

UNEDITED VERSION

COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-fifth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION**

Concluding observations: GERMANY

1. The Committee considered the second periodic report of Germany (CRC/C/83/Add.7) at its 926th and 927th meetings (see CRC/C/SR.926 and 927) held on 16 January 2004, and adopted at the 946th meeting, held on 30 January 2004.

A. Introduction

2. The Committee welcomes the submission of the State's party second periodic report, which followed the established guidelines. The Committee also takes note of the submission of the written replies to its list of issues (CRC/C/Q/DEU/2). The Committee appreciates that the presence of a high level delegation directly involved with the implementation of the Convention which allowed for a better understanding of the implementation of the rights of the child in the State party.

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

3. **The Committee welcomes the adoption of:**
 - (a) **the law of nationality and citizenship of 15 July 1999 which allows for a better integration of foreign children;**
 - (b) **the amendment of the Law on Family Matters (*Reform zum Kindschaftsrecht*) of 16 December 1997 (Federal Gazette 1997, p. 2942), which came into force on 1 July 1998 and which suppresses discrimination between children born in or out of wedlock regarding custody and visitation rights;**
 - (c) **the ratification, in 2001, of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption; and**

(d) the ratification, in 2002, of the ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

C. Factors and difficulties impeding the implementation of the Convention

4. The Committee notes that the reunification of Germany and its implications has still effects on the implementation of the Convention throughout the State party.

D. Principal subject of concern and recommendations

1. General measures of implementation

Previous recommendations of the Committee

5. The Committee notes with concerns that the State party mentioned at several occasions in its report that it will not implement various recommendations of the Committee. It further regrets that some of the concerns it expressed and the recommendations it made (CRC/C/15/Add.43) after its consideration of the State party's initial report (CRC/C/11/Add.5) have been insufficiently addressed, particularly those contained in paragraphs 21-26 and 29-35, such as the establishment of an independent monitoring mechanism. Those concerns and recommendations are reiterated in the present document.
6. **The Committee urges the State party to make every effort to address the previous recommendations that have not yet been implemented and the list of concerns contained in the present concluding observations.**

Reservations/Declarations

7. The Committee acknowledges the information (State party report, paras. 84 and 844 and written replies, p. 46-47) that the reservation and declarations the State party made upon ratification have become unnecessary, inter alia, due to recent legislation. But the Committee remains concerned at the lack of willingness of the majority of Länder to accept the withdrawal of these declarations and reservation.
8. **In light of the 1993 Vienna Declaration and Programme of Action, and in line with its previous recommendations, (*Ibid.*, para. 22), the Committee recommends that the State party expedite the process for the withdrawal of its reservations and declarations it made before the submission of its next report and increase in particular its efforts to convince the Länder for such a withdrawal.**

Legislation

9. The Committee is aware of the numerous laws relevant to children's rights which have been adopted since the review of the initial report but remains concerned that the

convention has not been incorporated in the Basic Law as foreseen at the time of the initial report.

10. **In light of its previous recommendations (Ibid., para. 21), the Committee recommends the State party:**
 - (a) **Reconsider the incorporation of the Convention into the Basic Law;**
 - (b) **Ensure, through an appropriate mechanism, that all national and Länder laws fully conform with the Convention; and**
 - (c) **Ensure that adequate provision is made for their effective implementation, including budgetary allocation.**

Coordination

11. The Committee notes that the Ministry for Family Affairs, Senior Citizens, Women and Youth is responsible for coordinating the implementation of the Convention, and that coordinating mechanisms exist between Länder such as the Association of Supreme Land Youth Authorities or the Conference of Land Youth Ministers. However, considering the implementation of the Convention cuts across many ministries, the Committee remains concerned that the absence of a central mechanism to coordinate the implementation of the Convention in the State party at the national and Land and local levels makes it difficult to achieve a comprehensive and coherent child rights policy.
12. **The Committee recommends that the State party establish an adequate permanent national mechanism to coordinate the implementation of the Convention at the federal level, between the federal and the Länder levels and between Länder.**

National Plan of Action

13. The Committee notes with satisfaction that a National Plan of Action is being currently drafted following the 2002 UNGASS, but it remains concerned that this National Plan of Action may not cover all areas of the Convention.
14. **The Committee recommends that the State party expedite the adoption of the National Plan of Action, which should cover all areas of the Convention, be comprehensive and multidisciplinary, and provide for a coordination and monitoring mechanism. The Committee further recommends that the adoption and the implementation of this Plan of Action be done through an open, consultative and participatory process.**

Independent monitoring structures

15. The Committee notes the existence of various human rights institutions which also cover children's rights as well as Children's Commissioners at the Länder level, the Children's Commission of the German *Bundestag* and the independent Commission in charge of regularly reporting on the situation of children and youth (*Kinder- und Jugendbericht*). However, the Committee is concerned that there is no central independent mechanism for a comprehensive monitoring of the Convention which is empowered to receive and address individual complaints of children at the Länder and federal levels.

16. **The Committee encourages the State party to consider the establishment of an independent national human rights institution, in accordance with the Paris Principles relating to the status of national institutions (General Assembly resolution 48/134) and taking into account the Committee's General Comment No. 2 on National Human Rights Institutions, to monitor and evaluate progress in the implementation of the Convention at the national and at the local level. In addition, the Committee recommends that the institution be allocated with adequate human, technical and financial resources and that its mandate includes the power to receive and investigate complaints of violations of child rights in a child-sensitive manner, and to effectively address them.**

Data collection

17. The Committee notes with appreciation the wealth of statistical data provided in the annexes to the State party report but remains concerned at the insufficient data in some areas covered by the Convention.
18. **The Committee recommends that the State party develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, and urban and rural area. This system should cover all children up to the age of 18 years with specific emphasis on those who are particularly vulnerable, such as foreign children. It further encourages the State party to use these indicators and data for formulation of policies and programmes for the effective implementation of the Convention.**

Training and dissemination

19. The Committee notes the various activities undertaken by the State party to disseminate the provisions and principles of the Convention but it remains particularly concerned that, according to recent studies, most children and adults, notably those belonging to vulnerable groups are not aware of the rights contained in the Convention. The Committee is, therefore, concerned that the State party is not undertaking adequate dissemination, awareness-raising and training activities concerning the Convention in a systematic and targeted manner.
20. **In line with its previous recommendations (ibid., paras. 26, 27 and 36) and article 42 of the Convention, the Committee recommends that the State party:**
- (a) Substantially expand dissemination of information on the Convention and its implementation among children and parents, civil society and all sectors and levels of government, including initiatives to reach vulnerable groups such as asylum seekers, refugees and ethnic minorities;**
 - (b) Develop systematic and ongoing training programmes on human rights, including children's rights, for all professional groups working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions, teachers and health personnel).**

International Cooperation

21. The Committee notes the approval of the Programme of Action 2015 for Poverty Reduction and the many other activities in the area of international cooperation and

assistance, but remains concerned that the State Party devotes only about 0,27% of its GNI to the Official Development Assistance, and that the foreseen increase to 0,33% in 2006 is very slow...

- 22. In light of its previous recommendations (Ibid., para. 25), the Committee encourages the State party to implement the United Nations target of allocating 0.7% of GDP to overseas development assistance as soon as possible and to emphasize its concern with basic social services to attain the objectives of the Copenhagen 20/20 Initiative.**

2. General principles

The right to non-discrimination

23. While acknowledging the prohibition of discrimination in the Basic Law (art. 3), the Committee is concerned at the de facto discrimination against foreign children and at incidents of racial hatred and xenophobia that have a negative effect on the development of children. The Committee is also concerned that some of the Land disparities in practices and services provided and in the enjoyment of rights by children may amount to discrimination.
- 24. In accordance with article 2 of the Convention, the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities. It also recommends that the State party strengthen its administrative and judicial measures to prevent and eliminate de facto discrimination against foreign children or children belonging to minorities.**
- 25. The Committee requests that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow-up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29, paragraph 1 (aims of education).**

The best interests of the child

26. The Committee takes note of the various initiatives which have been developed in order to take into consideration the principle of the best interests of the child (art. 3), but remains concerned that this general principle is not fully applied and duly integrated in the implementation of the policies and programmes of the State party as well as in administrative and judicial decisions.
- 27. The Committee recommends that the State party take all appropriate measures to ensure that the general principle of the best interests of the child is appropriately integrated in all legislation and budgets, as well as judicial and administrative decisions and in projects, programmes and services which have an impact on children.**

Respect of the views of the child

28. The Committee notes the progress achieved in the implementation of article 12 of the Convention with various legal provisions recognizing the right of the child to express his/her views, but remains concerned that the general principle as laid down in article 12 of the Convention is not fully applied and duly integrated in practice into the implementation of the policies and programmes throughout the State party.
29. **The Committee recommends that further efforts be made to ensure the implementation of the principle of respect for the views of the child. In this connection, particular emphasis should be placed on the right of every child to participate in the family, at school, within other institutions and bodies, and in society at large, with special attention to vulnerable groups. This general principle should also be reflected in all policies and programmes relating to children. Awareness-raising among the public at large as well as education and training of professionals on the implementation of this principle should be reinforced.**

3. Civil rights and freedoms

Freedom of religion

30. The Committee notes the decision of the Constitutional Court of 24 September 2003 (2 BvR 1436/02, Case Ludin) but it is concerned at laws currently under discussion in some Länder aiming at banning school teachers wearing headscarves in public schools because it does not contribute to the child's understanding of the right to freedom of religion and to the development of an attitude of tolerance as promoted in the aims of education under article 29 of the Convention.
31. **The Committee recommends that the State party take educational and other measures addressing children, parents and others to develop a culture of understanding and tolerance, particularly in the areas of freedom of religion, conscience and thought by, inter alia, avoiding measures which single out a particular religious group.**

Access to information

32. While welcoming the State party's efforts to protect children from harmful printed and electronic communications media (e.g. the Youth Protection Act and the Interstate agreement on the protection of minors in the media, 2003), the Committee remains concerned that the legal situation might be complicated due to a multiplication of legal instruments and that the sharing of responsibilities between the federal and Land levels is not clear.
33. **The Committee recommends that the State party**
- (a) **Ensure the full implementation of the newly adopted regulations on the protection of children against harmful information and find ways to make the legal situation in that regard more transparent; and**

(b) Consider further means, including through the provision of advice to parents, of protecting children from information that may be harmful to them.

4. Family environment and alternative care

Parental responsibilities

34. The Committee notes with appreciation the adoption of the third law to amend the federal law on child benefits (entered into force in January 2001) which improves the possibility for both parents to take parental leave and the amendment of the Law on parental custody which provides for shared parental custody (Sorgerecht) even when they are divorced, separated, or not married, but remains concerned that the judiciary system is not yet prepared to fully implement this latter legislation.
- 35. The Committee recommends that the State party take all necessary measure for a full implementation of the new legislation of the law on parental custody, notably through adequate training for the magistrates.**

Inter-country adoption

36. The Committee welcomes the ratification, in 2001, of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and notes the measures taken for its implementation but remains concerned at possible irregularities in these cases of adoption as mentioned in the State party report. [para. 476].
- 37. The Committee recommends that the State party continue to take all necessary measures to fight against possible irregularities in cases of intercountry adoptions inter alia by a full implementation of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and by promoting the ratification of the Convention by States of origin of children adopted by Germans which are not yet States parties to that Hague Convention.**

Illicit transfer and non-return of children abroad

38. The Committee notes with satisfaction that the State party is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction but remains concerned that parental abductions of children are a growing problem.
- 39. The Committee recommends that the State party fully and effectively apply the Hague Convention to all children abducted to Germany (including these abducted from non-State parties to the 1980 Hague Convention) and encourage States which are not yet a party to the Hague Convention to ratify or accede to this treaty and if necessary conclude bilateral agreements to deal adequately with international child abduction. It further recommends that maximum assistance be provided through diplomatic and consular channels, in order to solve cases of illicit-transfer.**

Violence, abuse, neglect, and maltreatment

40. The Committee welcomes the adoption of the 2000 Act to prohibit violence in the upbringing of child which prohibits corporal punishment within the family and of various other legal instruments to fight against domestic violence (e.g. 2002 Act for Further Improving Children's Rights) but remains concerned that there is a lack of comprehensive data as well as information on the impact of the new legislation. The Committee is further concerned that various forms of violence continue to exist in the State party, in particular sexual abuse and the growing problem of violence at school.
41. **In light of article 19 of the Convention, the Committee recommends that the State party:**
- (a) Undertake a comprehensive study on violence, more particularly, on sexual abuse and violence at school in order to assess the extent, scope and nature of these practices;**
 - (b) Strengthen awareness-raising campaigns with the involvement of children in order to prevent and combat child abuse; and**
 - (c) Evaluate the work of existing structures and provide training to the professionals involved in these types of cases.**

5. Basic health and welfare

42. The Committee expresses its concerns at the widespread abuse of drugs, alcohol and tobacco among children; at the high incidence of the infants born with the foetal alcohol syndrome and that it is estimated that there are 3'000'000 children of whose either parent is a drug addict [Written replies, p. 30].
43. **The Committee recommends that the State party take all necessary measures to combat the abuse of drugs and alcohol among children and parents by, inter alia, undertaking intensive education campaign and setting up adequate rehabilitation services.**

Adolescent health

44. The Committee is concerned that children with psychiatric illness are treated in the adult's ward in psychiatric institutions and that ethical issues pertaining to psychiatrics are not sufficiently taken into consideration. The Committee is further deeply concerned at the very high incidence of suicide among children and adolescents
45. **The Committee recommends that the State party take all necessary measures to ensure that children are separated from adults in psychiatric institutions and to better take into consideration international standards regarding ethics for psychiatrics. In addition, the Committee recommends that the State party strengthen adolescent health services, in particular counselling services and suicide prevention programmes.**

Harmful traditional practices

46. The Committee notes that the prohibition to practice female genital mutilation is covered under criminal law, but expresses its concern at reports that female genital mutilation is practiced in the State party on girls from sub-Saharan countries.

47. **The Committee recommends that the State party:**
- (a) undertake a study on the extent and nature of female genital mutilation practiced in the state party or abroad on girls who live in Germany;**
 - (b) Organize an information and awareness campaign, taking into account the result of the study, to prevent this practice;**
 - (c) Involve in this work non-governmental organisations which are active in this field; and**
 - (d) Give priority to the elimination of female genital mutilation in its programme of international cooperation by, inter alia, extending financial and technical assistance to countries of origin where female genital mutilation is practised that have active programmes designed to eliminate this practice.**

Child-care services and facilities

48. The Committee shares the concerns of the State party regarding the lack of sufficient child care facilities especially in the western part of the country [See State party report, paras. 584-585 and 630] and of national standards for these facilities.
49. **In line with articles 18(3) and 25 of the Convention and in light of the recommendations of the Committee on Social, Cultural and Economic Rights [E/C.12/1/Add.68, para. 44], the Committee recommends that the State party take measures to establish more childcare services to meet the needs of working parents; and set up national standards to ensure quality child care is available to all children.**

Right to an adequate standard of living

50. The Committee notes the change from financial transfers in policies for the emphasis in building appropriate infrastructure for poor families. It also welcomes the first national report on poverty [2001] and notes the increase of child allowances over the past years as well as the tax income reform which have been measures to help families with children but remains concerned at the prevalence of poverty, mainly affecting large families, single parent families and families from foreign origin and disproportionately families from the Eastern part of the State party as indicated in the eleventh Youth Report.
51. **The Committee, in line with its previous recommendations (*Ibid.* para. 31) recommends that the State party:**
- (a) Take all necessary measures to the "maximum extent of ... available resources" to accelerate the elimination of child poverty, notably to eliminate the differences between the eastern and western part of the country;**
 - (b) Continue to provide material assistance and support to economically disadvantaged families, notably, single parent families and families from foreign origin, to guarantee the right of children to an adequate standard of living; and**
 - (c) Evaluate appropriately the changes occurred in social policies.**

6. Education, leisure and cultural activities

52. The Committee notes that decentralised education which may lead to some disparities in the implementation of articles 28 and 29 of the Convention. In addition, the Committee is concerned at the lack of adequate services for the education of children with learning difficulties

53. **The Committee recommends that the State party:**
- (a) take all necessary measures, notably through the Federal Government-Länder Commission for Educational Planning and the Promotion of Research (BLK) and with the participation of the civil society to ensure that article 28 and 29 of the Convention are fully implemented and without disparities in all Lander;**
 - (b) With reference to paras. 23 and 24 above, and taking into consideration its General Comment No. 1 on article 29.1 of the Convention (aims of education), further develop human rights education;**
 - (c) further develop services for children with learning difficulties; and**
 - (d) Introduce in all schools programmes for civic education.**

7. Special protection measures

Refugee children

54. In addition to its concerns related to the declaration made by the State party upon article 22 of the Convention, the Committee remains concerned that:
- (a) refugee children between 16 and 18 years do not benefit from the rights included in the Youth Welfare Act;
 - (b) Roma children and other children belonging to ethnic minorities may be forcibly expelled to countries which their families have been fleeing from;
 - (c) recruitment of children as soldiers is not accepted as a child specific persecution in the asylum procedure;
 - (d) the national requirements and procedures for family reunification for refugee families, as defined under the 1951 Refugee Convention, are complex and too long; and
 - (e) Some children of asylum seekers in the Land Berlin were denied the right to a birth certificate due to incomplete documentation provided by the parents.
55. **In light of article 22, 7 and other relevant provisions of the Convention, the Committee recommends that the State party take all necessary measures to**
- (a) fully apply the provisions of the Youth Welfare Act to all refugee children below the age of 18 years;**
 - (b) review its legislation and policies regarding Roma children and other children belonging to ethnic minorities seeking asylum in the State party;**
 - (c) consider the recruitment of children as soldiers as a child specific persecution to be accepted in asylum procedure;**
 - (d) ease refugee family reunification requirements and procedures, in particular for the 1951 Convention refugee families; and**
 - (e) To ensure that birth certificates are delivered for all children of refugee and asylum seekers born on the territory of the State party.**

Sexual exploitation and trafficking

56. The Committee welcomes the adoption of the Plan of Action of the Federal Government for the Protection of Children and Young People from Sexual Violence and Exploitation (January 2003) but remains concerned at the various ages retained in the Criminal Code depending of the offence committed by an adult against a child.

57. **In light of article 34 and other related articles of the Convention, the Committee recommends that the State party:**
- (a) Extend the protection from sexual exploitation and trafficking in all relevant legislation to all boys and girls below the age of 18 years; and**
 - (b) pursue its efforts to combat sexual exploitation and trafficking in children by effectively implementing its Plan of Action in accordance with the 1996 Declaration and Agenda for Action and the 2001 Global Commitment adopted at the World Congresses against Commercial Sexual Exploitation of Children.**

Street children

58. While noting the efforts undertaken in that regard, the Committee expresses its concerns at the increasing number of street children in the State party, as well as the high percentage of foreign children among them.

59. **The Committee recommends that the State party:**
- (a) Pursue its efforts to prevent and reduce this phenomenon by addressing its root causes with special emphasis on the protection of foreign children;**
 - (b) Ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development; and**
 - (c) Ensure that these children are provided with: recovery and reintegration services for physical, sexual and substance abuse; and services for reconciliation with their families.**

Administration of juvenile justice

60. In addition to the reservations made upon article 40(2)(b)(ii) and (v), the Committee is concerned at the increasing number of children placed in detention disproportionately affecting children from foreign origin and that children in detention or custody are placed with persons up to the age of 25 years.

61. **The Committee recommends that the State party:**
- (a) take all appropriate measures to implement a juvenile justice system in conformity with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System; and**
 - (b) ensure that deprivation of liberty is only used as a measure of last resort, for the shortest possible time, that guarantees of due process are fully respected and that persons under 18 are not detained with adults;**
 - (c) Develop alternatives to juvenile justice processing as referred to in the above mentioned international standards.**

Optional Protocols

62. **The Committee acknowledges the State party's support to the "straight 18 position" for the Optional Protocol on the involvement of children in armed conflict and its declaration made on article 38 of the Convention. In that respect, the Committee notes that the process of ratification has been engaged in the State party and encourages it to ratify and implement the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict**

8. Dissemination of documentation

63. **In light of article 44, paragraph 6, of the Convention, the Committee recommends that the second periodic report and written replies submitted by the State Party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention, its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations. The Committee recommends that the State Party request international cooperation in this regard.**

9. Periodicity of submission of reports

64. **Finally, in light of the recommendation on reporting periodicity adopted by the Committee and described in its sessions reports CRC/C/114 and CRC /C/124, the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States parties' responsibilities to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. The Committee recommends the State party submit its next periodic report on 4 April 2009. This report will combine the third and fourth periodic reports. Such a report should not exceed 120 pages (see CRC/C/118).The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.**