



Deutsches Institut
für Menschenrechte

German Institute for Human Rights:

Suggested topics to be taken into account for the preparation of a *list of issues* by the Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child in Germany

Berlin, 13 May 2013

Introduction

The German Institute for Human Rights (GIHR), the national human rights institution of Germany, has been invited by the Secretariat of the Committee on the Rights of the Child (the Committee) to provide expert advice on the implementation of the Convention on the Rights of the Child (CRC) prior to the Pre-Sessional Working Group of the Committee. The GIHR has therefore compiled the following proposals, each supplemented with short background information.

The proposals focus on those thematic areas in which the GIHR has worked, gathered information and gained expertise during the past years. Unfortunately, the GIHR does not yet have the resources to monitor the implementation of all articles of the CRC. If the GIHR would be given an official monitoring mandate for the CRC this would obviously change, allowing the GIHR to engage in regular substantive monitoring activities with respect to the implementation of the CRC over time.

The GIHR will be represented by two delegates during the Pre-Sessional Working Group to answer questions related to the information presented here. The GIHR is also open to other questions the Committee might raise with respect to the state reporting process with respect to Germany.

As a standard in all state reporting procedures related to Germany, the GIHR will invite all stakeholders and the government to an exchange of opinion prior to the session of the CRC in January 2014 when the German state report is due for examination. After the session, the GIHR will routinely organize a follow up event with all stakeholders in order to discuss the findings of the Concluding Observations and to encourage follow-up implementation.

1. Germany's National Action Plan

Suggestion:

With regard to paragraphs 13-17 and 82 of Germany's Third and Fourth State Party Report, please provide more information on the implementation of Germany's National Action Plan "For A Child-Friendly Germany 2005-2010", particularly why the programme is not being continued, which goals have been achieved, detailed information as to the timetable and allocated budget. Please provide more information about the process towards further elaboration of the Action Plan as recommended in the Committee's Concluding Observation of 2004 (CRC/C/15/Add.226, para. 13-14).

Explanation:

In its Third and Fourth State Party Report, the Federal Republic of Germany describes the process of creating the National Action Plan (paragraphs 13-17 and 82), but does not explain why this process is not being continued. Germany reports that several hundred children participated in the process, but it remains unclear whether the participation of vulnerable groups was ensured. While the steering committee's coordination task is described, the description of the monitoring mechanism and of the participation of children and youth in the implementation process requires more details. It remains unclear whether the National Action Plan covers all areas of the Convention as addressed in CRC/C/15/Add.226, paragraph 13.

2. Participation: The Right of the Child to be Heard (article 12)

a. Participation in Judicial and Administrative Proceedings

Suggestion:

Please provide detailed information and data - including its sources - regarding the respect for the views of the child, especially related to the duty of decision makers in judicial and administrative proceedings affecting the child to explain their reasoning, as established in article 12 of the Convention on the Rights of the Child (CRC).

Explanation:

Germany's Report (paragraph 91) describes the general participation by children and juveniles in court procedures. Information remains unclear, however, about the introduction of legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and consequences for the child (CRC/C/GC/12, para. 33).

b. Operation of Intersexual Children

Suggestion:

Please explain how the right of intersexual children to be heard is guaranteed before an irreversible surgery or other irreversible medical treatment is carried out.

Explanation:

Intersexual children are children who cannot be categorized as "male" or "female". Their number in Germany is unclear¹, but according to scientific estimations approximately 150 to 340 intersexual children are being born in Germany each year.² Through medical procedures on the genitals, removal of gonads, ovaries or testicles, or through other forms of irreversible

¹ Deutscher Ethikrat, *Intersexualität, Stellungnahme*, Berlin 2012, p. 66; available at: <http://www.ethikrat.org/dateien/pdf/stellungnahme-intersexualitaet.pdf>.

² Woweris, Jörg (2010): „Intersexualität: eine kinderrechtliche Perspektive“, in: Frühe Kindheit 03/10, available at: http://liga-kind.de/fruehe/310_woweries.php.

medical treatment, in particular hormonotherapy, bodily appearance is aligned to the “male” or “female” sex. Such treatment is performed on infants, children and adolescents, depending on the discovery of their intersexuality. The parents’ consent is required for such treatment. In view of the irreversibility of medical procedures and the severity of their physical, psychological and sexual consequences, substituted decision-making is irreconcilable with General Comment No. 12 of the CRC Committee, unless there is medical evidence that a surgery or treatment is necessary to save the child’s life. The situation of intersexual persons in Germany was first brought before a UN treaty body through parallel reports by organizations of intersexual persons to the CEDAW Committee. In 2009, this body recommended to the German government to enter into a dialogue with intersexual persons (CEDAW/C/DEU/CO/6, para. 62). The government delegated this dialogue to the German Ethics Council (Deutscher Ethikrat). In 2011, the Committee on Economic, Social and Cultural Rights (E/C.12/DEU/CO/5, para. 26) called upon the German government “to step up measures” to ensure intersexual persons’ personal integrity, and later that year, the CAT Committee expressed concern about the continuance of medical procedures “without effective informed consent of the individuals concerned or their legal guardians” and recommended to ensure such consent (CAT/C/DEU/CO/5, para. 20 a). The CAT Committee did not discuss CRC General Comment No. 12. In 2012, the German Ethics Council recommended that an irreversible medical procedure be performed on “children not yet capable of making decisions” only when “irrefutable reasons of the best interest of the child” require it.³ The Ethics Council, however, did not discuss CRC General Comment No. 12. To date, the government has not introduced a draft law on the issue, nor is there a systematic approach to ensure better knowledge and awareness among medical personnel, nor full access to advice for intersexual children and their parents.

c. Participation in School

Suggestion:

Please provide information on how the right of the child to participate in school is promoted in each *Land*.

Explanation:

In its Third and Fourth State Party Report, the Federal Republic of Germany reports on participation by children and youth in Germany in shaping their environment and the society in which they live. Regarding participation of children in school, the Report notes that there are differences at the *Länder* level, but it does not give an overview of the regulatory models of children’s participation in school in the respective *Länder* and their implementation in practice (CRC/C/DEU/3-4, para. 92-94). In its Concluding Observation of 2004, the Committee recommended that further efforts shall be made to ensure the implementation of the principle of the respect for the views of the child with particular emphasis on the right of the child to participate at school (CRC/C/15/Add. 226, para. 29).

3. Human Rights Education of Teachers and Other Professional Groups Working with Children

Suggestion:

Please provide updated and detailed information concerning the measures taken to provide human rights education for all school children and training for teachers and other professionals working with children as discussed particularly in paragraph 254 in the Third and Fourth State Party Report: Please provide information on the concrete measures to include human rights education in school and training curricula, as outlined in the UN Declaration on Human Rights Education and Training (A/RES/66/137, article 8). Please also

³ *Supra* note 1, p. 174 (translation from German).

provide more details on how especially vulnerable groups and professional groups working for and with children are targeted (CRC/C/15/Add.226, paras. 19-20, 53).

Explanation:

Paragraphs 19-20 of the Committee's Concluding Observations (CRC/C/15/Add. 226, para. 19-20) cover the dissemination of information and training concerning the CRC, especially to vulnerable groups and to professional groups working for and with children. Paragraph 53 (b) recommends to further develop human rights education. Article 8 of the UN Declaration on Human Rights Education and Training lists the state's responsibilities to develop and promote strategies and policies, action plans and programmes to implement human rights education and training, e.g. through its integration into school and training curricula.

As far as the professional groups working for and with children are concerned, the State Party Report only describes optional programmes for some groups (teachers, lawyers, social workers) in paragraphs 51, 52 and 252. State Party Report paragraphs 252-256 describe competitions, websites and projects concerning human rights education, whose sustainability and effectiveness in reaching all necessary target groups would need to be evaluated. Vulnerable groups, civil servants, local government officials, personnel working in institutions, and health personnel are not addressed, neither are mandatory programmes for these groups mentioned.

4. Monitoring of the Implementation of Children's Rights

Suggestion:

Please provide information on when and how the Government will implement the Committee's recommendation on establishing an independent monitoring mechanism of the CRC in Germany. Please also specify how the role of civil society in monitoring children's rights in Germany shall further be strengthened by the federal Government. In addition, please provide information on how the German government is fulfilling its obligation of self-monitoring and evaluation by conducting "child impact assessments" as well as "child impact evaluations" at national level, *Länder* level and local level.

Explanation:

In its Concluding Observations in 1995 and 2004 (CRC/C/15/Add.43, para. 23 and CRC/C/15/Add. 226, paras. 12 and 16), the Committee encouraged Germany to establish a central independent mechanism for comprehensive monitoring of the CRC in accordance with the Paris Principles and the Committee's General Comment No. 2 on National Human Rights Institutions (NHRIs) (CRC/GC/2002/2, para. 29). To this day, however, Germany has neither set up an independent monitoring mechanism in accordance with the Paris Principles nor has it provided Germany's A-status NRHI, the German Institute for Human Rights, with the capacity to monitor the implementation of the CRC . With respect to the UN Convention on the Rights of Persons with Disabilities (CRPD), the Government conferred the mandate of the independent monitoring mechanism pursuant to article 33 paragraph 2 on the German Institute for Human Rights.

In its General Comment no. 5 of 2003 (CRC/GC/Nr. 5/ para. 45) the Committee highlights the importance of self-monitoring and evaluation as an obligation by Governments, in addition to independent monitoring. The demand for continuous "child impact assessments" and "child impact evaluations" in legislation, policy development and implementation at all levels of government is explicitly stressed.

5. Right to Education of Children with Disabilities

Suggestion:

Please provide information on efforts made to ensure inclusive education of children with disabilities and the steps taken to overcome segregation and to establish an inclusive educative system which accommodates all children with disabilities.

Explanation:

Recent studies have shown that the overall rate of inclusive education in schools for children in the Federal Republic of Germany remains low.⁴ An average of about 75 percent of children with disabilities is still educated in special schools, and there are considerable discrepancies between the rates of inclusive education in the different *Länder*. Almost all *Länder* fail to comply with their obligations with regard to the speedy creation of an inclusive education system according to Article 24 of the CRPD. The implementation measures for the CRPD outlined by the Federal Government in its CRPD National Action Plan are insufficiently geared towards the rights of children with disabilities, and so far, the conference of the competent *Länder* ministers has not taken up its lead role in the realization of the right to an inclusive education for children with disabilities,⁵ in line with the Committee's finding that "inclusive education should be the goal of educating children with disabilities" (CRC/C/GC/9, paras. 11 and 66-67).

6. Violence against Girls with Disabilities

Suggestion:

In the view of the findings that girls with disabilities are disproportionately subjected to violence, please provide information on measures taken to protect girls with disabilities from violence.

Explanation:

The Committee itself has already addressed the issue that children with disabilities are more vulnerable to all forms of abuse and urged States parties to take all necessary measures for the prevention of abuse of and violence against children with disabilities (CRC/C/GC/9, paras. 42-44). A recent study commissioned by the Federal Government on the situation in Germany revealed that women with disabilities in general and girls with disabilities in particular suffer violence on a more regular basis than the average female person without disability.⁶ For example, the study found that girls with disabilities suffered from physical

⁴ Cf. Klemm, Klaus (2013): *Inklusion in Deutschland - eine bildungsstatistische Analyse* [commissioned by the Bertelsmann Stiftung], available at: http://www.bertelsmann-stiftung.de/cps/rde/xbcr/SID-9FE1D608-39300339/bst/xcms_bst_dms_37485_37486_2.pdf.

⁵ For more details, see the position paper of the National CRPD Monitoring Body (2011): *Eckpunkte zur Verwirklichung eines inklusiven Bildungssystems (Primarstufe und Sekundarstufen I und II)*, available at: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Stellungnahmen/stellungnahme_der_monitoring_stelle_eckpunkte_z_verwirklichung_eines_inklusiven_bildungssystems_31_03_2011.pdf; and press release of the National CRPD Monitoring Body of 25 November 2011: *KMK verweigert Führungsrolle bei Inklusion in der Schule*, available at: [http://www.institut-fuer-menschenrechte.de/de/aktuell/news/meldung/archive/2011/november/article/pressemitteilung-monitoring-stelle-zur-un-behindertenrechtskonvention-kmk-verweigert-fuehrungsroll.html?tx_ttnews\[day\]=25&cHash=9e7f72de13ce3fc23918ecae1ee9c0e0](http://www.institut-fuer-menschenrechte.de/de/aktuell/news/meldung/archive/2011/november/article/pressemitteilung-monitoring-stelle-zur-un-behindertenrechtskonvention-kmk-verweigert-fuehrungsroll.html?tx_ttnews[day]=25&cHash=9e7f72de13ce3fc23918ecae1ee9c0e0).

⁶ Cf.: Hornberg, Claudia / Schrötle, Monika et al. (2012): *Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland* [University Bielefeld commissioned by the Federal Ministry for Family, Senior Citizens, Women and Youth], available at: <http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Lebenssituation-und->

violence and psychological abuses about twice as often as girls without disabilities in their childhood and youth. Girls with disabilities suffered from sexual violence two to three times more often in their childhood and adolescence than girls without disabilities. Therefore, the German Institute for Human Rights, as National CRPD Monitoring Body, has demanded that nationwide access to barrier-free protection and support facilities for women affected by violence is guaranteed for women and girls with disabilities and that effective protection and complaint mechanisms are provided to women and girls with disabilities that live in specialized facilities.

7. Trafficking

Suggestion:

Please provide information on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in Germany, especially regarding the residence permit for child victims in accordance with the best interests of the child.

Explanation:

The Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force in Germany on 1 April 2013, obliges States - under certain conditions - to grant a residence permit to victims of trafficking. As a matter of principle, article 14 allows States Parties to choose between granting a residence permit in exchange for cooperation with the law enforcement authorities and granting a residence permit on account of the victim's needs, or to adopt both options simultaneously.

In the case of trafficked children, the child's best interests take precedence over the two requirements: the Council of Europe Convention provides that residence permits for child victims are to be "issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions." (Council of Europe Convention on Action against Trafficking in Human Beings, article 14 para. 2)

The German Residence Act (Aufenthaltsgesetz) does not meet the Convention's obligation under article 14, because victims of human trafficking - regardless of whether they are children or adults - are granted residence permits on the basis of section 25 para. 4 (a) of the German Residence Act, which mandatorily requires the cooperation with the law enforcement authorities as a condition for a residence permit. In addition, the Residence Act does not contain a provision enabling the responsible *Länder* authorities to regularly consider the best interests of the child when issuing a residence permit.

8. Child Poverty

Suggestion:

Please provide data and information on the measures taken to combat child poverty and to increase educational opportunities and cultural participation for poor children. Please put special focus on the measures taken in order to implement the decision of the German Constitutional Court on social benefits of February 2010⁷ as well as on measures beyond the implementation of these decisions. In particular, please elaborate on the newly established empirical foundation for the modified calculation of social benefits for children and on their

[Belastungen-von-Frauen-mit-Behinderungen-Kurzfassung.property=pdf.bereich=bmfsfj.sprache=de.rwb=true.pdf](#).

⁷ German Constitutional Court 1 BvL 1/09, 1 BvL 3/09, 1 BvL 4/09, official English translation available at:

http://www.bundesverfassungsgericht.de/entscheidungen/Is20100209_1bvI000109en.html?Suchbegriff=%22hartz+IV%22.

connection to children's rights under the CRC, especially the rights to education and to participation in cultural life.

Explanation:

There exists a wide range of different studies on the quantity and quality of child poverty in Germany. Human rights-based studies, however, are rare. In its judgment on social benefits, the German Constitutional Court criticised the legislator's failure to address child-specific needs, in particular children's rights to education and to participation. It also noted that children cannot be seen as 'small adults', with the consequence that the assessment of their needs with respect to food or clothes cannot be made simply as a percentage of an adult's needs in this respect. Consequently, the Court set out the requirement that the legislator shall calculate social benefits for children so as to fulfil the "socio-cultural" minimum, which is defined as necessary for a life in dignity and which is not limited to mere survival, but to participation in society and to education as a gateway right to a self-determined life in the future. After the decision, the German government amended the law and increased the benefits slightly. The public debate and the Government's public statements during the review process focussed on the nominal amount of the increase and on its impact on the federal budget and that of municipalities. In view of this fact and due to the scarcity of human-rights based studies and human-rights based data on child poverty the German government should explain how the new social benefits for children have been calculated and how the fulfilment of the relevant children's rights has been operationalized to serve as the yardstick for the new calculation.

9. Unaccompanied Minors

Suggestion:

Please provide information on the implementation of article 20 CRC regarding unaccompanied minors. In particular, please provide information on how the best interest of the child is ensured with respect to their accommodation during asylum procedures and how the child's right to liberty is respected in deportation procedures.

Explanation:

The Committee already repeated its concerns as to the situation of unaccompanied minors in its Concluding Observations of 2004 (CRC/C/15/Add. 226, paras. 54-55). In its Concluding Observations of 2008, the Committee identified deficits as to how Germany implements the Optional Protocol on the Involvement of Children in Armed Conflict with respect to the treatment of child soldier refugees in Germany (CRC/C/OPAC/DEU/CO/1, paras. 16-17). The Committee reminded Germany to draw attention to its General Comment⁸ on unaccompanied children. In Germany's handling of unaccompanied children deficits persist, notably with respect to asylum-seekers between 16 and 18 years.

A fundamental problem exists in asylum procedures or procedures connected with the Residence Act, where children are treated like adults as soon as they have reached the age of 16.⁹ As one consequence, they are often excluded from the protection of the youth welfare service¹⁰ - at least in some *Länder* - and are placed in premises designed to house adult asylum seekers.¹¹ Such practice clearly ignores the best interests of the child.

⁸ General Comment No 6, 01.09.2005, CRC/GC/2005/6.

⁹ See § 12 Asylverfahrensgesetz (AsylVfG) [AsylumProcedureAct] and § 80 Aufenthaltsgesetz (AufenthG) [ResidenceAct].

¹⁰ Sozialgesetzbuch VIII (SGB) VIII [Social Code VIII].

¹¹ See also: Third and Fourth State Party Reports of the Federal Republic of Germany regarding the United Nations Convention on the Rights of the Child, p. 86 ff. paragraph 271 ff.

According to Article 15 Residence Act¹², unaccompanied minors may be rejected at the border. According to Article 18 (a) Asylum Procedure Act¹³, they may also be held in “transit areas” at airports during asylum procedures (“Airport Procedure”).¹⁴ Furthermore, unaccompanied minors are not generally exempt from being detained for the purpose of deportation, but may even be detained prior to deportation.¹⁵

10. Rights of the Child in International Cooperation (article 4 clause 2 CRC)

Suggestion:

Please provide information on mechanisms and procedures which make sure that international cooperation does not harm the rights of children and is child-rights based. Of particular interest with regard to international cooperation is the field of education, including vocational education. In addition, please provide statistical data on how much budget is allocated to child rights related activities in international cooperation.

Explanation:

The measures which States are required to undertake to implement the rights included in the CRC include measures of international cooperation (article 4 CRC). In its General Comment No. 5 of 2003 (CRC/GC/2003/5, para. 7), the Committee concluded that the ratifying States “take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation.” The Committee recommends that donor States’ development cooperation programmes should respect the rights of the child and should be rights-based; States shall meet the internationally agreed target to spend 0,7% of the gross domestic product for international development assistance, of which a substantive part shall be allocated to children; Sector-Wide Approaches (SWAs) and Poverty Reduction Strategy Papers (PRSPs) shall include a focus on children’s rights reflecting children as right-holders and the incorporation of development goals which are relevant for children (CRC/GC/2003/5, paras. 61-62).

The Committee has stressed the importance of international cooperation for the implementation of children’s rights and has issued recommendations for assistance in the thematic areas of early-childhood development (CRC/C/GC 7, Rev. 1, para. 42), the right to education (CRC/GC/2001/1, paras. 2-11), HIV/AIDS and the rights of the child (CRC/GC/2003/3, paras. 40 (b)-41), rights of children with disabilities (CRC/C/GC 9, para. 16), and the establishment of National Human Rights Institutions (NHRIs) or ombudspersons for children’s rights (CRC/GC/2002/2, para. 29). The Third and Fourth State Report does not include any information on Germany’s international cooperation with regard to child rights.

¹² http://www.gesetze-im-internet.de/aufenthg_2004/_15.html.

¹³ http://www.gesetze-im-internet.de/asylvfg_1992/_18a.html.

¹⁴ See also: Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, Germany, UN-Dokument CAT/C/DEU/C0/5, 12.12.2011, paragraph 27.

¹⁵ See § 62 Abs. 1 AufenthG, http://www.gesetze-im-internet.de/aufenthg_2004/_62.html; see also: Cremer, Hendrik, *Abschiebungshaft und Menschenrechte. Zur Dauer der Haft und zur Inhaftierung von unbegleiteten Minderjährigen in Deutschland*, German Institute for Human Rights Menschenrechte (Ed.), Berlin 2011, http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Policy_Paper_17_Abschiebungshaft_und_Menschenrechte_01.pdf.