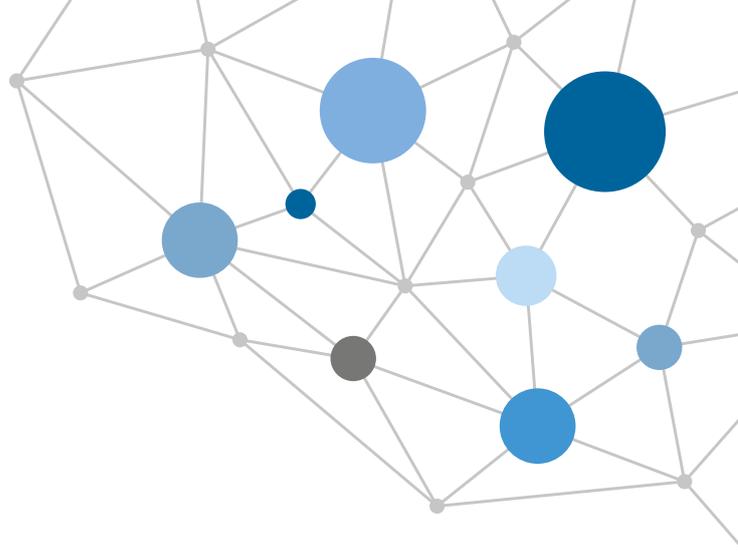
It is the fourth time that the National Coalition Germany took the responsibility to comment on and add to the State Report of the German Federal Government, which has been published on 4th April 2019. Based on the recommendations by the UN Committee on the Rights of the Child in 2014, 22 member organisations took charge of coordinating a decentralised writing process, and worked with other member organisations to compose parts of this report – on education, health, poverty and many other issues. Their common aim was to assess, at a civil-society level, how the Federal Government implemented the recommendations from the last reporting cycle. Furthermore, new topics were added by member organisations, many directly referencing the Federal Government’s State Report.

Our report, just as the State Report, follows the reporting guidelines set by the United Nations, in order for both reports to be read in parallel. Both reports are numbered in the same way. Any interruption of the numbering indicates gaps in content,

which we see as mandate for our further development: The more we know, the more questions arise. If an issue is not raised in this Supplementary Report, this does not mean no need for action.

Joint discussions on the drafts made us learn a lot from each other, and increased the wealth of knowledge and expertise within the member organisations of the National Coalition Germany. The collaboration between the various member organisations has strengthened the ties between them, the network has grown, and with it the common understanding of children’s rights. The Supplementary Report was written in autonomously working groups led by member organisations and drafts were discussed in open meetings online and offline. An editorial group and a project manager added the finishing touch and organised layout, translation and dissemination.

One of the greatest challenges associated with the report was that of recording developments at a municipal, state and national level. The federal system means that responsibility for legislation and execution does not always occur at the same level; for example, the states have authority over education-related decisions, while the State Report and Supplementary Report are primarily federal-level activities. Meanings of individual words and age-group structures also posed a challenge for the authors.



According to the UN Convention on the Rights of the Child, all people aged under 18 are children, though 15-year-olds would tend to see themselves more as adolescents, and the 'young adults' age group established by law in Germany applies up to the age of 27, thereby exceeding the framework of the UN Convention on the Rights of the Child and the term 'child'.

These are only a few examples of a heightened awareness of diversity and diversity-sensitive language, also highlighted in this report. We hope we

have put together a good, diverse report that supports the promotion and protection of children's rights for all children and youth in Germany.

Last, but not least a remark on the participation of children and youth in the reporting cycle, which is a very important issue to the National Coalition Germany. In addition to this report, we will publish the Second Child Rights Report written by children and youth: a must-read!

Berlin, 22 October 2019

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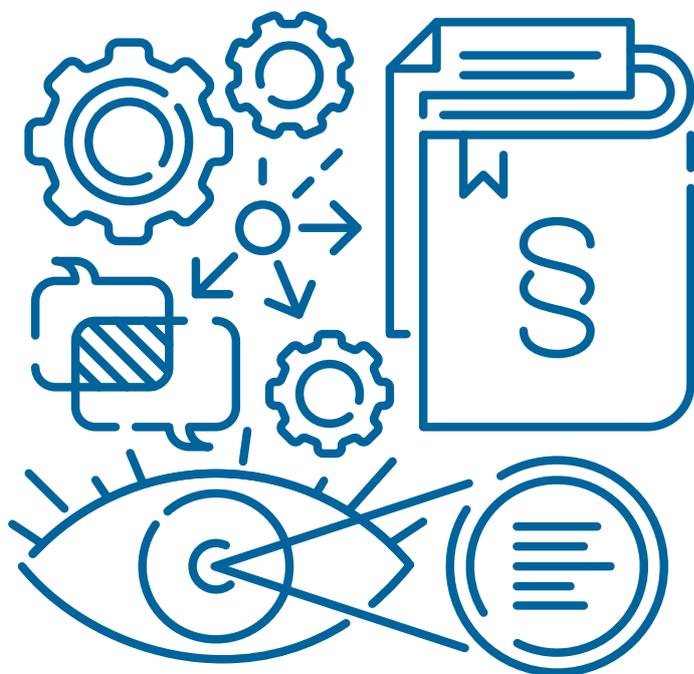
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1. General measures of implementation



precedence over simple federal law. The principles of the UN Convention on the Rights of the Child are, however, yet to be duly reflected in the Basic Law, apart from the protection against discrimination, as established in its Article 3 Paragraph 3.

The current legal situation in Germany thus does not sufficiently ensure implementation of children's rights; there are considerable shortcomings in the way children's interests are taken into account, and in the way children are promoted and

1.a The rights of the child in the German Constitution

The Basic Law (*Grundgesetz*) is the German Constitution. As the guiding law overarching all other German statutory regulations, however, it does not adequately provide for children's rights. While children are mentioned, they are not expressly named as original legal subjects, but rather only as the object of Article 6 of the Basic Law.

According to Article 4 of the UN Convention on the Rights of the Child, Germany is obliged to implement the provisions of the Convention in its national law, and must ensure basic principles and directives are executed effectively. The Committee has repeatedly urged Germany to ensure that the UN Convention on the Rights of the Child takes

precedence over simple federal law. The principles of the UN Convention on the Rights of the Child are, however, yet to be duly reflected in the Basic Law, apart from the protection against discrimination, as established in its Article 3 Paragraph 3. The current legal situation in Germany thus does not sufficiently ensure implementation of children's rights; there are considerable shortcomings in the way children's interests are taken into account, and in the way children are promoted and involved in decision-making, as the process for deducing these rights – through an interpretation in the light of public international law or a combination of constitutional provisions – is complex.¹ The Committee is rightly of the opinion that enshrining general human rights in the Constitution does not suffice to ensure the respect of children's rights.²

In Germany, children's rights currently attract great society and politics. They are stipulated in 15 of the 16 state constitutions (all except in Hamburg), to varying degrees.³ In October 2018, the state of Hesse incorporated children's rights into its constitution in the form of the right to development, the best interests of the child, and the right to participation.⁴ The governing parties' coalition agreement of 2018 stipulates that children's rights are to be enshrined in the German Constitution (Basic Law) as a basic right,⁵ though the details and exact formulation remain open.

Explicitly including children's rights in the German Basic Law would create a requirement for all fields of law, which would take precedence over mere federal laws. This would provide normative clarity, and result in substantive and procedural consequences that can have tangible impact on children's lives.

Ensuring the best interests of the child as a primary consideration at constitutional level is necessary in order for those applying the law to give adequate weight to these interests. To date, the best interests principle has not been expressly enshrined as an overarching benchmark for all legal fields in ordinary or constitutional law. A child's basic independent right to participation cannot be easily derived from the general personal rights established in Article 2, in conjunction with Article 1 of

the Basic Law. Explicit incorporation into the Basic Law can improve child-specific interpretation of ordinary law, and prompts legislators to enact specific participation rights in various areas of ordinary law.

While the general personal rights include the right to development, this needs to be further honed in the Basic Law to be more child-specific. Unlike adults, children are not at liberty to further their development as part of a free and unhindered personal development of the individual, but are dependent on special assistance for this. In addition to the protection mandate, the wording must also include a mandate to fulfil children's rights so as to guarantee the realisation of children's rights through proactive, promoting measures. The 'respect, protect and fulfil' framework commonly found in human-rights treaties would be used here.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

1. **Explicitly constitutionalise the general principles of the UN Convention on the Rights of the Child in the German Basic Law (Constitution), as per recommendation 10 in the UN Committee's Concluding Observations of 2014. It is important to ensure that the incorporated children's rights establish subjectively enforceable rights, and include both the best interests principle and the rights to participation, a child-specific right to development, and the mandate for protection and promotion.**

1.b Comprehensive national strategy

The German federal government has only catered to the recommendations from the UN Committee's Concluding Observations on the comprehensive children's rights strategy in Germany to a limited extent since 2014, and further measures to formulate a comprehensive children's rights policy have not progressed significantly. Comprehensively implementing the UN Convention on the Rights of the Child as a policy requires both a vertical and horizontal perspective. Vertical means the UN Convention on

the Rights of the Child is implemented legally and effectively at a federal, state and municipal level. It is so far not clear whether and how municipalities, states and federal government plan to work together to take the UN Convention into account in political processes and decisions. Horizontal means that children's rights not only play a role in terms of children, adolescents and families, but are also incorporated into all fields of policy.

The Concluding Observations from 2014 mention four central, institutional components for comprehensively implementing the UN Convention on the Rights of the Child in Germany. These are aimed at independent monitoring, data collection and analysis, complaints management, and internal

coordination within the government. At least one component was addressed with the establishment of an independent monitoring institution at the German Institute for Human Rights in 2015. With regards to other requirements, such as data collection and analysis, initial efforts have been identified, but there continues to be a lack of reliable data examining the actual living conditions of children and adolescents in terms of the UN Convention on the Rights of the Child. When collecting the data, the provisions of Article 2 of the UN Convention on the Rights of the Child must particularly be clarified across the board, and their consequences tackled. There continues to be a lack of municipal, state and federal ombudsman services established for the long term where children and adolescents can demand their rights, as well as a lack of internal coordination within the government to comprehensively implement the UN Convention on the Rights of the Child at the various levels.

Since 2011, efforts have been made in Germany to reinforce an independent youth policy (*Eigenständige Jugendpolitik*) as a form of comprehensive policy for young people. The youth policy identifies an approach that places the interests and needs of young people aged between 12 and 27 at the centre of interdisciplinary political action. More specifically, a 2015–2018 youth strategy has been developed by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) in recent years, entitled 'Taking action for a youth-friendly society' (*Handeln für eine jugendgerechte Gesellschaft*), which, among other things, seeks to highlight youth-policy approaches in various areas and regional levels, exemplarily increase participation opportunities, and create regulatory impact assessment for young people in the form of a 'Youth Check'. The National Action Plan 'for a child-friendly Germany 2005–2010' was discontinued.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

2. **Develop and indefinitely extend programmes and projects to enable a comprehensive policy to implement the UN Convention on the Rights of the Child at a vertical and horizontal level, and to provide adequate financial and human resources for this;**
3. **Ensure the Youth Check competence centre can operate permanently;**
4. **Develop a suitable instrument for assessing the impacts of laws for children and youths.**

1.c Coordination of implementation

The German federal government has not complied with the UN Committee's recommendation 14 from 2014 'to establish an appropriate, permanent national office'. Some states have municipal or state coordination centres that deal with subspects of the UN Convention on the Rights of the Child. The following German states have coordination centres for youth and adolescent participation: Baden-Württemberg, Berlin, Brandenburg, North-Rhine Westphalia, Saxony and Saxony-Anhalt. Their task is primarily to advise and connect municipal institutions regarding child and adolescent participation.

At a municipal level, there are many different approaches to co-ordinating implementation of the UN Convention on the Rights of the Child. Naming, sponsorship, mandate and resources vary greatly. There is no structural link to the federal and state level. Each municipality thus makes its own decisions as to how children's and adolescents' rights, as defined by the UN Convention on the Rights of the Child, are protected, how the participation of children and adolescents is ensured, and how child-friendly urban and regional development is promoted.⁶ In general, the municipalities primarily act in accordance with the German Child and Youth Services Act (*Kinder- und Jugendhilfegesetz*), without placing their main focus on the UN Convention on the Rights of the Child.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

5. Set up and structurally consolidate a central coordination office at a federal level as per the UN Committee's recommendation 14 from 2014 in order to achieve vertical and horizontal implementation of the UN Convention on the Rights of the Child at all levels;
6. Grant the coordination centre appropriate powers and funding;
7. Create conditions – through dialogue with the states and municipalities – to ensure similarly equipped and mandated coordination centres can be created at a state and municipal level.

1.d Data collection

In 2014, the UN Committee called on the German federal government to establish a comprehensive data-collection system for children and introduce indicators for children's rights. Despite this recommendation, it is yet to set up such a system. Apart from the recommendation, however, there are a few pieces of useful information to be found in Appendix 2 to the State Report and in the Common Core Document. During the reporting period, the German

Institute for Human Rights also started developing indicators for three articles of the UN Convention on the Rights of the Child.

Both the data-collection system requested by the Committee and the children's rights indicators are designed to facilitate assessments of children's overall situations and guide the formulation, monitoring and evaluation of political measures, programmes and projects for successful implementation of the Convention. As part of the regulatory impact assessment, and when evaluating a law, legislative proposals affecting children or families must refer to the children's rights that have been upheld

as a result of said activities. In order to ascertain the differences in the upholding of children's rights based on the age, sex, health, disability, geographical location, ethnicity, migration status and socioeconomic background of the children and adolescents, it is essential to have a correspondingly systematic reporting mechanism for these subpopulations of children and adolescents.

The data availability to date can be found in Appendix 2 to the State Report. For some issues, data is itemised by age, sex or so-called 'migration background'. For some other issues, it is possible to observe the development over several years during the reporting period, e.g. in the abuse of children entrusted to care. For other issues in turn, comparisons can be drawn between German states, e.g. in special-education support. The data available to date does not allow for systematic breakdown by age, sex, disability, geographic location, ethnicity, migration status or socioeconomic background.

This very heterogeneous data in terms of quality, breakdown, geographic origin and time frame makes it difficult to develop children's rights indicators,

which the monitoring mechanism for the implementation of the UN Convention on the Rights of the Child at the German Institute for Human Rights has currently undertaken. It is essential for civil society to be involved in selecting the indicators and also to decisively broadening them in order to document the progress in implementing the entire UN Convention on the Rights of the Child in Germany.

The legibility of the State Report would also be aided by clearly linking text components and data appendices. For example, the appendices contain data on aspects such as HIV infections, which are not mentioned in the text component of the report. Conversely, text components in the main section are not backed up by data. Data are lacking on, for instance, family reunification, asylum-seeking processes, digital forms of sexual abuse, or youth involvement in court procedures. In addition to this quantitative data, analyses of unreported cases are also necessary, e.g. in cases of violence, as are studies on the effectiveness of various forms of participation.

“Migration background”

*The German Federal Statistical Office defines migration background as follows: 'A person is deemed to have a migration background if they themselves, or at least one of their parents, were not born a German citizen. Specifically speaking, persons with a migration background include all foreigners, (late) resettlers and naturalised persons. They also include persons who were born German citizens but for whom at least one parent is a foreigner, late resettler or naturalised person.'*⁷

*'Migration background' has been determined by 19 questions based on the German Microcensus Act since 2016, though various studies or institutes, such as the PISA, the German Federal Employment Agency, the German Federal Institute for Vocational Education and Training, and the joint EU census for 2011, establish it through fewer questions. For example, they take into account the parents' countries of origin, the language spoken at home, and other factors.*⁸

*The term 'persons with a migration background' was initially used in administrative and scientific terminology, but since it has now also entered the vernacular, some people find it stigmatising, as it is now primarily associated with (Muslim) 'problem groups'.*⁹

The National Coalition Germany uses the term 'so-called migration background' to reference the State Report, even though it is aware of its stigmatising effect. As numerous source texts do not use the German Federal Statistical Office's definition consistently, it is similarly impossible to guarantee consistent use of the term in the Supplementary Report.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

8. Establish an extensive and integrated data-collection system specific to children, covering all German states and the entire age range from childhood to 18, and to introduce indicators for children's rights, which can be used to analyse and assess the progress made in upholding these rights. The data should be broken down by age, sex, disability, geographic location, ethnicity, migration status and socioeconomic background in order to facilitate assessment of the children's overall situation and act as a guide for preparing, monitoring and evaluating political measures, programmes and projects for successful implementation of the Convention.
9. Provide adequate resources to the monitoring mechanism at the German Institute for Human Rights to enable civil society to be extensively involved in preparing children's rights indicators.

1.e International assistance and development aid

The German Federal Ministry for Economic Cooperation and Development (BMZ) has boosted its efforts to place greater importance on children's rights in international cooperations. Passing the first action plan on children's and youth rights in 2017 was a key step, except that it is primarily a compilation of children's rights projects that are already being supported. As such, it is not clear how the action plan additionally contributes to securing children's rights in the development cooperation. A monitoring system is also lacking, meaning progress cannot be systematically recorded. There is absolutely no link whatsoever between the action plan and the BMZ's human rights concept or the Sustainable Development Goals. The interim report for the action plan, which had been due in autumn 2018, still has not been published in June 2019. From a civil-society perspective, children's rights continue to not be given priority in the BMZ's strategy, even though children and adolescents make up the majority of the population in many countries, totalling some 2.3 billion worldwide. Protecting and aiding

the holistic development of the most marginalised and vulnerable children and adolescents must thus take precedence in international cooperations.

Children's rights must be treated as a priority in bilateral government negotiations. The recommendations by the UN Committee on the Rights of the Child must be incorporated into strategy-development and priority-setting processes for recipient countries when allocating resources, and into bilateral and multilateral agreements. The introduction of a policy marker for children's rights in the BMZ's programme and project management would enable state-resource usage to be identified.

To date, the commitment to provide 0.7 percent of the gross national income (GNI) in funding was only upheld in 2016, due to the ability to offset the OECD criteria for refugee costs incurred in Germany.

Children and adolescents must also be protected against risks in the context of national cooperation projects and programmes. This requires standards such as a child-protection policy. Instead of just assessing the introduction, as stated in the action plan, the BMZ and the implementing organisations commissioned by it should bindingly establish a child-protection policy as soon as possible.

Last but not least, there need to be qualitative opportunities for child and adolescent participation,

not only so that the current projects and programmes can be made more impact-oriented and

sustainable, but also so that democracies of the future can be supported.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

10. Achieve the international target of providing 0.7 percent of GNI in funding as part of the development cooperation, without factoring in expenses incurred as part of the refugee aid programmes in Germany;
11. Develop a coherent overall strategy with concrete, workable projects and review mechanisms, such as an indicator for resource usage for children's rights projects, in order to consistently establish children's rights as a permanent fixture in Germany's development policy and in bilateral government negotiations;
12. Introduce a binding child-protection policy for the German Federal Ministry for Economic Cooperation and Development, and the implementation organisations commissioned by it, as soon as possible.

1.f Independent monitoring mechanism

The German federal government acted on the UN Committee's recommendation from the Concluding Observations from 2014 and, in 2015, set up a monitoring mechanism for the implementation of the UN Convention on the Rights of the Child at the German Institute for Human Rights (DIMR) as a project temporarily funded by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), running until the end of 2019.

This monitoring mechanism checks sections of the legislation at a federal level, and sometimes also at a state level, to ensure they comply with the normative provisions of the UN Convention on the Rights of the Child and its Optional Protocols. It informs the various stakeholders at the federal or state level, sometimes also at the municipal level, of the Convention's provisions, and refers to their comments on interpreting the various articles of the Convention. In the event of shortcomings in implementing the UN Convention on the Rights of the

Child, made known to the monitoring mechanism as part of its consultations with civil society or with children and adolescents, the monitoring mechanism follows up on these and, if necessary, initiates its own research projects.

Based on the resulting findings, and with the involvement of the affected children and adolescents themselves or their associations, the monitoring mechanism develops recommendations for policy-makers, as well as for civil society, with the aim of getting closer to implementing the provisions of the UN Convention on the Rights of the Child. The monitoring mechanism shares its findings with the United Nations' various contractual bodies worldwide, such as UNICEF and the Global Alliance of National Human Rights Institutions.

The complaints mechanism for children's rights stipulated in the UN Committee's Concluding Observations from 2014 is not part of the monitoring mechanism's tasks. Neither the German federal government nor the DIMR has taken action regarding the establishment of a complaints mechanism. Germany continues to lack an independent institution that receives and investigates complaints at a national level.

The current resources available to the monitoring mechanism to monitor implementation of the convention at a federal, state and local level are far from adequate in terms of staffing, finance and its authority. Furthermore, the monitoring mechanism does not have an unlimited time frame, and is instead dependent on the annual plan formulated

by the German Federal Ministry for Family Affairs, which is currently supporting the office until 2019. A legal basis is thus yet to be established for this. The monitoring mechanism for implementation of the UN Convention on the Rights of the Child has never been required to regularly report to the German Federal Parliament (*Bundestag*).

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

13. **Make the monitoring mechanism for the implementation of the UN Convention on the Rights of the Child at the German Institute for Human Rights a permanent fixture in the legislation, and provide it with adequate resources;**
14. **Advise the Bundestag to ask the monitoring mechanism for an annual report on the implementation of the UN Convention on the Rights of the Child in Germany, and debate this publicly;**
15. **Facilitate and support the establishment of an independent complaints mechanism at a federal, state and municipal level.**

1.g Dissemination, training and integration into school curricula

Around one million gainfully employed people in Germany work with children and adolescents in fields relating to social and childhood education.¹⁰ These are joined by some 370,000 gainfully employed people who practise professions in social work, social education or social counselling. If teachers, paediatricians, legal specialists and judges are also counted, e.g. in view of the more than 100,000 custody cases raised before German courts in 2017, there are many other people who also contribute to respecting children's rights in their daily work, protecting children against third parties, and ensuring institutional support for and promotion of children's rights.¹¹

Of key importance is the notion of helping children and adolescents know and stand up for their

rights. The German federal government has been asked on numerous occasions to systematically establish comprehensive components on children's and human rights education as permanent fixtures in the curricula of relevant professions when training specialists (see also Chapter 8).¹² Member states are obliged to ensure the 'professional suitability of staff' at the corresponding institutions. This includes 'appropriate training and the provisions of continued education and advanced training options for which attendance must be compulsory'.¹³ In the State Report, the German federal government's reference to (advanced) training in children's rights is rather brief and unsystematic, relating it almost exclusively to professions in the field of justice.¹⁴

It must be a top priority to take action in training specialists working in social fields, as they offer tremendous but insufficiently utilised potential to defend children's rights. To date, however, children's rights have not been taught systematically in study programmes and curricula pertaining to social work and childhood education.¹⁵ The laws on state

accreditation of study programmes make no reference to children's rights.¹⁶

The clear provisions of Article 3 Paragraph 3 and Article 29 of the UN Convention on the Rights of the Child on the one hand, and the shortcomings

in the reality of (advanced) training and continued education in children's rights on the other, highlight an urgent need to increase the focus on educating social-working professionals in the issue of children's rights.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

16. Work with the German states to ensure education in children's and human rights is firmly established in all training courses and curricula aimed at preparing specialists for fields of work which, in accordance with Article 3 Paragraph 3 of the UN Convention on the Rights of the Child, revolve around child welfare or protection;
17. Work with the German states to amend their laws on the state accreditation of relevant study programmes by adding nationwide regulations and professional standards;
18. Promote the initiatives of scientific associations and interest groups to firmly establish human rights education in study programmes, and create incentives for relevant research, teaching and continued education;
19. Work with other national institutions at a state and municipal level, and independent sponsors, to ensure advanced training and continued education options in children's rights are systematically made available for skilled workers and specialists.

1. h Efforts to make reports and concluding observations available

The National Coalition Germany welcomes the German federal government's efforts to make the first ever child-friendly version of the State Report available, and its declaration of intent to publish the Concluding Observations of the UN Committee on the Rights of the Child in a child-friendly version in future.

With regards to the quality of the child-friendly version of the German federal government's State Report, it must be noted that the report should not simply present the successes of government policies, but also reference problem areas, such as poverty and the Education and Participation Package

(*Bildungs- und Teilhabepaket*), the latter remaining overly complex for too many eligible children and adolescents. While the report is rendered more comprehensible by the fact that it is split into a basic report, an appendix with state-specific information, an appendix with data and an appendix with feedback from children, there are hardly any references between the basic report and the appendices.

Accessible versions of the State Report to maximise reach are not yet available. The child-friendly version of the Supplementary Civil Society Report is also yet to be arranged.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

20. **Make high-quality, balanced, child-friendly, accessible versions of the core documents of the reporting proceedings before the UN Committee on the Rights of the Child (State Report, Concluding Observations, Supplementary Report by the National Coalition Germany) systematically available to children and adolescents.**

1.i Cooperation with civil-society organisations

The funding of the National Coalition Germany by the BMFSFJ enables coordination of the Supplementary Report written by the member organisations as well as the Second Child Rights Report written by children and youths. Over the course of 18 months, the office has been able to collect and review the contributions of the 101 member organisations, and put these up for discussion at various events. The Second Child Rights Report documents

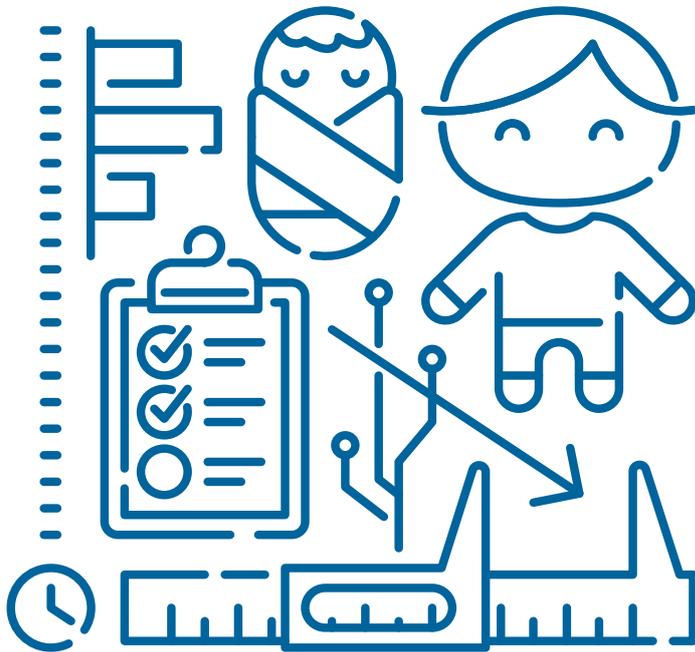
the views of children and adolescents regarding the implementation of the UN Convention on the Rights of the Child.

While composing the Supplementary Report, however, none of the content was discussed between civil-society representatives and the inter-ministerial group of the German federal government, which was composing the State Report, led by BMFSFJ. Following the German federal government's hearing in Geneva, it will be essential to cooperate with civil society to develop a strategy to apply the UN Committee's recommendations for further implementing the UN Convention on the Rights of the Child.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

21. **Keep funding the National Coalition Germany in order to monitor and assess the implementation of the UN Convention on the Rights of the Child from the perspective of civil-society organisations, and to continue to ensure children and adolescents are involved in reporting to the United Nations;**
22. **Plan a follow-up process to comprehensively implement the UN Committee's recommendations.**

2. Definition of the child



Many sections of this 5th/6th Supplementary Report refer to 'children and adolescents' to describe people under the age of 18 years. Volume VIII of the German Social Code distinguishes between children and adolescents: Adolescents are aged between 14 and 18 years. If the term 'young people' is mentioned, this refers to people aged 0 to 27 years.

This report will – where possible – refrain from using the terms 'minor' and 'of legal age', with the exception of the fixed expression 'unaccompanied refugee minors', which is used in this report to explicitly refer to regulations in asylum and immigration law.

13,470,262 number of persons aged 0 to 18 years in Germany, 2016

5,337,800

number of persons aged 0 to 20 living in areas with high population density, 2017

6,408,800

number of persons aged 0 to 20 living in areas with medium population density, 2017

3,505,700

number of persons aged 0 to 20 living in areas with low population density, 2017

16.3%

share of persons aged 0 to 18 years of total population, 2016

15.3%

share of persons aged 0 to 18 years living in East Germany, 2016

16.6%

share of persons aged 0 to 18 years living in West Germany, 2016

45.1 bn

Federal, state and municipal net expenditure on child and youth welfare, after deduction of revenues, 2017, in EUR

29.3 bn

Federal, state and municipal net expenditure on child day care, after deduction of revenues, 2017, in EUR

12.5 bn

Federal, state and municipal net expenditure on child and youth care facilities, 2017, in EUR

7.1%

share of students receiving special educational support, school year 2016/2017

15.4%

share of children aged 0 to 18 years at risk of poverty

35.9%

share of children aged 0 to 5 years with so-called migration background, 2016

52,685

number of early school leavers, 2017

136

number of violent deaths of children, 2018

14,606

number of children affected by sexual violence, 2018

3. General principles



The rise in far-right views and anti-democratic attitudes continues to be a serious problem. Polarised opinions, as well as misanthropic and extremist ideologies, are gaining momentum in Germany and Europe, necessitating greatly intensified action to effectively protect against discrimination and provide suitable prevention measures in all areas of life.

3.a Non-discrimination

art. 2 UN CRC

Equality and protection against discrimination are core elements of protecting human rights, which are based on the notion of human dignity afforded to all people alike. Children and adolescents, however, are affected by all kinds of discrimination, disadvantage and bullying in their everyday lives. Specific, attitude-based forms of discrimination have been observed (e.g. ageism, sexism, antisemitism, racism and disability discrimination). Different types of discrimination are intersectional, may occur simultaneously, and may feed off one another. Structural and institutional discrimination, e.g. as part of the school system, also exists. Children and adolescents are regularly disadvantaged here – particularly in relation to social and cultural background – and in relation to disabilities or limitations (see Chapter 7).

The groups of children and adolescents particularly affected by discrimination, disadvantage or bullying must especially be taken into account, as duly documented by studies conducted by the German federal government's antidiscrimination institution, the Leipzig Authoritarianism Study, and – in the area of education – by international comparative studies for education systems, such as the PISA. These are primarily children with a migration or refugee history, from socioeconomically disadvantaged families, Roma children, children with disabilities, and those who identify as LGBTI.

When it comes to classifying forms of discrimination, there is an element of conflict between the aim of using classification to combat discrimination, and the risk of assigning and reducing children and adolescents to set categories. Eliminating discrimination and barriers must, however, be viewed as a social shift: The problem is not the children and adolescents affected by discrimination, but rather individual, institutional and structural barriers that lead to disadvantage and discrimination.

The German federal government reports of increasing resources for programmes combating far-right extremism and misanthropy, yet this is mostly as part of temporary programmes and projects, rather than focusing on increasing sustainable expertise and infrastructure. A general, overarching strategy aimed at children's rights is lacking, as is a reliable, long-term infrastructure to combat discrimination and promote the acceptance of diversity.

Social polarisation and structural discrimination particularly affect refugee children and adolescents who, under Article 22 of the UN Convention on the Rights of the Child, have special protection rights, or those who belong to a recognised minority, especially the German Sinti and Roma. Accompanied refugee minors often only gain access to schooling once placed in communities. This can drag on for up to two years or even until the end of their stay, and is dependent on their country of origin and the German state in which they are located. Refugee children and adolescents also suffer from structural disadvantages because – unlike other children – they

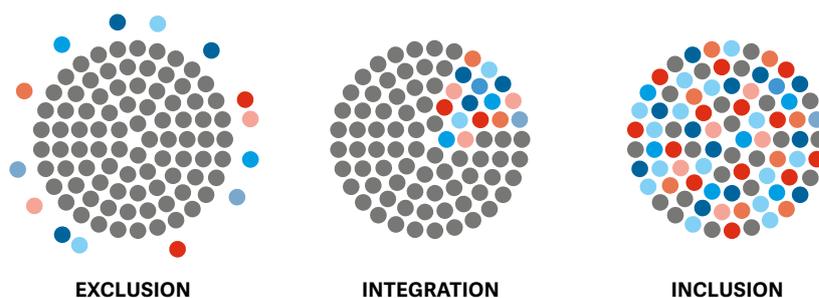
receive benefits for housing, health care or education under the German Asylum Seekers Benefits Act (AsylbLG). They sit in separate classrooms at the education facilities. They are sometimes confronted with a racist environment, in which children and adolescents with so-called migration backgrounds are often affected more than the average person. In particular, they are more frequently discriminated against in schools and in terms of access to training, and receive poorer grades and less favourable recommendations for further study. This education plight, which has been ongoing for decades, has substantial negative consequences for the children's lives.

The differentiation in the German support system can also foster discrimination. This is particularly true for children and adolescents with and without a disability, for they fall under different legal regulations. The provisions of Volume VIII of the German Social Code generally apply to children and adolescents. Physically and mentally disabled children and adolescents, however, generally receive

aid based on Volume XII of the German Social Code (Section 10 of Vol. VIII of the German Social Code; as of 2020, this will be Vol. IX of the German Social Code) and thus through different administrative structures. When it comes to comprehensively protecting the interests and rights of disabled children, and eliminating discrimination and barriers, it is therefore necessary to ensure Volume VIII of the German Social Code (Child and youth welfare) is entirely inclusive, and that the provisions of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child are implemented consistently.

“Inclusion”

The National Coalition Germany understands the notion of inclusion as a human rights principle directly linked to the right to freedom, equality and solidarity. Initially primarily based on the UN Convention on the Rights of Persons with Disabilities, the understanding of inclusion has broadened, and today stands for the elimination of structural barriers which restrict or prevent participation. Inclusion means no person may be excluded, segregated or marginalised. Every person's rights and individuality must be recognised and respected, regardless of sex, gender, age, origin, migration background, religion, sexual orientation, education, social status, any physical or intellectual disabilities, emotional or behavioural disorders, or other particularities or social attributions.



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The German federal government's reports on poverty and wealth repeatedly show that there are more children and adolescents living in poverty in Germany than ever before. Those worst affected are children with so-called migration backgrounds, children of single parents, and families unable to claim state benefits due to excessive bureaucratic hurdles. One in five children (21 percent) in Germany lives in a permanent or recurring state of poverty for a period of at least five years, and another 10 percent have had temporary experience with poverty.¹⁷ In Germany, this does not mean basic needs are not met, but for the affected children, adolescents and their families, poverty does have a multitude of consequences: They participate less in recreational activities, have fewer friends, are excluded, and are

less likely to aim for high-level educational qualifications. Eliminating hurdles to access state financial support is important but not enough to combat poverty-based discrimination. Poverty also 'reinforces' other forms of discrimination, compounding disadvantage and uncertainty.

In terms of gender equality, the public discussions under the #metoo hashtag have highlighted the prevalence of sexism and sexual abuse against women and girls that also exists in Germany. Organisations and individuals actively campaigning for gender equality for children and adolescents are increasingly coming under fire from far-right and populist groups. The existing services put in place by the German federal government are thus inadequate here. The campaigns to eliminate gender stereotypes (e.g. girls' or boys' days) continue to have a very low profile amongst young people. Regular information and campaigns are necessary here, e.g. through education at schools and social media, and awareness-raising work for all children and adolescents.

There is still not enough focus on lesbian, gay, trans and intersex children and adolescents. The conditions in which they grow up continue to be problematic, in terms of drug and alcohol consumption or a higher tendency to die by suicide.¹⁸ They are also at greater risk of everyday discrimination and exclusion, while their quantitative underrepresentation poses additional risks for their development growing up.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

23. **Develop a general, interdisciplinary strategy to combat discrimination and reinforced group-focused enmity;**
24. **Help eliminate discrimination and establish gender equality by introducing an aid policy which, in addition to innovations, also ensures extensive investments for a reliable, sustainable infrastructure;**
25. **Continuously analyse barriers and participation obstacles with the involvement of civil society, children and adolescents, and develop strategies to eliminate these;**

26. **Make support instruments so flexible that they help eliminate discrimination without pigeonholing children and adolescents into fixed categories. The support should primarily be aimed at protecting children and adolescents against discrimination, not at ‘categorising’ them and perpetuating the discrimination;**
27. **Work with civil society and all relevant players to continuously analyse the discrimination existing in the education system, act on suggested changes, develop support programmes, and thus eliminate discrimination and disadvantage.**

Intersex children

Intersex children reflect a natural variation in the diversity of human life. Their children’s rights encompass respecting the best interests of the child, and legally banning gender-corrective surgery without the children’s informed consent and participation until they have reached an age where they can make their own informed decisions.¹⁹ They need to be given appropriate opportunities for information, legal protection and compensation, and a non-discriminatory gender entry in vital records. The UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Elimination of Discrimination against Women, and the UN Committee against Torture have issued extensive recommendations regarding the rights of intersex people.

Voluntary commitments or guidelines will not suffice to comprehensively protect the rights of intersex children and adolescents.²⁰ Two studies found that corrective surgery continues to be performed on a large number of children despite the guidelines in place: 2,079 feminising (plastic surgery procedures on the vulva, vagina and clitoris) or masculinising operations (on the testicles, scrotum and penis) were performed in 2016. In the coalition agreement between the CDU, CSU and SPD, the

German federal government had announced its intention to clarify, by law, ‘that gender-corrective medical procedures on children only be permitted in urgent cases and to avoid the risk of death’.²¹ This clarification had yet to be provided at the time of this report’s compilation.

The ‘intersex’ label covers a wide range of diagnoses. In many cases, neither parents nor doctors can predict a child’s sexual development, which is why top priority must be given to the informed decision of the child, as the legal subject. This also means a parental decision cannot replace the child’s consent.

In its State Report, the German federal government mentions flyers, guidelines for counselling centres, and studies on the support and counselling required for intersex children, adolescents and their families.²² It does not, however, go into the act on reforming the German civil status law (*Personenstandsrecht*) law, passed by virtue of a decision by the German Federal Constitutional Court in October 2018.²³ It creates the new gender-entry option of ‘diverse’ (intersex), though this requires a medical examination. The medical examination contradicts the purpose of the act, as the compulsory nature of it does not respect an open and thus non-discriminatory gender entry for all children.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

28. **Ensure, as an addendum to Section 1631 of the German Civil Code (BGB), that gender-assignment operations cease to be performed on intersex children and youth without their express consent, and that breaches of this be rendered a punishable offence;**

29. Abolish the compulsory medical examination that is required before entries of 'diverse' can be made in vital records, so as to respect, without discrimination, the self-determination rights of intersex and trans children when entering their gender in vital record documents;
30. Provide systematically and continuously updated information and educational resources on the protection and rights of intersex children, particularly for relevant professions, in courses at vocational colleges and universities, and as part of education in politics and human rights;
31. Ensure systematic, high-quality, personal and continuous health care for intersex children, adolescents and their families everywhere and for their entire lives;
32. Establish legal certainty and protection for those affected by genital surgery, and assess compensation options for the injustice suffered.

3. b Best interests of the child

art. 3 UN CRC

The term 'best interests of the child' from Article 3 of the UN Convention on the Rights of the Child is officially translated into German as '*Wohl des Kindes*' ('Wellbeing of the child').²⁴ This non-literal translation may encourage paternalistic attitudes. The term '*Kindeswohl*' disregards the child's perspective and does not adequately take into account the opinions of the children and adolescents according to their age and maturity (Article 12 of the UN Convention on the Rights of the Child). It is thus necessary to rethink the concept and work on an understanding of the best interests that directly combines the right to participate and be heard (as the most urgent expression of subject status) with best interests.

The German Constitution, the Basic Law (*Grundgesetz*), does not consider a child's best interests as of primary concern. In accordance with Article 59 Paragraph 2 of the *Grundgesetz*, the UN Convention on the Rights of the Child ranks alongside a simple federal law, and thus below the Constitution. In the event of conflicts between the UN Convention on the Rights of the Child and the *Grundgesetz*, the latter takes precedence. Although the overarching priority favouring the best interests of the child,

established in Article 3 of the UN Convention on the Rights of the Child, as a directly applicable principle, is valid under German law, the best interests of the child are only recognised as a guiding principle in the Law of Parent and Child established in the German Civil Code (BGB), in the Act on Court Procedure in Family Matters (*Familienverfahrensgesetz*), and in the German Child and Youth Services Act (Vol. VIII of the German Social Code); it does not figure in many areas of common federal law (e.g. in asylum and immigration law).

In the application of law by the authorities and specific case law, the best interests of the child are thus usually only taken into account as part of deliberations specified in the relevant legislations, without respecting the overarching principle applicable under the UN Convention on the Rights of the Child. Legislators and the government thus have great responsibility when it comes to the extent to which obligations from Article 3 of the UN Convention on the Rights of the Child are upheld, yet they are not fulfilling this adequately, as was found by a legal opinion commissioned by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ).²⁵

A number of laws significantly affecting the key interests of children and adolescents, particularly in the area of migration, have been launched through summary proceedings, such as access to education

and appropriate health care, family unity, or the right to grow up protected from physical, mental and sexual abuse. The relevant legislative procedures did not comprehensively identify children's interests, nor give these priority over other matters.

The failure to properly identify and take into account children's interests in judicial and administrative procedures means children cannot be guaranteed adequate access to the law. There are virtually no procedures or criteria for identifying and determining the 'best interests of the child' in an administrative or judicial context. A children's rights approach, whose core element revolves around giving preference to the best interests of the child, is gradually taking hold in civil society, and in programmes and projects relating to children. However, most local, state and federal institutions relating to children (e.g. administrative authorities, legislative bodies, welfare institutions, courts), and even the general public, are barely aware of this approach

and the priority given to the best interests of the child, and thus do not adequately take these factors into account.²⁶

But the principle of giving priority to the best interests of the child, as the child's right and a binding decision-making guideline, is also frequently neglected in cases such as medical decisions, particularly those relating to young children in the context of birth and the first few years of life. Examples here include non-medically-indicated procedures affecting physical integrity, such as planned Caesareans, interventions to initiate and accelerate birth, and gender-corrective surgery in the case of intersexuality. In general, Germany has not implemented the relevant recommendations issued by the UN Committee in 2014. There are significant shortcomings, both in terms of conceptual understanding and legal priority for the best interests of the child, and in relation to the practical implementation thereof.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

33. **introduce the best interests of the child as a primary consideration into the Constitution. Its legal contents should be assessed as per General Comment No. 14 (2013) in consultation with non-governmental organisations and all levels of government – federal, state and municipal – made aware of the result. The government should help ensure the best interest of the child as a primary consideration is upheld through guidelines and advanced training.**

3. c The right to life, survival and development art. 6 UN CRC

Climate change, species extinction and environmental pollution are now among the greatest challenges of our time, and are increasingly being seen by children and adolescents as a threat to their present and future. The 'Fridays for Future' movement has also been very widely adopted by children and adolescents in Germany; they participate

in the protests in their thousands, form more than 500 local groups, and make concrete demands of German policymakers. The reports by the United Nations Special Rapporteur regarding human rights obligations in relation to a clean and healthy environment, and the results of the General Day of Discussion held by the UN Committee on the Rights of the Child on the topic of 'Children's rights and the environment', also illustrate the growing relevance of environmental issues. Young people in Germany are highly aware of the environment, and are increasingly shifting towards a sustainability mindset.

Irrespective of this, children in Germany are

already exposed to hazards right from the womb and early childhood, e.g. through waste, pesticides, residue in food and water, and other sources of environmental pollution that can have direct and long-term consequences. Systematic data on children's exposure to pollutants has been collected as part of the German Environmental Survey for Children and Adolescents conducted by the German Federal Environment Agency, and the German KiGGS studies on the health of children and adolescents. They show that the young generation is particularly at risk of environmentally related health problems, such as respiratory disorders and allergies.²⁷ But it is primarily in developing countries that environmental pollution and climate change are deteriorating

living conditions for children and adolescents. Extreme droughts, poor harvests and floods are intensifying famines, migration, armed conflict and the outbreak of diseases such as malaria and diarrhoeal diseases in many regions of the world.²⁸

Young people must be informed and be able to participate in future-focused discussions and decisions affecting them. This requires preparing information and giving them platforms to participate. To date, child-friendly environmental education and appropriate activities for sustainable development as per the 'Education for sustainable development' National Action Plan have been inadequate in Germany, even though young people are increasingly calling for these.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

34. Uphold the Paris Agreement, taking into account the 1.5-degree target;
35. Integrate children's rights into the national and international climate strategy;
36. Increasingly focus its environmental policy and protection activities on children's rights, also taking into account the economic activities of German businesses worldwide and the externalisation of environmental costs;
37. take into account greater and more effective protection of children's environmental rights as part of international and development cooperation and call for stronger protection;
38. Uphold the right to high-quality education, and effectively and comprehensively implement the National Action Plan 'Education for sustainable development' with appropriate financing.

3.d Respect for the views of the child

art. 12 UN CRC

Participation in social and political processes

The right to participation is a right encompassing all children's rights, and is established in Article 12 of the UN Convention on the Rights of the Child. Children and adolescents are entitled to participate in all issues affecting them. Greater involvement of young people in the social and political decision-making processes is a declared objective of policymakers, and a key component of political education.

In the Fifth and Sixth State Report, the German federal government states that child and adolescent participation at a federal level is being promoted by the 'Taking action for a youth-friendly society' (*Handeln für eine jugendgerechte Gesellschaft*) strategy, as well as various legal regulations at a state level. The report also emphasises the particular role of youth associations, and focuses on developing representation for children and adolescents. Despite growing efforts to enable young people to participate at all regional and structural levels, real

participation does not always occur. Either children and adolescents are not involved at all in relevant issues, or formats conveying a semblance of participation are introduced. In such cases, politicians invite children and adolescents selectively, and listen to them, but then make different decisions that do not have an impact on children and adolescents. This is not quality participation in which children and adolescents are involved in decisions from the outset and help shape the entire process.

The National Action Plan 'for a child-friendly Germany 2005–2010' was enacted by the German Federal Cabinet on 16 February 2005, and established the participation of children and adolescents as a central field of action. Unfortunately, the NAP was discontinued, even though many of its targets, including the effective participation of children and adolescents, were not met.

A comprehensive, effective participation policy needs to share decision-making power and transparently provide information on the framework conditions. Because real involvement only begins when young people are given the right to be heard, to take the initiative, or to help shape policy by delegating votes. But co-determination requires influencing decisions and effectively being able to share in the decision-making process.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

39. Lower the voting age for municipal, state, federal and EU elections, as well as for citizen decisions or demands;
40. Systematically establish sustainable participation processes and structures in the various areas and levels of child and youth policy, and comprehensively promote political education so that children and adolescents recognise and learn which rights they are entitled to, and how they can demand and implement these;
41. Appropriately incorporate and promote youth organisations as a democratic form of self-administration and representation of interests for young people.

Complaints procedures

There is no general obligation in Germany to establish easily accessible complaints procedures for children and adolescents. A legal obligation to establish complaints procedures only exists in relation to child and youth support services under

Section 45 Paragraph 2 of Volume VIII of the German Social Code if institutions are required to obtain an operating permit. This obligation does not apply for institutions such as schools, sports clubs, cultural establishments or refugee facilities at a municipal, state or federal level.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

42. **Work with the municipalities and states to comprehensively establish legislation stipulating easily accessible, transparent internal and external complaints channels for children, parents and specialists at all child and youth institutions, and to provide adequate funding and resources to establish these;**
43. **Legally grant children and adolescents an unconditional right to Youth Welfare Office counselling, including without the knowledge of their parent or guardian, by changing Section 8 of Volume VIII of the German Social Code.**

Participation in administrative and court proceedings

Article 12 of the UN Convention on the Rights of the Child establishes the participation rights of children, whose views must be given due weight in all matters affecting them, in accordance with their age and maturity. This right applies in particular to court and administrative proceedings. This results in additional efforts and needed resources for courts and administrations, because the proceedings need to be carried out in a child-friendly manner. Furthermore, the best interests for decisions in line with Article 3 of the UN Convention on the Rights of the Child can only be assessed through child-friendly participation processes.

As outlined in the State Report, the guardians ad litem have been legally established as the party representing children's interests in Section 158 of the German Act on the Procedure in Family Matters and Matters of Non-contentious Jurisdiction (FamFG). In general, there are major local differences regarding court resources, the conduct of court hearings, and the approach to appointing guardians ad litem.

Section 159 FamFG contains legal regulations on child participation for family-law procedures. In practice, however, hearings of children are not always conducted. A study of 318 cases found that, in the context of proceedings regarding the best interests of the child, 60.4 percent of children and adolescents are not given a hearing. This figure was 21.2 percent for 14 to 18-year-olds.²⁹

A survey of 48 children and adolescents, conducted by the German Institute for Human Rights (DIMR) in 2014 on behalf of the European Union Agency for Fundamental Rights, found that, during court proceedings, children are often very poorly informed, intimidated or do not feel they are being taken seriously by the adults.³⁰

There are some 11,000 municipalities in Germany. Around 5 percent of these have permanent child and youth committees.³¹ These are often structurally safeguarded by statutes, and have the right to be consulted or to contribute to decisions. In many cases, low-threshold, project-oriented forms of participation are also relied on at a municipal level, though these tend to have more of a selective focus. About 1 to 2 percent of municipalities have full-time child support officers or child service centres

Court hearings

Analysis of court hearings of 318 cases of 20 youth welfare offices in Germany, in which youth welfare offices have turned to a court in line with § 8 a para. 2 Social Code VIII or § 1666 German Civil Code, in percent



Data Source: Bindel-Kögel, G. et al. (2017): *Ergebnisse der Fallhebung in den beteiligten Jugendämtern*. In: Münder, J. (Ed.) (2017): *Kindeswohl zwischen Jugendhilfe und Justiz*. Weinheim, p. 169.

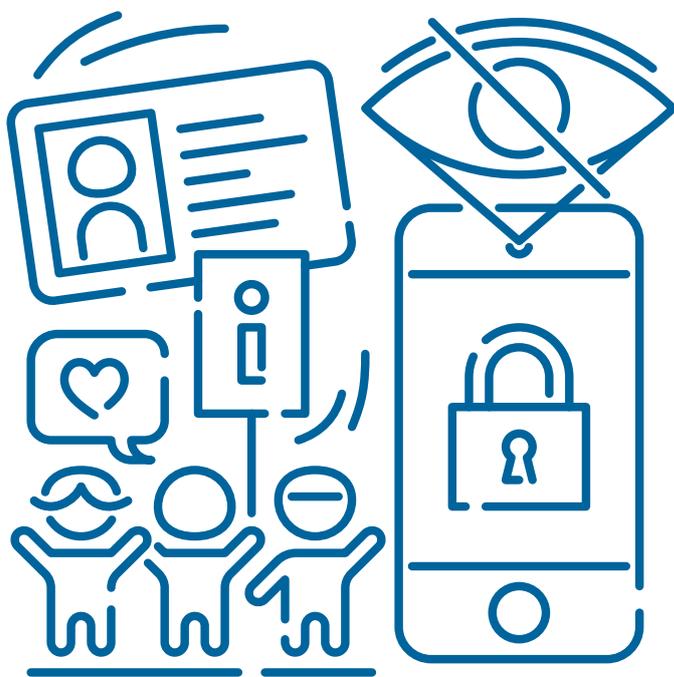
which represent children's interests in dealings with municipal administrations.³² This is far from a comprehensive support network. Experience has shown that, coupled with practical implementation measures at a state level, establishing a provision for mandatory child participation in municipal codes results in a positive increase in participation activities. One example of this can be seen in the state of Schleswig-Holstein, which incorporated a provision on mandatory child and youth participation in its municipal code in 2003.

The analysis of the cases showed that on average 60.4 percent of the proceedings did not include hearings of the children or youths involved. From the age of 14, a hearing is required by law.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

44. Enable children and adolescents, regardless of their age, to be heard directly in all court and administrative proceedings affecting them, and to make these hearings child-friendly;
45. Adequately train the specialists involved, including judges, experts and guardians ad litem;
46. Improve cooperation between departments and various specialists involved in the proceedings;
47. Grant children the right to have a say in the selection of guardians ad litem;
48. Support current studies on the implementation of children's rights in administrative and court proceedings, which include the experiences of children and specialists.

4. Civil rights and freedoms



4.g Access to information

art. 17 UN CRC

As a result of digitisation and mediatisation, the lives of children are changing dramatically. Mobile devices enable the availability and accessibility of the internet almost regardless of location and time. Article 17 of the UN Convention on the Rights of the Child stipulates that State Parties must give children access to media. Children's rights have to be fully respected in the digital environment.

The rights to participation, to freedom of information and expression, to education, to recreation and play, and to participate in art and culture – among other rights – have the potential for better implementation and dissemination in the digital environment. This potential has not been

fully exploited yet. These fundamental rights and freedoms are rarely the focus of political and educational (especially relating to media education) considerations, and are not yet taken into account when developing products and services. The protection rights established in Articles 16, 19, 32 and 34 regarding risk exposures arising or intensifying as a result of digitisation are yet to be fully reinterpreted.

On the one hand, children are recipients of online content, and on the other, they act independently as producers. Protecting their personal rights and data, however, usually falls short of the economic interests of providers. There are very few protection schemes which simultaneously and adequately take into account the notion of participation and promotion, nor is there a sufficient amount of secure social networks and platforms, well rated games and guides on counselling services, or online participation formats. Parents and professionals require support when it comes to the increasingly complex challenge of age-appropriate media education.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

49. Establish protection schemes and complaints mechanisms, as well as education and counselling formats to adapt children's and adolescents' presence and activity in the digital environment;
50. Structurally embed media education across the board in early-childhood, curricular and extracurricular education contexts;
51. Fully implement the 'Guidelines to respect, protect and fulfil the rights of the child in the digital environment' passed by the Council of Europe's Committee of Ministers of 4 July 2018;
52. Develop a holistic understanding of child protection in the digital environment which guarantees children's rights to protection, participation and promotion, and which aims to minimise risks associated with communication and interaction, and to enable children to participate in society.

fluctuate depending on their method of collection. Not enough focus is being placed on the fact that children and adolescents often do not just experience one form of violence, meaning correlations between different forms of violence must be taken into account.³⁴

As children are particularly affected by violence, they also need special protection. The risk of being affected by violence increases sharply for children who, for example, are affected by racism, homo- and transphobia or anti-Semitism.

The development of prevention and protection schemes sees institutions and associations faced with major challenges, especially when activities are primarily facilitated through the work of volunteers. In these contexts, as well as at municipal and state levels, appropriate options for financial support are lacking. As a result, many resort to the existing counselling centres for violence against children and adolescents due to the expertise they offer. The fact that there has been no notable development in this area is worthy of criticism. Even though the requests to develop prevention and protection schemes are on the rise, and counselling by experienced specialists has been introduced for even more professions in cases where there is evidence of risk to a child's wellbeing, most of these centres have very limited resources to cope with the increased demand. It has also been noted that many target groups cannot be reached or have no access. These institutions are not available across the board either.³⁵

In view of the increase in bullying, particularly cyberbullying, advanced training and continued education for various professions, such as teachers and judges, play a key role. Despite the 'German federal government's 2011 action plan to protect children and adolescents against sexual abuse and exploitation', addressing the issue of violence against children and adolescents is still not among the compulsory components of relevant vocational training or courses, e.g. for teachers. There is also a lack of awareness-raising programmes promoting positive forms of child-rearing. While municipalities are obliged to provide relevant parental education programmes, there are no proper qualitative or quantitative standards for this.

As such, there is a dizzying array of prevention measures and programmes run by various players and organisations which do not tie in with each other at all, and which display no common strategy.

In implementing the protection mandate for cases where there is evidence of a risk to child wellbeing, most of the youth welfare offices have increased their staffing, organisational resources and quality standards, and adapted their facilities to the legal regulations. At the same time, the excessive load on social services is becoming increasingly apparent: Too much bureaucracy, unstaffed centres and too many cases are making it difficult to provide good child-protection services. Many places are thus complaining that this is having a detrimental effect on aid for families requiring assistance below the risk threshold.³⁶

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

53. **Develop and update, with the involvement of states and municipalities, the national prevention strategy, which pools existing programmes and activities, establishes ties between them, and makes them permanent. This also includes training and continued education for relevant professions, as well as raising parent awareness of children's rights and non-violent child rearing;**
54. **Establish relevant provisions in Volume VIII of the German Social Code to facilitate a comprehensive, needs-based expansion of specialised counselling centres and services for different target groups and for all forms of violence against children and adolescents;**

55. Establish legislation granting children and adolescents an independent legal right to access parenting assistance in addition to that provided by their parents;
56. Comprehensively support social work for children and adolescents, the work of youth associations, and various services for children and adolescents;
57. Further develop the Frühe Hilfen support centres for pregnant women, young mothers and families so that all parents-to-be and those with small children can benefit from a wide range of services;
58. Extensively train child and youth workers and guardians ad litem in identifying, assessing and acting in child-protection cases;
59. Introduce mandatory advanced training for judges and public prosecutors so that the justice system can be rendered more child-friendly and children can be appropriately granted their right to be heard;
60. Initiate long-term research activities into all forms of violence against children and adolescents, including violence between children and adolescents, from the time around birth onwards in order to gain a greater insight into unreported cases and thus also establish a better basis for prevention work.

Child protection in the digital environment

When it comes to children's and adolescents' education, and their involvement in the community, the use of the Internet and digital media is a key part of their everyday life. Digital exhibitionism is on the rise not only amongst adults, but also by increasingly younger children and adolescents. Digital media and the unlimited availability of sexual online content pose the risk of experiencing sexual abuse, e.g. cybergrooming and prostitution through a webcam. In other words, digitisation is creating and

intensifying new forms of exclusion, discrimination and sexual abuse, which spread particularly quickly via social media.

Perpetrators use everyday images, posed images and sexualised images of children to sexually exploit them. Although so-called 'posing' pictures have been a criminal offence since 2015, it is not possible to assess the criminal relevance of all acts in Germany. This is due to the plethora of sexual abuse images on the Internet, Germany's tight restrictions on data retention, and the fact that perpetrators have the technical means to ensure they leave no trace.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

61. Address legal loopholes to protect children in the digital environment, and oblige businesses to implement child-protection mechanisms;
62. Develop a media-protection act for children and adolescents which also includes supporting and strengthening children and adolescents in terms of critical use of digital media and the Internet;

- 63. Ensure the German Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*) of 1 September 2017, which is also responsible for the gaming industry, is adapted to the latest developments;
- 64. Provide adequate resources, including research resources, to protect children in the digital environment.

5. b Female genital mutilation

art. 24 UN CRC

Female genital mutilation constitutes a serious breach of children's and human rights, and is a particularly drastic form of physical female suppression. According to data analyses, there were a total of 25,325 girls under the age of 18 living in Germany in 2015 as the first or second generation of people to have come from countries where female genital mutilation is practised.³⁷ In view of the national prevalence, between 1,558 and 5,684 of these girls, under the age of 18 and living in Germany, were at risk of genital mutilation in 2015.³⁸ This does not include girls without papers, girls who have already been naturalised, and German girls at risk. The documentation of the research services of the German Federal Parliament, which was completed on 24 April 2018, provides a very structured initial, but not entirely comprehensive overview.

As genital mutilation is a cultural practice and not medically required, General Comment No. 18 brands it a harmful practice that breaches Articles 3 and 19 of the UN Convention on the Rights of the Child. According to Article 24 of the UN Convention on the Rights of the Child, the Member State is obliged to abolish traditional customs posing a hazard to health, such as genital mutilation, and guarantee that the highest possible degree of health can be achieved. The accessibility of children in need of protection must, depending on age, also be controlled by guardians or social workers. The organisations and associations currently working Germany-wide to combat genital mutilation are not

enough to properly attend to all those affected. The exact number of establishments protecting girls of all ages is difficult to determine. Some of them stipulate a minimum admission age of 13 or 14 years.

There are clear shortcomings in the treatment of refugee women and girls. In accordance with Article 22 of the UN Convention on the Rights of the Child, refugee women and their families must, irrespective of their residence status, be informed of their rights and options for treatment and follow-up care for genital mutilation upon arrival in the contractual state. Many affected women currently struggle to find experienced specialists, as not a lot is known about the issue, and doctors are not totally confident in their ability to deal with it.³⁹ Parents of at-risk refugee girls, or the girls themselves, are often also not adequately informed of their rights, meaning the threat of genital mutilation upon their return is not sufficiently taken into account during the asylum process.

Furthermore, change within the communities is essential. To achieve this, relevant institutions pivotal in terms of both prevention and support – from national to municipal level – need to be involved and informed. This particularly applies to religious authorities, teachers, youth welfare offices, gynaecologists and paediatricians. Actions must be driven by a notion of empowering and supporting the legal and financial independence of women.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

65. Proactively take further low-threshold measures to combat genital mutilation, including by providing adequate resources to municipalities, and review the effectiveness of existing measures;
66. Introduce advanced-training programmes for staff at the German Federal Office for Migration and Refugees in relation to children's rights, including genital mutilation;
67. Train medical staff in issues relating to genital mutilation;
68. Commission human-rights-based data collection, and review the effectiveness of the current reporting systems.

5.c Sexual abuse

art. 34 UN CRC

The many publicised cases of sexual abuse at institutions during the 2010s saw policymakers and society pay greater attention to this issue. Three of Germany's federal ministries, for instance, established the 'Child sexual abuse in relationships of dependency and power at private and public institutions and within the family' round table, created the Independent Commission for Matters of Child Sexual Abuse, initiated an Independent Enquiry, commissioned numerous studies, and launched projects, particularly in relation to prevention.

The round table's recommendations were also incorporated into the German Federal Act on Child Protection, which has been in effect since 2012. In order to obtain a permit to operate, all child and youth-support institutions and services need to develop concepts that safeguard children's rights, particularly in relation to protection against abuse, and their rights to participate and complain (Section 45 of Vol. VIII of the German Social Code). Full-time and volunteer workers in child and youth support must, in accordance with Section 72a of Volume VIII of the German Social Code, also be able to provide an enhanced criminal record certificate. Anyone who

has been convicted of sexual abuse will be unable to work in these fields. The Supplementary Aid System (*Ergänzendes Hilfesystem*), aimed at mitigating ongoing negative impacts of abuse for affected parties, and which supplements existing the social welfare system, has also been established. Since January 2017, children who are victims of abuse have a right to psychosocial assistance in criminal proceedings.

Despite these developments and the growing awareness of study results, cases such as the Staufen and Lügde cases illustrate that the difficult situation and plight of sexually abused children are not being recognised or taken seriously enough.⁴⁰ Particular criticism must be levelled at the relevant authorities, such as youth welfare offices and police stations, which have not adequately followed up evidence of child sex abuse, and have thus not protected the affected children. The actions and decisions of the competent family and criminal courts are unacceptable, having not listened to the children, and having incorrectly assessed the risk situation on countless occasions. A summary compiled by the Independent Enquiry based on statements from affected parties reveals a loss of trust in the police and justice system.⁴¹

Although the two Christian churches have taken various measures to ensure prevention and better intervention, and have initiated revision processes, cases of sexual abuse by church representatives

have been hushed up, trivialised and/or only been handled internally for far too long. As such, many perpetrators have evaded state justice, and have not had to take adequate responsibility for their harmful actions. It would thus be important for many affected parties, and would help with their own rehabilitation, if the injustice committed were to be declared by the state. Victims also complain that

the churches do not listen to them or involve them enough.⁴²

Contrary to all findings, including in terms of extent, it has still not been possible to implement training on the subject of sexual abuse as mandatory content of vocational and tertiary education courses taken by those working with children and adolescents.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

69. Update the 'Action plan to protection children and adolescents against sexual abuse and exploitation';
70. Reform Section 45 of Volume VIII of the German Social Code to broaden the obligation to include existing child and youth-support institutions and set up suitable processes for involvement and lodging complaints in personal matters;
71. Demand national and interdisciplinary commissions to unreservedly investigate the matter in areas where communication between the parties has been unsuccessful, where child wellbeing has not been taken seriously, and where no responsibility has been taken for child protection, e.g. at churches and authorities;
72. Ensure specialist counselling and psychotherapy services which meet demand, and which are promptly available to children, including in ongoing preliminary and criminal proceedings;
73. Work with the federal states to implement child sex abuse training as compulsory content of vocational and tertiary education courses taken by those working with children and adolescents.

6. Family environment and alternative care



6.d Family reunification

art. 10 UN CRC

During the reporting period, the rules regarding family reunification have changed several times, especially for those people granted subsidiary protection. While the legal situation existing at the time of this report's compilation is, in some cases, more liberal compared to the last reporting period, it remains concerning at both a legal and practical level.

A strict quota of 1,000 persons eligible for reunification per month has been in place as per Section 36a in conjunction with Section 104 Paragraph 13 Clause 2 of the German Residence Act (AufenthG) since 1 August 2018. As such, children who had been left behind in another country cannot be reunified with their families, if the monthly quota

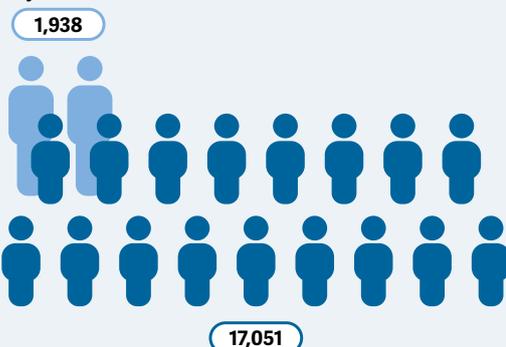
has been exhausted. With regards to the implementation of the quota rule, the priority given to the best interests of the child on the humanitarian grounds established in Section 36a AufenthG remains unclear. The federal states already warned of these uncertainties, and asked for further clarification – which was not forthcoming – during the legislative process.⁴³ There is still doubt regarding how humanitarian grounds relate to each other, which criteria are taken into account and the extent to which they are taken into account, and thus

ultimately the order in which requests are registered in order to ensure transparent selection based on binding criteria. Further delays occur as a result of waiting times for appointments at German representations abroad and the length of the administrative process. Consequently, neither the priority for the best interests of the child (Article 3 of the UN Convention on the Rights of the Child) nor the statutory acceleration established in Article 10 of the UN Convention on the Rights of the Child can be duly taken into consideration.

Another concerning development is the fact that Sections 28 et seq. AufenthG now officially also excludes sibling reunification with children already living in Germany. Only certain hardship cases as defined by Section 22 AufenthG are eligible to reunite with their siblings living in Germany. This restriction on reunification prevents the best interests of the child, as per Article 3 of the UN Convention

Family reunification

Persons registered under 18 years and within the competence of Youth Welfare Law, compared to number of visas issued according to § 36 para. 1 German Residence Act (reunification of parents with children) from 1 January to 30 November 2018



- refugees under 18 years living in Germany without parents
- parents authorised to reunite with their child

Data Sources: Institut für Sozialpädagogische Forschung Mainz (2019): *Auswertung der werktäglichen Meldungen der Jugendämter an das Bundesverwaltungsamt*. Mainz, p. 3; German Federal Parliament (Bundestag) (2019): *Familiennachzug zu unbegleiteten minderjährigen Flüchtlingen*. BT-Drs. 19/7267 p. 5.

on the Rights of the Child, from duly being given preference. While sibling separation was initially commonly avoided in administrative practice, it has been noted that, since at least the amendment in 2018, the act has become very restrictive, and that siblings are increasingly being separated from each other, as are children from their parents. These regulations have had unexpected effects on the integration process in that people who are worried about the life and limb of their children, siblings or parents find it difficult to settle into life in Germany.

Since 1 August 2018, a rigid contingent system applies. In the framework of family reunification, 1,000 persons per month authorised to reunite with their child are allowed to enter Germany. At least during the first few months after entering into force, this contingent has not been exhausted and many unaccompanied minors continue living in Germany without their parents.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

74. Give preference to the best interests of the child, including legally prioritising child-wellbeing matters based on the humanitarian grounds established in Section 36a AufenthG, and guarantee generous, humane and accelerated reunification of families who have been separated, regardless of their residence status;
75. Broaden the definition of core family members to include siblings.

6. f Children deprived of a family environment

art. 20 UN CRC

Children living in alternative care

The number of children and adolescents living in alternative care has grown constantly in recent years.⁴⁴ The rise between 2014 and 2016 was largely

due to the increasing number of unaccompanied refugee minors. The challenges posed by traumatic refugee experiences and language barriers in institutional or foster care have thus also risen sharply.

The considerable regional differences in the provision of support services in Germany is concerning.⁴⁵ Children's rights are breached when location and jurisdictions determine whether or not qualified support services are provided. Families overwhelmed with child-raising and care responsibilities have often not been given any adequate aid

or support beforehand. Children living in precarious situations and poverty are particularly affected.⁴⁶

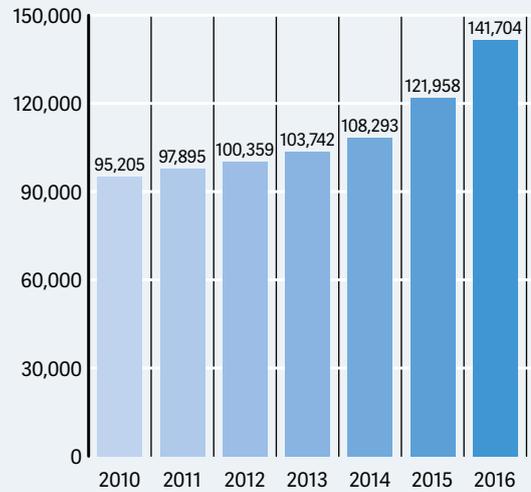
There has also been a rise in the number of children and adolescents living in alternative care settings, which restrict or deprive them of their freedoms (e.g. closed accommodation facilities). This indicates a serious overburdening and skill shortage within the youth welfare system.⁴⁷

Before arriving in their current alternative care setting, many young people have already lived in one or more foster families, other forms of alternative care, and some had their support services discontinued.⁴⁸

The legal situation and reality associated with foster-child support currently leads to foster care often remaining a 'temporary solution' for several years. Prospective planning, taking into account the child's sense of time, is not always adequately provided for in support plans, resulting in the children living in a permanent state of uncertainty. Once their child has been placed in alternative care, biological parents often receive no further assistance in constructively handling the situation in the best interests of the child.

Alternative care

Young persons aged 0 to 21 living in alternative care facilities between 2010 and 2016 (sums of ongoing support services until 31 December and all support services ended within a year)



Data Source: Fendrich, S. et al. (2018): *Monitor Hilfen zur Erziehung 2018*. Ed. Arbeitsstelle Kinder- und Jugendhilfestatistik, Technische Universität Dortmund. Dortmund, p. 76.

The number of young persons between 0 and 21 years in alternative care is growing. The rise in the years 2015 and 2016 is largely due to unaccompanied minors who were placed in alternative care facilities.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

76. Introduce mandatory professional standards, particularly regarding the involvement of children in decisions relating to institutionalised or foster care;
77. Introduce legal regulations that ensure foster children can remain with their foster families for the long term, thereby enabling relationship continuity;
78. Implement research findings on the consequences of differing quality of youth welfare offices and abruptly discontinued support services;
79. Review alternative care settings restricting or depriving children of their freedoms in terms of compliance with the UN Convention on the Rights of the Child, and ensure any breaches of children's rights are remedied;
80. Significantly improve the material resources and staffing at local youth welfare offices in order to eliminate regional disparities and ensure adequate support;
81. Promote skills in linguistic and cultural understanding, taking into account gender-specific aspects, by increasing the training and employment of multilingual social workers or youth welfare specialists.

Leaving care

The child and youth support services today do not adequately take into account the characteristics of modern-day youth, which include a longer youth phase, longer education pathways and longer economic dependence on parents. This affects the lives of youths in alternative care, which is where relationships and social infrastructures designed to strengthen the rights of young people in 'alternative care' transitioning into adulthood are developed. The restrictions on aid granted after a person's 18th birthday – even though the German Youth Welfare Act stipulates support up to the age of 27 in some cases – jeopardise young people's rights to protection. The 'Guidelines for the Alternative Care of Children' from 2010 establish the official responsibility for providing social networks during transition phases.

Right from adolescence, and particularly once someone has reached the age of 18, the percentage of young people in care facilities drops sharply.⁴⁹ Accelerated transition from alternative care, which often starts before a person's 18th birthday, results in precarious living circumstances for young people.

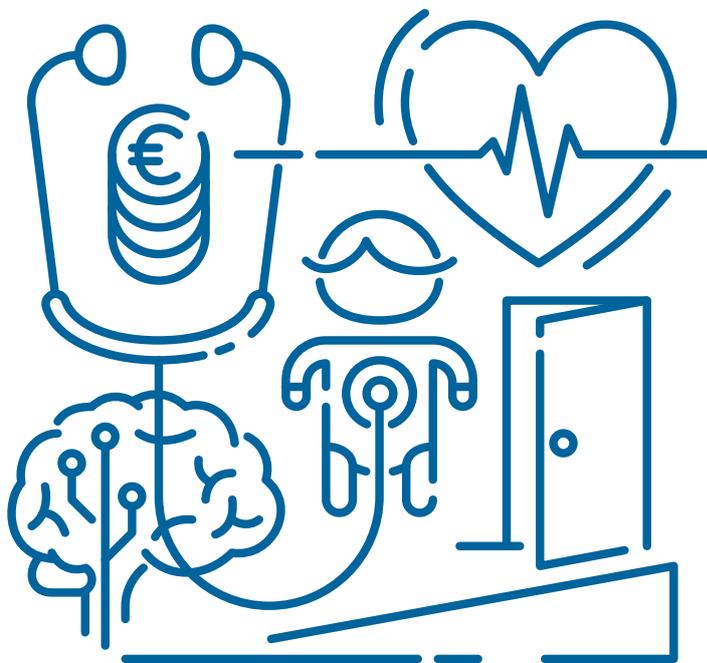
The key challenges faced by adolescents would otherwise be different, e.g. positioning themselves, gaining qualifications, and becoming independent. The prospect of having to leave the care facility and the associated social support systems at the age of 18 also has negative repercussions on adolescents in alternative care. The considerable uncertainties regarding the future make it tremendously difficult to concentrate on age-based development tasks and emotional stabilisation, especially for unaccompanied refugee minors.

The situation of young people without 'alternative care' is very different in that they are moving out of home later and later on average.⁵⁰ Over the last 10 years, the age for commencing vocational training has been pushed back by about a year, and is now almost 20.⁵¹ Families often take on the inevitable task of looking after and assisting their adult children. The vast majority of care leavers do not have this family support and security if they are left to be 'independent' without any further assistance. The lack of a publicly guaranteed care relationship for care leavers, which would be equivalent to the care provided by family, leaves them at a clear disadvantage.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

82. Take measures to ensure no young person leaves alternative care without a school certificate, training placement or a job to meet their basic needs;
83. Guarantee young people's entitlement to mandatory continuation of support services in cases where this is necessary to secure their future prospects;
84. Develop a proper system to assist young people, including young refugees, during their transition from alternative care, and provide reliable after-care and options for return;
85. Support self-organised care-leaver associations structurally and financially, and involve them in decision-making processes.

7. Disability, basic health and welfare



their financial and family resources, and their access to education and information.

Inclusion at school

Inclusive education is a key access point to social participation. 7.1 percent of all school students across Germany receive special educational support. Of these, only 39 percent are schooled inclusively. With regards to the different types of schools, com-

prehensive schools (*Gesamtschulen*) and general secondary schools (*Hauptschulen*) have the highest inclusion percentages, with more than 5 percent of pupils receiving special education support. Inclusive schooling at secondary schools (*Gymnasien*) remains the exception, with a percentage of just 0.3 percent.⁵²

The federal education system also results in unequal educational opportunities due to differing school codes and framework conditions. In terms of the inclusion rate, states such as Bremen, Berlin and Schleswig-Holstein have been successful in having classes that combine pupils both with and without disabilities. On the other hand, the amount of children attending special-needs schools is on the rise in southern Germany. There are also differences in relation to content. For inclusion at schools to be successful, a series of requirements and framework conditions need to be met. For instance, there need

7.a Children with disabilities

art. 23 UN CRC

The rights of children with a disability are explicitly established both in Article 23 of the UN Convention on the Rights of the Child and in the UN Convention on the Rights of Persons with Disabilities. In Germany, however, children and adolescents with disabilities are excluded from many areas of community life.

Article 23 on the UN Convention on the Rights of the Child describes the rights of children with disabilities to lead fulfilled lives of dignity, independence and active participation in the community. While children with disabilities can generally lead fulfilled lives in Germany, whether or not this happens is heavily dependent on where they live,

to be special-needs teachers in all inclusion classes, smaller class sizes and educational inclusion concepts, among other things. And this is not always a given, even in states with high inclusion rates.

Transitioning from school to career

The transition from school to tertiary education is an important phase that has a major influence on the further participation of adolescents with a disability in community life. Among the class of 2014, five in ten students without a general school-leaving certificate were from special-needs schools. This puts them at a disadvantage on the tertiary training market. At the end of 2014, there was also a sharp decline in training courses in special careers for people with disabilities as defined by Sections 66 of the German Vocational Training Act (BBiG)/Section 42m of the German Trades and Crafts Code (HwO).

Despite the large number of vocational training options, there is a particular lack of inclusive courses, and courses aimed at inclusion in professional life, for adolescents unable to obtain a vocational training certificate. The existing options tend to be more segregated, and the overwhelming majority continue to be aimed at special target groups, due to the varying jurisdictions and thus structures.

Inclusive child and youth support

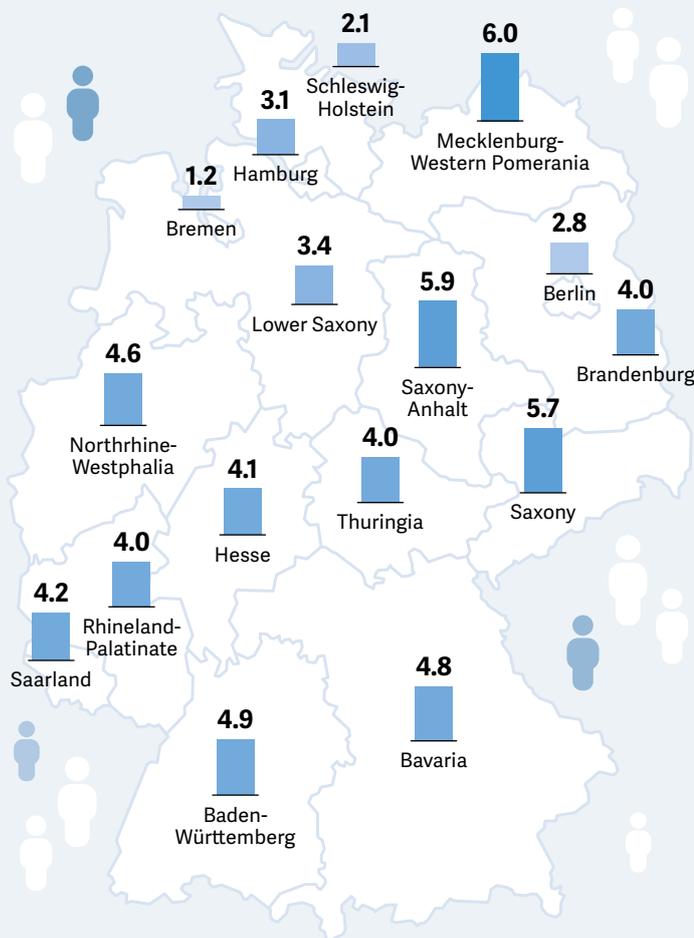
For many years, there have been calls for child and youth support services to have sole jurisdiction for all young people. The jurisdictions are currently divided: While the social welfare system is responsible for integration benefits for children or adolescents

with intellectual or physical disabilities, child and youth support services are responsible for children and adolescents with psychological disorders.

This complex legal situation raises interface problems, and impedes young people's participation. The jurisdiction split results in inappropriate 'jurisdictional diagnostics', meaning aid and support are not geared around the child's needs. Implementing an overall jurisdiction in child and youth support should not be reduced to a new performance element or a restructuring of legal entitlements. The entire infrastructure for child and youth support particularly needs to be further developed conceptually, and its services rendered inclusive, with all parties involved having the correct training and attitudes. Children with disabilities must not keep being

Students at special needs schools

Share of students with special education support needs that were taught at special needs schools of all students, school year 2016/2017, in percent



Data Source: Klemm, K. (2018): *Unterwegs zur inklusiven Schule. Lagebericht 2018 aus bildungsstatistischer Perspektive*. Ed. Bertelsmann Stiftung. Gütersloh, p. 11.

denied access to benefits established in Volume VIII of the German Social Code.

Inclusive recreation

Extracurricular activities in childhood and youth are important means of developing one's identity, e.g. in establishing links to peers. Child and youth work provides an opportunity to shape and structure recreational activities for children and adolescents. According to the 15th report on children and youth, inclusion and participation of young people with disabilities are among the key tasks of child and youth work. The number of child and youth-work services used by children and adolescents with physical disabilities is on the rise. Adolescents with intellectual disabilities, however, tend to use special disability support services in many places. Here, too, there are regional differences, and the importance of material and conceptual framework conditions becomes apparent: Adolescents with disabilities tend to use the child and youth-work services more if these services co-operate with disability-support facilities or employ specially trained experts.⁵³

Protection against the sexual abuse of girls with disabilities

Statistics show that girls and young women with disabilities are the target group most frequently affected by sexual abuse.⁵⁴ Unlike child and youth-support services, disability-support facilities and services do not have nationwide regulations on protection mechanisms. Legal changes are urgently required here.

Protection and support for children with so-called migration backgrounds and disabilities

According to a 2016 participation report by the German federal government, people with disabilities and a so-called migration background are particularly at risk of social exclusion. There is a lack not only of support and information channels for parents of children with disabilities and so-called migration backgrounds, but also of structures and networks within civil society which represent or take into account the interests of people with disabilities and so-called migration backgrounds in federal processes.

Inclusion as a key social process

Inclusion is a principle of human rights that enables people to participate in all areas of life. Implementation of the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities cannot be considered successful while lots of children with disabilities continue to be excluded from key areas of social interaction, such as education, recreation, culture and work. Inclusion must also be viewed as a process that needs to be extended and further developed beyond the schooling phase. It is a responsibility of society as a whole, and must shift from the periphery to the central focus of political debate. Inclusion does not just apply to education, but rather encompasses all aspects of a child's life. As such, policymakers are also called on to take action in related areas, e.g. urban planning mobility or sport and culture.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

86. Legally establish protection schemes for disability-support facilities and services, particularly in relation to protecting girls and young women with disabilities;
87. Create nationwide standards for an inclusive education system and educational training of specialists in order to counteract the lack of equal opportunities resulting from place of residence, support focuses or a lack of necessary resources;

88. Introduce a nationwide jurisdiction of child and youth-support services for all young people, regardless of their needs or type of disability. The transition from child and youth-support services and integration support to a reformed Volume VIII of the German Social Code must be such that there are no gaps in support or discontinuation of care;
89. Establish nationwide quality standards for training options for adolescents with disabilities. The conditions of the general labour market and rehabilitation system must be equally further developed and adjusted in order to give adolescents with disabilities equal opportunities to participate in professional life;
90. Legally establish inclusive services for children with disabilities in the Child and Youth Support Act;
91. Develop a nationwide funding line for the overlap between disability and migration in order to combine disability-specific expertise with knowledge of culturally sensitive work to enable culturally sensitive work at disability-support facilities and services.

7.b Health and health services

art. 24 UN CRC

The growing lack of doctors, nurses and midwives, and the closure of specialist and maternity clinics, is alarming. Access is particularly at risk in rural regions, where a number of paediatric departments have been closed down in recent years, further closures are imminent for economic reasons, and there is a shortage of skilled workers. Over the next 10 to 15 years, demographic trends will see a disproportionate number of paediatricians retiring, with no successors to replace them. With specialist paediatric qualifications remaining the same or declining, Germany is heading for a massive undersupply in both inpatient and outpatient care.

More and more paediatric treatment capacities are also being cut at hospitals for economic reasons. When children are treated by doctors or nurses trained in treating adult patients, it is not always possible to guarantee these children will receive medical, psychosocial and nursing care appropriate to their age.⁵⁵ For example, basic inpatient care for children and adolescents at paediatric departments

is not taken into account at all in legal regulations or directives issued by Germany's Federal Joint Committee. This only applies to internal medicine and surgery departments.

Access to medical care for refugee children and adolescents

The access to medical care granted to children and adolescents who have fled to Germany as refugees is problematic. While unaccompanied refugee minors do legally, but not actually, have access to full legal health-insurance benefits, refugee children and adolescents who arrive in Germany with their parents are, for the first 15 months, only entitled to treatment for acute illness or treatment essential to maintaining health. Access to psychosocial care is very limited for unaccompanied and accompanied children and adolescents.⁵⁶ Preventive health care and psychotherapeutic support are thus rarely provided. In addition to legal hurdles, this is also due to language barriers and a lack of knowledge of the German health system – and has serious consequences for the children's further development.⁵⁷

Male circumcision

Section 1631d of the German Civil Code (BGB) allows parents who have custody of their children to consent to a non-medically-required circumcision of male children not yet able to make their own decisions or judgements, if performed in accordance with the latest medical standards. Around 10.9 percent of boys in Germany are circumcised.⁵⁸ Even under optimum medical conditions, the expected rate of complications is approximately 5 percent, with a higher rate anticipated for newborns.⁵⁹ At least 400 boys a year require hospitalisation due to medical complications resulting from circumcision. The complications range from post-operative bleeding and wound infections to scarring, agglutination or penis amputation.⁶⁰

Children's hospitals

Number of beds in pediatrics per 100,000 persons under age 14, 2010 to 2017



2010: 19,297 beds/
10,941,201 persons
under age 14

2017: 18,591 beds/
11,171,759 persons
under age 14

Data Sources: German Federal Statistical Office (2018): *Anzahl der Kinder bis 14 Jahre in Deutschland von 1991 bis 2017*; German Federal Parliament (Bundestag) (2019): *Notstand in Kinderkliniken*. BT-Drs. 19/7270, p. 3.

Due to the increasing economisation of the health system, numerous children's wards in clinics have been closed and beds in inpatient pediatrics have been reduced in recent years. Other beds cannot be used because qualified staff is lacking. While the number of beds available is decreasing, the number of children in Germany is slowly increasing since 2013.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

92. Grant all children and adolescents unrestricted access to health care, including health promotion, preventive services and rehabilitation;
93. Take measures ensuring adequately qualified paediatric care by both doctors and nurses in order to counteract the shortage of doctors anticipated for the medium and long term. The number of medical-school placements must also be promptly and significantly raised as part of the 2020 master plan for medical studies, and nursing course options similarly increased;
94. Adapt the requirements, particularly regarding children's and adolescents' accessibility to comprehensive basic care by specialist paediatric departments at hospitals, to equalize the basic-care requirements for adult patients;

95. Expand the medical care services so that refugee children are equally entitled to a maximum state of health, and particularly to appropriate treatments for trauma;
96. Commission research projects which highlight the actual impacts and possible target discrepancies in the existing Section 1631d BGB (male circumcision), and the causes thereof;
97. Assess whether and the extent to which the legal situation in Germany and its implementation complies with the UN Convention on the Rights of the Child in terms of male circumcision. For this assessment, current national and international knowledge of legal, medical, psychological and social-science matters needs to be taken into account, and civil-society organisations including interest groups should be involved.

7.c Efforts to overcome the most urgent health challenges

art. 24 UN CRC

In Germany, parents' socioeconomic status and level of education has a big impact on the health of children and adolescents. When parents are poor and lack education, children and adolescents eat less healthily, exercise less, are less involved in sports clubs, and are thus more frequently overweight or obese than their peers from families with a better social status.⁶¹ Sugary food and drinks play a key role here, as they are consumed particularly heavily by children and adolescents from families from lower socioeconomic backgrounds. In addition to causing numerous physical complaints, obesity also negatively affects children's and adolescents' confidence and feelings of self-worth.

Around 20 percent of children and adolescents in Germany display symptoms of psychological abnormalities.⁶² The children of parents without any educational qualifications are 44 percent more likely to suffer from behavioural disorders such as ADHD compared to the children of educated parents.⁶³ Boys aged between 7 and 13 especially tend to be diagnosed with ADHD/hyperkinetic disorder and treated with psychotropic medication.⁶⁴ There is much evidence to suggest that behavioural problems in children often have no internal causes, and

are instead based on unfavourable development conditions, resulting in many misdiagnoses.⁶⁵

In 2016, 26 percent of all children received diagnoses indicating a potentially chronic somatic disorder, while 9 percent of all children also have a potentially chronic psychological disorder.⁶⁶ These chronic illnesses may lastingly impede development or even entail further secondary disorders, which is why children and adolescents need access to medical and educational services.

The risk of parents not identifying chronic illnesses as such is three times as high in families with low socioeconomic status as it is among families with high socioeconomic status.⁶⁷ This is particularly problematic, as chronic limitations appear more commonly in children from families with low socioeconomic statuses.⁶⁸ Many federal initiatives, such as 'IN FORM' or the national 'Gesund aufwachsen' ('Growing up healthy') health target seek to promote the health of children and adolescents and eliminate social differences and disadvantages. Specific measures, such as training or courses, designed to change behaviour – and create a healthier lifestyle – are rarely effective, and often have no impact on socially disadvantaged groups. The important thing is to change the living conditions of children and adolescents in such a way that it is easier for them to make their own health-promoting decisions.

School as a living environment is also a source of concern: 43 percent of school pupils suffer stress

as a result of excessive performance pressure, poor grades, a dysfunctional pupil-teacher relationship, or bullying at school and on social media. As such, a third of school pupils complain about headaches,

back pain, sleeping problems and panic attacks. The stress increases the higher the year level, and many children and adolescents feel that school is a burden.⁶⁹

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

98. **Work with states, municipalities and civil society to develop comprehensive health-promoting initiatives which strengthen the state of health of children and adolescents from families with low socioeconomic statuses;**
99. **Create framework conditions for chronically and mentally ill children which facilitate complex, personalised treatment and support management based on the diagnosis, severity of the symptoms, and the living conditions of young patients;**
100. **Work with states and municipalities to make child-focused facilities (such as day-care centres, schools or open youth clubs) health and resilience-promoting places of learning and living, and establish health education in the curricula.**

7.e Measures to protect children from substance abuse

art. 33 UN CRC

More than every fourth child of mothers with low social status was exposed to tobacco smoke during the pregnancy, increasing the risks of pregnancy complications and sudden infant death syndrome. Conversely, only 1.6 percent of pregnant women with high socioeconomic statuses smoke.⁷⁰ This imbalance is ongoing: For example, socioeconomically disadvantaged children and adolescents are more frequently exposed to passive smoking (26.4 percent) than their peers with high statuses (8.2 percent), and are also more likely to smoke themselves.⁷¹ In general, the consumption of illegal

drugs, alcohol and tobacco is heavily influenced by social characteristics: Lower-secondary-school (Hauptschule) students consume more tobacco or illegal drugs more frequently than their peers from other levels of education.⁷²

A new addiction factor is the increasing media consumption among children, adolescents and their parents, which poses a risk to health. For instance, babies are already displaying feeding and sleeping disorders, infants are displaying developmental language disorders, restlessness and aggression, and primary-school children are displaying difficulties concentrating. 22.4 percent of 12 to 17-year-olds have an issue with problematic Internet usage, while 5.8 percent of adolescents are affected by disorders associated with computer games or the Internet (Internet dependence), resulting in physical and mental disorders.⁷³

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

101. **Impose taxes on, and ban advertising for, health-harming products such as sugar, tobacco and alcohol, or significantly increase taxes on these, and implement the WHO Framework Convention on Tobacco Control;**
102. **Raise awareness among children, adolescents and parents regarding the physical, mental and psychosocial risks of their own media use, and educate them about the health-harming consequences of intensive use.**

7.f Care services and facilities

art. 18 paras. 2 and 3 UN CRC

Early education, care and child-raising underwent a dramatic change during the reporting period (in relation to the right to education, which also includes early education; see Chapter 8 (a)). The quantitative developments in child day-care before children start attending school were among the focuses of the German federal government, with the aim of improving the compatibility of family and work and

counteracting discrimination against socioeconomically disadvantaged families. The introduction of a legal right to early-childhood support through a day-care facility in 2013, as well as investments worth billions of euros in child day-care services saw a rise in care numbers: In 2017, one in three children under 3 and 93.6 percent of 3 to 5-year-olds – over 3.1 million children in total – were being looked after at over 50,000 child-day-care facilities and by approximately 44,000 child-minders.⁷⁴

But the demand for care placements also grew. The demand for care for children under 3 outdid supply in all federal states, with the average shortfall

in 2017 being around 12 percent.⁷⁵ By 2025, at least 600,000 additional placements are expected to be required for children in the years before they commence school.⁷⁶

There continues to be major differences between the federal states in terms of the meeting of demand, financing, parent contributions, skilled worker training, skills shortages, carer-to-child ratio, and scope of care. In eastern Germany, the agreed scope of care for children under 3 is, on average, 7 hours longer than in western Germany – and, at some 42 hours a week, longer than a working week for full-time employees.⁷⁷

However, given the growing scope of care, particularly for very young children, the qualitative challenge was not adequately overcome during the reporting period. The German act on further developing quality and on participation in child day-care (*Gute-KiTa-Gesetz*) has not succeeded in establishing nationwide quality standards. The idea of focusing educational work on children's rights, on education in human and children's rights, and, in particular, on upholding the right to co-determination has so far not been comprehensively established in the federal states' early-education training

and tertiary curricula (see Chapter 1 (g)).

For children with so-called migration backgrounds and children from socioeconomically disadvantaged families, the access barriers during the reporting period continued to be much greater than for other children. In some cases, this access is not available at all for refugee children. Although the percentage of children with so-called migration backgrounds rose and was 28 percent in 2017⁷⁸, their involvement in education before starting school is behind that of their peers without so-called migration background. The number of children whose parents both have a so-called migration background, and children from first-generation migrant families, is especially low.⁷⁹

As quantities continue to grow, qualitative developments need to be successful. This is essential in order to achieve the education target of 'developing the child's personality, talents and abilities to their fullest potential' (Article 29 Paragraph 1a), and in view of the intention to ensure comprehensive, permanent participation right from the outset (in accordance with Article 12 of the UN Convention on the Rights of the Child).

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

103. Develop nationwide quality standards for day-care centres and child-minders, geared around the best interests of the child;
104. Expressly refer to children's rights in the *Gute-KiTa-Gesetz* for agreements between the federal and state governments, and in the elementary-level curricula for the states;
105. Eliminate access barriers to early-education services for families particularly in need. This includes effectively counselling parents on options for discounted contributions.

7.g Standard of living

art. 27 paras. 1–3 UN CRC

In accordance with Article 26 and 27 of the UN Convention on the Rights of the Child, every child has a right to grow up in social security and with an appropriate standard of living. This is not the reality for an increasing number of children and adolescents in Germany. Despite economic growth and declining unemployment, child poverty has been on the rise for years. This has serious consequences for the rest of the children's lives and fulfilment of a number of children's rights, including education, health development, social participation or opportunities for involvement.

Child poverty ties in directly with parent poverty. As such, children living in families at high risk of poverty are particularly affected: Some 40 percent of families with a solo parent, and around 30 percent of families with three or more children, are considered poor, as are nearly 30 percent of children with so-called migration backgrounds.⁸⁰

Around 3 million children and adolescents currently live off government benefits to survive, with

more than 1.6 million doing so even though their parents are gainfully employed.⁸¹ They receive additional benefits under Volume II of the German Social Code, housing benefits or child allowance. In addition, there are many families who do not apply for benefits for shame of stigmatisation, due to cumbersome bureaucracy, or because they are not even aware of their social entitlements. The number of unreported cases of child poverty is thus high. The German federal government states that around 30 to 50 percent of those entitled to benefits under Volume II of the Social Code, and indeed 60 to 70 percent of those entitled to a child allowance, do not apply for benefits. The number of those not claiming the Education and Participation Package (*Bildungs- und Teilhabepaket*) is sometimes even higher.⁸²

But even with government benefits, the minimum subsistence level, including physical needs for clothing, food and shelter, as well as education and social participation, is not guaranteed for all children.

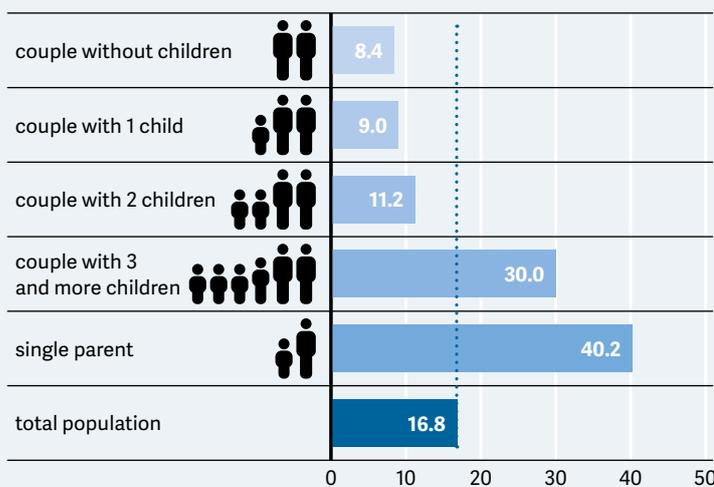
The method for calculating minimum subsistence has for many years been met with criticism. Experts believe social benefits are too low – in view of the inadequate statistical basis for children's needs, the additional inclusion of unreported poor

households, and the arbitrary removal of certain budget expenditure items. The statutory rates for children are also calculated based on an already poor comparison group. The minimum subsistence level under social law is thus extremely tight. The spin-off into the Education and Participation Package, which fewer people claim, means education and participation are not guaranteed.

The poverty line is drawn at 60 percent of the median income. 40.2 percent of households with a single parent live below the poverty line.

Poverty rate by household type

The poverty rate describes the percentage of people in the total population who must live below the poverty line. Poverty rate by household type in 2016, in percent



Data Source: Aust, A. et al. (2018): *Wer die Armen sind. Der Paritätische Armutsbericht 2018*. Ed. Der Paritätische Gesamtverband. Berlin, p. 19.

The minimum subsistence level for children is massively undercut if the already very tight social benefits are further reduced due to sanctions. Much of these reductions affect children and adolescents. In some cases, entire benefits are cut, and this can have far-reaching consequences for families in the form of power blackouts or the threat of homelessness. As such, the German federal government's Children's Commission announced back in 2017 its intention to cut sanctions in order to reduce child poverty. The German Federal Constitutional Court is currently assessing the constitutionality of sanctions.

Although a lot of expertise exists on the topic of poverty, and, by virtue of the 5th Poverty and Wealth Report from 2017 and the overall evaluation of marriage and family-based benefits from 2013, the German federal government has extensive knowledge of the extent of child poverty and the need for initial target-group-specific reforms to reduce it, no political priority is ever given to combating child poverty. And children and families are feeling this: 90 percent of children and adolescents, and 73 percent of adults, believe policymakers do not focus enough on the issue of child poverty.⁸³

Apart from very few exceptions, the German federal government's actions in recent years have been limited to constitutionally required adjustments: It increased child tax deductions, and did the same for child benefits, but failed to close the gap between this tax relief and the child benefit amount. As the child benefit is offset against other

benefits such as basic benefits and child support for low-income earners, poor families do not benefit from an increase. The German federal government similarly adjusted the statutory rates for children on a rotational basis, but did not make any changes to the much-criticised calculation method. The Education and Participation Package was only adjusted in 2019 as part of the so-called 'Strong Families Act' (*Starke-Familien-Gesetz*), thereby increasing the contribution paid out for school supplies (among other things) and abolishing own contributions for midday meals.

This same act has also increased the child support for low-income families from 170 to 185 euros, and will in future peg this to the actual minimum subsistence level. The pay-out, however, will regrettably still not be automatic, which is why an extremely small number of people are once again expected to claim it. The 2017 broadening of the advance on maintenance payments (*Unterhaltsvorschuss*) was an important step for solo parents and their children, who are a group particularly at risk of poverty; the broadening saw the tight age limit and maximum receipt period abolished.

Given the rising number of children in poverty, however, the measures taken to date do not suffice to combat this. There needs to be a well coordinated, interdisciplinary, nationwide strategy tackling child poverty, which includes a reform of monetary benefits, preventive approaches, and reinforced social infrastructure – from child day-care centres to schools to recreation.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

106. Focus more on children's actual needs and rights when determining benefits to uphold a minimum subsistence level, and involve children and adolescents in the calculation process;
107. Pool the many existing child-related benefits, and guarantee financial subsistence support as an independent entitlement for every child, paid out automatically;

108. Abolish the Education and Participation Package in its current form, and establish a ruling whereby the flat amounts previously contained therein are incorporated into the pooled financial subsistence support for children, as well as ensure further benefits – such as private tutoring or free lunches – are provided through the institutions attended by children;
109. Abolish the sanctions established in Volume II of the German Social Code against families with underage children;
110. Promote the establishment and expansion of additional services for all children in the areas of education, recreation, sport and culture;
111. Enhance disadvantaged neighbourhoods, and ensure social services, facilities and educational institutions in these neighbourhoods are particularly well staffed, so as not to compound the disadvantages suffered by children living in poverty.

8. Education, leisure and cultural activities



referring to its second state report to the Committee. Furthermore, apart from citing the federal programme 'Demokratie leben!' ('Live democracy!'), only a few examples are mentioned, referring to human rights education and children's rights education, but neither do these examples offer a comprehensive strategy, nor an overall concept

Depending on the basis of calculation, the data on the share of education expenditure in gross domestic product in 2015 and 2016 differ: According to the figures of the Federal Statistical Office, they range

between 4.2 percent (2015) and are thus even below the OECD average, and 6.4 percent (2016).⁸⁵ The number of pupils at comprehensive schools declined by 11 percent between 2007 and 2017.⁸⁶ A total of 47,435 adolescents nationwide (equating to 5.9 percent) left school without obtaining the lowest school-leaving certificate (*Hauptschulabschluss*) in 2015.⁸⁷ The percentage of adolescents who have not obtained any school-leaving certificate varies between states and districts, with the highest dropout rates occurring in Berlin (9.3 percent) and Saxony-Anhalt (9.9 percent).⁸⁸ The rates are significantly higher among boys.⁸⁹

Equal opportunity and educational equality at schools

The right to education on the basis of equal opportunity is not implemented adequately or, more

8. a Right to education

art. 28 UN CRC

The right to education encompasses non-discriminatory access to education and the availability of education for all children and adolescents. Education targets, content and methods shall, in accordance with the UN Committee on Economic, Social and Cultural Rights, be established in such a way that they comply with human rights and are based on children's rights at all institutions working with children and adolescents.⁸⁴ In its report, the German federal government focuses on early-childhood education (for the quantitative development of day-care centres, see Chapter 7 (f) of this report). But no information is provided with regard to the education targets, instead the government is simply

importantly, in a non-discriminatory manner at early-childhood educational institutions and schools. Equal access and equal treatment of all children is not upheld by the German education system. A number of studies have found that children are experiencing structural disadvantages in terms of their right to education based on certain characteristics, social factors or other attributes. These particularly include children with disabilities, children with a so-called migration background, and children from poor families.

For these children, the structural disadvantages impact the entire course of their education. The limiting of educational opportunities for children begins before they even start school; it continues during primary school and subsequent schooling; and it is especially apparent when moving from one institution to another. Children from socially weaker families or children whose first language is not German have much fewer opportunities to graduate from school with a good grade. While the percentage of children attending separate special-needs schools has dropped slightly (2008: 4.9 percent of all children, 2017: 4.3 percent), there continues to be major differences between the states (e.g. 1.2 percent in Bremen and 6 percent in Mecklenburg-Vorpommern).⁹⁰

Taking into account that around 2.7 million children in Germany are affected by material poverty⁹¹, a considerable number of pupils are at risk of having only limited chances to maximise their potential throughout the course of their education. Furthermore, they have disproportionately fewer educational opportunities than their peers who do not grow up in socially and educationally disadvantaged families. The transition from primary to secondary school is particularly socially selective. Children from households with a higher level of education are more likely to attend comprehensive schools (76 percent) which qualify students for access to university than children from households with a lower level of education (54 percent). 16 to 29-year-olds from families with so-called migration backgrounds are also less likely to attend university (15 percent) than peers without so-called migration backgrounds (18 percent). Generally, young people of the same age from families with so-called

migration backgrounds less frequently have university degrees, and are more likely to not have any vocational qualification.⁹²

The introduction of full-day schools is progressing nationwide. Full days have been increased to nearly 50 percent at primary schools, though often on a voluntary basis, and sometimes even at a cost, which poses a major barrier for socioeconomically disadvantaged families.

The staffing, as well as technical and financial resources at schools continue to be insufficient. Everyday school life is, in many cases, characterised by a shortage of teachers and cancellation of classes. According to estimates, there will be a nationwide shortage of up to 35,000 teachers at primary schools alone over the next few years.⁹³ There is a particular acute lack of equipment, qualified teaching staff and funding in the field of digital transformation.

Non-formal educational institutions

Non-formal and extracurricular activities in education and interaction, such as youth work or cultural education, are just as important as formal education when it comes to cultivating and developing responsible, socially competent personalities. Children and adolescents must thus also be given the chance to autonomously participate in non-formal youth activities. But this area receives a lot less funding and is often short-term, resulting in job insecurity and precarisation of educators, social and youth workers. There is an urgent need to invest in extracurricular and non-formal education, as well as in a sustainable social and cultural infrastructure for adolescents in their social spheres.

Right to education for refugee children

The right to education for refugee children and adolescents varies from state to state, and overall has been inadequately implemented during the reporting period. Theoretically, access to early education is possible if the child's 'habitual residence' is in Germany. In practice, however, a 'habitual residence' is often only recognised if a certain amount of time has elapsed since their arrival in the country, or those

seeking refuge have left the initial reception centre for refugees. Restrictive legal regulations lead to the fact that these children rarely have any access to day-care centres.⁹⁴

Refugee children's access to schools depends on the state in which they live: If refugee children enter the country with their parents, and are then obliged to live in refugee processing centres for 6 months, 2 years or until their repatriation (Section 47 of the German Asylum Act, AsylG), the respective state law determines whether the children are also obliged to attend school during this time. In states

where immediate compulsory schooling is in place, access to regular schools is often considerably limited for refugee children at processing centres, due to a shortage of capacities and resources. The situation is particularly precarious for adolescents transitioning into adulthood, as to date, only Bavaria has compulsory schooling requirements extending up to 21 years of age, and in exceptional cases even up to 25 years of age. It is expected that the creation of processing centres known as 'Anker-Einrichtungen' will further impede access to regular schools for refugee children.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

112. Incorporate children's-rights-based quality development and assurance mechanisms, including effective control mechanisms, at all educational institutions (such as day-care centres, schools and youth recreational facilities) and into a nationwide system monitoring children's rights;
113. Boost support for educational specialists and day-care workers in relation to children's-rights-based teaching, consultations with parents, conflict-resolution skills, complaints management, prejudice-conscious cooperation with families, the education of parents and families, and provide the resources necessary for this;
114. Invest in a sustainable social and cultural infrastructure in the social sphere, and develop and safeguard extracurricular and non-formal education services;
115. Eliminate disadvantages for children with so-called migration backgrounds, children who are at risk of poverty, or who are confronted with structural barriers. Refugee children in particular must be able to freely exercise their right to education. It is important to ensure they receive the earliest possible access to benefits established in Volume VIII of the German Social Code – either through mandatory information on primary place of residence as per Section 6 Paragraph 4 of Volume VIII of the German Social Code, or through an explanatory legal amendment.

8. b Aims of education

art. 29 UN CRC

The UN Committee on Economic, Social and Cultural Rights establishes that: 'Education is both a human right in itself and an indispensable means of realising other human rights.'⁹⁵ As such, great importance is placed on education targets and education in human rights, though this importance is not adequately reflected in the German federal government's State Report.

Children must be able to participate in education institutions and experience the quality of children's rights here themselves. This includes having their dignity respected by professionals, whose welfare obligation should allow for self-determined learning processes. Progress has been made in relation to comprehensively implementing children's rights at formal education institutions. While children's rights are established in the school legislation of all federal states at comprehensive schools, the states' cultural sovereignty means this is done in varying ways, and often more implicitly rather than explicitly. Several states (such as North-Rhine Westphalia, Hesse and Lower Saxony) have been implementing model projects (such as 'children's rights schools') for some time now, and these are to be further developed.

Overall, children's rights are increasingly being addressed as a classroom topic, but school structures and approaches, and common school life, still fail to adequately uphold the mission of the UN Convention on the Rights of the Child. According to the 2018 Children's Report, some 84 percent of the 1,000 children and adolescents (aged 10–17) surveyed know little to nothing about children's rights.⁹⁶ Here, the government needs to be held accountable more intensively.

The field of teaching and education revolves around the relationships and the respect shown to the young people. However, everyday educational interactions also involve degradation, discouragement and psychological abuse: On average 5 percent of all educational interactions are classified as very hurtful, while a further 20 percent are classified as mildly hurtful.⁹⁷

Often, child participation solely occurs on designated committees, and usually tends to focus more on peripheral school issues rather than the core issue of teaching structures. The participation rights of children and adolescents in education and all areas of life affecting them directly are an independent right for which specific criteria exist (e.g. transparent, voluntary, child-friendly, inclusive and accountable).⁹⁸

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

116. Systematically take into account Article 12 of the UN Convention on the Rights of the Child both at day-care centres and schools, and introduce mandatory, age-appropriate processes and structures guaranteeing children's and adolescents' self-determination and co-determination at educational institutions at any age. At schools, this must also include form and content of teaching and learning.

8.d Human rights education

art. 29 para. 1 UN CR

Education in, through and for human rights is based on respect for human rights and basic freedoms and the full development of human capabilities. Furthermore, the UN Committee on the Rights of the Child, the UN Committee on the Rights of Persons with Disabilities, as well as the UN Declaration on Human Rights Education and Training define enabling real, non-discriminatory participation in a free society, as well as an awareness of every person's dignity and feeling of self-worth, as the tasks and objectives of human rights education.

This results in an obligation for all stakeholders and professions in the relevant action fields. In its State Report, the German federal government refers to the 'recommendation on human rights education in schools' issued by the Standing Conference of Ministers of Education and Cultural Affairs of the Laender in the Federal Republic of Germany (*Kultusministerkonferenz*), which was pleasingly revised and updated in 2018. However, only state school laws are binding for schools. And only three of them

explicitly refer to children's and human rights in the law. Additionally, some of these – contrary to the universality of human rights – use restrictive wording in relation to love of one's homeland, and to Christian and humanist ideas and values. This warrants criticism in view of the government's neutrality obligation and ban on discrimination.⁹⁹

Human rights education requires expertise, yet the facilities for training and continued education at universities and among private institutions or independent sponsors explicitly geared around the aforementioned tasks and objectives continue to be limited at both federal and state level. For instance, there are only a few select areas or job profiles encompassing human rights education explicitly. Also scientific research and analysis of issues relating to children's and human rights in the education system have not been appropriately developed either.

Other key tasks include raising awareness about diversity, and eliminating discrimination in everyday education. This must take into account public communication and education materials, as well as curricula, quality standards or guidelines. All dimensions of discrimination must be considered here, including intersectional overlaps.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

117. Recommend that the states explicitly incorporate human rights education into school laws as an education target, and ensure all children and adolescents know their rights;
118. Implement the joint recommendation by the German Rectors' Conference (*Hochschulrektorenkonferenz*) and the *Kultusministerkonferenz* on teacher training for diverse schools (2015);
119. Ensure skills-building in human rights education and research, and ensure the laws and standards of the individual areas of education at state level explicitly establish bans on discrimination, raise awareness about diversity, and provide clear regulations on making educational interactions respectful and participative.

8. e Rest, play, leisure, recreation and cultural and artistic activities

art. 31 UN CRC

Free spaces for children and adolescents are important for teaching self-efficacy, interacting with peers, and being creative of their own volition, without pressure. Free spaces are defined as spaces not governed by any government or society regulations, where growing up is controlled or standardised as little as possible. The ability to make their own decisions regarding the complex options in such spaces empowers children and adolescents. Suitable locations and time frames are required depending on how these free spaces are to be used.

An increase in purpose-driven focuses, time constraints and assimilation for children and adolescents has meant less and less of a priority is being given to spaces designed for leisure and recreation. Many children and adolescents are critical of the fast speed and condensed nature of school curricula, and the lack of time and space available to do as they please. Decisions on the children's and adolescents' time management are not always made by the children and adolescents themselves; they are instead primarily made by parents and the schools.

The State Report lists many cultural options available to young people in their free time, and the diversity of options is highly appreciated; yet the report fails to properly see leisure services from the perspective of recreation and an ability to participate in society. Young people feel pressured to make the most of the recreational activities to improve their qualifications. According to the 'Health Behaviour in School-aged Children' study, the World Health Organisation (WHO) found that around 30 percent of children and adolescents in developed countries feel exhausted. The figures show that Article 31 of the UN Convention on the Rights of the Child does not adequately provide for the right to leisure, play and recreation.

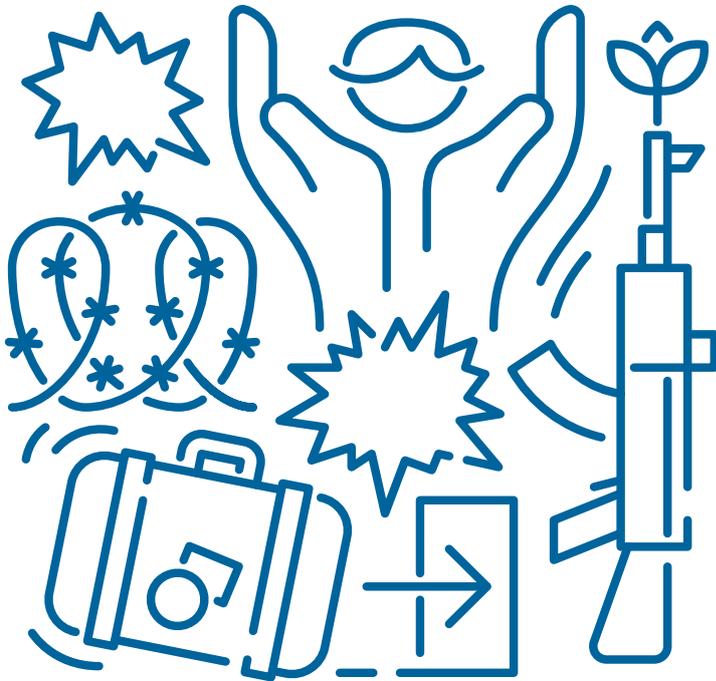
The expansion of full-day schooling at primary schools across Germany poses the risk of the children merely being supervised, or of extended lessons in the afternoon. Instead of these approaches, free, non-compulsory afternoon options with social youth workers must be developed to promote inclusion, self-determined involvement, and recreation.¹⁰⁰

The right to secure, attractive free spaces based on self-management is not a given; it must be enabled through mandatory municipal structures and frameworks. Article 31 of the UN Convention on the Rights of the Child includes the right to privacy in relation to intervention and access by others, as well as the right to not be forced to participate.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

120. More intensively involve young people in decision-making processes regarding the use of public spaces;
121. More intensively integrate the needs and perspectives of children and adolescents when developing full-day schools. This requires more flexible solutions, public services, and the option of not being obliged to participate every day. Full-day schooling is also possible outside school grounds at public youth-support facilities, and must provide enough time and space for self-management in general.

9. Special protection measures



enacted. In doing so, however, legislators have not adequately taken into account the obligation from Article 3 Paragraph 1 of the UN Convention on the Rights of the Child, which requires that affected child-welfare matters be investigated and given priority. The number of children and adolescents forced to endure uncertain residency situations, such as repeated exceptional leave to remain (*Kettenduldung*), also increased during the reporting period, which has considerable negative consequences for the development and education

prospects of those affected. As at 30 June 2018, 49,212 minors had the status of having been granted 'exceptional leave to remain' (*Duldung*).¹⁰¹

Access to protection and humanitarian aid when exercising rights under the UN Convention on the Rights of the Child (Article 22) has seen significant tightening at a legal and practical level. In order for access to appropriate protection and care to be provided, unaccompanied minors and their independent legal representation need to be identified from the outset. Both have so far been the primary responsibility of public youth support services.

But this primary responsibility is sometimes evaded. In many cases, for instance, unaccompanied minors who had been picked up by the federal police at the national borders were not handed over to the youth welfare authorities as required: In 2016, 649 unaccompanied minors were pushed back or turned away at the border.¹⁰²

9.a Refugee children

art. 22 UN CRC

Unaccompanied refugee minors

Some of the recommendations issued by the UN Committee on the Rights of the Child in 2014 have been implemented in Germany: Unaccompanied minors are now deemed capable of following legal proceedings (*Verfahrensfähigkeit*) up to the age of 18 as a standard, a legal basis has been established for the so-called age determination in relation to the Child and Youth Welfare Law, and asylum hearings of unaccompanied minors are now being conducted by special commissioners.

Since 2015, a number of legal amendments affecting refugee children and adolescents have been

Significant shortcomings were apparent during the reporting period right from the time of identifying unaccompanied minors. Minors are often considered accompanied if adults travelled with them, even if these adults have no parental or custodial ties to them.¹⁰³ The main instrument used to identify an official need for protection if no ID papers are available is the age assessment process. In 2015, a legal basis as per Section 42f of Volume VIII of the German Social Code was established for official age assessments when children are taken into temporary care by child and youth support services. But there continues to be a lack of concentrated jurisdiction among youth welfare authorities, and of a legally binding effect attached to these results, e.g. for the Foreigners' Bureau. This results in various authorities obtaining differing assessment results.

Another reason why access to legal protection during the age-assessment process conducted by child and youth support services is uncertain is because, at the time of the assessment, only the emergency representation by the age-assessing youth welfare office itself exists. This consequently leads to conflicts of interest. Although Section 42f of Volume VIII of the German Social Code stipulates an appropriate sequence of measures to be applied, the wording of the law does not mention any concrete procedural standards, nor does it legally discount the possibility of degrading methods, including genital examinations. Only the explanatory memorandum specifically discounts this. The word of the law similarly fails to mention the principle of considering youths as minors in cases of doubt, based on Article 3 Paragraph 1 of the UN Convention on the Rights of the Child, which states that, in cases of doubt, youths must be considered minors.

In addition to the existing shortcomings, further disadvantageous reforms are also being discussed at the time of this report's publication. These discussions relate to key issues regarding the protection of unaccompanied minors, such as the age-assessment process, the mandatory use of medical methods, and the notion of calling into question the primary jurisdiction of public youth support services when it comes to identification and initial housing.

The asylum process

Although improvements were made to the asylum process for unaccompanied minors during the reporting period, child-specific reasons for flight, such as recruitment as child soldiers or gender-specific violence, are still not adequately taken into account.

The asylum process for accompanied minors requires improvement, as their need for protection is often neglected. There is no obligation to investigate child-specific reasons for flight, and children are treated as a legal appendix to their parents in proceedings. There is also a lack of procedural requirements stipulated for child-friendly counselling prior to the hearing, and having the hearing conducted by specially trained staff.

This situation has significantly deteriorated as a result of the fact that, at an administrative level, families' asylum proceedings have been shortened, and are increasingly being conducted in the space of a few days at so-called 'Anker-Einrichtungen' (processing centres), reception centres or similar.¹⁰⁴ This acceleration has made it more difficult, and therefore less common than before, to identify child-specific reasons for fleeing, as there is generally no access to independent, needs-based counselling before or during the process.

At a legal level, accompanied minors are governed by the accelerated process under Section 30a of the German Asylum Act (AsylG), introduced in 2016, and the obligation to live in 'special reception centres'. The consequences of this are impeded access to legal counselling and translation/interpreting, shorter appeal periods, and tighter restrictions on free movement, which, if breached, can result in feigned retraction of the asylum application. Both accompanied and unaccompanied children and adolescents are similarly not exempt from the airport proceedings established in Section 18a AsylG.

Deportation, arrest and detention

No legal exemption has been established for custody pending deportation, which can last up to 18 months (Section 62 of the German Residency Act, AufenthaltG), or for the detention period, which was

extended to up to ten days in 2017 (Section 62b AufenthG). An increasing number of families were deported during the reporting period, resulting in

family separations, some of which were illegal and carried out using disproportionate force.¹⁰⁵

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

122. Ensure legislators and the administration give priority to the best interests of the child, including in matters of migration law and other related areas;
123. Legally establish child and youth support services as having primary jurisdiction over unaccompanied minors;
124. Explicitly prohibit unaccompanied minors from being pushed back or turned away at the border;
125. Establish age-assessment processes geared around the best interests of the child, prohibit the use of degrading methods, such as genital examinations, and explicitly establish the principle of 'if in doubt, classify as a minor' by law;
126. Ensure qualified legal representation (e.g. in asylum and residency law) for unaccompanied minors right from the outset;
127. Bindingly verify and legally acknowledge child-specific reasons for fleeing, such as recruitment as child soldiers, forced marriage, or child trafficking;
128. Ensure mandatory, child-friendly counselling prior to the asylum hearing, and have the hearing conducted by specially trained staff, including for accompanied minors;
129. Establish express legal exemptions for accompanied and unaccompanied minors in relation to accelerated asylum proceedings, airport proceedings, detention, and custody pending deportation;
130. Expressly exempt accompanied and unaccompanied minors from sanctions and exclusion grounds in relation to benefits, asylum and residency;
131. Ensure that the best interests of the child are the pivotal factor in decisions regarding residence permits for those who have been granted long-time exceptional leave to remain. To do this, repeated exceptional leave to remain (*Kettenduldung*) must be abolished, and children and adolescents given access to a permanent right to remain.

Accompanied refugee minors

'Accompanied refugee minors' are children and adolescents who are accompanied by persons entitled to take care of them and have custody of them – generally the parents. On arrival in Germany, families are initially housed at central reception facilities. From here, they are distributed on a quota-basis across

the municipalities – a practice which has sometimes been established as a requirement for accessing day-care centres, regular schools and municipal integration services, often contrary to the applicable legal situation.¹⁰⁶

Groups of people are increasingly being excluded from this distribution process, and obliged to spend extended periods at reception centres.

Persons from safe countries of origin (Section 29a AsylG) are obliged to stay at the reception centres until they leave Germany if their asylum application has been rejected on the basis of being clearly unfounded. Others may be obliged to do this for up to 24 months (Section 47 AsylG). Until 2015, housing at these reception centres was only permitted for a maximum of three months. At the time of the Supplementary Report's compilation, further broadening of the rule regarding mandatory housing at reception centres is being discussed.¹⁰⁷

This legal development has a negative impact on children and adolescents, as it breaches their rights established in Articles 27, 28, 29 and 31 of the UN Convention on the Rights of the Child. Access to education is restricted, and sometimes even totally blocked, and admission into a training course or internship is sometimes also prohibited under Section 61 AsylG.¹⁰⁸ In some states, children start attending school immediately, while in others, state laws or administrative practices prevent access.

Housing at reception centres also significantly

compromises the children's safety and development. The centres often have no child-friendly sanitary facilities, and the hygiene situation is alarming.¹⁰⁹ Some room doors cannot be locked, and there is a lack of privacy.¹¹⁰ Leaving the municipality or district without the relevant authority's permission may be punishable. Parents often cannot cook for their children due to the 'benefits-in-kind principle' (*Sachleistungsvorrang*). Many children and adolescents are also forced to witness or experience violence. There is a lack of mandatory, standardised processes to identify the need for protection, clear processes in the event of threats to the best interests of the child, and needs-based staffing ratios and training. The 'Anker-Einrichtungen' processing centres introduced in 2018 were criticised by the UN Committee Against Torture in May 2019.¹¹¹

Health care is based on the Asylum Seekers Benefits Act, and is only guaranteed for acute diseases nationwide. Any extra care, e.g. for chronic illnesses, is at the discretion of the local authorities.¹¹²

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

132. Establish, in federal law, mandatory standards and framework conditions that ensure the wellbeing and protection of children and adolescents at reception centres, including effective sanctioning, complaint and control mechanisms;
133. Promptly distribute asylum-seekers across the municipalities, and limit the obligation to stay at a reception centre to a maximum of one month;
134. House refugees locally in small units or homes as quickly as possible;
135. Ensure direct access to statutory care for accompanied minors, e.g. unrestricted health care and complete social and cultural participation, by eliminating geographic restrictions and residence conditions;
136. Advise the state governments to introduce direct compulsory schooling for refugee minors in all states;
137. Open up access to educational support, and grant permits for internships and training courses regardless of status, duration of prior periods of stay in Germany, type of housing, or country of origin.

9.d Children in situations of exploitation

art. 34 and 35 UN CRC, OPSC

The implementation of the Directive on Trafficking in Human Beings (Directive 2011/36/EU) during the reporting period is welcomed. The new law criminalises all forms of exploitation established in the directive (Sections 232 of the German Criminal

Code, StGB). The German Code of Criminal Procedure (Section 154c Paragraph 2 StPo) and German Youth Court Act (Sections 45, 47 JGG) permit the abandonment of prosecution against a victim of criminalised human trafficking, and termination of the proceedings. Under the German Residency Act, victims of human trafficking may be granted residency in Germany (Sections 23a, 25, 26 AufenthG). Both aspects are, however, a matter of discretion, and still require the underage victim of human trafficking to give testimony in court.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

138. Establish a binding legal regulation that refrains from punishing underage victims of human trafficking for acts committed through exploitation;
139. Not make the granting of a residence permit contingent upon whether or not a person testifies as a victim;
140. Establish training for authorities, the justice system, child and youth support facilities, and specialist counselling centres in relation to the EU directive on preventing and combating trafficking in human beings, to implement this, and to inform affected parties of their rights in a manner appropriate to their age;
141. Ensure authorities recognise the expertise of specialist counselling centres for victims of human trafficking in terms of them being able to officially identify affected parties, and to ask the law enforcement agency to confirm that the person is a victim of human trafficking;
142. Facilitate a well coordinated, transnational cooperation between appropriate authorities and relevant players once the affected parties have been identified;
143. Grant specialist counselling centres for persons affected by human trafficking steady financing and broadened mandates to expand their human-trafficking task area to also include child trafficking;
144. Present a comprehensive strategy to combat the trafficking and exploitation of children, and implement the federal 'Protection and aid in cases of child trafficking and exploitation' cooperation scheme.

9.f Children in armed conflicts

art. 38 UN CRC, OPAC

The German Armed Forces recruit 17-year-old volunteers every year, and train them in weapon use. These totalled 1,679 in 2018, and as many as 2,128 in 2017 – a record that is triple the figure from 2011. Since 2011, the German Armed Forces has employed a total of 11,500 underage soldiers. They receive the same military training as adults, and are often housed with them. They cannot perform armed service in Germany or abroad, but otherwise no special protection is granted to them.

Following a six-month probation period, the voluntary nature required under international law no longer exists, and the often long-term employment contracts cannot be terminated. If the young soldiers absent themselves from the German Armed Forces, they render themselves liable to prosecution as deserters.

The number of punishable sexual assaults recorded by the German Armed Forces rose sharply in 2017 and 2018.¹¹³ In both years, underage or newly-adult soldiers of the German Armed Forces were

affected by sexual harassment or victims of rape.

At a diplomatic level, and as part of its development cooperation, the German federal government campaigns for countries such as Myanmar and Somalia to stop recruiting children and adolescents in their armies. Yet the German Armed Forces is one of just 46 armies worldwide to still recruit people aged under 18, thereby weakens the international 18+ standard.¹¹⁴ Armies and armed groups in war-zones which recruit children as soldiers justify their actions by citing the fact that children and adolescents are recruited as soldiers in the USA, Germany and Great Britain – the three Western countries that still recruit youths in large numbers.

German Armed Forces advertising and information is often biased, barely mentioning the risks associated with being a soldier, such as trauma, injury or death. Many advertising campaigns for the German Armed Forces in the media and on the Internet are aimed directly at youths, wooing them with misleading images of campfires, sport and games on the beach.¹¹⁵ German Armed Forces soldiers, so-called youth officers and career advisors, also provide information and promote these careers at schools; they had a reach of over 200,000 pupils in 2017.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

145. **Raise the minimum age for recruiting soldiers into the German Armed Forces to 18 and prohibit all forms of advertising campaigns for the German armed forces that target children, as per Recommendation 77a and b in the UN Committee's Concluding Observations from 2014;**
146. **Record, document and publish all cases of breached children's rights suffered by children and adolescents in the German Armed Forces. These breaches must then be immediately remedied.**

Arms exports

In recent years, Germany has regularly approved arms exports to countries where child soldiers are used. Despite the temporary stop on exports in November 2018, and the brutal warfare in Yemen, Saudi Arabia was one of the German armament industry's primary customers in 2018.¹¹⁶

Small arms and associated ammunition, which result in very high mortality rates among civilians, continue to be exported to countries where child

soldiers are fighting.¹¹⁷ In 2018, over 50 percent of Germany's arms have been exported to so-called third countries (neither of EU Member States, nor NATO or NATO-equivalent states), where numerous cases of war and massive human rights breaches have been reported. In 2017, the figure was indeed over 60 percent.¹¹⁸ This conflicts with both the German federal government's political directives on armament exports, and with the EU's Common Position.

The National Coalition Germany recommends that the UN Committee calls on the German federal government to

147. Comply with Recommendation 77c of the UN Committee's Concluding Observations from 2014 in ensuring maximum transparency in relation to the transfer of arms, and legally ban the sale of arms in cases when there is a risk of the final destination being a country in which children may be recruited for or used in hostilities.

Supplementary Report on the Optional Protocol on the Involvement of Children in Armed Conflict

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Terre des hommes Germany, Kindernothilfe and World Vision Germany are working together with eight more non-governmental organisations in the German Coalition to Stop the Use of Child Soldiers (Deutsches Bündnis Kindersoldaten).

Introduction

The UN Convention on the Rights of the Child and its Optional Protocols apply in Germany in the form of a federal law. In accordance with the case law of the Federal Constitutional Court, they must be taken into account in the interpretation of other federal laws as well as all basic rights and constitutional principles.

This “shadow report” details the implementation of the Optional Protocol for the Convention on the Rights of the Child regarding the involvement of children in armed conflicts from 25 May 2000. Germany ratified the Optional Protocol (hereinafter referred to as the Optional Protocol, OP) on 13 December 2004.

Similar to Art. 38 of the Convention on the Rights of the Child (CRC), the Optional Protocol aims to protect children from involvement in armed conflicts and enlistment in the armed forces. The Optional Protocol defines the minimum age for direct participation in “hostilities” (Art. 1 OP) and conscription into compulsory military service (Art. 2 OP) as 18 years of age.

At the same time, it also requires States Parties to raise the minimum age of 15 years for voluntary recruitment into the armed forces established by the Convention on the Rights of the Child (Art. 38 Para. 3 CRC). Each State Party must define the corresponding increased minimum age and can raise it again at any time. The majority of States Parties have pledged a minimum age of 18 years (see below).

If the States Parties of the Optional Protocol permit the enlistment of volunteers under 18 years of age in their armed forces, they are obligated to take special protective measures. These safeguards *must as a minimum* include reliable proof of age, permission from the parents or legal guardian, an extensive explanation of the obligations associated with military services, and especially the condition that enlistment be genuinely voluntary (Art. 3 OP).

As the term “as a minimum” in the text of the contract indicates, the safeguards specified do not constitute a conclusive list. The Optional Protocol should also be understood in conjunction with the Convention on the Rights of the Child as putting the best interests of the child at the forefront and demanding comprehensive protection of minors.

1. Recruitment of minor volunteers to the Bundeswehr

By submitting the instrument of ratification, the Federal Republic of Germany declared a binding minimum age for commencement of voluntary service in its armed forces of 17 years of age pursuant to Art. 3 Para. 2 of the Optional Protocol:

“The Federal Republic of Germany declares that it considers a minimum age of 17 years to be binding for the voluntary recruitment of soldiers into its armed forces under the terms of Article 3 paragraph 2 of the Optional Protocol. Persons

under the age of 18 years shall be recruited into the armed forces solely for the purpose of commencing military training. The protection of voluntary recruits under the age of 18 years in connection with their decision to join the armed forces is ensured by the need to obtain the consent of their legal guardian and the indispensable requirement that they present an identification card or passport as reliable proof of their age”.

After the compulsory military service has been suspended since 1 July 2011, Germany currently has a volunteer army. 17 year old minors are able to join the voluntary military service programme (Freiwilliger Wehrdienst, FWD) for the duration of seven to 23 months, or they can join the army as a regular soldier, contracted for a period of several years (for 2–25 years) (Zeitsoldat). The number of minor “soldiers doing voluntary military service” (Freiwillige Wehrdienstleistende, FWDL) and minor soldiers with a limited service contract (Zeitsoldaten) amounted to 687 people in the second half of 2011. During this period, that corresponded to 4.7% of all new soldiers enlisting. Affected in part by high numbers of graduates from schools, as well as by the comprehensive advertising measures taken by the Bundeswehr, this number increased in the subsequent years: 2012: 1,202 (5.7%), 2013: 1,146 (5.9%), 2014: 1,465 (6.6%), 2015: 1,511 (7.2%), 2016: 1,910 (8.2%), 2017: 2,126 (9.1%). Following the peak in 2017, the number decreased – as the number of graduates from schools declined – in the year 2018 to 1,679 (8.4%) minors but remained high.¹¹⁹

Although the Optional Protocol – under the corresponding protective measures specified – does not forbid the recruitment of 17-year-olds, the UN Committee on the Rights of the Child expresses concern in their “Concluding Observations” on Germany in 2014 that youth can commence military training with the armed forces in Germany starting at the age of 17. It repeated its recommendation from 2008 to set the minimum age for voluntary recruitment to the armed forces at 18 years as well in order to better protect the children.¹²⁰ Within Germany, this request enjoys strong support from numerous child and human rights organisations.¹²¹ A campaign was recently launched called “Never Under 18! No Minors in the Bundeswehr (Unter 18 nie! Keine Minderjährigen in der Bundeswehr)”, which is supported by various non-governmental organisations. The Children’s Commission (Kinderkommission) of the German Bundestag also took up the request to raise the minimum age to 18 years during the 18th election period.¹²² At the family and youth conference of the federal states in May 2019, a motion to set the mandatory legal minimum age for recruitment and enlistment in military service for the Bundeswehr under the National Service Act to the completion of the 18th year of life (and to end the military training of minors and their participation in military exercises until the legal reform goes into effect) lacked a majority by a very small margin.

The Parliamentary Commissioner for the Armed Forces does not impose such a demand, but at least supports the idea that the enlistment of 17-year-olds must remain the exception rather than the rule.¹²³ Anyone who has not yet reached adulthood must have special protection.¹²⁴ As early as during the 18th election period, he stated: “It is difficult to

reconcile Germany's dedication to upholding international law in regards to child and minor protection with the exception of the recruitment of minors that is increasingly becoming the norm.¹²⁵ In the latest report, he correspondingly welcomed the decrease in minor volunteers in 2018.¹²⁶

The federal government has explicitly spoken out against raising the minimum age. When questioned, the Bundestag believed that the current recruitment practices of the Bundeswehr were fully compatible with Germany's obligation to protect human rights, making it seemingly unnecessary to reassess any aspects related to international law.¹²⁷ In the government report to the UN Committee on the Rights of the Child, this view was further affirmed. A corresponding proposal in the Bundestag to end the recruitment of minors for the Bundeswehr immediately was rejected during the current 19th legislature period by the votes of the government coalition (as well as two opposition parties).¹²⁸

In doing so, the federal government has taken a position contradictory to the global trend. According to a study by *Child Soldiers International* (2018), 151 countries have now adopted the 18-year recruitment standard (*Straight 18*). According to the study, only 46 countries still have minors within the ranks of their armed forces. The 168 State Parties of the Optional Protocol include – alongside countries such as Egypt, Bangladesh, Bolivia, China, India, and Pakistan – some NATO countries, namely Belgium, Germany, France, Great Britain, Canada, the Netherlands, Austria, the USA, and Cyprus. Compared to the European NATO countries, however, only Great Britain surpasses Germany with regard to the absolute number (2017: 2,290) and the relative percentage (19%) of minors among new recruits.¹²⁹

By continuing the recruitment of minor volunteers, the Federal Government is not only weakening the international 18-year recruitment standard (*Straight 18*), but also undermining its own intensive efforts to draw international attention to the employment of child soldiers in other world regions – as the federal government emphasises in its State Party Report.¹³⁰ It is also ignoring legal, political and moral concerns raised against military training of minors in Germany (see below). Due to the unique nature of the profession of soldiers, the argument presented by the Federal Government that the Bundeswehr are attempting to provide equal opportunities in career selection and do not want to put minor school graduates looking to start careers in the military at a disadvantage over their peers by imposing waiting times on them – cannot be accepted.¹³¹

Call to action:

The Federal Republic of Germany should not hamper the international Straight 18 recruitment trend and should increase the minimum age for volunteer recruitment to the Bundeswehr to 18 years of age. This would be an important step towards protecting minors.

2. Obligation to inform prior to acceptance into the armed forces

Included in the safeguards listed in the Optional Protocol is the guarantee that minor volunteers receive comprehensive information on military service before being enlisted in the armed forces and that such recruitment is carried out with the informed consent of their parents (or legal guardians). This establishes requirements to provide comprehensive information to the minor and their parents before enlistment.

The safeguards of the Optional Protocol make it clear that the national armed forces are not an employer just like any other. By enlisting in the military, minors are subordinating themselves to the armed forces' obligations to follow instructions and obey orders and are accepting the limitations on their basic rights associated with their service duties. Most of all, they are accepting a very high long-term risk to life and limb. Moreover, unlike civil work contracts, the often-long-term service contracts cannot be cancelled regularly after the trial period (see below).

When individual advising is provided, it is therefore essential that comprehensive information be provided that extends beyond training, jobs and career paths to address the obligations and risks involved in a – particularly long-term – commitment to the armed forces. This is built upon the acknowledgement that minors are easily influenced and inspired, and may not yet be able to fully understand the gravity of their decisions. Youth and their parents must therefore be provided with a realistic picture of the military nature of service.

According to the federal government, prior to enlistment comprehensive explanation and counselling concerning the opportunities and risks of a career as a soldier coupled with an intensive, science-based capacity diagnostic assessment process are used to ensure that only 17-year-olds who have given ample thought to the demands of a career as a soldier and show that they have the necessary capacity for such a career are enlisted.¹³²

In practice, however, there has been extensive criticism of the career counselling. The Parliamentary Commissioner of the Bundestag himself mentioned in his report from 2018 an internal survey performed by the Ministry of Defence of soldiers who had left the Bundeswehr: Thirty-six percent of the regular soldiers with a limited service contract soldiers (*Zeitsoldaten*) surveyed and 25 percent of the soldiers doing voluntary military service (*FWDL*) said they had left because career counselling had given them inaccurate expectations of their future work.¹³³ Rough treatment of recruits, unreasonably high demands or lack of challenging work as well as a failure to foster existing abilities were also provided as reasons for leaving.¹³⁴

High drop-out numbers are, at the very least, indirectly indicative of deficiencies in career-related information and the Bundeswehr's selection process. In the year 2017, two percent of the expected applicants have never actually enlisted.

Another 18 percent asserted their right to withdraw within the first six months of service. The Bundeswehr parted ways with another two percent within the first six months of service.¹³⁵ This phenomenon is also relevant for minors: the Federal Government's response to a parliamentary small inquiry in the Bundestag for the year 2016 reveals that a total of 1,518 soldiers enlisted as minors from 2011 to 2015 terminated their service during the trial period.¹³⁶ In a similar small inquiry from 2018, unfortunately only regular soldiers with a limited service contract (Zeitsoldaten) were queried who were recruited as minors by the Bundeswehr during the period from 2011 to 2017. Of these, a total of 785 people exercised their right to withdraw and left the service.¹³⁷ Apparently, soldiers doing voluntary military service (FWDL) were not included in this count. Only with regard to the latter, however, data are available for 2018: While 223 minor volunteer conscripts left the Bundeswehr at their own request, 31 minor volunteer conscripts were dismissed by the army.

Even after the trial period, many minor soldiers or adult soldiers who were recruited as minors terminated their service early (442 between 2011 and 2015, 203 in 2015 alone) or submitted corresponding applications concerning the difficulties in terminating service mentioned below (952 between 2011 and 2015, 316 in 2015 alone).¹³⁸ Furthermore, a total of 3,104 soldiers who were minors at the time of their enlistment were terminated by their supervisors between 2013 and 2017.¹³⁹ Although there are various reasons for this, the data seem to suggest that as minors, they were not as thoroughly familiarised with the demands and obligations of a career as a soldier as the government claims.

If the terminations and withdrawals of minor enlisted soldiers during and after the trial period are combined, the following total numbers can be calculated for the three years 2013-2015 in which all data are available: 1,069 (2013), 1,203 (2014), and 1,494 (2015). These are extremely high numbers if you consider that a total of 1,152 (2013), 1,463 (2014), and 1,515 (2015) minor soldiers were enlisted each of these years. It is clear that a very high percentage of soldiers who enlist as minors leave the Bundeswehr before the end of their period of service. However, it is not possible to obtain a precise percentage for the number of withdrawals and terminations based on the available data, since the year in which soldiers enlisted is unknown for those who withdrew or terminated their service in a certain year.

It is essential to verify the extent to which minors are properly advised and informed by career counsellors or at career assessment centres during the course of their enlistment. There is much evidence indicating that a very euphemistic image is provided of career opportunities and challenges in the armed forces, and the obligations and risks of military service are not sufficiently discussed. Are the enlisted minors and their parents (or legal guardians) actually sufficiently advised that a) it is very difficult to withdraw from military service once the trial period is over, b) service obligations are associated with lasting limitations of rights, and c) that service involves considerable risks to life and limb over an extended period of

time? Or, are they becoming aware of the importance of the decision and the consequences for the future only at a later point (while serving their military duty)?

Another question that arises is whether or not enough information is provided about the dangers of deployments abroad in addition to information on the excitement of such missions abroad that might attract a young prospective applicant. Even if only adult soldiers are allowed to take part in such missions, the perspective to do so may play an influential role in the application process. After all, a total of 485 soldiers who were minors at the time of enlistment have participated in armed missions abroad, often multiple times, since mandatory enlistment was abolished (2011).¹⁴⁰ Are the risks of traumatisation, injury and death entailed in military service explained? After all, a total of 110 Bundeswehr members who were sent on foreign deployments have died since 1992, with 37 of these deaths being due to external influences. The Ministry of Defense said that about 22 Bundeswehr members took their own lives during deployments abroad (as of July 2017). According to information provided by the federal government from 12 September 2018, a total of 418 soldiers have also returned from deployment areas due to injuries or wounds since 2010.¹⁴¹ Even higher is the number of Bundeswehr members treated for post-traumatic stress disorder (PTSD) or who suffer from other deployment-related psychological illnesses such as anxiety, depression, adjustment disorders, and addiction. The psychological trauma centre of the Bundeswehr believes that PTSD is caused by stresses experienced during missions abroad, such as first-hand experience of poverty, civil war, and atrocities.¹⁴² With a presumably high number of unreported cases, the number of officially reported new cases of PTSD following deployments abroad was 235 (2015), 175 (2016), 170 (2017), and 182 (2018) people. In the same period there were about 1,600 to 1,900 PTSD treatment contacts per year.¹⁴³

Taking all of this into consideration, it is advisable to subject the individual (non-public) information and counselling procedure to a critical review – while at the same time assessing this in conjunction with the general public advertising measures taken by the Bundeswehr (see below), which have a strong influence on youths' decision to volunteer for the Bundeswehr.

Call to action:

Considering the obligation to provide information established in the Optional Protocol, it is essential to ensure that minors are given a realistic idea of what to expect from training and service in the Bundeswehr, including the associated obligations and risks. A critical evaluation must be performed of the information and counselling services of career counsellors, career centres, and assessment centres in regard to minors.

3. Is it possible to leave the Bundeswehr?

One very important protective measure to be taken when minor volunteers are recruited is to ensure that they are actually enlisting voluntarily. The binding English version of the Optional Protocol requires that such recruitment is genuinely voluntary (Art. 3 Para. 3a OP). A purely word-for-word interpretation of the norm might take it to mean that this only concerns the act of recruitment. That would have to mean, however, that minors might have to stay in the armed forces against their will once they have been recruited as volunteers. This goes against the purpose of both the norm and the Optional Protocol. A systematic and teleological interpretation would require not only that enlistment into military service be voluntary but would also demand that the option be provided to leave voluntarily as well.

In Germany, however, the actual voluntary nature of service required by law expires six months after the trial period ends. It is only possible to apply for dismissal or withdraw one's formal obligation within the trial period of six months of service (cf. Section 58h Soldatengesetz (Soldier Act)). Following the trial period, the service contract can no longer be regularly terminated, but can at best be dissolved by way of a hardship case application (Section 55 Para. 3, Section 75 Para. 2 SA) or can be refused on grounds of conscientious objection in connection with major difficulties. Upon release, the applicant may subsequently be required to pay back large amounts of money for the training already received.

Although no lawsuits have been initiated against minor soldiers due to unauthorised absence (Section 15 WStG) or "desertion" (Section 16 WStG) since the abolishment of mandatory enlistment,¹⁴⁴ absenting by minor soldiers from the Bundeswehr is generally punishable under criminal law. The risk of criminal liability after the trial period was a cause of concern for the UN Committee on the Rights of the Child as early as in 2014.¹⁴⁵ Besides adult soldiers, this could also potentially affect soldiers doing voluntary military service " (FWDL) as well as regular soldiers with a limited service contract (Zeitsoldaten) who are still minors when their trial period ends. In 2017, this amounted to 173 soldiers and in the previous years as follows: 31 (2011), 110 (2012), 139 (2013), 169 (2014), 212 (2015), and 222 (2016).¹⁴⁶

In practice, this is also affected by the fact that soldiers sometimes decide themselves to shorten the trial period of six months in order to qualify for additional education, training and study programmes following the three-month basic training. Those who are still in the trial period are sometimes denied access to corresponding training and career options. It is also possible that youth are subject to peer pressure, while also being pressured by supervisors or parents to commit quickly. This sometimes causes them to commit before the trial period comes to an end.

Minors should generally be required to sign the service contract with the Bundeswehr, which their parents or legal

guardian previously signed on their behalf, again themselves once they reach adulthood. This would establish an independent declaration of intention from the grown adult.

Call to action:

If volunteer minors are recruited, it must be legally possible for them to end their service with the Bundeswehr through a unilateral declaration at any time until they come of age. It must be ensured that violating the obligation to military service under the WStG (Wehrstrafgesetz) is not a punishable offence for minors. After reaching adulthood, the recruits should sign the service contract with the Bundeswehr again themselves.

4. Protection of minors during their period of service

4.1 Military training of minors

If minor volunteers are recruited, they must be properly protected. While serving voluntarily in the armed forces (from seven to 23 months), even minor volunteer conscripts (FWDL) receive full military basic training and are already serving in a military unit starting in the fourth month (army, air force, marine, medical service, armed forces joint support service). If they commit to a longer period of service as regular soldiers (Zeitsoldaten), they establish a career in the military. (Beyond that, the Bundeswehr also offers purely civil training for the field of Bundeswehr administration. These programmes are only examined in the shadow report to the extent that they function as an alternative to military training). Military training and the soldier's profession, however, are associated with special demands that could violate minors' right to protection.

Indeed, minors in the Bundeswehr are not allowed to serve with weapons neither abroad nor domestically, not even as sentries. Volunteer minors do, however, receive the same basic military training with the Bundeswehr as adult recruits. This means they are trained with weapons, namely with live munitions, they learn how to battle and to kill, and they participate in military drills. Even if training with weapons is performed under close supervision, the use of weapons with live munitions always poses hazards. Individuals may become careless in their handling of the weapons and this could lead to improper execution of shooting exercises. In June 2017, media reports also revealed glaring violations of safety guidelines and degrading treatment of recruits during shooting exercises at the Bundeswehr base in Sondershausen.¹⁴⁷ Furthermore, in 2017, an individual case was revealed in which a 17-year-old soldier was assigned sentry duty with a weapon.¹⁴⁸

Even the SPD parliamentary group in the Bundestag, which supports the government coalition of CDU/CSU and SPD, has spoken out in favour of amending training so that minors receive purely civil training until they reach adulthood, without training with weapons and without any kind of

military training content.¹⁴⁹ In its position paper “Protection Provisions for Minors in the Bundeswehr” from June 2017, the parliamentary group calls for a civil employment relationship with civil administration of the Bundeswehr to be created for minor applicants until they reach adulthood and that a training concept be developed for this – so that minors are not employed through a military service relationship. The 2018 coalition agreement of the current federal government¹⁵⁰ established an agreement to evaluate and adjust Bundeswehr training programmes. Here it is important to research the situation and experiences of minor recruits in particular and assess this information separately while considering the special protection minors require.

This is also important, as according to the Federal Ministry of Defence, serving in the armed forces demands special physical and psychological strength.¹⁵¹ Accordingly, basic training already functions as a kind of drill in and of itself, especially when special basic training programmes are involved. It can also be deduced from this that training is – at least in part – associated with great physical and psychological demands and stresses, particularly when it comes to minor soldiers. It therefore requires a certain degree of mental maturity and a specific physical constitution, even though limits have now been set for enlistment. Here it is important to emphasise that minors who are trained with weapons learn strategies for action that involve violent force ranging all the way through to the killing of another person are much more vulnerable to physical injuries and traumatised.¹⁵²

The fact that young recruits do not always have the physical capacity to meet demands (despite enlistment tests) is evident, among other things, in the need for the Bundeswehr to enact a new concept of “activating physical training”; this was introduced in 2017 in reaction to cases where recruits were unable to meet demands. Following marching exercises performed in high temperatures during basic training in Munster, an officer cadet died in July 2017, while three others were taken to an intensive care unit, one of whom was seriously injured, and seven additional soldiers experienced health problems.¹⁵³ Several soldiers collapsed in January 2018 during a run around the campus of the training centre in Pfullendorf.¹⁵⁴ Although the Bundeswehr has not released the ages of the people affected by these incidents, it still reveals that minor soldiers in particular run the risk of being overworked, especially when trainers – as apparently occurred in Munster and Pfullendorf – neglect their leadership duties.

In specific cases, the military training, especially training with weapons, may violate the protective aim of Art. 32 of the CRC, which states that children (as defined by the CRC: minors) cannot, among other things, be put to work undertaking tasks that are hazardous or that could pose a risk to their health or development. Furthermore, it has now been internationally stated that the handling of dangerous equipment and materials as well as the physically and psychologically stressful training and working conditions present in the military might constitute “hazardous work” for minors as defined by ILO Convention 182 and the corresponding Recommendation 190.¹⁵⁵

The latter recommends that children 16 years of age or older be allowed to work only when the health, safety and morality of the children involved are fully protected.

This is further complicated by the fact that the German Youth Worker Protection Act (Jugendarbeitsschutzgesetz) does not apply to minor soldiers. According to the Federal Ministry of Defence, numerous of its legal requirements are met by existing measures.¹⁵⁶ Reference is also made to the applicable conditions of the general Law on Safety and Health at Work (Arbeitsschutzgesetz) and corresponding information provided to all soldiers. Youth worker protection does not apply, however, as it does in civil training and professional settings. Even the manual provided to supervisors on how to handle minors in the Bundeswehr, which is currently being updated and is expected to be released later on in 2019 as a central service regulation¹⁵⁷, indicates without any further explanation that the Youth Protection Act does not apply and that, for example, there are no limitations on overnight or bivouac training. Even though provisions are made to require that minors receive separate rooms, the Federal Government has stated that this is neither a mandatory requirement nor is it always possible to execute. Data are not collected on this matter.¹⁵⁸ Furthermore, this apparently does not apply to accommodations for military exercises. It is just as difficult to determine the extent to which the advisors for minors are qualified for this task.

Call to action:

Minors should not perform military duties and should not receive any kind of military training. Instead, they should be engaged in a civil employment relationship and benefit exclusively from civil training. During training and while serving, they should not be put to undertake tasks that are hazardous or that pose a risk to their health or development. In the evaluation of Bundeswehr training agreed upon in the coalition agreement, the training of minor soldiers should be researched separately and should also take violations of children’s rights into consideration.

4.2 Protection of basic rights

Beyond occupational protection, a review must be carried out of the extent to which rights and guarantees of protection for minors – which Germany pledged to uphold by ratifying the Convention on the Rights of the Child – can be restricted. Soldiers generally have the same basic rights as any citizen, but these are “limited during military service by the soldier’s legal obligations” (Section 6 SA).

Soldiers are subject to a strict obligation to maintain secrecy, for example. According to the Soldier Act, a soldier must maintain the secrecy of matters made known to them through their service, even after they have left the armed forces (Section 14 Para. 1 SA). Without approval from – the current or last – disciplinary supervisor, he/she can divulge information or give statements or explanations about such matters

neither before a court nor outside of court (Section 14 Para. 2 SA). This constitutes a major restriction on freedom of speech that must withstand an assessment of proportionality. Anecdotal evidence seems to indicate that, in individual cases, the required obligation to maintain secrecy can be excessive. There are not, however, any empirical studies on the matter.

Furthermore, any soldier must not, for example, engage in political activities while being on duty. The right to express one's own opinion in discussions with comrades, however, remains unaffected by this. On military bases, however, limits are also set for free time in the "basic rules for camaraderie" and mutual consideration in order to prevent serious disruptions to camaraderie during service. Specifically, a soldier cannot "act as an advocate for a political group by holding speeches, distributing literature, or working as a representative of a political organisation" (cf. Section 15 Para. 1 and 2 SA). The legal limitations are indeed in keeping with Art. 13 Para. 2 of the CRC. It is worth examining whether or not limitations on freedom of speech or even the freedom to assemble are far too strict. The latest report from the Parliamentary Commissioner does not address this.

The Parliamentary Commissioner does, however, mention – 63 (2016), 167 (2017), and 150 (2018) – reported cases in the category "suspected of endangering the democratic constitutional state, inappropriate political activities and incitement of the people". This mainly involves propaganda offences such as xenophobic and anti-Semitic statements, listening to right-wing extremist music, swastika graffiti, demonstrating the forbidden Nazi salute, calling out "Sieg-Heil", and using stored images, texts and music with extremist content.¹⁵⁹ If these incidents are not consistently reported, punished and prevented in accordance with the basic principle of "leadership development and civic education" (Innere Führung), they bring with them the risk of seriously suppressing minor soldiers' opinions – thus impairing personality development in the spirit of the ideals expressed in the Charter of the United Nations and the Convention on the Rights of the Child. In general, there is also the question as to whether the right to develop in keeping with the ideals of peace, tolerance and friendship between peoples can always be maintained within the context of a military education.

Call to action:

Minors in the Bundeswehr must be effectively protected against unreasonable restrictions on their basic rights and against propaganda offences perpetrated by comrades and supervisors.

4.3 Protection against degrading initiation ceremonies and sexual abuse

It is particularly important – as defined under Art. 34 CRC – to protect minors against mistreatment and abuse. There is an especially great need to protect female minors.. Since suspension of mandatory enlistment as of 1 July 2011, their numbers

were on rise up to 2017: 2011 (half year): 57, 2012: 152, 2013: 153, 2014: 193, 2015: 247, 2016: 356, 2017: 448, 2018: 313.¹⁶⁰

The Ministry of Defence emphasises that supervisors must pay special attention to minor soldiers during training. The need to protect minor soldiers from sexual discrimination and assault is effectively implemented by these service supervisors.¹⁶¹ Within the internal reporting system of the Bundeswehr (Meldewesen Innere und Soziale Lage), the reporting of revealed cases of suspected degrading initiation ceremonies or forceful assaults is mandatory. It was not until 2018, however, that specific data were collected on whether the affected soldiers were minors. No suspicious cases were reported during the period from 1 January to 8 August 2018.¹⁶² In 2017, however, at least one minor recruit was at the centre of a scandal involving sexual abuse and degrading initiation ceremonies at the Staufer Barracks in Pfullendorf (Baden-Württemberg).

Evidence of other violations beyond Pfullendorf and indications that the reporting system within the Bundeswehr as a whole has deficits can be found not only in a report by the General Inspector Volker Wieker to the members of the Defence Committee of the German Bundestag (2017), but also in numerous media reports. This includes sexual assaults occurring in the mountain infantry in Bad Reichenhall, at the Toden-dorf Barracks, and at the Hain Barracks near Gera, to name a few.¹⁶³ The annual reports of the Parliamentary Commissioner also point toward problems in implementing the principles of leadership development and civic education and warn that supervisors should not downplay such misconduct or brush it off as insignificant isolated case.¹⁶⁴

The number of events and special incidents subject to mandatory reporting due to suspicion of criminal offences against sexual autonomy has increased significantly: 86 (2015), 131 (2016), 235 (2017), 288 (2018). This also includes sexual assault and harassment of soldiers within the Bundeswehr, ranging from verbal sexual harassment to sexual harassment in the form of touching through to attempted or successful assault and rape. The actual number of sexually motivated assaults may be considerably higher, since it is probable that many cases – out of shame or fear of professional or personal retaliation – are not reported.¹⁶⁵ According to the study "Troops With Women Out of the Picture?" ("Truppenbild ohne Dame?") released by the Bundeswehr's Centre for Military History and Social Sciences in 2014, 55 percent of women and 12 percent of men have experienced some form of sexual harassment in the Bundeswehr. The majority of cases involved verbal sexual harassment or unwanted touching. Three percent of women, however, also reported having been the victim of sexual assault or rape at least once in the Bundeswehr, and such cases also occurred among men.

Call to action:

As minor soldiers in armies are not (and cannot be) effectively protected from degrading rituals and sexual abuse – even in the Bundeswehr – minors should not be recruited as soldiers.

5. Information measures and advertising campaigns of the Bundeswehr

Advertising the military to minors runs counter to the spirit of the Optional Protocol and the Convention on the Rights of the Child. Accordingly, the UN Committee on the Rights of the Child recommends that Germany “prohibits all forms of advertising campaigns for the German armed forces that target children.” This recommendation echoes the demands of numerous child and human rights organisations in Germany as well as the Education and Science Worker’s Union (GEW), among others. The Children’s Commission (Kinderkommission) of the German Bundestag also spoke out against such ad campaigns during the 18th voting period.¹⁶⁶

The State Party Report from the federal government to the UN Committee on the Rights of the Child stated: “Given the minimum age of 17 for joining the Bundeswehr, the main target group for recruitment activities is defined as persons aged between 17 and 30 as a matter of principle. Youth marketing activities do not pursue any personal advertising objectives according to the definition of recruiting to the Bundeswehr. In fact, they aim to provide interested young people with general first information about the Bundeswehr and to reduce fear of contact. No special advertising campaigns aimed at children are carried out for the German armed forces.”¹⁶⁷

In practice, these statements do not hold true:

For one thing, the variety of personnel recruitment measures implemented by the Bundeswehr also addresses minors under the age of 17. It can therefore be assumed (and is desirable) that youth under 17 will also visit the many training and career fairs in which the Bundeswehr participates. In the fourth quarter of the year 2018 alone, the Bundeswehr attended 194 fairs and exhibitions.¹⁶⁸ They presumably also take smaller personnel recruitment measures (small booths, info mobile, etc.) outside of military bases¹⁶⁹ and events at career information centres. The Bundeswehr also participates in the so-called “Girls’ Day” (girls-day.de) and “Boys’ Day” (boys-day.de) in order to inform youth of career opportunities with the Bundeswehr. The offerings are explicitly geared toward minors 15 years of age and up. Furthermore, the Bundeswehr also clearly organises “individual and group troop visits (outside of school) for the personnel recruitment target group (including young pupils) in various regions across the nation” that pupils participate in.¹⁷⁰ The events held by career counsellors at schools are also geared toward minors in particular, and indeed many of them are under 17 years of age (see below).

Two- to three-week pupil internships with the Bundeswehr are even expressly geared towards students aged 14 and over. According to their website, these are intended to “gain an insight into the career possibilities and individual development opportunities in the Bundeswehr.” The student internships are mainly offered in training workshops as well as in service centers of the Bundeswehr.

Furthermore, the differentiation between information and advertising is rather blurred in practice. In setting itself apart by addressing youth and giving them a positive image of the Bundeswehr, many of its offline and online youth marketing offerings ultimately constitute open and offensive advertising for the Bundeswehr going far beyond pure image maintenance and informational purposes.

The child-friendly designs of Bundeswehr websites make this clear. A discourse linguistic analysis performed by Vogel (2014) concluded that the Internet presence of the Bundeswehr aims to channel the stereotypes, emotions and needs of young people into an idealised image in conjunction with the message: “Join the Bundeswehr!”. Such images are also produced on the current website bundeswehrentdecken.de and the Bundeswehr is actively promoted. Here, for example, the youth magazine “BE Strong. The Info Magazine of the Bundeswehr” (“BE Strong. Die Infopost der Bundeswehr”) published by the press and information branch of the Federal Ministry of Defence can be ordered free of charge. This youth magazine contains multiple references to career opportunities with the Bundeswehr and is clearly intended to enthrall young people about the Bundeswehr as an employer.

Also geared specifically toward young people is the YouTube series produced by the Bundeswehr. In his report from 2017, the Parliamentary Commissioner gives the YouTube series “The Recruits” (“Die Rekruten”), in which cameras follow 12 new recruits during their basic training, a positive assessment. It supposedly provides potential applicants with a first look at the Bundeswehr. Strenuous physical activity, deprivations, the handling of weapons, and even the experience of camaraderie can be conveyed better and more vividly here than would be possible in glossy brochures. The question remains, do such four- to 13-minute videos really capture the reality or rather do they trivialise and embellish to a great extent, thus functioning – even if indirectly – as advertising for the Bundeswehr.

Accusations of true “militainment” (military and entertainment) for the purposes of recruiting youth seem justified in the case of the web series “KSKS – Never Fight Alone” (“KSK – Kämpfe nie für dich allein”) produced by the Bundeswehr and published in November and December 2018 on social media (YouTube, Instagram, Facebook). The 22 episodes (usually five to ten minutes in length) chronicle a jungle combat course being completed by KSK soldiers in Belize, who are accompanied by a civil “adventurer” as the main protagonist, appearing in typical influencer format. Depending on the episode, the videos were viewed between about 95,000 and 600,000 times on YouTube, certainly with declining numbers over time. The Federal Ministry of Defence views the videos more as image films targeted toward potential trainees for the KSK and their supporting forces.¹⁷¹ Content, aesthetics and format are all geared specifically toward youth. The series was promoted accordingly in the youth magazine of the Bundeswehr: “Get excited for jungle action guaranteed to give you goosebumps and become part of the adventure every day at 5pm on YouTube, Facebook, and Instagram,” as it was advertised in the youth magazine “BE Strong” (3/2018, p. 5) – at the same time

with references to extensive supplementary information on Whatsapp, in the Facebook ChatBot at “Bundeswehr Exclusive”, on Snapchat under “Bundeswehr Jobs”, and in a daily podcast on Spotify. There was also a corresponding quiz for interested persons aged between 16 and 20.

A trailer for a new series titled “SURVIVAL – 7 Officers. One Mission!” (“SURVIVAL – 7 Offiziere. Eine Mission!”) now appears on the official YouTube channel of the Bundeswehr “Bundeswehr Exclusive”. The new series was announced in April 2019 as follows: “One of the hardest lessons of the Bundeswehr awaits you: the lesson of the lone warrior. From leading a group left to their own devices under extreme conditions to survival skills in the wilderness through to sleep deprivation and food shortages, our participants face some great challenges – and YOU can be there for it all!”

Such media and other public relations work of the Bundeswehr specifically target youth (under 17 years of age as well) and surely do not just serve informational purposes, but also directly or indirectly serve to recruit youth. Again, it must be emphasised that the Bundeswehr is not just your ordinary run-of-the-mill employer. Correspondingly, the armed forces must avoid using sugar-coated, trivialised, aesthetic or glorified youth marketing techniques to enthruse minors for military service and the profession of soldier, which is associated with substantial risks that are hard for youth to foresee. Youth are particularly trusting, adventurous, willing to take risks, open to group experiences, and highly engaged with new technology, which tends to make it easier to get them excited about the profession of soldier than adults or even mothers or fathers with families. This means the Bundeswehr has a correspondingly greater responsibility not to suggest in their information and marketing campaigns targeted toward youth that military service is nothing but fun, camaraderie, adventure, and heroism. The risks of traumatisation, injury, and death involved in military deployments cannot be playfully trivialised or hidden.

In keeping with this, it is important not to encourage associations with action films and video games. During the Cologne digital games fair “Gamescom” in 2018, for example, the Bundeswehr’s advertisement poster was justifiably criticised. With armed fighters made to look like figures from a computer game and with slogans such as “multiplayer at its best” and “there’s no better open world”, even conservative media believed the Bundeswehr was specifically trying to recruit youth. The Bundeswehr explains this by saying the posters were intended to get people to think about what really counts: war games or ensuring peace (#Gamescom2018#GC18#Bundeswehr). These and many other campaigns are ultimately part of greater campaigns to recruit youth, who the Bundeswehr has been addressing since 2015 with the slogan: “Do Something That Really Matters.” Despite the recommendation of the UN Committee on the Rights of the Child to the contrary in 2014, such measures have increased considerably.

Call to action:

The federal government should discontinue all advertising and marketing measures for military service targeted at

minors – especially trivialising, sugar-coating, aestheticising, and glorifying measures.

6. Cooperation of Bundeswehr with schools

In Germany, the Bundeswehr’s cooperation with schools is a controversial socio-political topic. Put simply, three different positions have been identified: the first position does not see the advertising or information measures of the Bundeswehr at schools as problematic. The second position rejects all advertising measures, but not information measures of the Bundeswehr at schools. The third position is against the presence of the Bundeswehr at schools altogether.

Once again, however, it must be highlighted that it is very difficult to differentiate between advertising and information measures. This is clear in the activities of career counsellors at schools. Information provided by them about training and career opportunities with the Bundeswehr at least implicitly go hand in hand with advertising for service in the Bundeswehr. This is especially true when the school administration does not at the same time present information on the variety of professional careers outside of the Bundeswehr in order to ensure that neutral and balanced information is conveyed. This requirement can be seen as early as 2010 in the report “School and the Bundeswehr” issued by the Scientific Service of the German Parliament.¹⁷²

In the fourth quarter of 2018 alone, there were 165 presentations or events held by the career counsellors of the Bundeswehr within and outside of class at schools or sometimes outside of schools.¹⁷³ Measures mostly engaged pupils from middle and high schools. Most of the pupils in this instance were minors, with many of them being under 17 years of age.

Although the Bundeswehr does have to compete with other civil employers for new recruits, it should again be emphasised that military service and a career as a soldier are associated with great dangers and more pervasive obligations than civil careers. It was with good reason that the UN Committee on the Rights of the Child called upon the federal government in 2014 not to conduct advertising campaigns for the German armed forces that target children. This demand also applies to minors at schools. Any career counselling that takes on a promotional nature must be discontinued.

This opinion endures – despite the latest controversy surrounding the regional party convention resolution of the Berlin SPD from April 2019. The resolution called for the following clause to be added to the school act for the state of Berlin: “Military organisations will be banned from advertising for service or work in the military field at Berlin schools.” Even after the subsequent declaration that this does not constitute the banning of information, but rather advertising for the Bundeswehr at schools, and only affects Bundeswehr career counsellors (and not so-called Bundeswehr youth officers, see below), criticism of the resolution from well-known politicians,

even from the ranks of the SPD, has not abated. The Federal Ministry of Defence also defended the visits of soldiers, Bundeswehr career counsellors as well as Bundeswehr youth officers, to schools. These were purported to be associated with the constitutionally mandated role of the Bundeswehr as a parliamentary army.¹⁷⁴ In order to better protect minors as required by the Convention on the Rights of the Child and the Optional Protocol, however, career advising by the Bundeswehr at schools must be discontinued, as it is at least implicitly of a promotional nature.

Call to action: The federal government should also and especially discontinue military recruitment by the Bundeswehr at schools, as the audience there would primarily be composed of minors.

Unlike Bundeswehr career counsellors, so-called “Bundeswehr youth officers” (Jugendoffiziere) are not allowed to directly promote a career in the Bundeswehr. Rather, these soldiers are usually supposed to participate in school events about peace and security policy and merely provide information about the associated duties of the Bundeswehr. According to the Parliamentary Commissioner, they make a valuable contribution to the public image of the Bundeswehr and the political training of young people.¹⁷⁵

One to four Bundeswehr youth officers are stationed at each of the 61 locations nationwide (whereby in 2018 only 69 of the planned 94 full-time Bundeswehr youth officer positions were filled).¹⁷⁶ Based on the Bundeswehr’s own accounts, the Bundeswehr youth officers held a total of 5,743 events in 2017, which were attended by 157,205 people, with 122,483 of these attendees being young pupils (and university-age students) and 34,722 multipliers (incl. teaching staff and trainee teachers). These events mostly involved presentations, seminars, and information events, as well as troop visits and participation in major events and podium discussions. The number of events and participants here has remained stable for the most part since 2013 (2013: 5,484 events/152,235 participants; 2014: 5,520/161,515; 2015: 5,569/149,966; 2016: 5,468/146,509).¹⁷⁷

Between 2008 and 2011, the ministries of education and cultural affairs of the federal states even concluded cooperation agreements with the Bundeswehr that made it easier for Bundeswehr youth officers to gain access to schools and to train and provide supplementary education to teachers and trainee teachers. This was initiated by North Rhine-Westphalia. It was followed by (in alphabetical order): Baden-Wuerttemberg, Bavaria, Hesse, Mecklenburg-West Pomerania, Rhineland Palatinate, Saxony, and Saarland. The wording of the agreements varied, but the fixed goals were similar. Additional information provided by Bundeswehr youth officers should enable young pupils (of secondary levels I and II as well as vocational schools) to independently engage with the issues of peace and security policy in more depth, relating generally to Germany’s role.

Safeguards are clearly incorporated into several cooperation agreements – with the exception of the one in Rhineland Palatinate. They stipulate, for example, that schools or teachers can decide independently and voluntarily if they wish to

take advantage of the offerings provided by the Bundeswehr youth officers. Bundeswehr youth officers are in some cases explicitly forbidden from promoting service or work in the Bundeswehr. In some instances, Bundeswehr youth officers are, for example, explicitly bound by the principles of the “Beutelsbach Consensus”, particularly in relation to ban on indoctrination and treating controversial subjects as controversial.¹⁷⁸ Some agreements required teachers to be present at events and emphasise their responsibility for the class. In Saarland and Hesse, the schools and teaching staff are required to ensure that information is factual and that multiple viewpoints are presented. In North Rhine-Westphalia, the agreement explicitly states that various institutions and organisations should be equally incorporated.¹⁷⁹ The agreements in Hesse and Saarland refer to the option of engaging in dialogue with peace organisations.¹⁸⁰

While Bundeswehr youth officers are still invited to schools in federal states where no cooperation agreements exist, such agreements have strengthened the cooperation between Bundeswehr youth officers and schools and expanded offerings.¹⁸¹ Although Bundeswehr youth officers visiting schools was defended during the Berlin debates concerning a ban on advertising in schools, it remains controversial. The influence of the Bundeswehr on the content of courses and the training and continuing education of teaching staff and trainee teachers has at times been heavily criticised, by the Education and Science Workers’ Union (GEW), for example, as well as by national and local associations and parent initiatives. They demand the termination of the cooperation agreements with the Bundeswehr and “School without the Bundeswehr” (“Schule ohne Bundeswehr”).

According to critics, the Bundeswehr has no education mandate at schools. If, however, they are involved in information and education work – even with the aforementioned safeguards in place – the risk still exists that the Bundeswehr will convey a biased viewpoint. In reality, peace organisations and organisations critical of the military are almost never invited and also do not have the financial or personnel resources to facilitate a comparable alternative offering at schools. This means that Bundeswehr youth officers who have been rhetorically trained dominate the field without allowing the expression of critical opinions from the peace movement or children’s and human rights organisations. Whether or not opposing opinions are presented and a balanced controversy is (or can be) introduced is largely up to the teachers themselves.

No less controversial are the troop visits made by school classes in the form of official school excursions. On “Hesse Day 2018”, for example, the GEW strongly urged school administrations to refrain from organising school group visits to the Bundeswehr. This was deemed objectionable based on experiences from “Hesse Day 2017”, during which military equipment was displayed and hand-to-hand combat techniques were demonstrated, accompanied by rousing rock music (“I kill ‘cause I’m hungry”, “Only the strongest will survive”). If troop visits were to occur, participation should be voluntary.

Call to action:

Lessons on political security and peace topics should generally be given by trained teachers and not by youth officers from the Bundeswehr. During these lessons, educating youth for peace as defined under Art. 29 of the CRC should remain at the forefront. If Bundeswehr youth officers are invited, attendance of the lesson provided must be voluntary and should ensure the necessary political balance, e.g. in the form of podium discussions with various experts.

7. Human rights and peace education in schools

It is generally important to keep in mind the necessity of raising children for peace and teaching them about human rights at schools. The education of the child, as recorded in the UN Convention on the Rights of the Child, shall be directed, among other things, to to the development of respect for human rights and fundamental freedoms, and the principles enshrined in the Charter of the United Nations" (Art. 29 Para. 1 b CRC) while also preparing the child to live responsibly in a free society with a spirit of understanding, peace, tolerance, equality of the sexes and friendship among all people and ethnic, national, and religious groups as well as indigenous peoples (Art. 29 Para. 1 d CRC). Similarly to the International Covenant on Economic, Social and Cultural Rights (in Art. 13 Para. 1), the Convention on the Rights of the Child lists raising children for peace and educating them about human rights as important content to be incorporated into the human right to education. The Permanent Conference of the Ministers of Education and Culture of the German Federal States (ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland) explicitly acknowledged the Convention on the Rights of the Child and updated its recommendations for human rights education at schools for 2018. Here, human rights are seen as the foundation for every human society as well as being fundamental to maintaining peace and a just world¹⁸², but the goal of raising children for peace remains unmentioned in the recommendation.

Peace education is also not specifically mentioned in the government report to the Committee on the Rights of the Child. According to the report, human rights education is a core aspect of the mandate to educate and raise youth and is established as a top educational goal in all state constitutions and school laws. It should be involved in all areas of school activity and aim to instil in youth esteem, tolerance, and respect for other cultures as well as a fundamental responsibility towards society.¹⁸³ Contrary to this, the findings of the German Institute for Human Rights (DIMR) indicate that just three school laws explicitly mention human rights in the general educational goals. The DIMR therefore recommends the states of the Federal Republic of Germany responsible for education to establish education about human rights explicitly

as an educational objective in their school laws¹⁸⁴. The goal of peace education, however, is more or less explicitly incorporated into the states' school laws.

There is still a need for empirical data on the extent to which this is implemented. The same applies to implementation of the – also supported by the KMK¹⁸⁵ – recommendation to establish human rights education as an interdisciplinary topic pervading all school life and as the subject of a teaching method that connects and encompasses multiple disciplines. Identifying indicators that this is truly taking place on a regular basis has proven difficult. Aside from the several good practice examples, peace and human rights education at German schools is approached more implicitly rather than explicitly. Evidence of existing deficits can be found particularly in the variety of reform proposals for establishing stronger and more comprehensive peace and human rights education at schools – or even for an education built upon children's rights.¹⁸⁶

Call to action:

Human rights and peace education must be implemented at German schools as an explicitly interdisciplinary mandate and strengthened. Schools and the education provided there should show a consistent orientation toward the human rights of children as well as peace and tolerance.

8. Former child soldiers as refugees

In 2014, the UN Committee on the Rights of the Child welcomed the withdrawal of the German declaration of reservation concerning Art. 22 CRC and acknowledged Germany's efforts to host a large number of "refugee children" from numerous countries. They remained, however, especially concerned that children who had been recruited as soldiers or were fleeing forced recruitment were not appropriately identified during the asylum process or were rejected.¹⁸⁷

8.1 Recognising forced recruitment of minors as child-specific persecution

According to the UN Refugee Agency (UNHCR), forced recruitment of a minor and recruitment of a minor for a country's armed forces for direct participation in combat activities constitutes a child-specific form of persecution as defined under Art. 1 (A) 2 and 1 (F) of the Geneva Convention relating to the Status of Refugees. The same applies to the recruitment of minors into a non-governmental armed group. Factors indicating persecution illegible for refugee status include – in addition to other characteristics where applicable – membership in a social group of children who are specifically recruited or deployed by armed forces or armed groups.¹⁸⁸ Under the qualification directive of the EU, which requires member states to

consider child-specific forms of persecution when reviewing the applications of minors, actions against children can also be considered persecution.

Accordingly, courts in Germany have also recognised the forced recruitment of minors as child-specific persecution in some cases. Here too, reference was made – in accordance with the GFK and its legal opinion through the UNHCR – to the aspect of being a child (as defined under Section 3a Para. 2 No. 6 AsylG) and therefore membership in a certain social group (as defined under Section 3 Para. 1 No. 1 AsylG)¹⁸⁹. Verdicts have also been passed, however, that do not recognise the forced recruitment of minors as persecution in a warlike confrontation where the country – or the respective ruling groups – are forced to rely on large numbers of soldiers, and children are not seen as a social group (as defined under Section 3b Para. 1 No. 4 AsylG).¹⁹⁰ The Federal Office for Migration and Refugees (BAMF) has apparently also repeatedly rejected asylum seekers with the justification that there is no individual risk of persecution, even when there is a nationwide risk of recruitment.¹⁹¹

Taking this into account, political requests for a stronger recognition of child-specific persecution by the BAMF or Administrative Courts in decisions to grant protective status should be supported. What makes this even more important is the fact that none of the usual domestic fleeing alternatives (as defined under Section 3 AsylG) are available to minors. They cannot usually be expected to go to other parts of the country without family aid to seek out protection against forced recruitment by armed forces or non-governmental armed groups. Returning to their home country is also often associated with dangers that would justify a non-refoulement. Fleeing former child soldiers face double threats: on the one hand from the armies and armed groups they have fled from, since these often punish desertion with death or brutal mistreatment; and on the other hand from the opposing party in the conflict and parts of the population who continue to view them as enemy fighters. Most child soldiers are also traumatised and may be able to assert post-traumatic stress disorders as barriers to deportation.¹⁹²

No data are available on how many former child soldiers have applied for asylum or received protective status in Germany as accompanied or unaccompanied minors. The same applies for the presumably higher number of minors who have fled the threat of forced recruitment by armed forces or non-governmental armed groups. For its annual "Report on the Situation of Unaccompanied Minors in Germany", however, the federal government performs an online survey of establishments in which unaccompanied minors live. The survey indicated that war and civil war were the most common reasons provided for fleeing. Fear of forced recruitment is given as a reason quite frequently by male minors.¹⁹³ This also corresponds to the data on countries of origin of the 35,939 (2016) and 9,084 (2017) unaccompanied minors who submitted applications for asylum in 2016 and 2017. They come mainly from Afghanistan, Syria, Eritrea, Somalia, and Iraq.¹⁹⁴ It becomes even more problematic when the asylum process

concerned ultimately does not (or will not) provide secure protective status.

Call to action:

The actual or threatened forced recruitment of a minor and a minor's actual or threatened involvement in combat activities must be consistently considered a child-specific form of persecution in decisions granting protective status.

8.2 Identification and treatment of escaped child soldiers

The Federal Government has addressed the concern that fleeing child soldiers are not properly identified in asylum processes by highlighting the special commissioners at the Federal Office for Migration and Refugees (BAMF) who are specially trained in working with unaccompanied minor refugees. Their duties include identifying "refugee children" with a special need for protection within the context of the asylum process, particularly during questioning of children on the facts of their flight. Additional special commissioners for traumatised persons, victims of torture and those fleeing gender-specific persecution are presumably employed to assist these minors who have been traumatised, were victims of torture, or have experienced gender-specific persecution. All special commissioners purportedly undergo continuous comprehensive legal, cultural and psychological training in the form of basic and advanced training courses.¹⁹⁵

Annex 1 (Section 9a) of the State Party Report contains an example of how child soldiers are identified in practice in Berlin. According to this document, specialised experts in organisations for the care of children record detailed case histories for the unaccompanied minor refugees (during a clearing phase that generally lasts three months) before sending the minor on to the youth welfare facilities that can best meet their needs. This should facilitate the identification of children who were or are still threatened with forced recruitment. Suitable educational, social-pedagogical, and psychological support could presumably be provided at these facilities.

The described measures do show that it should be possible to identify former child soldiers. It does not, however, guarantee that this will happen. This also explains why there is still a lack of information as to how many people in Germany are currently seeking or have received protection as former child soldiers. Further complicating the matter is the fact that there can sometimes be quite a long delay before unaccompanied minor refugees submit an application for asylum. Contributing to this is also the fact that identifying oneself as a former child soldier during the asylum process may also entail making self-incriminating statements about oneself. If the child was recruited by non-governmental units, criminal persecution could follow as a consequence (member of a terrorist organisation, etc.).

Call to action:

It must be generally ensured that former child soldiers, who came as refugees to Germany, are identified and that they receive appropriate (psychological and other) support.

8.3 Child soldiers as victims and perpetrators

Recruiting and deploying children under 15 years of age is considered a war crime as defined under Art. 8 of the Rome Statute of the International Criminal Court (ICC). War criminals who are not punished in their respective countries can and should be held responsible under international criminal law. This is also required by the Optional Protocol (Art. 4.2) and the "Principles and guidelines on children associated with armed forces or armed groups" (Paris Principles) passed at a conference organised by France and UNICEF with the title "Free Children from War". By signing the agreement, the participating countries, Germany among them, pledged to disarm child soldiers under 18 and reintegrate them into civil life among other things. Perpetrators who recruited and deployed children were to be punished. –The first lawsuit of the ICC involved the recruitment and use of child soldiers for the militia of defendant Thomas Lubanga Dyilo in the DR Congo and he was ultimately sentenced to 14 years in jail.

The German Code of Crimes Against International Law (VStGB) established in 2002 also allows for the criminal punishment of war crimes in Germany, even if the crime was perpetrated abroad and is not related to Germany. At the same time, the VStGB also defines the recruitment of children under the age of 15 for armed forces, integrating children into the armed forces or armed groups, or using children as active participants in hostilities as a war crime (Section 8 Para. 5 VStGB). As defined here, it is to be expected that, provided they are captured in the country, the people who have perpetrated such war crimes should be held accountable for their crimes by German law enforcement authorities. In the first trial following the Code of Crimes Against International Law in 2015, Ignace Murwanashyaka, the president of the Rwandan Hutu militia FDLR, was sentenced to 13 years in prison for his involvement in war crimes and co-defendant Straton Musoni was sentenced to eight years. Murwanashyaka was also charged with using child soldiers, but it wasn't possible to clarify the charges and they were dropped.

In its "Concluding Observations" of 2014, the UN Committee on the Rights of the Child also stated that extraterritorial legal jurisdiction could also be expanded for the recruitment of children 15 years of age or older but regretted that both sides would have to be punishable by law in this case. The committee therefore recommended considering the expansion of extraterritorial legal jurisdiction for crimes concerning the recruitment and involvement of children in hostilities, without submitting it to the condition of double criminality.¹⁹⁶

It is especially problematic when child soldiers are not only victims, but also perpetrators. One example is Dominic

Ongwen, a former child soldier who – admittedly as an adult – has been charged by the International Criminal Court with recruiting child soldiers. In accordance with its statute, the ICC only has jurisdiction over people over 18 years of age. In Germany, however, persons reach the age of criminal responsibility under both general domestic and international law at 14 years of age (Section 19 StGB; Section 2 VStGB). What if child soldiers have committed serious criminal acts as minors? Due to the nature of the situation, minors have often been forced to participate in armed conflicts. As combatants of governmental armed forces, international humanitarian law (laws of armed conflict) state that they will not be punished for participating in lawful armed conflicts as long as they do not commit any war crimes. But what happens if they are recruited by irregular units involved in an armed (internationalised) internal conflict that is denied combatant status?

There are still only very few case laws on this issue. In at least one case, a German court sentenced a pupil to three years of juvenile detention – as a result of membership in a terrorist organisation while at the same time exercising force with an illegal weapon of war (assault rifle) and attempted murder. According to his self-incriminating statements – first during the asylum process and later in criminal court – the convict was recruited by an illegal armed group following a family crisis. Following brief military training, he was forced to participate in armed attacks on police and military posts before he succeeded in fleeing. After a harrowing escape that involved a number of stops along the way, he made it to Germany. He was placed in detention while awaiting trial and was ultimately found guilty of attempted murder (for the attack on the military) and imprisoned at a juvenile detention centre. This conviction for attempted murder is problematic in many ways, as at the time the child felt that he was forced to participate in the armed attack, and it was not possible to determine if the child actually attempted to shoot anyone. Furthermore, the German court also viewed the armed group as a terrorist organisation, which precluded the child from claiming combatant status – without even considering the possibility.

Regardless of how the specific situation is assessed, it should generally be emphasised that minors are treated differently under criminal law than adults and enjoy certain protections even as perpetrators. German criminal law for young offenders is focussed mainly on raising the child. Of all the resources available under criminal law for young offenders, imprisonment for – especially traumatised – youth is generally the worst option. Here, General Comment No. 10 of the UN Convention on the Rights of the Child specifies that alternatives to criminal persecution should be considered. The Optional Protocol also aims to facilitate the physical and psychological recovery and social reintegration of child soldiers (Art. 6 Para. 3 OP). When child soldiers have not only experienced serious crimes, but have also been forced to commit them, they should be supported in actively dealing with their role as a victim and also as a perpetrator, e.g. through trauma therapy. The latter is important for reintegration, even from the perspective of their victims and family members. Such a

discerning approach should be incorporated into transitional justice efforts even in German exile.

Call to action:

Persons who live in Germany and have been or are responsible for recruiting and deploying child soldiers should be held accountable under international law. Here, the extra-territorial responsibility should be expanded to include recruitment and deployment of child soldiers of any age, without submitting it to the condition of double criminality. If child soldiers commit crimes themselves, they should be assisted in dealing with their role as a victim and a perpetrator through therapy and transitional justice efforts.

9. Exports of weapons

According to Art. 7 OPAC, state obligations of the Optional Protocol relate not only to national, but also intergovernmental and international levels. In terms of extraterritorial obligations to respect and protect human rights, the States Parties must discontinue and prevent any measures that entail violations of the protocol in other countries. This includes weapons trade in countries where child soldiers are recruited.

In its “Concluding Observations” from 2014 for Germany, the UN Committee on the Rights of the Child expressed concern about the lack of an – recommended already in 2008 – explicit ban on the sale of weapons when the final destination is a country where it is known or possible that children are recruited or used for armed conflicts. It recommended ensuring the greatest transparency possible regarding the transfer of arms and, as per the law, forbidding the sale of weapons when there is a risk that the weapons’ final destination is such a country.

9.1 Transparency in the weapons trade

According to the government report to the UN Committee on the Rights of the Child, the Federal Government has enhanced the transparency of its arms export decisions. In addition to the annual arms export reports, it has been submitting intermediate reports on its export policies for conventional military equipment since October 2014. Furthermore, the final approval decision of the Federal Security Council (Bundessicherheitsrat/BSR) is regularly submitted promptly to the Economic Committee of the German Bundestag.¹⁹⁷

Two remarks must be made here: firstly, the arms export reports mainly provide information on the issued approvals for (and not the actual export of) arms goods. Only the actual exports of weapons of war are recorded statistically. For another thing, – which is particularly important in connection with child soldiers – small arms are indeed listed according to recipient country, but this does not include all handguns. According to the statistical definition of the federal

government, “small weapons” are: guns with a War Weapons List (KWL) number (semi- and fully-automatic guns), machine pistols, machine guns, shotguns for military purposes, weapons for coreless ammunition, and parts for these weapons. Other handguns are not included though: weapons without a KWL number, revolvers, pistols, sniper rifles, inoperable weapons, hunting rifles, sports pistols and revolvers, sports guns, semi-automatic hunting and sports guns, and other shotguns. In its arms export report, namely, the federal government bases its description on the weapon categories defined by the EU¹⁹⁸. Deviating from this, the “OSCE Document on Small Arms and Light Weapons” and the working definition of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects also encompass revolvers and semi-automatic pistols. Even when voluntarily reporting exports of small arms and light weapons to the UN Register of Conventional Arms (UN-ROCA), the federal government did not use the UN working term, but rather the EU definition of small weapons. Only the annual official export statistics of the Federal Statistical Office (DESTATIS) contain all handguns.¹⁹⁹ Art. 5 Para. 3 of the Arms Trade Treaty of 2014, which Germany has also signed, requires the States Parties to use the UN definition of small arms and light weapons.

Call to action:

In its statistical information on small arms exports, the federal government should apply the working definition of the United Nations as required in the Arms Trade Treaty signed by Germany.

9.2 Export of weapons to crisis regions

According to the German Government report to the UN Committee on the Rights of the Child, the federal government pursues a restrictive armament export policy on the basis of various legal and political regulations. Among these are the Weapons of War Control Act (Kriegswaffenkontrollgesetz), the Foreign Trade Act (Außenwirtschaftsgesetz), the “Political Principles of the Federal Government for the Export of War Weapons and Other Military Equipment” (2000), the EU “Council Common Position Defining Common Rules Governing Control of Exports of Military Technology and Equipment” (2008), and the Arms Trade Treaty ATT (2014), in which the federal government pledged not to export weapons if they could be used to commit war crimes – which would include the use of child soldiers (Art. 6 ATT). According to the Federal Government, approval generally will not be given when there is sufficient suspicion that military goods might be misused for internal repression or other ongoing and systematic human rights violations. The guideline for applying the “EU Council Common Position” specifies that in checking if the intended final destination country is respecting human rights and humanitarian international law, it is important to consider if the recipient country has set a minimum age for recruiting (voluntary and

obligatory) people to the armed forces and if the country has taken legal steps to ban or prevent the recruitment of children and their deployment in hostilities.²⁰⁰

Despite the mentioned legal stipulations and political pledges, there is still, however, no special national legal ban on weapons trade (with final destination) in countries where children are recruited. Even more: a look at the recipients of German armament exports does not reveal any evidence of a restrictive armament policy adhering to the standards of EU law and human rights. Germany is not merely one of the largest armament exporters worldwide. German armament goods also go to countries where human rights are systematically violated and countries that are involved in armed conflicts. Between 2014 and 2017, Germany reported to the UN Register of Conventional Arms, for example, exports of battle tanks to Indonesia and Qatar as well as exports of submarines to Egypt.²⁰¹ It is especially problematic that extensive armament exports have been approved for countries participating in the war coalition in Yemen led by Saudi Arabia that has committed serious violations of international humanitarian law and despite the fact that child soldiers are used in Yemen.²⁰² Between 2015 and 2017, the federal government approved armament exports of a total value of over 2.6 billion euro for Saudi Arabia, the United Arab Emirates, and Egypt alone.²⁰³

This violates the criteria of the above-mentioned “EU Council Common Position” from 2008. According to that, EU member states are obligated to refuse export licenses for military technology and equipment when, for example, there is a clear risk that these will be used to violate international humanitarian law or endanger regional stability. They also cannot be used for internal repression and aggression against another country. Despite severe criticism, the German Federal Government – under pressure from some European partner governments – is currently not prepared to completely cease the export of weapons to Saudi Arabia. These exports were suspended following the murder of journalist Jamal Khashoggi in the Saudi Arabian embassy in Istanbul at the end of 2018. The coalition compromise, however, still allowed for the supply of components for mixed European weapons systems (such as for Eurofighter military aircraft) and their export to Saudi Arabia as long as the German parts do not make up more than ten or twenty percent of the entire weapons system. In the first half of 2019 alone, 122 export licenses were also issued for military goods valued at 1.1 billion euro to six other member states of the Yemen war alliance such as Egypt and the United Arab Emirates.²⁰⁴

During the entire period covered by the report, the federal governments also gave approval for the export of small weapons to government recipients in third-party countries, including countries with precarious human rights situations and with conflict situations. In the period from 2014 to 2017, for example, exports of guns, machine pistols, and machine guns to Brazil, India, Indonesia, Iraq, Jordan, Qatar, Malaysia, Oman, Singapore and the United Arab Emirates were approved.²⁰⁵ Minors are recruited by the armed forces or conflict parties in several of these countries.²⁰⁶ Despite the passing of the

“Principles Adopted by the Government of the Federal Republic of Germany for the Issue of Licenses for the Export of Small and Light Weapons, Related Ammunition and Corresponding Manufacturing Equipment to Third Countries” (Small Weapons Principles) by the federal government in March of 2015, no major changes have been made: small arms have been exported to countries where child soldiers are used by conflict parties as early as the period from 2008 to 2015.²⁰⁷

As has already been emphasised in “Shadow Report Child Soldiers 2013”, the distribution of small arms in particular can have wide-reaching effects on the situation of human rights and children in many countries and regions. They can be used for decades to come and can easily be passed on with no oversight. Despite final destination declarations (that specify that small arms cannot be made available to another end user in the recipient country without the approval of the federal government), despite the principle “New for Old” (government recipients of small and light weapons pledge to destroy the older weapons being replaced by the new purchase), and despite the pilot programme for post shipment checks introduced in 2015 (in the first two on-site-checks of the actual final destination of small arms in 2017 there were no objections in the case of India and the United Arab Emirates), it is almost impossible to monitor the use, passing on, and final destination, as many years of experience with German small arms exports have given cause to fear.²⁰⁸ This is especially true for conflict regions – as the federal government itself emphasises – as national monitoring mechanisms are, for the most part, underdeveloped.²⁰⁹ The German Federal Government should therefore consistently refrain from exporting small arms to countries where child soldiers are recruited by governmental or non-governmental entities.

Call to action:

The federal government should suspend the export of weapons, especially of small arms, to countries where human rights and international humanitarian law is violated and where child soldiers are recruited by governmental or non-governmental entities by establishing a legal ban.

10. International cooperation

Art. 7 of the Optional Protocol calls for the cooperation of the States Parties. This also includes extraterritorial obligations to fulfil human rights. Accordingly, the reintegration of child soldiers into civil life should be promoted, e.g. through technical and financial cooperation, in coordination with the affected State Parties and the responsible international organisations.

The government report states that the federal government relies not only on political-diplomatic channels to better protect children in armed conflicts, but also provides technical and financial support for the reintegration of former child soldiers into their families and local communities.²¹⁰ Attachment 1 of the government report lists individual project

funding of the Federal Foreign Office, admittedly without a detailed listing of the associated financial expenses. Projects in Yemen (2014), Nepal (2017), and the DR Congo were mentioned specifically as well as – through payment into the post-conflict fund of the United Nations – two projects in Columbia.

There is no information on the extent to which the Federal Ministry for Economic Cooperation and Development (BMZ) supports the reintegration of former child soldiers in the government report and its attachments. According to Parliamentary State Secretary Thomas Silberhorn at the BMZ – in reply to a parliamentary inquiry in the Bundestag – as part of its efforts to promote peace and to support the social and professional reintegration of ex-combatants, including child soldiers, the federal government is currently engaged in measures in the following countries (status January 2018):

Partner country	Measure	Current support phase (status January 2018)
South Sudan	Reintegration, return assistance	2.0 million euro (2017–2018)
DR Congo	Reintegration through “community stabilisation”	2.55 million euro (2017–2018)
Philippines	Rehabilitation, empowerment, educational and vocational training	1.2 million euro (2006–2021)
Columbia	Reintegration of former FARC combatants	1.6 million euro (payment 2017–2018 into UN Post Conflict Multi-Donor Trust Fund)
Afghanistan	Strengthening of children’s rights by supporting civil and governmental organisations	0.4 million euro (2017–2018)
Liberia/ Sierra Leone	Vocational training	0.9 million euro (2016–2019)
Sierra Leone	Income generation	12.3 million euro (2014–2018)
Cambodia	Particularly Reconciliation work	6.1 million euro (2014–2018)

Source: Answer of the Parliamentary State Secretary Thomas Silberhorn from 17/01/2018; BT-Drs. 19/484, 19/01/2018, Question 73.

As part of the NATO Mission “Resolute Support” in Afghanistan, the federal government is also financing a high-ranking expert to deal with the issues of UN Security Council Resolution 1612 “Children and Armed Conflicts” for training and advising the Afghani armed forces. The mission has also introduced a reporting and monitoring system to help identify, clarify and punish cases where minors are recruited or when military units use force against children in Afghanistan.²¹¹

Considering the great problems – and the insufficient international financing available – in association with the resocialisation of child soldiers, the opposition parties in the German Bundestag recently made an unsuccessful proposal

to require the federal government to make measures aimed at demobilising as well as socially and professionally reintegrating former child soldiers a focal point of German development cooperation and to provide sufficient funding for this. The proposal of the “Die Linke” parliamentary group included other requirements – such as increasing the minimum age to 18 years for recruitment of volunteers to the Bundeswehr – that was met with opposition. The proposal was supported only by the Bündnis 90/Die Grünen parliamentary group and was rejected.²¹²

Even if the topic is not made a focal point of German international and development work, it would be important and meaningful to stock up on resources. Many countries simply do not have the resources to prevent, protect and reintegrate child soldiers. Within this context, it is important

to remember that, under Sub-Objective 8.7 of the global Sustainable Development Goals, the international community pledged to end the use of children as child soldiers.

The EU also played a potentially very important role in this when it passed its own guidelines for children’s rights and armed conflicts in 2003 and updated them in 2008. In its guidelines, the EU pledges to pursue foreign policies regarding human rights which help protect children against the effects of armed conflicts. Its intention is to convince governments and organisations worldwide to apply humanitarian law and human rights to protect children against the consequences of armed conflicts. An end should be put to the recruitment of children for armed forces and immunity from punishment for crimes committed against children. The EU has indicated that it strives to coordinate its actions with entities such as the special representatives of the UN Secretary-General for children and armed conflicts and the Work Group for Children in Armed Conflicts of the UN Security Council.

Call to action:

Government funding from the federal government for prevention, protection, and reintegration measures for child soldiers in crisis regions should be increased considerably. At the same time, the federal government should work toward lending greater weight to the issue in the EU in accordance with its guidelines.

Supplementary Report on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

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ECPAT Germany has consulted its member organisations, key experts and additional active networks working for the protection of children against sexual violence and exploitation. In particular, the following organisations have contributed to this report: Federation of Child Protection Centres (Bundesarbeitsgemeinschaft der Kinderschutz-Zentren), Federal Coordination of Specialised Counselling Centres Against Sexual Offences in Childhood and Youth, Innocence in Danger, Terre des Hommes Germany, Wildwasser Freiburg.

Introduction

This report supplements the combined 5th and 6th Periodic Reports submitted by the Federal Government of Germany to the Committee on the Rights of the Child in April 2019. It relates to the Committee's concluding observations of 2014 and offers a civil society perspective on the progress made since then.

This report presents a focused review of the implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) by the Federal Government. As the leading civil society actor in the field, ECPAT points out weaknesses and gaps in the responses to the sexual exploitation of children in Germany and invites the Committee to urge the Federal Government to take action for the effective implementation of its commitments under the OPSC.

The review and recommendations presented in this report are based on ECPAT's expertise and consultations with key civil society actors in the field.

1. General coordination and measures of implementation

1.1 Coordination and national strategy (art. 4 UN CRC)

In its 2014 concluding observations, the Committee on the Rights of the Child (hereafter "the Committee") recommended that the Federal Government develop a comprehensive national strategy to address all forms of violence against children and adopt a national coordinating framework to this end.²¹³ The Committee noted that its previous recommendation calling for more effective coordination had not yet been implemented.²¹⁴

The State Party Report provides information about significant developments during the reporting period. In response, ECPAT strongly welcomes the institutionalisation of the Independent Commissioner for matters concerning sexual abuse of children (UBSKM) as a permanent body in 2018, as recommended by the Committee²¹⁵. However, as the mandate of the Independent Commissioner focuses on sexual abuse, there is no central national body responsible for matters concerning the exploitation of children, and there remains a notable gap with regard to coordination of activities under the scope of the OPSC.

ECPAT also welcomes the establishment of the Federal Coordination of Specialised Counselling Centres Against Sexual Offences in Childhood and Youth (BKSF) on a project base.²¹⁶ However, this measure remains limited in scope and reach, as counselling services are not available in all parts of the country and not all centres are specialised on matters of sexual exploitation of children. The establishment of the BKSF does not respond to the need for coordinated long-term support for children at risk and child victims. ECPAT continues

to see a strong need for a national strategy to coordinate prevention measures and provide qualified support for children. The wide differences between the Federal States (hereafter "Länder") and between urban and rural areas must be redressed.

ECPAT Germany welcomes the decision of the Federal Ministry for Families, Senior Citizens, Women and Youth to set up a National Council on Sexual Violence Against Children and Adolescents, which is tasked to collaborate closely with the Independent Commissioner for matters concerning sexual abuse of children (UBSKM). ECPAT underlines, however, that it will be essential for the National Council to address the sexual exploitation of children, in addition to other forms of sexual violence against children.

During the reporting period, the Federal Government has made initial efforts to recognise the need for enhanced coordination to protect children against sexual exploitation in the digital environment, and specific objectives have been introduced into the current Government's coalition contract for the protection of children and youth in the media.²¹⁷

Although law reform and numerous projects were carried out, a comprehensive strategy to promote the rights and safety of children in the digital environment is not yet in place. As a member of the Council of Europe, in 2018 the Federal Government participated in the development and adoption of the Committee of Ministers' Guidelines on the Rights of the Child in the Digital Environment, thereby demonstrating a commitment towards the progressive promotion and implementation of the guidelines in Germany and internationally.

ECPAT Germany recommends to

1. *Draw up a national strategy or a new action plan to coordinate measures against sexual violence and exploitation of children also taking into account the issues of risks, protection and support in the analogue and digital environments and to ensure all children are reached effectively by prevention and response measures in all parts of the country, equipped with sufficient funding and effective monitoring.*
2. *Develop a coordinated national approach to safeguard and promote the human rights and fundamental freedoms of children in the digital environment, in accordance with the Council of Europe guidelines and the commitments under the Coalition Contract, with specific measures to protect children against sexual exploitation. Children should be engaged actively and ethically in the development and implementation of policies and programmes in this field.*
3. *Set up a national/federal coordination body to oversee the implementation of measures to prevent and respond to sexual violence against children and sexual exploitation, in accordance with the UN Convention on the Rights of the Child and its Optional Protocols. Such a coordination body should provide a forum for inter-agency and multi-disciplinary exchange, including the participation of relevant state agencies at the federal*

and the *Länder* levels, representations of municipalities, specialised institutions, organisations and service providers, academia, and the business sector.

1.2 Cooperation and multi-professional approaches in the federal system (art. 4 UN CRC)

In the federal system, a unified national child protection system for the 16 *Länder* and all municipalities does not exist. The organisation and funding of child protection services and multi-professional referral mechanisms falls under the competence of cities and counties (*Landkreise*) with their independent local Youth Offices. The resulting consequence is that the local availability of services and children's access vary in each location. The Youth Offices struggle with limited resources and the working conditions and salaries of Youth Office staff are not proportionate to their demanding mandates and social responsibility. Professional experience from the field shows that it is therefore particularly important for Youth Office staff to rely on the cooperation with other state and private service providers.²¹⁸

In this highly fragmented system, certain key safeguards are required to ensure consistent quality standards are maintained in the provision of service for children at risk of sexual exploitation in all parts of the country, including: the regulation of decentralised services, the cooperation and coordination between service providers, the provision of easily accessible child-sensitive mechanisms for reporting and complaint, and monitoring of these services. However, these essential safeguards are not guaranteed. Despite the entry into force of the Federal Child Protection Law in 2012 and the lessons learned from its evaluation in 2015, local child protection systems are neither clearly regulated nor monitored. Although the State Party report describes important initiatives at the federal, *Länder* and local levels, it is practically impossible for the Federal Government to gain an overview of the scope and quality of local service provision for child victims of sexual exploitation and children at risk.

Noting the absence of a unified referral mechanism for cases of child trafficking, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) urged the Federal Government to redress this gap in its first evaluation round of 2015.²¹⁹ In 2018, the Federal Ministry for Families, Senior Citizens, Women and Youth adopted the Federal Cooperation Model on Protecting and Supporting Child Victims of Trafficking and Exploitation, which had been developed by ECPAT Germany in cooperation with the German NGO Network against Trafficking in Human Beings (KOK e. V.) and through a broad-based consultation with experts and practitioners at the federal and *Länder* levels.²²⁰ As noted by GRETA and leading civil society experts in Germany, the progressive implementation of the Federal Cooperation Model offers opportunities to strengthen local and regional referral mechanisms for child victims of sexual exploitation and

trafficking and children at risk and to guide their development where they do not yet exist.²²¹

ECPAT Germany recommends to

4. *Ensure effective multi-professional referral mechanisms are in place at the local level to identify children at risk of sexual exploitation, as well as child victims, and enable the child's reliable referral to meaningful assistance and support. Reporting and referral mechanisms must be child-sensitive, known and accessible to children and adults in the analogue and digital environments, as recommended by the Council of Europe Guidelines on the Rights of the Child in the Digital Environment and the European Commission Principles for Integrated Child Protection Systems. Referral mechanisms should promote, operationalise and regularly update guidance and quality standards, as well as indicators for the identification of children at risk and child victims of sexual violence and exploitation.*
5. *Promote the progressive implementation of the Federal Cooperation Model on protecting and supporting child victims of trafficking and exploitation. In accordance with the recommendations issued by GRETA, continued support is required from the Federal and *Länder* governments and the municipalities to put in place the necessary framework for its implementation, as outlined by the Federal Cooperation Model. Its implementation should be closely monitored and evaluated.*

1.3 Law reform to address sexual exploitation of children (arts. 1 and 3 OPSC)

During the reporting period, the transposition of the 2011 EU Anti-trafficking Directive (2011/36/EU) into federal law, extended the forms of exploitation criminalised under the human trafficking offence. This law reform expands the group of children who can be formally recognised as victims of human trafficking. Despite this improvement, the status of child victims of trafficking remains insufficiently protected. The Committee's recommendation to remove the conditionality of the provision of residence permits for non-national child victims of trafficking has therefore not yet been addressed.

The Residence Act provides in § 25 and § 23a for the possibility to regularise the status of victims of trafficking who do not have a valid permit to stay in Germany. However, this remains conditional on the person's collaboration in criminal investigations and proceedings and his or her consent to testify as a witness or as a hardship case. As the issuing of a permit of stay under the Residence Act, which applies to adults and children without distinction, is subject to the discretion of the competent authority, child victims of trafficking can still not rely on having their status regularised.²²²

ECPAT is further concerned that the Residence Act does

not refer to the best interests of the child in determining the most appropriate place of stay and durable solution for a child victim of trafficking whose status in Germany has not been regularised.²²³ In accordance with Article 3 of the UN Convention on the Rights of the Child and relevant international guidance²²⁴, decisions over a non-national child's stay in Germany, their return to the country of origin or their transfer to a third country within or outside the European Union, should apply a determination procedure which is based on an individual's best interests.

In June 2019, a package of asylum and migration laws was adopted with the aim to regulate immigration to Germany, facilitate and speed up the deportation of rejected asylum seekers and to adjust the asylum reception conditions. In particular, the law on the return of rejected asylum seekers has been criticised for its tightened provisions. It does not provide special safeguards for persons with special protection needs, such as children and victims of sexual violence, whose asylum claims have been rejected. The law does not include reference to the best interests of the child.

Law reform to prevent sexual exploitation in the digital environment

The Act to Enhance the Assertion of Legal Rights in Social Media Networks (*Netzwerk-durchsetzungsgesetz*), which entered into force in January 2018, defines illegal content in social media. It holds social media companies accountable for following-up on notifications by users and deleting illegal content in due time. The law has helped to facilitate the reporting of illegal content to social media providers. However, leading experts and associations in the field, as well as the media, have criticised the law for its ineffective implementation and limited scope, especially as illegal content defined under the Act includes the sexual exploitation in pornography of children up to the age of 14 years old without applying also to adolescents aged between 14 and 17 years old. In addition, the Act leaves the decision as to what constitutes illegal content to social media providers rather than to the competent state agencies. It does not cover messaging services, chatrooms or the online gaming industry, and providers of networks with less than 2 million users in Germany are exempted. This constitutes a serious shortcoming as the use of online gaming has been evidenced to increase the risks of children to receive unwanted sexual solicitations.²²⁵

ECPAT Germany recommends to

6. *Revise the Residence Act to ensure that, where a child victim of exploitation or trafficking is a non-national and does not possess a valid permit of stay, the issuing of a residence permit is not conditional on the child's collaboration in criminal investigations and proceedings, and the best interests of the child are the primary consideration in decisions about the child's place of stay and durable solution, irrespective of the child's national origin or status.*
7. *Expand the application of the Act to enhance the*

assertion of legal rights in social media networks to all online applications and services where children are active, including messaging services, chatrooms and online games, and include the production of sexual abuse material of adolescents (14–17 years) in the definition of illegal content under the Act.

1.4 Training of officials and professionals (arts. 8 para. 4 and 9. para 2 OPSC)

In 2014, the Committee reiterated its concern about inadequate training activities in relation to the Convention. The Committee recommended that systematic and ongoing training programmes be developed for all professional groups working with and for children.²²⁶

The State Party report provides information about training activities for officials and professionals in different fields, such as the justice sector, social services, education and health.²²⁷ As the provision of academic and vocational training falls under the competence of the *Länder*, the availability, content and scope of training is highly fragmented. The State Party report does not clarify to what extent participation in the enlisted academic and continuous training courses is mandatory or voluntary.

The federal training initiative to empower staff in child and youth services to prevent sexual violence (2010-2014) was an important investment in this field, however it is not been sustained.²²⁸ The State Party report does not provide information about the evaluated impact of this federal initiative and how the lessons learned might be considered for mainstreaming and institutionalisation.

Experts consulted for this report note that multi-professional training, for instance the training provided by ECPAT and mentioned in the State Party report²²⁹, is perceived as particularly useful because participants learn to understand the complex dimensions of the phenomenon of sexual exploitation of children, as well as the roles, mandates and working methods of different sectors as a precondition for engaging in more effective and trusted collaboration.

ECPAT states the provision of systematic and mandatory training remains one of the most pertinent measures required to protect children against sexual exploitation. Academic and vocational training must provide basic knowledge on the rights of the child across all relevant professions. Specialised and advanced training is required for officials and professionals working in direct contact with children and families. This training should include child safeguarding procedures and methods, such as best interest determinations, child-sensitive communication, interviewing and hearing of children.²³⁰

ECPAT Germany recommends to

8. *Collaborate with the Länder, the representation of municipalities, academia, relevant institutions and civil society to develop a training strategy for officials and professionals working with and for children.*

The objective shall be to provide for systematic and mandatory inclusion of child rights and child development themes in the academic and vocational training curricula for all professions working with and for children and families, as well as measures for targeted continuous and on the job training, with due consideration to the rights of the child in the analogue and digital environments. The training strategy shall further aim to advance inter-disciplinary child protection training as a standard component of academic training curricula, as well as joint multi-professional child protection training with mandatory participation of all relevant sectors, including specific training on the theme of sexual violence and exploitation of children. The strategy shall provide for measures to evaluate and enhance the effectiveness of the training, such as longer-term supervision and peer support to enhance training impact, skills training to use evaluated evidence-based evaluation methods, and hands-on guidance for practice.

1.5 Data collection and research (art. 4 UN CRC)

The Committee urged the Federal Government to establish a comprehensive and integrated data collection system on all areas covered by the Convention and its Optional Protocols as a necessary precondition for measuring progress in the realisation of the rights of the child. The Committee expressed concern that the absence of such a system in Germany constituted a major obstacle for the effective planning, monitoring and evaluation of policies, programmes and projects.²³¹

In the State Party Report, Annex Two presents official statistics and data on a range of child rights indicators, including data on different forms of sexual violence and exploitation of children.²³² With the entry into force of the Federal Child Protection Law in 2012, Youth Offices started generating statistics on their case assessments that identified risks of sexual violence against children.

The reported data described in Annex two represent merely fragments of the real prevalence of sexual violence and exploitation of children. Criminal statistics reflect only the number of registered cases of Child Sexual Abuse Material, the completed police investigations of sexual exploitation in prostitution and trafficking, the child victims identified in these cases, as well as sexual offences against children under 14 years of age. Surveys provide information on prevalence rates among school-going children. The data remains inconclusive with regard to the degree of overlap between different data sources and children who are not captured by the various statistics, such as child victims of sexual exploitation seeking advice from specialised counselling centres or assisted by social outreach services, as well as children who are not in school.

Research has identified groups of children that have a disproportionate risk of sexual exploitation. While the specific

risks of unaccompanied asylum-seeking children have been evidenced and recognised, other risk groups have received less attention in programming and policymaking, such as children who have been exposed to violence and neglect in their home or in institutions, children living or working on the streets, children with substance abuse problems, children involved in illegal or criminal activities, missing children, and accompanied migrant and asylum seeking children (including Roma children from other EU Member States). Poverty and a street-based life have been evidenced to increase the risk of children's sexual exploitation in prostitution for income generation.²³³

ECPAT continues to see a need to strengthen the database through more systematic data gathering and analysis, including attention to poly-victimisation and the provision and effectiveness of services. In the absence of a comprehensive and disaggregated set of data, policymakers are missing the evidence base required to measure progress and conduct forward planning.

ECPAT Germany recommends to

9. *Establish a comprehensive and integrated data collection system on sexual violence and exploitation of children in all contexts, such as an independent national rapporteur or knowledge centre on all forms of violence and exploitation of children in the analogue and digital environments.*

1.6 Cooperate with the private sector: with attention to corporate social responsibility and accountability (art. 4 UN CRC, Preamble OPSC)

In 2014, the Committee expressed its concern that German companies conducting business abroad reportedly violated the rights of the child. It called upon the Federal Government to establish a regulatory framework for industries operating on or from German territory to ensure that their activities do not negatively affect the rights of the child and to strengthen private sector accountability, including through law reform where required and by implementing relevant international standards and guidance.²³⁴

The Federal Government considers the existing legal framework as sufficient to prevent and respond to infringements against the rights of the child by business companies and continues to rely on the voluntary self-commitment of the private sector rather than imposing a binding regulatory framework.²³⁵ The Federal Government has announced need to continue monitoring progress in this area and to undertake law reform in case the voluntary self-commitment of business companies remains insufficient by 2020 when the current National Action Plan on business and human rights expires. In this case, the Federal Government envisages supporting an EU-wide regulation.²³⁶

ECPAT is concerned that these measures do not sufficiently cover the scope of the OPSC. The National Action Plan

on Business and Human Rights does not explicitly address corporate social responsibility for the protection of children against sexual offences and considers the rights of the child primarily with regard to the prevention of child labour in global trade. While the Section 8b (2) SGB VIII of the Federal Child Protection Act (*Bundeskinderschutzgesetz*) provides mandatory child protection standards for the owners of institutions, there are no comparable regulations for companies at suitable place. As a consequence, there are no child protection standards or concept in place for activities organised by private companies, including animation programmes in hotels, and childcare facilities and playrooms in shopping centres or fitness studios.

Internet service providers and associated business enterprises

With regard to the prevention of sexual exploitation of children in the digital environment, the Federal Government reports progress made with the network “No Grey-Zones on the Internet”, which was established in 2014 to identify images or video material used for the purpose of sexual exploitation of children, including material with non-explicit sexual content used for this purpose. The network, which was dissolved in 2018, aimed to enhance the referral of illegal and grey-zone content to law enforcement authorities within Germany and across borders. It also aimed to contact internet service providers to effect the deletion of the material.

The State Party Report does not provide any information on the effectiveness and impact of the network, such as data on the number of incidents identified and referred, the deletion of content, or the effectiveness of the law enforcement and child protection responses to identified material. It remains silent on the need to re-establish, sustain and expand the network with the participation of relevant state agencies, NGOs and other non-state actors, as well as business companies.

After the adoption of the ‘General Comment on Children’s Rights in Relation to the Digital Environment’ it will be necessary to monitor how the Federal Government and the governments of the Federal States will realise their obligations to children’s rights in the digital environment.

ECPAT sees a need for more comprehensive and systematic measures to regulate private sector activities in the digital environment. Modern technology offers a wealth of possibilities to identify and investigate users of illegal content on the internet, to protect children, and to track and delete illegal content effectively. Leading civil society experts and associations in the field underline the need for further law and policy reform to ensure the effective use of existing technology and support its continued development. This includes measures to establish mandatory child protection standards such as age verification and network access filters of internet service providers, age limitations and obligatory age verification of users, protected online rooms for children, automatic replacement of sexually explicit language and automatic notification of law enforcement authorities of criminally relevant conduct.

In addition, there is a need to regulate mandatory storing of ISP records and their accessibility for criminal investigations, improve automatic identification of illegal content and its users, regulate anonymous remailers to prevent the forwarding of illegal content and regulate the use of hash values or other automatic identification means to locate known illegal material for law enforcement and child protection purposes. Associated companies may be required to block credit card transactions related to illegal content and to stop advertising on websites displaying illegal content.

The travel, tourism and transportation sector

Although the Federal Government sustains several initiatives to prevent the sexual exploitation of children in the context of travel and tourism, the measures taken during the reporting period are insufficient to strengthen corporate social responsibility and accountability in this sector.²³⁷ The low threshold campaign and reporting mechanism both support efforts to expand the protective network for children but will remain insufficient unless the necessary regulation of the private sector and an accountability mechanism are in place. Information on the impact of these measures is not reported.

ECPAT notes that there is an increasing sensitisation to the corporate social responsibility of the travel and tourism sector, in particular with regard to the protection of children in long-distance destinations. However, sexual exploitation of children in the context of travel and tourism also takes place within Germany and in neighbouring countries, by persons travelling for work and volunteerism and by expats and tourists. Sharing economy platforms and companies operating online booking systems have a significant facilitating role in the mobility of perpetrators, yet these businesses have not yet been regulated to the same extent as the traditional travel and tourism sector. Organisations and companies placing volunteers on short- or longer-term assignments in institutions or other services for children around the world have to be regulated by law with appropriate safeguards for children. Overall, the Berlin Declaration on “Transforming Tourism” provides valuable guidance for the development of adequate governance structures in tourism, with a human rights-based approach in tourism policy and effective accountability mechanisms, including specific consideration to the prevention of sexual exploitation of children.

ECPAT Germany recommends to

10. *Ensure that a comprehensive regulatory framework is in place that requires business companies operating on or from German territory to respect the rights of the child in the analogue and digital environments, with effective accountability mechanisms to prevent impunity in the case of infringements, in accordance with the UN Guiding Principles on Business and Human Rights. The regulatory framework should further require business enterprises and other commercial actors who provide services to children or have children as clients to draw up child protection policies, publicise*

them and review and update them regularly.

11. *Ensure that child protection standards in the digital business sector are mandatory and incorporate state-of-the-art technology safeguards for children. Internet service providers shall be required to employ child protection contact persons, as well as moderators for online games, chat rooms and other applications used by children. These contact persons must be trained, competent and supervised to assume child safeguarding tasks. Restrictions for child protection purposes shall be mandatory in all social media, internet services and applications used by children. Child and adult users, as well as parents and service providers working with children, have to be duly informed of relevant restrictions and filters. Users shall be informed and asked to agree to these safeguards when accepting the terms of use.*
12. *Legislate for business companies and other commercial actors, including in the travel and tourism sector, to carry out and publicise mandatory social impact assessments for their operations in a specific location for the entire value-chain, with due consideration to the human rights of the child and the protection of children against sexual exploitation. Ensure that mechanisms are in place to prevent and mitigate adverse impacts on the human rights of the child, in accordance with the UN Principles on Human Rights and Business, relevant international standards and the Berlin Declaration on "Transforming Tourism".*
13. *Undertake law reform to regulate travel policies of state agencies and private actors collaborating in public private partnership agreements to the effect that official travel is purchased only from accredited companies that have a child protection policy in place.*

1.7 International cooperation (art. 10 OPSC)

The Federal Government's 2017 Action Plan "Agents of Change – Children and Youth Rights in German Development Cooperation Activities" promotes the rights of the child in bi- and multi-lateral cooperation.

ECPAT notes that the Action Plan marks potentially the beginning of a process of change towards a stronger consideration for the rights of the child in Germany's development cooperation, which merits to be sustained and expanded beyond the action plan's envisaged two-year period. The current focus of integrating the rights of the child into different fields of development cooperation and promoting the participation of children and the partnership with specialised organisations, creates a useful foundation. In follow-up, more targeted attention will be required to support the effective implementation of the rights of the child in and through German development cooperation, including by supporting partner countries in the development of national and local child protection systems, as part of broader efforts in support of the implementation of

the UN Convention on the Rights of the Child and its Optional Protocols.

The Action Plan's objective to examine the possibility of introducing a child protection policy to protect children within the sphere of influence of German development cooperation policy and in its institutions by 2019 constitutes a necessary first step. But, this will remain insufficient unless and until a child protection policy is introduced and operational.²³⁸ ECPAT Germany sees an urgent need to ensure child protection policies are in place and effective.

The objective to promote the rights and the participation of children in bi- and multilateral development cooperation is also highly relevant for the cooperation with state and civil society actors in fragile contexts, in support of peacebuilding and state-building processes. It will therefore be essential to ensure that the experience with the implementation of the Action Plan, including the monitoring and evaluation findings, inform the follow-up in development cooperation, as well as the continued work with the Federal Government's guidelines for engagement with fragile states and contexts.

ECPAT Germany recommends to

14. *Ensure child protection policies are in place and effective for all actors in the German development cooperation and those engaged in fragile contexts.*
15. *Sustain and expand the promotion of the rights of the child, including the protection of children from sexual violence and exploitation, in German development cooperation and during engagement in fragile states and contexts, by moving on from integrating the rights of the child to promoting their effective implementation in practice.*

2. Prevention of sexual exploitation of children

2.1 A continuum of services in the digital and analogue world (art. 9 para. 1 OPSC)

The Federal Government recognises the risks of sexual exploitation in the digital environment. The State Party Report falls short, however, of explaining how child protection services in the digital and analogue environments are effectively connected and coordinated and how they succeed to provide a continuum of services in practice.

Whenever perpetrators use photographs or video to record an act of sexual violence against a child in the analogue environment, there is a risk that this material is subsequently shared or sold on the internet, which results in a prolonged act of exploitation. In consequence, a distinction between sexual violence and sexual exploitation and between criminal offences committed in the analogue and the digital environments is often neither feasible nor useful. Research further shows that previous experiences of violence, including sexual violence

in the home, increase a child's risk to get exposed to sexual solicitations on the internet with an associated risk of sexual exploitation.²³⁹

Research with a gender-representative sample of adults and children revealed that approximately 8.5 percent of the surveyed participants have had experiences of sexual solicitations or violence online whereas the first incident happened on average at the age of 9.5 years old. Only around one third of the cases identified had been disclosed, and only one percent had been reported to law enforcement authorities or Youth Offices.²⁴⁰

This data indicates the need to promote the rights of the child in the digital environment, including protection against sexual exploitation, as a cross-cutting issue in all dimensions of child and youth policy, starting from early childhood education and care, as laid out in the Council of Europe Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment. Across all social sectors, prevention and response projects should include, as a general rule, considerations for addressing the digital environment.

ECPAT Germany recommends to

16. *Ensure that the promotion of the rights of the child in the digital environment is recognised as a cross-cutting issue and mainstreamed into all policies and programmes concerning children and families, the media, the business sector and other relevant fields.*
17. *Require all organisations, institutions, associations and services who are working with children, are in contact with children or have children as clients, to have child protection policies in place, with due consideration to the risks of sexual violence and exploitation in the digital and the analogue environments. Having a child protection policy in place should be mandatory for the issuing and renewal of licenses, as recommended also by the Independent Commissioner for Matters of Child Sexual Abuse. Child protection policies are considered to be stronger when developed or reviewed in consultation with children and should be subject to periodic review.*

2.2 Prevention activities (art. 9 para. 2 OPSC)

The State Party Report informs about numerous prevention projects rolled-out in schools and other institutions for children to raise awareness and sensitise children and adults to the risks of sexual violence. There is however no national overview of these activities and their impact, nor is there evidence-informed planning and coordination at the federal level. In the specific scope of the OPSC, the preventive approach and the activities in the frame of the Federal Cooperation Model on Protecting and Supporting Child Victims of Trafficking and Exploitation is a good example. Regarding the protection of children from sexual exploitation in travel and tourism, the multi-country child protection campaign "Don't

Look Away!" is understood as a positive example that merits to be sustained. It aims to prevent the sexual exploitation of children in the context of travel and tourism and facilitate the reporting of cases and suspicions. Beyond these activities, ECPAT and its partners would like to see a more comprehensive and coordinated approach to the prevention of sexual exploitation of children by the Federal Government.

ECPAT Germany recommends to

18. *Promote and coordinate a comprehensive set of activities for the prevention of sexual exploitation of children specifically, in addition to the prevention of sexual violence against children. Prevention activities should include awareness raising and sensitisation campaigns for different target groups, such as officials and professionals working with children, the general population, parents and children on sexual exploitation.*

2.3 Promoting ethical and rights-based terminology (art. 9 para. 2 OPSC)

In 2019 the Terminology Guidelines for the protection of children from sexual violence and exploitation were adopted into German language in consultation with state agencies, service providers and civil society organisations led by ECPAT Germany. Inspired by the 2016 international Terminology Guidelines, the German adaptation aims to influence attitudes towards child victims of sexual offences, to protect their dignity and enhance the recognition of the child as a rights holder. The guidelines were considered necessary as the sensitivity towards terminology in the child protection field has evolved with the progressive implementation of the UN Convention on the Rights of the Child and its Optional Protocols. Rather than "child prostitution", "child pornography" and "child sex tourism", for instance, which used to be common terminology when the Optional Protocol was adopted, the guidelines promote more rights-based terms such as "sexual exploitation of children in prostitution", "child sexual abuse images" and "sexual exploitation of children in the context of travel and tourism".²⁴¹

ECPAT Germany recommends to

19. *Promote the consistent use of the terms and concepts agreed upon under the German Terminology Guidelines in the operations and communication of state agencies and their official partners, and promote their use in the legislative process, in the academia, in education and training, and among the private actors working with and for children and families, as well as the media.*

2.4 Reducing demand through therapy programmes for potential and convicted perpetrators (OPSC art. 9.1)

Preventive programmes for potential perpetrators

As noted by the State Party Report²⁴², the network „Kein Täter werden“ (“Don’t Offend”) offers preventive therapy for persons who are sexually attracted to children, who perceive their sexual preferences as distressing and who are seeking help to not commit a criminal offence. Participants are enrolled on the condition that they have not committed any sexual offences.²⁴³ The evidence-based programme is supported by a scientific committee. It was launched in 2005 and established as a country-wide network in 2011. In 2016, law reform enabled free-of-charge participation in the therapy, which is covered by public health insurance.

The programme is closing a protection gap, as preventive therapy for potential perpetrators is complementing prevention measures targeting children, parents and professionals working with and for them. Evaluations demonstrate that the programme succeeds in reducing risk factors as it achieved a sustainable behaviour change by preventing 98 percent of the participants from becoming perpetrators.²⁴⁴

The demand for preventive therapy is high. By the end of December 2018, 10,499 persons throughout Germany had contacted the prevention network “Don’t Offend”. 3,672 persons had presented themselves at one of the eleven locations for diagnosis and consultation, of whom 1,783 were eligible to receive a therapy offer. Persons who cannot easily access one of the therapy locations due to long travel distances, have the possibility to enrol in the online self-help programme “Troubled Desire”. The prevention network offers also a special programme targeting adolescents. The results suggest that prevention measures targeting adolescents appear to be more efficient.

Preventing recidivism: Risk assessments of defendants and convicted perpetrators

The State Party Report does not report on measures taken to prevent recidivism of sexual offenders. At present, there are no legal regulations to ensure that defendants accused of sexual offences are subject to psychopathological risk assessments. Research by the University of Kiel revealed that only around 12 percent of the defendants in sexual offence cases were assessed by a professional psychiatrist during the investigations or proceedings. Where psychopathological assessments are done, they typically remain limited to establishing whether the defendant can be considered criminally responsible. The risk of re-offending is typically assessed when a sentenced perpetrator is prepared to be released from prison. During the prison term, therapy and treatment of perpetrators of sexual offences against children are not provided as a standard measure. In consequence, the risk of a perpetrator to reoffend after release from prison is high.²⁴⁵ Evidence from other countries demonstrates that risk assessments during criminal proceedings and prison terms as well as treatment

for the prevention of recidivism succeed in reducing the rate of reoffending significantly and thereby enhance the prevention of sexual offences against children.²⁴⁶

ECPAT Germany recommends to

20. Institutionalise the therapy programme for potential perpetrators permanently and step up therapy places country-wide to reduce waiting times, while facilitating access in rural areas.
21. Develop evidence-informed therapy programmes for perpetrators of sexual offences against children, with due consideration to the characteristics and needs of different typologies of perpetrators, in particular with a view to secondary and tertiary prevention. Ensure that sentences issued by courts of law in cases of sexual offences against children provide for mandatory therapy of convicted perpetrators from the beginning of the prison term.
22. Train psychologists and psychiatrists working with defendants and sentenced perpetrators of sexual offences against children in conducting recidivism risk assessments. Support academic research and teaching in specialised faculties for sexual medicine in order to expand the availability of specialised forensic expertise, therapy and treatment for potential and convicted perpetrators of sexual offences throughout the country.

3. Effective law enforcement

3.1 Strengthening the effective enforcement of laws in Germany (arts. 1 and 3 OPSC)

As described in the State Party Report, the Federal Criminal Code prohibits the sexual exploitation of children in prostitution and pornography, as well as in the contexts of child trafficking, sale, travel and tourism. Whereas criminal law offers a sufficient margin of action to prosecute perpetrators and protect victims, challenges continue to prevail mainly with regard to the effective enforcement of these laws.

German law enforcement authorities are successfully investigating and prosecuting cases of sexual exploitation of children in prostitution and in the context of child trafficking. They have recognised the possession of illegal content and its distribution on the internet as a common criminal offence, which is identified and investigated due to increased resources, specialisation and technology. However, in many cases, the investigations lag behind the vast amount of criminal activity, especially in the digital environment. The backlog can only be addressed through more specialised officers, an increased use of technology and the allocation of the necessary budgets, as well as collaboration with law enforcement agencies of other countries.

The State Party Report does not include information about the presence of law enforcement and prosecution

units throughout the country which are specialised on sexual offences against children. The annual trafficking statistics published by the Federal Criminal Office (BKA) indicate a disproportionately high number of successful investigations of trafficking of children in Berlin, which is considered to be related to the specialised law enforcement unit operating in the Berlin Criminal Office.²⁴⁷

ECPAT Germany and the specialised counselling centres on trafficking are concerned that despite the progress made, there remain numerous situations where girls or boys are known to be sexually exploited in prostitution on the streets, in private apartments or other contexts where law enforcement services do not succeed to end the exploitation and apprehend the perpetrators. Many children in situations of exploitation are subject to high levels of pressure, control or threat. Children may also refuse to accept services as they do not trust to receive meaningful help.²⁴⁸ Some children refuse to collaborate with law enforcement authorities or other service providers due to serious health impacts and traumatisation as a result of the violence exerted by exploiters and traffickers.²⁴⁹ Low threshold and social outreach services are often the only service providers in contact with children in situations of sexual exploitation.

ECPAT Germany recommends to

23. *Ensure specialised law enforcement and prosecution services are in place at the federal level to investigate sexual offences against children. Ensure that, in the course of criminal investigations, interviews of child victims of sexual violence, sexual exploitation or trafficking are conducted as a general rule by specifically trained staff (police officers or child psychologists).*
24. *Require business enterprises and other relevant stakeholders to collaborate with law enforcement agencies for the purpose of criminal investigations, in particular to secure the availability of metadata concerning illegal content identified on local servers, as recommended by the relevant Council of Europe guidelines.*

3.2 International law enforcement cooperation and extraterritorial jurisdiction (arts. 4, 5 and 6 OPSC)

Since 1993, the Criminal Code has enabled the application of extraterritorial jurisdiction in cases of sexual offences against children committed abroad. The legal framework required for enforcing criminal laws in relation to sexual offences against children committed abroad or in transnational situations is therefore in place and could be applied in cases of sexual exploitation of children in the context of travel and tourism, in child trafficking and in the digital environment. The provisions apply irrespectively of whether the conduct is criminalised also in the country where it was committed.

ECPAT underlines the need for disaggregated data on

extraterritorial prosecutions of sexual offences against children in the criminal police statistics. A survey conducted by ECPAT Germany among courts and the Criminal Offices of the *Länder* identified 38 extraterritorial cases over a ten year period (2005–2015) out of a total caseload that is known to be higher. None of the child victims identified in the cases that resulted in the conviction of a perpetrator received victim compensation.²⁵⁰

Increased resources, specialisation and technology have enabled law enforcement authorities to identify and investigate criminal offences related to the possession of illegal content and its distribution on the internet, including in transnational contexts. However, the State Party Report does not comment on the immense workload and the inadequate personnel and technical resources of the investigating authorities.

ECPAT notes that sustainable solutions to reduce the backlog and to enhance the effectiveness of law enforcement in relation to the digital environment require bi- and multilateral collaboration with law enforcement agencies of other countries, including in the contexts of Europol and Interpol regarding the green notices.

ECPAT Germany recommends to

25. *Enhance data collection and analysis with regard to the application of extraterritorial jurisdiction in cases of sexual violence and exploitation of children, with a view to assessing the current practice and to guide and monitor progress in this field.*
26. *Ensure the centralised register of persons who have been convicted of sexual offences against children is screened effectively in vetting procedures for employees and volunteers recruited for activities where they are in contact with children, in Germany or abroad. The register should be connected with a travel notification system, and enable the sharing of the data and appropriate notifications through bi- and multilateral law enforcement cooperation mechanisms such as Interpol and Europol.*

4. Assistance, remedies and child-sensitive justice for child victims of sexual exploitation

4.1 Assistance for child victims of sexual exploitation (art. 9 para. 3 OPSC)

In its 2014 concluding observations, the Committee expressed concern about insufficient measures to provide help and support to victims of sexual exploitation, in particular concerning insufficient and unequal access to counselling services and treatment units for child victims, as well as insufficient funding of specialised services. The Committee noted that

boys, children with disabilities and migrant children with poor knowledge of German language are facing particular difficulties in accessing assistance.²⁵¹

The State Party Report includes information about the measures taken by the federal and *Länder* governments, in cooperation with partners, to strengthen the assistance and support services for children who are victims of sexual exploitation.²⁵² Measures were taken to enhance the provision of information to persons who are victims of crime, as the Federal Government recognised that many do not apply for compensation and support services because they are unaware of their legal entitlements.²⁵³ However, the Federal Government recognises the difficulties of guaranteeing access to specialised counselling and advice for persons who were victims of sexual offences during childhood, especially for certain groups including those in rural areas.

ECPAT Germany recognises the increased awareness of the Federal and *Länder* governments of the need to lower the threshold for child victims of sexual offences to access assistance and support. However, the measures taken thus far remain insufficient. Although a range of service providers, counselling centres, child protection centres and outpatient clinics are in place, child victims of sexual offences cannot rely on getting access to child-friendly information and counselling and lack assistance and support services targeted to their individual needs in the place where they live.²⁵⁴

It is not uncommon that service providers working with children fail to identify signs of sexual violence, exploitation and trafficking even among the children they work with, mainly due to limited awareness and knowledge.²⁵⁵ Experts are concerned about gender-related stereotypes, which continue to prevent the effective identification and referral of child victims of sexual violence and exploitation. The fact that women commit sexual offences against children is only scarcely known and researched. Service providers tend to have a limited understanding of the patterns and scope of sexual exploitation of boys.²⁵⁶ Shelter services for boys or transgender children are almost not available.²⁵⁷

Research reveals that 60 percent of the children who received services in response to a sexual offence had symptoms of a psychological disorder as a result of sexual violence, such as post-traumatic stress and depression. Due to feelings of shame, many children disclosed only one year after the incident happened. 20 percent felt they did not receive sufficient support. Although children showed symptoms that required treatment, 62 percent did not receive specialised therapy. A third of the children didn't consider the services of the Youth Welfare Offices to be really helpful.²⁵⁸

ECPAT Germany recognises the need to continue enhancing the quality of service provision for children and to promote the use of standardised methods for case assessment, diagnosis and therapy.²⁵⁹ The recommendations issued by the Committee on the Rights of the Child in 2014 continue to be highly relevant.²⁶⁰

As noted also by the Council of Europe monitoring body GRETA, the scope of Victim Protection Law and the correlated

entitlements of victims of crime to apply for compensation remain limited to children and adults who have their permanent residence in Germany. This protection gap has to be closed to ensure child victims of sexual exploitation are fully protected and receive appropriate support for recovery and rehabilitation, irrespective of their nationality or residence status.²⁶¹

ECPAT Germany recommends to

27. *Guarantee the unrestricted access of child victims of sexual offences to assistance and support services, including child-friendly information, specialised counselling with child-sensitive communication and interviewing, treatment, shelter services and therapy.*
28. *Provide systematic training for child psychologists and psychiatrists on the diagnosis, impact and treatment of sexual violence and exploitation of children, including the identification and treatment of traumatisation and dissociation as a result of particularly cruel and prolonged situations of exploitation, as well as meaningful support for children who continue to be exploited in the digital environment.*
29. *Expand the scope of the Fund Sexual Abuse to accomplish the victim's entitlement to apply for compensation to children and adults who have their permanent residence in Germany.*

4.2 Remedies and child-sensitive justice (arts. 8 and 9 para. 4 OPSC)

With the entry into force in 2015 of the revised Act strengthening victims' rights in criminal procedures, the legal entitlements of child victims of sexual offences to receive support during criminal proceedings have been strengthened.²⁶² Persons who are victims of sexual offences are entitled to receive psychosocial support during the court proceedings. This service aims to offer better support for young victims of sexual offences. Experts observe that the quality of the service varies, as the training and qualification of providers of psychosocial support is not regulated.²⁶³

Experience has shown that a child's participation as a witness in civil and criminal proceedings still often stands in conflict with prompt access to therapy, as therapy is considered to alter the child's statement. Admitting video-recorded hearings of child victims as a general rule would resolve the potential conflict of interests and enable child victims to initiate therapy while the proceedings are still in course.

The Civil Code obliges family court judges to make the best interests of the child a primary consideration. However, the concept of 'best interests' is not defined and there are no binding regulations on how judges determine the best interests of the child and ensure it is a primary consideration in their decision-making processes. As a consequence, professionals report on court decisions under child welfare laws that do not give adequate weight to the protection of the child.

ECPAT Germany recommends to

30. *Guarantee child victims of sexual exploitation have access to child-sensitive remedies and justice, in accordance with relevant recommendations adopted by the Council of Europe Committee of Ministers. The setting up of child-centred service models under one roof, inspired by the Nordic Barnahus and comparable service models, has to be further promoted. The relevant pilot projects testing the model in Germany should be evaluated and debated with a view to identifying the most appropriate model for the federal context.*
31. *The hearing of the child should be mandatory from a young age in all court proceedings concerning them, in accordance with the principle of the best interests of the child, ensuring that child-friendly conditions and a qualified interviewer guarantee a child-sensitive hearing. In criminal proceedings, the standardised use of video-recorded forensic interviews or hearings of child victims or witnesses in court should be provided for, in accordance with the principles of the rule of law and due process.*
32. *Judges handling proceedings under administrative, civil or criminal law that involve children as victims or witnesses, and in particular judges of the Family Courts, as well as the jury have to undergo mandatory training on the rights of the child, best interests determination procedures in the judicial context, child-sensitive hearing, the use of evidence-based interviewing protocols for child victims and witnesses, the child's evolving capacities to make reliable and accurate statements, as well as the health impact of sexual violence and exploitation, including the impact of traumatisation and dissociation. Training should be provided as a standard component of academic curricula and through continuous on-the-job training.*
33. *The writing of opinions for court proceedings assessing the best interests or other matters concerning child victims of sexual exploitation should be regulated and guided by a set of binding quality standards, as well as training, as is also recommended by the German Thematic Expert Group on sexual violence against children in organised and ritual structures.*

Endnotes

Links to sources can be found online
www.netzwerk-kinderrechte.de

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- 2 UN Committee on the Rights of the Child (2003): *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, p. 7.
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- 4 Hessian State Parliament (2017): *Gesetzentwurf der Fraktionen der CDU, der SPD, Bündnis 90/Die Grünen und der FDP*. Wiesbaden.
- 5 Coalition agreement between the CDU, CSU and SPD (2018): *Ein neuer Aufbruch für Europa. Eine neue Dynamik für Deutschland. Ein neuer Zusammenhalt für unser Land*. Berlin, p. 21.
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- 10 Fachkräftebarometer authors' group (2017): *Fachkräftebarometer Frühe Bildung 2017*. Ed. *Deutsches Jugendinstitut*. Munich, p. 24.
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- Hochschule für angewandte Wissenschaften Coburg – Fakultät Soziale Arbeit und Gesundheit
- Hochschule Magdeburg-Stendal – Studiengang Kindheitswissenschaften
- Initiative für Große Kinder
- International Society for Pre- and Perinatal Psychology and Medicine
- **Internationale Gesellschaft für erzieherische Hilfen**
- Internationaler Bund
- **Intersexuelle Menschen**
- Jugend der Deutschen Lebens-Rettungs-Gesellschaft
- JUMEN
- Kinder- und Jugendwerk der Naturfreunde – Verein zur Förderung der Naturfreundejugend Deutschlands
- Kinderfreundliche Kommunen
- Kindernetzwerk
- **Kindernothilfe**
- KRF KinderRechteForum
- LERNEN FÖRDERN – Bundesverband zur Förderung von Menschen mit Lernbehinderungen
- Lindenstiftung für vorschulische Erziehung
- MACHmit! Museum für Kinder
- Makista
- MOGiS
- **Montessori Dachverband Deutschland**
- NAJU – Naturschutzjugend im NABU
- **OUTLAW. die Stiftung**
- PFAD Bundesverband der Pflege- und Adoptivfamilien
- pfv – Pestalozzi-Fröbel-Verband
- **Plan International Deutschland**
- PROKIDS PROSOZ Herten
- Ringe deutscher Pfadfinderinnen- und Pfadfinderverbände
- **Save the Children Deutschland**
- SOS-Kinderdorf
- Teach First Deutschland
- Technische Jugendfreizeit- und Bildungsgesellschaft
- **terre des hommes Deutschland**
- The Duke of Edinburgh’s International Award – Germany
- Verband binationaler Familien und Partnerschaften iaf
- Vereinigung der Waldorfkindergärten
- **World Future Council**
- World Vision Deutschland

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Legally established civil society organisations of nationwide importance working in the field of children’s rights can apply for membership, if they support the statutory objective of the National Coalition Germany. If you are interested in becoming a member, please contact us.

