



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Concluding observations on the combined third and fourth periodic reports of Germany\*

1. The Committee considered the consolidated third and fourth periodic reports of Germany (CRC/C/DEU/3-4) at its 1866<sup>th</sup> and 1867<sup>th</sup> meetings (see CRC/C/SR. 1866 and 1867), held on 27 January 2014, and adopted, at its 1875<sup>th</sup> meeting, held on 31 January 2014, the following concluding observations.

#### I. Introduction

2. The Committee welcomes the submission of the consolidated third and fourth periodic reports of Germany (CRC/C/DEU/3-4) and the written replies to its list of issues (CRC/C/DEU/Q/3-4/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multisectoral delegation of the State party.

#### II. Follow-up measures undertaken and progress achieved by the State party

3. The Committee welcomes the adoption of the following legislative measures:
- (a) The Act Strengthening the Rights of the Biological, Non-Legal Fathers of 4 July 2013;
  - (b) The Act to Reform the Parental Custody Rights of Parents Not Married to Each Other of 16 April 2013;
  - (c) The Act Amending the Guardianship and Custodial Care Law of 29 June 2011;
  - (d) The Federal Child Protection Act of 22 December 2011;
  - (e) The Child Promotion Act of 16 December 2008;
  - (f) The Act to Facilitate Family Court Measures in case of Danger to the Best Interests of the Child of 12 July 2008;

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\* Adopted by the Committee at its sixty-fifth session (13-31 January 2014).

- (g) The Federal Parental Benefit and Parental Leave Act of 1 January 2007;
  - (h) The Child and Youth Welfare Further Development Act of 1 October 2005.
4. The Committee also notes with appreciation the ratification of:
- (a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure in February 2013;
  - (b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in July 2009;
  - (c) The Convention for the Protection of All Persons from Enforced Disappearances in September 2009;
  - (d) The Convention on the Rights of Persons with Disabilities in February 2009; and
  - (e) The Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005 in December 2012.
5. The Committee also welcomes the following institutional and policy measures:
- (a) The establishment of the Federal Initiative for Early Intervention in 2012;
  - (b) The development of the Strategy of the Federal Government to promote children's health in 2008;
  - (c) The National Action Plan entitled "Für ein kindergerechtes Deutschland" (For a Child-Friendly Germany) in 2005-2010.
6. The Committee welcomes the State party's withdrawal of its reservation to article 40, paragraph 2 (b) (ii) and (v) of the Convention.

## IV. Main areas of concern and recommendations

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

#### The Committee's previous recommendations

7. The Committee, while welcoming the State party's efforts to implement its concluding observations of 2004 on the State party's second report (CRC/C/15/Add.226), notes with regret that some of the recommendations contained therein have not been fully addressed.

8. **The Committee recommends that the State party take all necessary measures to address those recommendations from the concluding observations of the second periodic report under the Convention that have not been sufficiently implemented, particularly those related to coordination, independent monitoring, as well as to asylum-seeking children and children in situations of migration.**

#### Legal status of the Convention

9. The Committee notes with satisfaction that most Länder have explicitly recognized children's rights in their Constitutions. However, the Committee remains concerned that children's rights have not yet been explicitly recognized in the Constitutions of Hamburg and Hesse, and in the Federal Constitution (Basic Law). The Committee further notes that

under article 59, paragraph 2 of the Basic Law, the Convention is placed at the level of an ordinary federal law.

10. **In light of its previous recommendations (CRC/C/15/Add.226, para. 10), the Committee urges the State party to take all the necessary measures to ensure that the Convention takes precedence over the Federal laws through its incorporation into the Basic Law or by any other procedure.**

#### **Comprehensive policy and strategy**

11. The Committee notes that the National Action Plan (NAP) (2005-2010) opened a broad discussion on children's rights. However, it regrets that its implementation in practice did not sufficiently involve civil society organizations and other actors at local level. While noting that a new Youth Policy focusing on adolescents and young adults started in 2011, the Committee is however concerned that this policy does not seem to cover all issues related to children's rights.

12. **The Committee recommends that the State party take measures to formulate a comprehensive policy on child rights, and provide relevant bodies with the necessary human, technical and financial resources to guide the development of programmes and projects and establish systems for their monitoring and evaluation with clear indication of the roles and responsibilities of the relevant bodies at Federal and Länder levels.**

#### **Coordination**

13. The Committee remains concerned at the absence of a central body to coordinate the implementation of the Convention in the State party at the Federal, Länder and community levels, making it difficult to achieve a comprehensive and coherent child rights policy.

14. **In light of its General Comment No. 5 on general measures of implementation of the Convention (2003), the Committee reiterates its previous recommendation (CRC/C/15/Add.226, para.12) and calls upon the State party to establish or designate an adequate and permanent national body with full capacity and authority as well as sufficient human, technical and financial resources to effectively coordinate the implementation of the Convention. This should include addressing cross-cutting issues between the different ministries at the Federal level, between the Federal and the Länder levels and among the Länder.**

#### **Data collection**

15. The Committee takes notes that the State party is aware of the importance of establishing a comprehensive data collection system. However, the Committee is concerned that the State party does not have a comprehensive system of data collection on all areas covered by the Convention, which is one of the major obstacles for the effective planning, monitoring and evaluation of policies, programmes and projects for children, especially in the fields of violence against children, children with disabilities, juvenile justice, and child refugees, particularly regarding the number of unaccompanied children.

16. **Recalling its general comment N° 5 (2003) on the general measures of implementation (2003), the Committee urges the State party to establish a comprehensive and integrated data collection system on children covering all Länder and the entire period of childhood up to the age of 18, and to introduce indicators on children's rights on which progress in the realization of those rights could be analysed and assessed. The data should be disaggregated by age, sex, disability, geographical location, ethnicity, migration status and socio-economic background in order to facilitate the assessment of the overall situation of children and provide guidance for**

**the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention.**

#### **Independent monitoring**

17. The Committee remains concerned at the continued absence of a central independent body that monitor the implementation of the Convention on Federal, Länder and community levels, and which is also empowered to receive and address complaints of violations of children rights.

18. **In line with its previous recommendations (CRC/C/15/Add.226, para. 16), the Committee recommends that the State party provide the German Institute for Human Rights (GIHR) with a mandate to monitor the implementation of the Convention at Federal, Länder and local levels. The Committee further recommends that the GIHR be allocated adequate human, technical and financial resources and that its mandate include the possibility to receive, investigate and effectively address complaints of violations of child rights in a child-sensitive manner.**

#### **Dissemination and awareness-raising and training**

19. While welcoming the State party's efforts to disseminate the Convention in child-friendly ways, the Committee is concerned about the unsatisfactory status in the access to information about children's rights among children and adults, particularly children in vulnerable situations. The Committee reiterates its previous concern that the State party is not undertaking adequate dissemination, awareness-raising and training activities concerning the Convention in a systematic and targeted manner, particularly within the school context, and towards the relevant professionals working with children.

20. **In line with its previous recommendations (CRC/C/15/Add.43 para. 26) and (CRC/C/15/Add.226 para. 20), the Committee recommends that the State party:**

(a) **Include mandatory modules on the Convention and human rights in general in the school curriculum and develop sufficient initiatives to provide such information to vulnerable groups such as asylum-seekers, refugees and ethnic minorities;**

(b) **Develop systematic and on-going training programmes on the Convention for all professional groups working with and for children such as judges, lawyers, law enforcement officials, civil servants, teachers, health personnel (including psychologists) and social workers;**

(c) **Encourage greater media engagement in raising awareness of the Convention in a child-friendly manner, in particular through greater use of social media but also press, radio, television and other media as well as the active involvement of children themselves in public outreach activities.**

#### **International cooperation**

21. **The Committee welcomes that in the framework of the European Union's Official Development Assistance objectives, the State has committed to reaching the internationally agreed target of 0.7 per cent of gross national income (GNI) by 2015. The Committee encourages the State party to meet this target and to ensure that the realization of children's rights becomes a top priority in the international cooperation agreements established with developing countries. In doing so, the Committee recommends that the State party take into account the concluding observations of the Committee on the Rights of the Child for the recipient country in question. Furthermore, the Committee recommends that the State party advocate within the**

**European Union for the implementation of austerity measures in the concerned countries not having a negative impact on the allocation of resources for child policies.**

#### **Child rights and the business sector**

22. The Committee notes that the State party is one of the European countries where coal is greatly used in the production of power and is concerned about the negative impact that coal emissions have on children's health. The Committee is also concerned about the lack of adequate measures taken by the State party against German companies acting abroad reportedly violating children and human rights.

23. **In line with its General comment N° 16 on State obligations regarding the impact of the business sector on children's rights (2013), the Committee recommends that the State party:**

(a) **Establish a clear regulatory framework for the industries operating in the State party to ensure that their activities do not negatively affect human rights or endanger environmental and other standards, especially those relating to children's rights;**

(b) **Take into consideration the best interests of the child when adopting budgetary measures such as subsidies for business affecting children rights;**

(c) **Examine and adapt its legislative framework (civil, criminal and administrative) to ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State party's territory, regarding violations of child and human rights;**

(d) **Comply with international and domestic standards on business and human rights with a view to protecting local communities, particularly children, from any adverse effects resulting from business operations, in line with the United Nations "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights that were adopted by the Human Rights Council in 2008 and 2011, respectively, and by the Committee's own general comment N° 16.**

## **B. General principles (arts. 2, 3, 6 and 12 of the Convention)**

### **Non-discrimination**

24. The Committee welcomes the anti-discrimination measures adopted by the State party, particularly those aimed at promoting a culture of understanding and tolerance. However, the Committee remains concerned that children with disabilities and children with a migration background continue to face discrimination in the State party, particularly regarding education and health care services.

25. **The Committee recommends that the State party increase measures to combat discrimination, in particular against children with disabilities and children with a migration background through programmes and policies to reduce inequalities in access to education, health and development. The Committee also recommends that the State party continue its efforts in raising awareness of discrimination and fostering an inclusive and tolerant environment in schools and other spaces for children.**

**Best interests of the child**

26. While taking note of the welfare of the child being a guiding principle in the State party's legal order as well as of the increase in its application, the Committee also notes with concern that the principle of the best interests of the child has not yet been fully incorporated into the Federal legislation and the prioritization of the child's best interests has not yet been integrated in all areas of the legislative, executive and judiciary. In particular, it is frequently disregarded towards children from educationally and socio-economically disadvantaged families, including refugees and asylum-seeking children.

27. **The Committee draws the State party's attention to its General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration and, in line with its previous recommendations (CRC/C/15/Add.226, para. 27), it recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects that are relevant to and have an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving them due weight as a primary consideration. Such procedures and criteria should be disseminated to private social welfare institutions, courts of law, administrative authorities, legislative bodies, and the public at large.**

**C. Civil rights and freedom (arts.7, 8, 13-17, 19 and 37 (a) of the Convention)****Birth registration /nationality**

28. The Committee welcomes the developments made by the State party in terms of birth registration of all national and foreign children, including children of refugees and asylum seekers. However, the Committee is concerned about the still remaining practical difficulties in obtaining a birth certificate for new born babies with an irregular residence status, given that the registry offices responsible for the issuance are required to check residence status and have the obligation to communicate the information to the immigration authorities.

29. **The Committee urges the State party to take the appropriate measures to ensure that birth registration is available as soon as possible to all children regardless of their parent's legal status and/or origin. In doing so, the Committee recommends that the State party exempt registry offices from the obligation to communicate the information to immigration authorities, as it has already been done for educational facilities in 2011.**

**Right to Identity**

30. While noting the decision not to establish new baby boxes and the planned regulation of anonymous births, as well as the provision of support to pregnant women or women who have recently given birth aimed at reducing abandonment of new born children, the Committee nevertheless regrets the absence of regulation and the on-going practice of "baby-boxes", which is in violation of, inter alia, articles 6, 7, 8, 9 and 19 of the Convention.

31. **The Committee strongly urges the State party to undertake all measures necessary to end the practice of anonymous abandonment of children and expeditiously strengthen and promote alternatives. The Committee also urges the**

State party to increase its efforts to study and address the root causes which lead to the abandonment of infants. The response should include the provision of family planning, reproductive health as well as adequate counselling and social support for unplanned pregnancies and the prevention of risk pregnancies, and support for families in need, while introducing the possibility of anonymous births at hospitals as a measure of last resort. In that respect, the State party should keep a confidential record of the parents to which the child could have access at a later stage, taking into account the duty to fully comply with all provisions of the Convention.

#### **D. Violence against children (articles 19, 37 (a) and 39 of the Convention)**

##### **Corporal punishment**

32. The Committee notes with appreciation that children have a statutory right to violence-free upbringing. Nevertheless, the Committee remains concerned that a significant number of children experience different forms of violence in their homes.

33. **The Committee recommends that the State party take all necessary effort to ensure that the right to a violence-free upbringing be more effectively implemented. Furthermore, the Committee recommends that the State party develop and strengthen already existing awareness-raising programmes aimed at promoting positive, non-violent and participatory forms of child-rearing and discipline to replace corporal punishment.**

##### **Sexual exploitation and abuse**

34. The Committee is concerned about insufficient prevention and access to help and support for victims of sexual offences, including:

- (a) Insufficient prevention measures in schools and other institutions attended by children;
- (b) Insufficient state-wide coverage of counselling services as well as insufficient treatment units for sexualized violence towards children, with gaps existing particularly in the eastern Länder and in rural regions;
- (c) Insufficient funding of specialized services;
- (d) Unequal access to support and counselling services, particularly by boys, children with disabilities, as well as migrant children with no or poor knowledge of German; and
- (e) The Independent Commissioner for Sexual Abuse not being permanent.

35. **The Committee urges the State party to strengthen coordination between all actors of the protection system and to allocate all necessary human, technical and financial resources to ensure:**

- (a) **Prevention of sexual violence against children, especially in schools and facilities for children with disabilities but also in youth welfare facilities and other institutions, e.g., in the clerical, sport and cultural sectors, and to ensure for them to be implemented comprehensively;**
- (b) **Unrestricted access to adequate counselling services and treatment units for children who are victims of sexual exploitation and abuse.**
- (c) **Allocation of resources to the specialized services;**

(d) **Barrier-free access to counselling services and treatment units by providing communication possibilities in foreign languages and sign language; and**

(e) **The Independent Commissioner for Sexual Abuse to become permanent.**

36. While noting the measures undertaken by the State party to investigate cases of child abuse committed by Church officials, the Committee is concerned that several cases have not been investigated.

37. **The Committee recommends that the State party take all necessary measures to expedite the investigation and prosecution of such cases.**

#### **Harmful practices**

38. The Committee is concerned about a significant number of girls living in the State party affected by genital mutilation or at risk of either being temporarily sent to a country where genital mutilation is practiced or being exposed to it within the State party. The Committee also notes with concern that doctors, midwives and hospital personnel are often not well informed on genital mutilation and on preventative and protective measures in order to be able to give advice and provide help.

39. **The Committee therefore reiterates its previous recommendations (CRC/C/15/Add.226, para. 47) and urges the State party to draft a national policy and strategy against female genital mutilation and to:**

(a) **Provide training on the prevention of and response to female genital mutilation for all relevant professional groups, in particular doctors, midwives and hospital personnel as well as teachers, social workers, and child helpline counsellors;**

(b) **Strengthen and organize further information dissemination and awareness-raising campaigns to prevent this practice, inter alia by involving civil society and the media. In this regard, particular focus should be placed on campaigns targeting girls at risk, informing them on access to help and advice; and**

(c) **Further strengthen measures for the elimination of female genital mutilation in its programmes of international cooperation by, inter alia, extending financial and technical assistance to countries where female genital mutilation occurs.**

#### **Freedom of the child from all forms of violence**

40. The Committee is concerned about on-going violence experienced by children in schools and other institutions, including physical violence, bullying and an increase of cyber-bullying. Furthermore, the Committee is concerned at the lack of adequately qualified teachers and school social workers in some schools to address this issue, as well as qualified staff in other institutions.

41. **Recalling the recommendations of the United Nations study on violence against children of 2006 (A/61/299) and its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee recommends that the State party:**

(a) **Develop a comprehensive national strategy to prevent and address all forms of violence against children;**

(b) **Adopt a national coordinating framework to address all forms of violence against children;**

(c) **Provide state-wide awareness-raising and training programmes for teachers and social workers aimed at learning to recognize and effectively respond to the incidents of violence; and**



(d) **Cooperate with the Special Representative of the Secretary-General on violence against children and other relevant United Nations institutions.**

**E. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)**

42. While welcoming the significant changes made by the State party with regard to regulation of parental relations, in particular a major trend towards establishing joint parental custody over their children, the Committee notes that the State party is still using the term “custody” in its legislation, and not “parental responsibility” as used in the Convention and in some of the international instruments adopted after the Convention on the Rights of the Child.

43. **The Committee recommends that the State party consider the possibility of replacing the term “custody” with the term “parental responsibility”, thus following the Convention’s object and purpose.**

**Children deprived of a family environment**

44. The Committee is concerned about the strict rules regarding family reunification, stipulating that left behind children who are not citizens from an EU country are only allowed to move to their parents living in the State party below 16 years of age and when their means of subsistence are guaranteed.

45. **In light of its General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), the Committee recommends that the State party ensure a general statutory right for children of foreign nationals to family reunification until the age of 18.**

46. While welcoming the legislative measures adopted by the State party to provide support to parents in the fulfilment of their parental obligations, the Committee is concerned about the following issues:

(a) The increasing number of children deprived of their family environment and taken into public care;

(b) The lack of adequate resources in public youth welfare services to support families at risk and that only few local authorities provide support services in the parents’ language or interpretation; and

(c) The practice of placing children with behavioural problems into foster care in other countries of the European Union without proper supervision and evaluation.

47. **The Committee recommends that the State party:**

(a) **Improve its system of family support and ensure that placement of children in foster care is only used in the best interests of the child;**

(b) **Provide welfare services with adequate human and financial resources in order to make it available to all families faced with social and economic difficulties, including migrant families, particularly in overcoming the language barrier; and**

(c) **Revise its policy of placing children in other EU countries and provide adequate supervision, follow-up and evaluation.**

48. While welcoming the efforts of the State party to expand early childhood education and care, the Committee remains concerned at the low number of early childhood education and care services available in some Länder, especially for children under the age of three

and the difficulties that families in vulnerable situations, in particular migrant families, have in accessing such services. The Committee is also concerned at the disparities in qualitative standards for early childhood education and care facilities between Länder.

49. **The Committee recommends that the State party adopt a comprehensive national policy for early childhood education and care, in compliance with the Lisbon 2020 strategy and ensure that all children have access to high quality early childhood education and care, without discrimination.**

**F. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)**

**Children with disabilities**

50. The Committee welcomes the State party's initiatives undertaken in terms of analysing and improving the situation of children with disabilities. The Committee is, however, concerned about the non-inclusive nature of education, particularly at secondary school level. In this context the Committee also notes with concern that:

(a) There is insufficient cooperation between the Federal and Länder level in the educational sector, and no adapted curricula or systematic training of all teacher and school personnel on an inclusive approach to education;

(b) The need for individual support and reasonable accommodation in the area of education is not recognized and regulations concerning sign language vary across the Länder;

(c) In certain Länder children at primary level are assigned to a special needs school against the will of their parents, the vast majority of pupils with disabilities attend special schools, and a high number of children with disabilities leave schools without any diploma.

51. **In the light of article 23 of the Convention and of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to adopt a human rights-based approach to disability and specifically recommends that the State party:**

(a) **Pursue the establishment of State-wide inclusive education and ensure that the necessary resources are available, also through the use of the resources available in the special schools;**

(b) **Take all necessary legislative and structural reforms to ensure that the right to inclusive education is guaranteed to children with disabilities and provide for it to encompass the right to individual support and reasonable accommodation in the area of education; and**

(c) **Ensure that children with disabilities and their families have a voice regarding the decision of whether the child should attend a special needs school.**

52. The Committee is concerned about the findings of a recent study undertaken by the State party, according to which girls with disabilities are frequently at risk of violence, including sexual violence.

53. **The Committee recommends that the State party take every necessary measure to prevent all forms of violence against children with disabilities, placing particular attention on the safety of girls with disabilities. In this regard, the Committee recommends that the State party provide for particular protection and complaints mechanisms for children with disabilities who have become victims of violence.**

54. The Committee notes with concern that children with disabilities from migrant families often do not receive the same support as their peers without a migration background because of lack of information, and/or difficulties of their parents to access the necessary forms and applications, and/or ignorance or lack of awareness about the disability.

**55. The Committee recommends that the State party take all necessary efforts to ensure that families with children with disabilities, who have a migration background, are provided with sufficient information and assistance regarding access to support.**

#### **Health and health services**

56. The Committee is concerned about the following issues:

(a) There is new a morbidity in children related to attachment disorders which could be related to declines in exclusive breastfeeding practices and increases in emotional and behavioural problems in children due to pressure to succeed in schools, which are insufficiently addressed; and

(b) Inadequate access to health services for asylum-seeking children and those in irregular migration situation, including treatment of acute illnesses and preventive health care and psychosocial therapy support when necessary.

**57. The Committee recommends that the State party undertake advocacy and awareness-raising programmes targeting schools and families, emphasizing the importance of physical exercise, healthy eating habits and lifestyles, as well as take all necessary efforts to address the existing disparities in health outcomes. Special attention should be paid to children and young people in vulnerable situations, especially those from socially disadvantaged or migration backgrounds. The Committee furthermore, draws the State party's attention to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recommends that the State party take every necessary legislative and structural measure to ensure that every child within the State party has access to breastfeeding through the control of infant formula which will promote better bonding between infants and mother.**

#### **Mental health**

58. The Committee is concerned about the increase in prescription of psycho-stimulants to children and about an excessive diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) or Attention Deficit Disorder (ADD), related to the following:

(a) The over prescription of the psycho-stimulant methylphenidate; and

(b) The forced removal of children who are diagnosed/misdiagnosed with ADHD or ADD from their families and their subsequent placement in foster care or psychiatric hospitals, where many of them are treated with psychotropic medications.

**59. The Committee recommends that the State party:**

**(a) Ensure that placement of children in foster care or psychiatric hospitals is used as a last resort only, following a proper diagnosis;**

**(b) Provide families with access to psychological counselling and emotional support;**

**(c) Establish a system of independent expert monitoring of the diagnosis ADHD and ADD and use of drug treatments for children;**

(d) Ensure that relevant health authorities determine the root causes of inattention in the class rooms and improve the diagnosis of mental health problems among children; and

(d) Eliminate the labeling of children as ‘having a psychiatric’ problem, which diagnosis is not validated by medical evidence.

#### **Adolescent health**

60. While welcoming the decline in smoking among adolescents, the Committee remains concerned about a significant rise in alcohol consumption.

61. Referring to its general comment No. 4 (2003) on adolescent health, the Committee recommends that the State party ensure that children are provided with accurate information about the negative consequences of drug, alcohol and substance abuse, by providing for a stronger integration of information on harmful effects into the school curriculum, providing life skills education to prevent such practices and encourage more media coverage to prevent substance abuse. The Committee further recommends that the State party ensure that children have sufficient access to confidential counselling and treatment for addictions.

#### **Breastfeeding**

62. The Committee notes a decline in the breastfeeding rates in the State party, but welcomes the initiatives to promote breastfeeding, such as the adoption of the 2006 EU Directive on Infant Formulae and Follow-up Formulae. However, it is concerned that the efforts made to improve rates of exclusive breastfeeding for six months may not be sufficient.

63. The Committee recommends that the State party strengthen its efforts to promote exclusive and continued breastfeeding by providing access to materials, and educating and raising awareness of the public on the importance of breastfeeding and the risks of formula feeding. The Committee urges the State party to strictly enforce the International Code of Marketing of Breast-milk Substitutes.

#### **Standard of living**

64. The Committee is concerned about the rise of the poverty and at risk of poverty rate among children, with children from single-parent families, large families, and families from ethnic minority backgrounds being particularly affected, above all when experiencing unemployment or a precarious job situation. The Committee is furthermore concerned that the statutorily prescribed practice of sanctions following non-compliance with duties connected to unemployment assistance may, when imposed on families or unemployed adolescents, also affect the living standard of children.

65. The Committee recommends that the State party allocate the necessary resources and make stronger efforts in tackling the root causes of child poverty as well as conduct a comprehensive evaluation of the areas in which families are particularly vulnerable to poverty and develop and implement appropriate remedial strategies. The Committee further recommends that the State party increase material assistance and support to economically disadvantaged families in order to ensure an adequate living standard of children.

## **G. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)**

### **Education, including vocational training and guidance**

66. The Committee notes that in the field of education the competences lie almost exclusively in the Länder. However it is concerned that the various systems have not been harmonized, producing differences among the Länder in important areas. Furthermore, the Committee also notes that in most Länder the school system is divided into lower, intermediate and academic track schools and it is concerned that the choice is to be taken at a very early age and it may be difficult to change tracks later. The Committee also regrets that children from ethnic-minority backgrounds have a significantly weaker record of school achievement, leaving school without certificate twice as often as pupils from non-ethnic minority backgrounds.

67. **Taking into account its general comment No. 1 (2001) on the aims of education and the recommendations made by the Special Rapporteur on the right to Education in his Report after his visit to Germany (A/HRC/4/29/Add.3), the Committee recommends that the State party:**

- (a) **Adopt the necessary measures to harmonise the school programmes to a greater extent between all the Länder, in order to facilitate the students' mobility between Länder;**
- (b) **Undertake a revision of the current education system dividing students in various tracks at a very early stage, and make it more inclusive; and**
- (c) **Allocate sufficient human, technical and financial resources to provide additional support to children from an ethnic-minority background within school facilities.**

## **H. Other special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)**

### **Asylum-seeking and refugee children**

68. The Committee welcomes again the withdrawal of the declaration made by the State party on article 22 of the Convention and notes the efforts of the State party in hosting thousands of asylum-seeking children and refugee children from many countries. The Committee however remains concerned that:

- (a) The Asylum Procedure Act (AsylVfG) provides that children of 16 years old have the legal capacity to begin the asylum process on their own. Consequently, in practice children of 16 years and above often do not benefit from the full protection of the youth welfare services and are placed in centres designed to house adult asylum seekers;
- (b) The age assessment procedure in the State party may involve degrading and humiliating practices and does not produce accurate results, and a significant number of asylum-seeking and refugee children are identified as adults;
- (c) The deficiencies in the identification of child soldiers or children who have escaped forced recruitment, as well as the rejection of asylum applications in such cases, prevent an adequate assessment of their protection needs and to receive the appropriate attention;

(d) Custody pending deportation imposed to children can last up to 18 months, which is in direct contravention to the right of the child to have his or her best interests taken as a primary consideration.

69. **The Committee recommends that the State party:**

(a) **Ensure an equal and child-friendly treatment for every child under 18 years of age;**

(b) **Ensure that the age assessment procedure applied to asylum-seeking and refugee children is based on scientifically approved methods, in full respect of children's dignity, as recommended in general comment no. 6 (2005);**

(c) **Improve the identification of child soldiers and children in danger of being recruited and ensure that in such cases they are granted with refugee status, in order to better assess their protection needs and ensure an adequate, psychological and social support; and**

(d) **Ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with article 37 (b) of the Convention and that detention be made subject to time limits and judicial review.**

#### **Children in situations of migration**

70. The Committee is concerned that different services facilities in the State party are under Federal statutory obligation to inform immigration authorities about any person, including children, who do not have residence permit that come to their knowledge, which in practice results in children of irregular residence not approaching service offices for fear of discovery of their irregular status which may, inter alia, lead to their deportation.

71. **The Committee urges the State party to repeal the statutory obligation on all service facilities to inform immigration authorities on any child in situation of irregular migration.**

#### **Trafficking**

72. The Committee is concerned that the State party Residence Act conditions the provision of residence permit to victims of trafficking, including children, on their cooperation with the law enforcement authorities.

73. **The Committee recommends that the State party revises its Residence Act in order to remove any conditions linked to the provisions of residence permit to children victims of trafficking.**

#### **Administration of juvenile justice**

74. The Committee notes with satisfaction the amendment to the legislation prohibiting children in detention to be placed with persons up to the age of 24. However, the Committee regrets that not all Länder apply the principle of "deprivation of liberty as a last resort".

75. **The Committee in line with its previous recommendations, (CRC/C/15/Add.226, para. 61), recommends that deprivation of liberty be always used as a measure of last resort, for the shortest possible time. In this regard, the Committee recommends that the State party take every necessary effort to expand possibilities for alternative sentences such as probation and community services.**

**Follow-up on the Concluding observations on the initial State party report under the Optional Protocol on the Involvement of Children in Armed Conflict (CRC/C/OPAC/DEU/CO/1)**

76. The Committee welcomes the efforts made by the State party to implement its previous recommendations under the Optional Protocol on the Involvement of Children in Armed Conflict. However the Committee is concerned about the following issues:

(a) The voluntary recruitment to the armed forces for the purpose of military training being possible for children from age 17 onwards, who might furthermore bear the danger of becoming liable to prosecution if they decide to leave the armed forces after expiry of their trial period.

(b) Various advertising campaigns for the armed forces, specifically targeting children as well as the presence of representatives of the armed forces within the school context, speaking with pupils and organizing activities; and

(c) The lack of an explicit prohibition in the law with respect to the sale of arms when the final destination is a country where children are known to be, or may potentially be, recruited or used in hostilities.

**77. The Committee reiterates its previous recommendations (CRC/C/OPAC/DEU/CO/1) and recommends that the State party:**

**(a) Raise the minimum age for recruitment into the armed forces to 18 years;**

**(b) Prohibit all forms of advertising campaigns for the German armed forces targeting children; and**

**(c) Ensure the greatest transparency regarding the transfer of arms and explicitly prohibit in the Law the sale of arms when there is risk that the final destination is a country where children are or potentially may be recruited or used in hostilities.**

78. The Committee notes with satisfaction the provisions on war crimes contained in article 8 of the Penal Code of the State party and the statements of the State party that it may exercise extraterritorial jurisdiction in case of recruitment of children aged less than 15 years in the armed forces or armed groups. The Committee notes that such jurisdiction may also be established with regard to children aged 15 to 17 years, but regrets that it is subject to the condition of double criminality.

**79. The Committee recommends that the State party further strengthen international measures aimed at preventing the recruitment of children and their use in hostilities. The Committee also recommends that the State party consider extending extraterritorial jurisdiction for crimes for the recruitment and involvement of children in hostilities without submitting it to the condition of double criminality.**

## **I. Ratification of international human rights instruments**

80. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the core human rights instruments to which it is not yet a party, namely the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

**J. Cooperation with regional and international bodies**

81. The Committee recommends that the State party cooperate with the Council of Europe towards the implementation of the Convention and other human rights instruments, both in the State party and in other Council of Europe member States.

**K. Follow-up and dissemination**

82. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, *inter alia*, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court and Federal, Länder and local authorities for appropriate consideration and further action.

83. The Committee further recommends that the combined second and third periodic reports and the written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and the Optional Protocols thereto and of their implementation and monitoring.

**L. Next report**

84. The Committee invites the State party to submit its next fifth and sixth periodic report by 4 April 2019 and to include in it information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the guidelines. In accordance with General Assembly resolution 67/167 of 20 December 2012, in the event a report exceeding the page limitations is submitted, the State party will be asked to review and resubmit the report in accordance with the above-mentioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, translation of the report for purposes of examination of the treaty body cannot be guaranteed.

85. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at the fifth Inter-Committee Meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).

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