

**Fifth and Sixth State Party Reports  
of the Federal Republic of Germany  
on the  
United Nations Convention on the  
Rights of the Child**

## **Foreword**

The Federal Republic of Germany herewith submits to the Committee on the Rights of the Child its Fifth and Sixth State Party Reports in accordance with Article 44 of the Convention on the Rights of the Child. It herewith furthermore reports on the implementation of the Optional Protocol concerning the involvement of children in armed conflicts, and of the Optional Protocol on the sale of children, child prostitution and child pornography.

The Report provides information regarding the most important developments in recent years, and is intended to underline the major significance that the Federal Republic of Germany attaches to the ongoing implementation of this Human Rights Convention. In accordance with art. 12 of the Second Optional Protocol (CRC/C/OPSC/DEU/CO/1), Germany herewith submits a statement on the Committee's Concluding Observations of 25 February 2014 (CRC/C/OPAC/DEU/3-4) and of 24 February 2014.

The protection and reinforcement of children's rights is an important political cross-sectional task that involves all sectors and all levels. Accordingly, the Federal Ministries, the Federal *Länder*, and the central municipal associations, were involved in the preparation of the Report.

Exchange and cooperation with civil society organisations contribute to the successful implementation of the Convention, and civil society organisations were therefore also consulted within the State Party Report procedure.

Children and juveniles, as the group affected by the Convention, were asked about their views on the implementation of the Convention for the first time, before the Report was drawn up. The results were made available to those involved in the preparation of the Report.

The Report contains extensive data on children and their rights in order to allow an analysis and evaluation of the progress that has been made in the implementation of the Convention.

The period under report comprises the period from January 2014, when the Committee addressed the joint Third and Fourth German Reports, up to January 2019.

The Report has been prepared in accordance with guidelines CRC/C/58/Rev. 3 and HRI/GEN/2/Rev. 6, and should be read in conjunction with the Common Core Document submitted by the Federal Republic of Germany as per 8 November 2016.

It is supplemented by Annex 1, which explains individual activities in greater detail and showcases good examples. Annex 2 contains data on the situation of children. The perspectives of children and juveniles are attached to the Report as Annex 3.

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

### **a) Measures taken to review and bring domestic legislation and practice into full conformity with the Convention and the Optional Protocols.**

1. Germany is unreservedly committed to the goals of the Convention. On 15 July 2010, Germany withdrew the reservation that it had lodged at the time of ratification. The Convention thus unrestrictedly applies in Germany with the rank of a federal law. It must be taken into account in accordance with the case-law of the Federal Constitutional Court, both in the interpretation of other federal laws and of the fundamental rights and constitutional principles that are enshrined in the Basic Law (GG) within the recognised methods of interpretation (principle of interpretation that is compatible with international law). Germany must therefore guarantee the rights under the Convention. Germany has also amended non-constitutional law with regard to the Convention in order to remedy contradictions vis-à-vis the Convention.

2. Children are furthermore entitled to enjoy the fundamental rights that are enshrined in the Basic Law, as well as the rights under other human rights agreements, at least to the same degree as adults are. This is equally true for the rights of defence, protection and benefits derived from the fundamental rights in the case-law. In order however to improve the visibility of children's rights and their application in practice, the Federal Government regards an amendment to the Basic Law as constituting a constitutionally-expedient, important project.

3. The Coalition Agreement that was reached between the governing parties for the 19th legislative period stipulates that an explicit fundamental right for children is to be incorporated into the Basic Law. This should make it clear that children are fundamental right holders and that their rights have constitutional status. The Federation and the *Länder* are currently discussing the exact form in a working group, and will submit a proposal by the end of 2019 at the latest.

4. In contrast, it is not necessary to further entrench the entire Convention in the Basic Law, including in the interest of clarification. The Basic Law is deliberately limited to a short list of fundamental rights, but provides them with robust protection. The Convention, on the other hand, contains numerous substantive guarantees flanked by a control mechanism. Its 54 articles provide for a wide range of civil, political, economic, social and cultural rights for chil-

dren, as well for as rules for monitoring and implementing the Convention and transitional provisions. It would therefore be contrary to the character of the Basic Law to transfer the entire Convention into it. It furthermore appears inconceivable to emphasise only the Convention on the Rights of the Child in contrast to other human rights treaties that are binding on Germany.

5. It can therefore be assumed that the Committee's recommendation in this regard will be implemented during this legislative period.

6. Moreover, the Constitutions of individual *Länder* were amended in the period under report with the aim in mind of further boosting children's rights. Article 2a of the *Land* Constitution in *Baden-Württemberg* has expressly stipulated since 2015 that children and juveniles, as independent personalities, are entitled to respect for their dignity, to a non-violent upbringing, and to special protection. Art. 13, sentence 1, of the *Land* Constitution provides that children and juveniles are to be protected against exploitation and neglect, as well as against moral, mental, physical and emotional endangerment.

7. An amendment to the *Land* Constitution in *Hesse* was approved in a referendum that was held in October 2018. A provision on children's rights was also part of the proposal to be put to the vote. The fact of their inclusion in the *Hesse Land* Constitution means that children's rights are entrenched in all the *Länder* Constitutions with the exception of Hamburg, which has a state-organisational Constitution pure and simple.

**b) Whether a comprehensive national strategy for children and a corresponding plan or plans of action have been adopted**

8. The realisation and boosting of the rights of children and juveniles is a central point of reference for state policy in Germany. The policy measures on children's rights that have been taken in Germany cover a wide range of policy areas, and include local, *Land* and federal levels. In Germany's federal constitutional system, responsibility between the federal and *Land* levels varies according to the policy area. Sectoral strategies are as a matter of principle also considered appropriate and effective because of the specific requirements and objectives in different policy areas.

9. For example, an Overall Concept to Protect Children and Juveniles Against Sexual Violence was implemented in the period under report, based on a previously agreed action plan (see section 5c). The youth strategy entitled "Creating a society fit for young people to live in" has been implemented since 2015 (see section 3d). The Action Plan "Agents of Change – Children and youth rights in German development cooperation activities" was presented in 2017 (see section 1e).

10. Coordinated cooperation and exchange on the implementation of children's rights also take place across ministries, between the various levels of government, and with civil society, as part of the State Party Report procedure, and are to be continued beyond this.

11. Some of the Federal *Länder* have up-to-date strategies on children's rights, or have implemented them in the past. This is described in greater detail in Annex 1.

**c) Which government authority has overall responsibility for coordinating the implementation of the Convention and the Optional Protocols**

12. The Second as well as the Third and Fourth State Party Reports address the lead responsibility for implementation at the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), and the tried-and-tested structures for the coordination of child and youth policy in Germany's federal system.<sup>1</sup> Effective coordination of policy on children's rights at federal level, between the Federation and the *Länder*, and between individual Federal *Länder*, should be developed in a manner appropriate to the system of government, and can take a variety of forms as a matter of principle, ranging from informal exchanges through formal working groups and committees, to the establishment of a central or national coordination body. It is always important here to weigh up whether it makes more sense to create a

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<sup>1</sup>paras. 40 et seq. CRC/C/83/Add. 7; para. 24 CRC/C/DEU/3-4

new unit than to make better use of existing capacities. Cross-cutting issues are coordinated in Germany within existing, suitable structures. These include the Conference of Youth and Family Ministers of the Federal *Länder*, the Association of Supreme *Land* Youth and Family Authorities, the Federal Association of *Land* Youth Welfare Offices, as well as a variety of Federation-*Länder* working parties. Improvements are being achieved within this framework when it comes to the implementation of a comprehensive and coherent policy on children's rights. The establishment of a new federal-level national agency to coordinate policy on children's rights is therefore not considered necessary.

13. At federal level, there is the Children's Commission of the German Bundestag. At *Land* level, there are Children's Commissions in the Landtag of *Lower Saxony* (since 2016) and of *Bavaria*. *Hesse* and *Saxony-Anhalt* have established children's commissioners at *Land* level, and the citizens' commissioners in *Rhineland-Palatinate* and *Schleswig-Holstein* are also responsible for issues related to children (see section 1f as well as Annex 2).

14. For the first time, the Fifth and Sixth State Party Reports provide a comprehensive presentation of data on the state of implementation of children's rights on the basis of statistical data collected in Germany as well as from publicly-funded empirical studies (see Annex 2). The selection and processing of statistical information in the reporting were based on the corresponding guidelines from the Committee<sup>2</sup>. It is planned in future to develop a children's rights monitoring system based on the improved data available.

15. In order to further facilitate the evaluation of the implementation status of the Convention in the future, the Monitoring Mechanism on the UN Convention on the Rights of the Child at the German Institute for Human Rights is also currently developing examples of children's rights indicators on a pilot basis.

**d) Whether the budget allocated for the implementation of the Convention and the Optional Protocols is clearly identified**

16. Annex 2 contains an overview with examples of expenses in selected sectors. This can however only show some of the total public expenditure spent on the implementation of the Convention. Further details are given in the abovementioned Annex.

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<sup>2</sup> CRC/C/58/Rev.3

**e) Whether international development aid is provided**

17. With the release of the Action Plan “Agents of Change – Children and youth rights in German development cooperation activities”<sup>3</sup> in 2017, the Federal Ministry for Economic Cooperation and Development (BMZ) published for the first time a strategy for systematically integrating young people into German state development cooperation as right holders. The Action Plan comprises bilateral cooperation with partner countries, multilateral engagement and cooperation with civil society, Academia and industry. In addition to improving and expanding development cooperation, another objective is for Germany to play a pioneering role in the international dialogue concerning the respect for and the implementation of children’s rights. The BMZ will monitor the implementation of the Action Plan through a mid-term report in the autumn of 2018, and will take stock at the end of 2019. Activities funded by Germany’s humanitarian assistance also cater to the specific needs of children. Examples of concrete activities can be found in Annex 1.

18. Germany’s expenditure on public development cooperation rose from 10.1 bn. EUR in 2012 to 22.4 bn. EUR in 2016. The percentage of public development cooperation in gross national income (ODA ratio) increased from 0.37 % (2012) to 0.7 % (2016). This makes Germany the second-largest development partner in the world.

**f) Whether an independent national human rights institution for monitoring the implementation of the Convention and the Optional Protocols has been established**

19. The Federal Government has taken up the Committee’s recommendation regarding monitoring the implementation of the Convention and the Optional Protocols, and has set up an independent Monitoring Mechanism for the UN Convention on the Rights of the Child to monitor the implementation of the Convention in Germany at the German Institute for Human Rights (DIMR) in 2015 (see section B.II.4 of the Common Core Document).

20. The Monitoring Mechanism’s mandate is to observe and monitor, on an independent basis, Germany’s implementation of the Convention. In order to do this, it investigates and evaluates the respective status of CRC implementation and conducts research related to children’s rights. It advises the political and legislative domains in connection with political decision-making processes, contributes towards greater awareness of children’s rights among children and the bodies concerned with their welfare, and works closely with civil society, public authorities and research institutes. The Monitoring Mechanism will continue to be promoted by the BMFSFJ, and is to be secured in the long term.

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<sup>3</sup> [http://www.bmz.de/de/mediathek/publikationen/reihen/strategiepapiere/Strategiepapier385\\_04\\_2017.pdf](http://www.bmz.de/de/mediathek/publikationen/reihen/strategiepapiere/Strategiepapier385_04_2017.pdf)

21. The Federal Government does not consider it to be necessary to expand the mandate of the Monitoring Mechanism in such a way that it is tasked with receiving individual complaints regarding children's rights violations. Contact points which receive individual complaints from children or their representatives, or which support and advise them, should be low-threshold, i.e. they need to be easily accessible to children, and they should be located in children's immediate living environment. There are already numerous such contact and complaint points in Germany, particularly at municipal level.

22. The installation and implementation of participation procedures and complaint mechanisms to safeguard the rights of children and juveniles in facilities as a prerequisite for the granting of an operating permit has been provided for in child and youth welfare as per 1 January 2012 by the Act to Strengthen Active Protection of Children and Juveniles – Federal Child Protection Act (*Bundeskinderschutzgesetz* – BKiSchG) in section 45 of Book VIII of the Social Code.

23. As of August 2018, ombuds offices providing advice on individual cases in child and youth welfare already exist in *Baden-Württemberg, Berlin, Brandenburg, Bremen, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate* and *Saxony*. *Schleswig-Holstein* has a project aiming to establish needs-based structures of youth welfare ombuds offices across the *Land*. These are intended to support children, juveniles and families in exercising their rights by providing independent information, counselling and conflict mediation. In *Rhineland-Palatinate* and *Schleswig-Holstein*, the Complaints Office is hosted by the citizens' commissioner of the *Land*. According to a sample of youth welfare offices (n=144), almost half of the youth welfare office districts (47%) had a complaints office in 2014 (in most cases occupied by an employee designated by the youth welfare office) to which families could turn if they were dissatisfied with a decision taken, or not taken, by the youth welfare office (independently of complaints against civil servants, which are always possible as a matter of principle). Few youth welfare offices point to regional ombuds or complaints offices as an option.<sup>4</sup>

24. As part of a pilot project, the BMFSFJ is promoting the establishment of an independent Federal Coordination Office "Ombudship in Child and Youth Welfare Work". This office is to identify and develop nationwide needs, questions and requirements, including to stabilise existing ombuds offices and to establish new ones. The pilot project aims to gather experience

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<sup>4</sup> [https://www.dji.de/fileadmin/user\\_upload/bibs2016/64\\_Bundeskinderschutzgesetz.pdf](https://www.dji.de/fileadmin/user_upload/bibs2016/64_Bundeskinderschutzgesetz.pdf)

in implementation in order to advance the establishment of a future Federal Ombudship Coordination Office in child and youth welfare.

25. Important contact points for children are also children's and youth commissioners, as well as children's and youth welfare offices. These are usually organised at municipal level, and regard their role as promoting the successful representation of the interests of children and juveniles there. Annex 2 contains an overview of child and youth commissioners and children's and youth welfare offices at municipal level in the various Federal *Länder*, as well as individual offices at *Land* level.

#### **g) Measures taken to make the principles and provisions of the Convention and its Optional Protocols widely known to adults and children**

26. The Convention and the Optional Protocols are freely available on the Internet and in print, as are other information and brochures specifically aimed at children.<sup>5</sup> The BMFSFJ carried out the campaign entitled "Empowering activities for children's rights" in the period under report in order to make known and enhance children's rights. Numerous festivals and anniversary events also serve to make children's rights known. Further details can be found in Annex 1.

#### **Information on the Convention in school curricula.**

27. Due to the federal system, the school system is the responsibility of the *Länder*. Teaching modules as well as numerous and varied initiatives exist in the *Länder* in order to educate children at all school levels with regard to their rights. Children also learn about their rights as part of political education work and political youth education. The Federal Agency for Civic Education and the BMFSFJ carry out various measures to this end.

#### **Further training programmes for specialists working with children.**

28. Particular emphasis is placed in Germany on the training of judges and public prosecutors. Due to the federal system, the respective Federal *Länder* are responsible for this. In addition, regular events are offered at the German Judicial Academy – a supra-regional further training institution jointly funded by the Federation and the *Länder* – and by the Federal Office of Justice, and these also deal with issues related to children's rights. Annex 1 contains information on existing further training activities of the Federation and the *Länder* in the field of justice.

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<sup>5</sup> [www.bmfsfj.de/kinderrechte](http://www.bmfsfj.de/kinderrechte); [www.kinder-ministerium.de](http://www.kinder-ministerium.de)

29. In addition to the staff of the judiciary, the target group of further and advanced training activities on children's rights comprises other groups of specialists who work with children. Appropriate measures taken by the Federation and the *Länder* are listed in Annex 1.

**Media commitment to raising awareness of the Convention in a manner appropriate for children.**

30. Because of the freedom of the media guaranteed in art. 5 para. 1, sentence 2, of the Basic Law (*Grundgesetz* – GG) and the resulting independence of the media from the State and programming autonomy, the State may not exert any influence on the programming of media providers in Germany. No regulations or instructions may be issued. For this reason, no other measures, assistance or offers are made. Irrespective of this, numerous initiatives have been taken by media operating under public law to make children's rights known – also in a child-friendly manner. More details can be found in Annex 1.

**h) Efforts undertaken or foreseen to make reports and concluding observations widely available**

31. The Third and Fourth State Party Reports were published as a brochure in printed form and are also freely accessible on the Internet.<sup>6</sup> An archive of the German State Party Report procedures, including the Concluding Observations, can be found on the DIMR website.<sup>7</sup> After being adopted by the Federal Government, the Fifth and Sixth Reports will be sent to the responsible Committees of the German Bundestag for information and made available to the public in printed form and on the Internet. In addition, it is planned to publish the Fifth and Sixth Reports as well as the Concluding Observations in child-friendly language for the first time.

**i) Cooperation with civil society organizations**

32. The “National Coalition Germany – Network for the Implementation of the UN Convention on the Rights of the Child” (NC) plays a special role in monitoring the implementation of the Convention by civil society organisations. The NC, which is funded by the BMFSFJ, will present a supplementary report from a civil society perspective. As with the last State Party Report procedure, the NC will involve children and juveniles themselves, and will publish its assessment of the state of the implementation of the Convention in a separate form.

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<sup>6</sup> <https://www.bmfsfj.de/bmfsfj/service/publikationen/dritter-und-vierter-staatenbericht-der-bundesrepublik-deutschland-zu-dem-uebereinkommen-der-vereinten-nationen-ueber-die-rechte-des-kindes/88134>

<sup>7</sup> <https://www.institut-fuer-menschenrechte.de/menschenrechtsinstrumente/vereinte-nationen/menschenrechtsabkommen/kinderrechtskonvention-crc/staatenberichtsverfahren-zu-deutschland/archiv-staatenberichte-kinderrechtskonvention/>

33. Non-governmental organisations (NGOs) were consulted prior to the preparation of the Fifth and Sixth Reports, and were invited to submit written statements. The Coordination Office for Children's Rights of the Children's Charity Germany (DKHW) has been commissioned by the BMFSFJ to obtain views from children and juveniles on the implementation of their rights before the State Party Report was drawn up. The report is attached to the State Party Report as Annex 3. The results of the report in Annex 3 were presented to the Federal Ministries and the Federal *Länder* at meetings, and were subsequently made available to them along with the abovementioned statements. A further consultation of civil society is to take place once the Report has been submitted to the Committee.

### **Children's rights and the economy**

34. Germany has a clear legal framework for industry in order to ensure that companies do not violate any rights, including children's rights. In the event of infringements nevertheless occurring, measures are available to provide remedies under civil, criminal and administrative law.

35. Thus, for example, a company that violates absolute or third-party rights can be required under civil law to cease and desist and – in the event of culpability – to pay damages. Insofar as the violation of rights constitutes a criminal offence, offenders and participants may be prosecuted under criminal law. In accordance with the applicable law, a fine may be imposed under certain conditions on companies that are organised as legal persons or associations of persons. Under the same conditions, a fine may be imposed on companies where a criminal offence has been committed as a result of a breach of the duty of supervision by a manager. The law on sanctions for companies is to be revised in accordance with the Coalition Agreement.

36. The basis for administrative measures is provided by the provisions contained in the Trade Regulation Act (*Gewerbeordnung – GewO*). The law as it stands – section 35 of this Act/prohibition of trading in cases of unreliability – permits the prosecution authorities to intervene on a case-by-case basis if they conclude that the unreliability is the result of a trader's failure to comply with children's and human rights.

37. It must be ensured in accordance with article 3 para. 1 of the Convention that the best interests of the child are taken into account in budgetary measures relating to trades that affect the interests of children in Germany, e.g. by formulating the funding guidelines for financial assistance accordingly.

38. The Federal Cabinet adopted the National Action Plan on Business and Human Rights (NAP) at the end of 2016, in line with the United Nations Guiding Principles on Business and Human Rights and the “Protect – Respect – Remedy” framework concept, which refer to existing human rights instruments – both binding and non-binding – including the core labour standards of the International Labour Organisation (ILO). The NAP also includes the prohibition of, and measures to eliminate, the worst forms of child labour as a human rights standard. In the NAP, the Federal Government formulates its expectations vis-à-vis all companies regarding respect for human rights on the basis of five core elements that are enshrined in the duty of care with regard to human rights. The implementation of this duty of care with regard to human rights by companies will be reviewed annually in a monitoring procedure starting in 2018. The Coalition Agreement provides that the Federal Government will legislate nationally, and will promote an EU-wide arrangement if the effective and comprehensive review of the NAP 2020 concludes that the voluntary undertaking entered into by companies is insufficient.

39. Improved observance of human rights as well as of social and environmental standards in global textile supply chains is also pursued with the Partnership for Sustainable Textiles. From 2018 onwards, all companies in the Textile Alliance must establish a procedure for dealing with cases of child and forced labour, including access to redress.

40. The Federal Government is also supporting the ILO’s “Programme on the Elimination of Child Labour” (IPEC), and is taking part in the ILO’s “Alliance 8.7” for a world without child labour.

41. The Federal Government is also addressing the health significance of environmental pollution in relation to its particular impact on children. The German Environment Agency (UBA) furthermore surveyed the exposure of children and juveniles in the period from 2014 to 2017 in the latest German Environmental Health Study. Once the quality assurance process has been completed and the data have been evaluated, these will be published, including recommendations for action with regard to the protection of children and juveniles.

## **2. Definition of the child (art. 1)**

42. Status as a minor in German law corresponds to the definition of the child used in the Convention. Minors are persons who are not yet 18 years old. Further information on the no-

tion of the child in the German legal system, and on individual provisions, can be found in the previous State Party Reports.<sup>8</sup>

43. There have been changes with regard to the minimum marrying age in the period under report. The marrying age under German law has been set at 18 without exception since the Act to Combat Child Marriages (*Gesetz zur Bekämpfung von Kinderehen*) came into force on 22 July 2017.

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

#### **a) Non-discrimination (art. 2)**

44. Sections B.II.1.a.bb and C of the Common Core Document contain information on the structure of equality rights in the German legal system, as well as information on non-discrimination and equality. Reference is also made to the relevant commissioners of the Federal Government and to the Federal Anti-Discrimination Agency in sections B II 3 g-i.

45. In order to prepare and support equal access to child day care, especially also for children with migration and refugee backgrounds, the Federal Government supports its own federal programmes with “Language child day care centres: Because language is the key to the world” and “A good start at child day care centre: Building bridges for early education”. Another goal is the improved inclusion of children with disabilities in child day care. The *Länder* have also taken steps to counteract or reduce inequalities in child day care. See section 8a and the corresponding section in Annex 1 for more details.

46. Inclusion at school in Germany is regulated by *Land* legislation. The aim is to include children and juveniles with disabilities in the general education system and to enable pupils with and without disabilities in general schools to learn together, be it with the same educational goals or with different objectives. Greater priority is being applied to children with and without disabilities living and learning together, thus shielding children with disabilities from experiences of discrimination. See section 7 for more information on the rights of children with disabilities, including with regard to inclusive education.

47. The action plans that have been adopted at federal and *Land* level for the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD, cf. Annex 1) pave the way for the further expansion of the inclusive school system. With the

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<sup>8</sup> paras. 8 et seq. CRC/C/11/Add.5; para. 118 CRC/C/83/Add. 7; para. 58 CRC/C/DEU/3-4.

participation of people with disabilities and their organisations, the Federal Government adopted in 2016 the revised National Action Plan 2.0 on the UN CRPD (NAP 2.0) in Cabinet, with 13 fields of action and 175 new measures. NAP 2.0 aims to bring about the inclusion and participation of people with disabilities. This is intended to enable them to live a self-determined life in the midst of an inclusive society without suffering discrimination of any kind. One of the objectives of NAP 2.0 is to promote the development of children with disabilities from the outset in order to strengthen them by offering better services and via greater participation.

48. Children with a migration background are clearly over-represented in non-grammar schools. However, if the socio-economic background is taken into account, 15-year-olds both with and without a migration background attended the respective types of school in comparable proportions in 2012. Recent comparative education studies have also observed a significant improvement in reading skills among children and juveniles with a migration background.<sup>9</sup> Amongst other things, the *Länder* have pursued the approach of providing competence-orientated, needs-based individual support for pupils in recent years, have massively expanded language support measures, reformed teacher training and further training, and expanded the various possibilities for cooperation with parents. Annex 1 contains an overview of various measures to combat discrimination against children with a migration or refugee background. Specific information on instruction in schools for refugee children can be found in section 9a.

49. The Federal Anti-Discrimination Agency offers initial legal advice to all people who consider that they have suffered discrimination on the basis of their ethnic origin, religion or belief, age, gender, sexual identity or disability. A total of 288 counselling requests from 2014 to 2017 concerned children. The experience of discrimination was primarily linked to characteristics such as ethnic origin/racial discrimination (31%) and disability (31%), and mainly concerned public education and, to a lesser extent, access to private service-providers and goods. See Annex 2 for more details. *Hesse* also set up an anti-discrimination office at *Land* level in 2015.

50. Germany combats discrimination against children on the basis of gender, sexual identity or orientation, origin or political views, as well as racial discrimination, through numerous other measures. Some of them are described in detail in Annex 1.

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<sup>9</sup> The PISA studies can be retrieved at: [www.pisa.tum.de](http://www.pisa.tum.de); go to <https://www.kmk.org/themen/qualitaetssicherung-in-schulen/zib.html> for information on the national implementation of PISA.

### **b) The best interests of the child (art. 3)**

51. Measures and projects take into account the impacts on children and juveniles as a matter of principle. In order to examine and describe the impact of measures on the younger generation the BMFSFJ promotes a project carried out by the German Research Institute for Public Administration (FÖV): the Centre of Excellence on the Youth Check.

52. A preventive appeal was created by the Act of 11 October 2016 in the Act on Procedure in Family Matters and Non-Contentious Matters (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG*) in order to avoid excessively lengthy proceedings in certain parent-and-child cases relating to residence, the right of access to or the surrender of the child, as well as in proceedings on grounds of endangerment of the best interests of the child. More details on this can be found in Annex 1.

53. There is a wide range of measures in place at *Land* level to take account of the best interests of the child as a priority in actions affecting children. An examination of child and family friendliness was for example introduced in *Rhineland-Palatinate* in order to establish the best interests of the child as an aspect of decision-making when drafting laws and ordinances. See Annex 1 for further information on this and other measures.

### **The right to life, survival and development (art. 6)**

54. The manifestations of human rights in the German legal system, including the anchoring of the right to life in the Basic Law, are described in section B.II.1.a.aa of the Common Core Document. Annex 2 contains statistical data on child deaths and causes of death.

### **d) Respect for the views of the child (art. 12)**

55. The Third and Fourth State Party Reports contain a description of the relevant legal provisions concerning art. 12 of the Convention.<sup>10</sup> In addition, it should be pointed out that children are also entitled in accordance with art. 17 of the Basic Law as a matter of principle to petition the Bundestag and the *Land* Parliaments, the municipal and district parliaments, as well as any other (competent) body and authority of public-law institutions with their concerns. The Third and Fourth State Party Reports also deal with the right to vote.<sup>11</sup> The voting age in *Baden-Württemberg* was lowered from 18 to 16 in municipal elections in recent years, this also applying in Landtag elections in *Schleswig-Holstein* (the right to vote from the age of 16 already applied at local government level before) and in municipal and Landtag elections in *Brandenburg* and *Hamburg*.

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<sup>10</sup> paras. 90 et seq. CRC/C/DEU/3-4.

<sup>11</sup> para. 84 CRC/C/DEU/3-4.

56. The reform of the proceedings in family matters and in non-contentious matters, which came into force in 2009, has amongst other things enhanced the rights of participation and co-determination of the child concerned, in particular through the establishment of the institution of the procedural adviser (section 158 of the Act on Procedure in Family Matters and Non-Contentious Matters). Their task is to determine and assert the interests of the child in the court proceedings, as well as to inform the child of the course of the proceedings and of the possibilities to influence them. According to the results of a recent study of legal facts, the institution of the procedural adviser has proven its value on the whole.<sup>12</sup> The appointment of the procedural adviser has furthermore had a positive impact on finding consensual solutions to conflicts in parent-and-child cases.

57. The Federal Child Protection Act confers on children a binding right to receive counselling without the knowledge of the person who has personal custody, if this is necessary due to an emergency and conflict situation, on the condition that the purpose of the counselling would be frustrated if the person who has personal custody were to be informed (section 8 subsection (3) of Book VIII of the Social Code). According to the results of a survey conducted in 2014, a good three-quarters (77%) of youth welfare offices provide information about this possibility of receiving counselling independently of parents.<sup>13</sup>

58. The Third and Fourth State Party Reports contain information on the participation of children in school.<sup>14</sup>

59. Youth associations and their federations (“Youth Councils”) also voice young people’s concerns and represent juveniles politically. The federal associations alone, which are supported via the Federation, represent about six million young people. A total of 388 Youth Councils existed in 2015, in roughly two-thirds of the youth welfare office districts in Germany. Participation by juveniles is also a core component of the youth strategy entitled “Creating a society fit for young people to live in”, which has been implemented by the BMFSFJ since 2015. The Coalition Agreement provides for the development of a Joint Youth Strategy of the Federal Government. Its implementation is currently being prepared in an interministerial working group. More about this and about the “*U 18 Wahl*” election project for the under-18s can be found in Annex 1.

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<sup>12</sup> Stefan Ekert/Bettina Heiderhoff, *Die Evaluierung der FGG-Reform*, 2018; retrievable at [www.bmjv.de](http://www.bmjv.de)

<sup>13</sup> Pluto, Liane/van Santen, Eric/Peucker, Christian (2016): *Das Bundeskinderschutzgesetz in der Kinder- und Jugendhilfe. Empirische Befunde zum Stand der Umsetzung auf kommunaler Ebene*. DJI, Munich.

<sup>14</sup> para. 92 CRC/C/DEU/3-4

60. At *Länder* level, the respective Municipal Codes of several *Länder* contain legal provisions which provide for the participation of children and juveniles when their interests are affected. Further information on this and on other measures to enhance the participation of children and juveniles is presented in Annex 1. As part of the BMFSFJ-funded project entitled “Representative participation formats for children and juveniles in local politics”, 202 adult contact persons from representative participation formats for children and juveniles were interviewed at municipal political level. The aim of the analysis is to show the conditions under which these children’s and youth representations can succeed, as well as the quality criteria that they need to satisfy. According to the survey, these criteria are met in roughly 5% of all German municipalities. Some key results regarding the composition and structure of the committees can be found in Annex 2.

#### **4. Civil rights and freedoms (arts. 7, 8 and 13-17)**

61. The Common Core Document contains in B. II. a detailed description of the constitutionally-guaranteed fundamental rights, including civil rights and freedom rights, to which both children and adults are entitled.

##### **a) Birth registration, name and nationality (art. 7)**

62. The applicable situation under national law ensures that all children, including children of refugees and asylum-seekers born in Germany, are issued with birth certificates or a certified register printout as a civil status certificate as soon as possible. If the registry office does not have suitable proof of information about the parents, in accordance with section 35 subsection (1), sentence 1, of the Ordinance on Civil Status (*Personenstandsverordnung – PStV*), in conjunction with No. 21.4.7 of the General Administrative Regulation on the Civil Status Act (*Allgemeine Verwaltungsvorschrift zum Personenstandsgesetz*), the registry office must include in the birth entry an explanatory addendum on the lack of proof of the parents’ identity and, consequently, the lack of proof of the child’s name. In this case, the registry office may only issue a certified printout from the relevant birth register in lieu of a birth certificate until such time as a supplementary subsequent certification has been entered (section 35 subsection (1), sentence 2, of the Ordinance on Civil Status). The birth certificate and the certified extract from the register are legally equivalent. They serve as proof of birth registration, and are necessary for example to gain access to social benefits, healthcare or education. The evidential value of particulars accompanied by an explanatory note is however limited.

## **b) Maintenance of identity (art. 8)**

63. The Act on the Expansion of Assistance for Pregnant Women and on the Regulation of Confidential Birth (*Gesetz zum Ausbau der Hilfen für Schwangere und zur Regelung der vertraulichen Geburt* – SchwHiAusbauG) entered into force on 1 May 2014 with the aim of avoiding secret births outside medical facilities and preventing newborns from being anonymously deposited, abandoned or killed. The new provisions thus introduced in sections 25 et seqq. of the Act on Assistance to Avoid and Cope with Conflicts in Pregnancy (*Schwangerschaftskonfliktgesetz* – SchKG) enable pregnant women who do not wish to reveal their identity due to a particular hardship to give birth to their children anonymously and in a medically-safe environment – in an obstetric facility or with a midwife of their choice. It also guarantees mothers 16 years of anonymity, and children born secretly the right to know their own ancestry by giving them the opportunity to enquire about the identity of their biological mothers once they have reached the age of 16. The procedure also offers all concerned legal certainty regarding their actions.

64. As part of the implementation of the Act, the “Pregnant women in need – anonymous and safe” helpline was set up for pregnant women in psychosocial conflict situations, thus creating low-threshold access to the counselling system in Germany. The helpline consists of a telephone service, as well as providing the possibility of receiving advice online – by e-mail or chat.<sup>15</sup> Those seeking help receive an initial consultation free of charge, in confidence and anonymously, and are referred to local counselling centres if they so desire. If required, the counselling can be provided barrier-free and in 17 foreign languages. The Federation has been running a nationwide information campaign since 2014 in order to publicise the assistance that is available.

65. Assistance for pregnant women is well received by those affected. Approximately 1,300 pregnant women in need received advice at a pregnancy counselling centre between the end of 2014 and September 2016. There were a total of 249 confidential births nationwide during the same period; there have already been 465 confidential births by now (as of June 2018). In addition, the possibility of confidential birth created by the Act on the Expansion of Assistance for Pregnant Women and on the Regulation of Confidential Birth has reduced the number of medically-unaccompanied births. According to a trend analysis, about 40 percent of

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<sup>15</sup> [www.geburt-vertraulich.de](http://www.geburt-vertraulich.de)

women used confidential childbirth as an alternative to an anonymous form of child depositing between May 2015 and September 2016.<sup>16</sup>

66. In addition to the confidential birth service, it is still possible to use baby boxes in Germany. A total of 278 children were placed in a baby box nationwide between 2000 and 2010. The service is primarily aimed at women for whom confidential childbirth is out of the question, or who have not been reached by assistance for pregnant women in need.<sup>17</sup>

**c) Freedom of expression and the right to seek, receive and impart information (art. 13)**

67. The right to freedom of expression is guaranteed in Germany by the Basic Law. Further details can be found in the First and Second Reports.<sup>18</sup>

**d) Right to freedom of thought, conscience and religion (art. 14)**

68. The right to freedom of thought, conscience and religion is described in Germany's previous reports.<sup>19</sup>

**e) Freedom of association and freedom of peaceful assembly (art. 15)**

69. Regulations and measures for freedom of association and freedom of peaceful assembly are described in the First and Second Reports<sup>20</sup>.

**f) Protection of privacy (art. 16)**

70. Regulations and measures for protection of privacy are described in the First Report.<sup>21</sup>

**g) Access to information from a diversity of sources and protection from material harmful to a child's well-being (art. 17)**

71. Children and juveniles have a fundamental right to obtain information from generally-accessible sources without hindrance (art. 5 para. 1, sentence 1, of the Basic Law). The protection, promotion, empowerment, involvement and participation of children and juveniles are to be ensured. The Federation's Youth Protection Act (*Jugendschutzgesetz – JuSchG*), as well as the Interstate Agreement on the Protection of Minors in the Media (JMStV), form the legal basis for this. Uniform protection standards are guaranteed by the interlocking provisions contained in both sets of regulations.

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<sup>16</sup> Cf. Report of the Federal Government on the effects of the law on confidential birth:

<https://www.bmfsfj.de/blob/jump/117448/bericht-vertrauliche-geburt-2017-data.pdf>

<sup>17</sup> German Youth Institute: "*Anonyme Geburt und Babyklappen in Deutschland – Fallzahlen, Angebote, Kontexte*" 2011

<sup>18</sup> para. 29 CRC/C/11/Add. 5; paras. 351 et seqq. CRC/C/83/Add. 7

<sup>19</sup> paras. 32 et seq. CRC/C/11/Add. 5; paras. 354 et seq. CRC/C/83/Add. 7; paras. 110 et seqq. CRC/C/DEU/3-4

<sup>20</sup> para. 34 CRC/C/11/Add. 5; paras. 356 et seqq. CRC/C/83/Add. 7

<sup>21</sup> para. 35 CRC/C/11/Add. 5

72. The demands placed on the protection of children and young people in the media by media convergence and mobile use of digital services have changed. Digital media open up many opportunities for children and juveniles. At the same time, children and juveniles can access such media 24/7 and from any location, thus exposing them to massive new risks. The rise in cyberbullying, grooming and sexualised violence, the threat of addiction and inducement to self-harming online is worrying. Modern protection of minors in the media must ensure the protection of children and juveniles from harmful content, must guarantee the protection of their rights of privacy and their data, and must refine tools to enhance their media literacy. The Coalition Agreement therefore provides for the creation of a viable and coherent legal framework for the protection of children and young people in the media in the Interstate Agreement on the Protection of Minors in the Media and in the Youth Protection Act, taking into account the responsibilities of the *Länder* in terms of the law on competences.

73. The reform of the Interstate Agreement on the Protection of Minors in the Media that was brought about by the 19th Act Amending the Interstate Broadcasting Agreement (*Rundfunkänderungsstaatsvertrag*) came into force on 1 October 2016. The consequence of this reform was that the age groups covered by the Youth Protection Act were also adopted for broadcasting and telemedia in the Interstate Agreement on the Protection of Minors in the Media. The mutual recognition of age ratings in the online and offline sectors takes account of media convergence. The requirements for the youth protection programmes were also specified. The linking of the responsibility for reviewing the recognised voluntary self-regulations contained in section 11 of the Interstate Agreement on the Protection of Minors in the Media with regard to eligible technical youth media protection systems enhances the idea of voluntary self-regulation. At the same time, the requirements under substantive law for the protection of minors were modernised. The reform also aims to secure the financing of “jugendschutz.net” in the long term.

74. The “jugendschutz.net” Centre of Excellence operated by the Federation and the *Länder* systematically monitors services that are of particular importance to children and juveniles, and processes incoming complaints. The Centre of Excellence supports initiatives and companies in order to make the web safer, focuses on online content that may endanger, frighten or impair the development of minors, urges providers to comply with the protection of minors, and either to modify or delete services accordingly, or to make them inaccessible.

75. The new specialist unit “Further development of child and youth media protection, prevention and public relations” was established in July 2017 at the Federal Review Board for

Media Harmful to Minors, and is to shape the current and future challenges for sustainable youth media protection on the basis of the legal mandate of the Federal Review Board.

76. A wide range of information material is made available in Germany in order to promote and enhance the media skills of children and juveniles, and funding institution structures for youth media work and projects are promoted. Annex 1 contains some examples.

## **5. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)**

### **a) Protection against violence, abuse and neglect (art. 19)**

#### **Preventing and combating violence against children.**

77. The Federal Child Protection Act came into force as per 1 January 2012.<sup>22</sup> The Federal Child Protection Act enhances prevention with regard to child neglect and abuse, and underscores the protective mandate of the public funding institution of youth welfare work in the event of an endangerment of the best interests of the child.

78. When it comes to prevention, the BMFSFJ has established the Federal Foundation for Early Childhood Intervention on the basis of section 3 subsection (4) of the 2017 Act on Cooperation and Information in Child Protection (*Gesetz zur Kooperation und Information im Kinderschutz*). It builds on the findings of the Federal Early Childhood Intervention Initiative, which was implemented between 2012 and 2017. This will create support structures throughout Germany for (expectant) parents and families with small children up to the age of three, especially in stressful life situations. Early Childhood Intervention makes a significant contribution towards the healthy growth of children, and safeguards their rights to protection, support and participation. Early Childhood Intervention also furthers networking between different players from the relevant benefit systems (child and youth welfare, healthcare, early support, pregnancy counselling, etc.). Finally, the National Centre for Early Childhood Intervention (NZFH) has been informing the public since November 2017 about the dangers of shaking babies and toddlers with a nationwide alliance in an information campaign, in order to meet the population's need for information on this topic and to prevent violent shaking.

79. With regard to the mandate to protect against endangerments of the best interests of the child, the Federal Child Protection Act created greater certainty of action and legal certainty for the professions concerned with child protection, and introduced clear stipulations on pow-

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<sup>22</sup> cf. also para. 33 CRC/C/DEU/Q/3-4/Add.

ers and duties to act in fulfilling the State's mandate to protect children, e.g. by means of an unequivocal legal provision applying to persons with a professional obligation to maintain secrecy with regard to the disclosure of information to the youth welfare office. The Federal Child Protection Act also contains an obligation to develop quality in child and youth welfare, thereby increasing the binding nature of professional standards, especially in child protection.

80. The report on the results of the evaluation of the Federal Child Protection Act that was submitted to the German Bundestag on 31 December 2015 shows that a great deal has already been achieved in terms of the protection of children since the Act came into force. However, there have also been indications of a need for further advancements to be made in the welfare and comprehensive protection of children. The Coalition Agreement provides for child and youth welfare law to be further developed. The goal is to be to create an effective assistance system that strengthens families and protects children from endangerments. The best interests of the child are the guiding principle, and the support and empowerment of parental educational responsibility continue to be the child and youth welfare's high standard and mission. However, close cooperation between the players that are relevant will be given a higher priority. Among other things, work with parents as well as qualification and support of foster parents will be strengthened and promoted, which is also in the interest of children placed in alternative care. Moreover, preventive services in the social sector will be strengthened.

81. With the Prevention Health Care Act (*Präventionsgesetz – PräVG*), most of the provisions of which entered into force in July 2015, amongst other things the legal basis for health check-ups for children and juveniles in section 26 of Book V of the Social Code was expanded in such a way that the examining physician now has to pay greater attention to the individual strains and risks of the child and, in line with this, advise parents on how they can targetedly promote the development and health of their children. If necessary, the doctor is to recommend behavioural prevention services and point out further health-related services and assistance available locally (including regional parent-and-child support services such as Early Childhood Intervention). Further improvements are also likely to ensue from the medical guideline entitled "Maltreatment, abuse and neglect of children", which is expected to be completed in early 2019 and is sponsored by the Federal Ministry of Health (BMG), and which also covers the crossover to child and youth welfare.

82. In addition, the *Länder* made additional efforts in the period under report to further improve the protection of children. Appropriate examples can be found in Annex 1.

### **Awareness-raising and training programmes.**

83. The *Länder* offer training and support activities for violence prevention in schools where it is needed, in most cases in cooperation with independent youth welfare work funding institutions. Annex 1 contains further education activities of the *Länder* with a specific reference to child protection. These range from a *Land*-wide child protection out-patient clinic, targeted training programmes and events, through to incorporating the topic into the training of specialists. See sections 1g and 10d of this Report for additional further and advanced training activities.

### **Cooperation with the UN.**

84. The Federal Government is committed to the protection of children in the UN, working closely with various UN mechanisms to this end, in particular with the mandate of the UN Special Representative of the Secretary-General on Violence against Children, and that of the UN Special Representative of the Secretary-General for Children and Armed Conflict. It also includes visits by the Special Representatives to Germany, in which, amongst other things, the global study on violence against children was discussed, as was financial support for the mandates of the two Special Representatives.

### **Statistical data.**

85. The number of reported cases of maltreatment of those under one's care in the age group of under 6-year-olds fluctuated between 3.8 and 4.5 per 10,000 of the age group in the population between 2010 and 2016, but ultimately remained at approximately the same level. The number of mistreatments reported fluctuated in the same period between 4.2 and 3.9 per 10,000 in the age group of 6 to under 14-year-olds, which shows a downward trend. Further statistical information can be found in Annex 2.

### **b) Measures to prohibit and eliminate all forms of harmful practices, including, but not limited to, female genital mutilation and early and forced marriages (art. 24 para. 3)**

86. Female genital mutilation (section 226a of the Criminal Code – *Strafgesetzbuch* – StGB) was explicitly inserted into the German Criminal Code as a separate offence on 28 September 2013, this also being in order to emphasise the particular significance of these offences. Offences committed abroad are furthermore punishable if the offender is German at the time of the offence, or if the offence is directed against a person who has his or her domicile or habitual residence in Germany at the time of the offence (section 5 No. 9a (b) of the Criminal

Code). An amendment to the Passport Act entered into force on 15 July 2017 in order to make infringements abroad more difficult. Anyone who wishes to travel abroad with girls or women in order to have genital mutilation carried out there is in future threatened with the withdrawal of their passport. The measure serves to prevent so-called “holiday circumcisions”. Families living in Germany travel to their countries of origin for this purpose during the holidays in order to have genital mutilation performed on the girls there.

87. Another focus is awareness raising among the medical profession. In cooperation with the German Medical Association and others, the BMG has for example ensured that recommendations for dealing with female patients affected by genital mutilation have been developed and disseminated.

Family and sex education-related topics, including female genital mutilation, are incorporated in regular further training courses for the responsible teachers and specialists in the school assistance system. Overcoming these harmful practices has been anchored as a strategic goal of Germany’s international cooperation on several occasions, and also forms a focus of humanitarian health assistance. See Annex 1 for more information on this and on measures at *Land* level.

88. The “Empirical Study on Female Genital Mutilation in Germany” that was funded by the BMFSFJ presented for the first time figures on female genital mutilation in Germany in February 2017.<sup>23</sup> According to estimates contained in the study (based on the methodology proposed by the European Institute for Gender Equality – EIGE), the number of girls aged under 18 at risk of female genital mutilation in Germany (without German citizenship) was between 1,558 and 5,684 as per 31 December 2015.

89. Based on the results of the study, and in line with the recommendations of the European Commission on the abolition of female genital mutilation of 15 November 2013, a pilot project was launched in October 2017 to provide information on aspects of female genital mutilation in refugee accommodations, including health, asylum and criminal law.

90. The Federal Government ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) on 12 October 2017. The Convention entered into force for Germany on 1 February 2018. Its parties will pay special attention in the implementation of the Convention to women and girls aged under 18 who are victims of or at risk from gender-specific violence.

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<sup>23</sup> <https://www.netzwerk-integra.de/startseite/studie-fgm/>

### **c) Protection from sexual exploitation and sexual abuse (art. 34)**

91. Protection from sexual exploitation and sexual abuse continues to be a focus of the Federal Government's policy on children and youth.

92. A Comprehensive Concept for the Protection of Children and Juveniles against Sexual Violence was presented in 2014, and was partly based on the recommendations of the Round Table on "Sexual Child Abuse in Dependency and Power Relationships in Private and Public Institutions and in the Family". It aimed to bring about improvements in criminal law, criminal procedure, the right to protection, counselling and support of persons affected by sexual violence, as well as protection in the digital media. The measures of the Comprehensive Concept were largely implemented in the last legislative period.

93. The 49th Criminal Law Amendment Act (*Strafrechtsänderungsgesetz*), which came into force on 27 January 2016, introduced numerous improvements in criminal law. These are described in greater detail in Annex 1. Reference is also made to the measures described in section 5a. Particular mention should furthermore be made of the introduction of a legal entitlement to psychosocial proceedings support, especially for children and juveniles who have been victims of a serious sexual or violent offence (see section 10f), the establishment of a federal coordination office of specialised counselling centres to combat sexualised violence in childhood and adolescence (see below), and the establishment of a network to combat the abuse and sexual exploitation of children on the Internet (see section 10a). The implementation of the Comprehensive Concept was coordinated with representatives of the Federation, the *Länder* and NGOs, amongst others, in the Federation-*Länder* Working Group (B-L-AG) "Protection of children and juveniles against sexualised violence and exploitation".

94. Some of the *Länder* have also adopted action plans or strategies to protect children and juveniles from sexual violence. Further details are given in Annex 1.

#### **Programmes for the prevention of sexual violence.**

95. The Federation and the *Länder* implemented various measures in the period under report in order to improve prevention and intervention in cases of sexual violence against children and juveniles.

96. The nationwide initiatives by the names of "Dare to!" (*Trau Dich!*) and "School against Sexual Violence" (*Schule gegen sexuelle Gewalt*) focus on schools as an important venue for protection against sexual violence. In the "Dare to!" prevention initiative of the BMFSFJ and

the Federal Centre for Health Education, children aged between eight and twelve are educated and encouraged in age-appropriate schemes with regard to their right to protection from sexual violence through individual collaborations with the Federal *Länder*. The initiative had reached nearly 56,000 children in nine Federal *Länder* as per the end of 2018. Parents and professionals are also approached by the initiative, and the participating schools are networked with regional assistance and counselling services. The initiative will continue until 2022.

97. The nationwide “School against Sexual Violence” initiative of the Independent Commissioner for Child Sexual Abuse Issues supports schools together with all Federal *Länder* in developing concepts for protection against sexual violence. A specialist portal provides head teachers and school staff with practical guidance and information specific to the Federal *Länder*.<sup>24</sup> All 30,000 general education schools throughout Germany received an information folder from the initiative from the autumn of 2016 until 2018, and raised awareness for it at public events.

98. At the structural level, the Standing Conference of Ministers of Education and Culture of the *Länder* (KMK) updated its list of measures for the prevention of sexual abuse in February 2013.<sup>25</sup> The Conference has appointed a rapporteur on issues including sexual violence in schools, who is involved in various committees as a representative of the *Länder*.

99. The nationwide “BeSt – *Beraten und Stärken* (Counselling and empowering)” pilot project, which was launched in 2015, aims to improve the protection of girls and boys with disabilities against sexualised violence in facilities. 65 (partly) residential facilities catering for persons with disabilities had taken part in the pilot project up to the beginning of 2018. The project provided training for managers and employees, (further) developed child protection concepts, and conducted prevention training for the girls and boys living there.

100. Annex 1 contains a detailed description of the measures carried out by the Federation and the *Länder* to prevent and intervene in sexual violence, including in child and youth welfare facilities.

### **Counselling and treatment services.**

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<sup>24</sup> [www.schule-gegen-sexuelle-gewalt.de](http://www.schule-gegen-sexuelle-gewalt.de)

<sup>25</sup> [https://www.kmk.org/fileadmin/veroeffentlichungen\\_beschluesse/2010/2010\\_04\\_20-Handlungsempfehlungen-Vorbeugung-sexueller-Missbrauch\\_2013.pdf](https://www.kmk.org/fileadmin/veroeffentlichungen_beschluesse/2010/2010_04_20-Handlungsempfehlungen-Vorbeugung-sexueller-Missbrauch_2013.pdf)

101. The Federal Government is committed to improving access to specialised counselling for those affected by sexualised violence in childhood and adolescence. The Federal Coordination of Specialised Counselling against Sexualised Violence in Childhood and Youth (BKSF) was established in 2016 with this in mind. Specialised counselling centres provide support and advice to those affected, their relatives and institutions. The BKSF is committed to providing needs-based, long-term funding to specialised counselling centres and to closing gaps in the provision of services. Care that is not tailored to needs currently exists primarily in rural areas and for vulnerable groups, such as people with disabilities or with a migration background. As a political representation, the BKSF bundles the interests of the specialised counselling centres, supports them on the ground in setting up and expanding them, and promotes the development of common quality standards.

102. Annex 1 contains a description of the existing structures of specialised counselling against sexualised violence in childhood and adolescence in individual *Länder*, as well as measures taken by the *Länder* to improve access for those affected.

### **The Office of the Independent Commissioner for Child Sexual Abuse Issues.**

103. In December 2018, the Federal Government adopted the concept for the sustainable strengthening of the structures for the protection, prevention and intervention against sexualised violence in childhood and adolescence and thereby consolidated the office of the Independent Commissioner, including the valuable work of the Council of Affected Persons that is hosted there. In addition, the Independent Inquiry into Child Sexual Abuse, which is located at the Commissioner's office, was expanded until the end of 2023. The Commission is supposed to continue to provide information on the extent, the reasons and the consequences of sexualised violence against minors, to hear those affected, to indicate pathways towards acknowledging of the harm done, to identify research deficits, and to make recommendations on child protection, including on the investigation of sexualised violence in institutions.

### **Criminal prosecution.**

104. The criminal prosecution authorities in Germany are obliged as a matter of principle to take action against all prosecutable criminal offences if there are sufficient factual grounds for doing so. The criminal prosecution authorities must investigate the facts as soon as they become aware of the suspicion of a criminal offence, and are obliged to conduct the entire criminal proceedings, including the investigation procedure, expeditiously.

105. The Police Crime Statistics recorded 11,547 cases of sexual child abuse in Germany in 2017, around 75% of which concerned girls and 25% boys. Further details can be found in Annex 2.

**d) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (arts. 37 (a) and 28, para. 2)**

106. The legal entrenchment of the child's right to a non-violent upbringing in the Civil Code (BGB) is presented in the Third and Fourth State Party Reports.<sup>26</sup> In addition, the comments in the Second Report are referred to<sup>27</sup>, section B.I.1 of the Common Core Document, as well as sections 5a and 6b of the present Report.

**e) Measures to promote the physical and psychological recovery and social reintegration of child victims (art. 39)**

107. The Crime Victims Compensation Act (*Opferentschädigungsgesetz – OEG*) still applies in Germany. This Act entitles individuals, including children, who have suffered damage to their health as a result of an intentional, unlawful act of violence to receive benefits.<sup>28</sup> These include medical treatment services, rehabilitation services, a nursing care allowance, pension benefits, and compensation for occupational injury.

108. As was agreed in the Coalition Agreement, the Federal Government is planning a comprehensive reform of this area of the law. The intention is, inter alia, to provide social compensation to victims not only of physical violence but also of psychological violence and of acts of terror. In addition, immediate and emergency assistance is to be made available quickly, on a low-threshold basis, and unbureaucratically. This also includes rapid access to outpatient trauma clinics, which is to be guaranteed for all groups of individuals and across the board. The situation of victims of sexual violence is also to be improved. Further information on the Crime Victims Compensation Act is provided in section 10e.

109. The Sexual Abuse – Supplementary Assistance System (EHS) Fund, set up in May 2013, provides individual subsidiary assistance to help alleviate the existing health impairment suffered by those affected by sexual violence during their childhood and youth. Originally limited to three years, the EHS will continue due to the ongoing need for low-threshold, needs-based, subsidiary assistance.

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<sup>26</sup> para. 163 et seq. CRC/C/DEU/3-4

<sup>27</sup> para. 388 et seq. CRC/C/83/Add. 7

<sup>28</sup> Cf. also para. 504 CRC/C/83/Add. 7

#### **f) The availability of helplines for children**

110. For many years, the Federal Government has been supporting the largest free and anonymous nationwide helpline for children and young people “*Nummer gegen Kummer*” (Number against Worries). Specially-trained volunteer counsellors support callers in dealing with everyday problems and facing difficult life situations. The “Sexual Abuse Help Portal” and the free, anonymous “Helpline Sexual Abuse” provide information to victims and survivors at all ages, their relatives and persons from their social environment, as well as professionals. The “Violence against Women” helpline offers a counselling and referral service to women and girls affected by violence, and especially also victims of human trafficking. 2018 saw the launch of the “Hit Pause!” project, which is a special service for children and juveniles with caring responsibilities. Further details can be found in Annex 1.

### **6. Family environment and alternative care (arts. 5, 9-11, 18 paras. 1 and 2, 20, 21, 25 and 27)**

#### **a) Parental guidance in a manner consistent with the evolving capacities of the child (art. 5)**

111. The concept of “parental custody” was introduced by the Act amending the Law on Parental Custody as per 1 January 1980, and replaced the previous concept of “parental authority”. The term “parental custody” was intended to express more clearly the nature of the parent-and-child relationship, and to clarify the essence of parents’ responsibility towards children. (Bundestag printed paper – BT-Drs. – 8/2788, p. 36). Replacing the term “parental custody” with the term “parental responsibility” was discussed as part of the 1998 reform of the law of parent and child, which brought about fundamental changes in the law of parent and child. This was ultimately dispensed with because, in accordance with the German understanding of the law, the terms vary in terms of what is covered by them (cf. Bundestag printed paper 13/4899, p. 58). Whereas parental custody includes the personal and property-related custody of the child, as well as the right to represent him or her, parental responsibility includes not only parental custody, but also contact with the child, the maintenance obligation vis-à-vis the child, and general parental responsibility. If, therefore, a court ruling assigns custody of the child to one parent alone, for example after the parents have separated, the other parent loses parental custody, but is not automatically absolved of his or her parental responsibility. By its very nature, parental custody constitutes a right to provide care, or an obligation that exists for the protection and in the interest of the child. The obligation-entailing na-

ture of parental custody was clarified by the wording of section 1626 subsection (1) of the Civil Code, as amended by the Law of Parent and Child Reform Act (*Kindschaftsrechtsreformgesetz* – KindRG) of 16 December 1997, which defines parental custody as “the duty and the right [of the parents] to care for the minor child”.

**b) Parents’ common responsibilities, assistance to parents and provision of childcare services (art. 18)**

112. Reference is made to section 8a with regard to the expansion of childcare facilities and services.

113. Family education (section 16 of Book VIII of the Social Code) provides an important service in Germany to support parents in performing the task of raising their child. The aim is to facilitate access to education for children in disadvantaged families and to promote their individual development and societal participation. See Annex 1 for more information on the federal programmes entitled “Parental Opportunity II – Getting Families into Education Early” and “Strong Parent Support Networks for Refugee Families”. The numerous schemes at *Länder* level for education, counselling and prevention for families – be it via targeted programmes, specific networks or through youth welfare offices and *Land* Counselling Centres – are also discussed there.

**c) Separation from parents (art. 9)**

114. The Third and Fourth State Party Reports deal with the 2009 reform of family court proceedings.<sup>29</sup> The evaluation of the reform has shown that the legislature’s reform objectives, including strengthening conflict-preventing and conflict-resolving elements in family court proceedings, have very largely been achieved.<sup>30</sup>

115. The Federal Government commissioned the study entitled “The best interests of the child and the right of access” in 2015 in order to explore how children whose parents have separated or divorced can be enabled to grow up well. The research focuses on the best interests of the child.

**d) Family reunification (art. 10)**

116. The law in Germany allows minor unmarried children of foreign nationals to reunite their families as a matter of principle by way of family reunification up to the age of 18. The right to family reunification relates primarily to the nuclear family. In addition, other family

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<sup>29</sup> para. 133 CRC/C/DEU/3-4

<sup>30</sup> (cf. Stefan Ekert/Bettina Heiderhoff, *Die Evaluierung der FGG-Reform*, 2018; retrievable at [www.bmjv.de](http://www.bmjv.de))

members can reunify in order to avoid exceptional hardship. Family reunification of single children up to the age of 18 to join their parents is provided for in section 32 of the Residence Act (*Aufenthaltsgesetz – AufenthG*), and for parents to join their minor children in section 36 subsection (1) of the Residence Act. Section 32 of this Act applies, inter alia, to the minor's immigration to join family members whose asylum has been recognised or who are refugees under the Geneva Refugee Convention, to join individuals who have a residence permit for the purpose of training or gainful employment, including researchers, and to join parents who have a settlement permit or a permanent EU residence permit. Family reunification to join beneficiaries of subsidiary protection is regulated in section 36a of the Residence Act. It is granted for humanitarian reasons, and is limited to 1,000 persons per month. Only if this number is exceeded a selection does have to be made. The best interests of the child must be given special consideration in this decision. Humanitarian reasons apply in particular when unmarried minor children are affected. The hardship arrangement in accordance with sections 22 and 23 of the Residence Act also applies.

**e) Securing the recovery of maintenance claims for the child (art. 27 para. 4)**

117. The entry into force of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations in August 2013, and of the Hague Convention of the same date on the International Recovery of Child Support in August 2014 made the cross-border enforcement of child maintenance claims easier. This leads to considerable improvements and simplifications in the enforcement of maintenance claims for children across borders through the modern mechanisms for the enforcement of maintenance claims that are now applicable. These rules are supplemented by the EC's Maintenance Regulation of 2009 and the domestic German implementing provisions that are contained in the Foreign Maintenance Act (*Auslandsunterhaltsgesetz – AUG*) of 2011, both of which entered into force on 18 June 2011.

118. The enforcement of child maintenance claims is also being further improved and facilitated at national level. As early as since 2016, the minimum maintenance amount, which is to be guaranteed as a minimum for minor children, has no longer been defined on the basis of calculations related to tax law, but on the basis of separate calculations of the minimum subsistence level of minor children. This ensures that minors have a minimum entitlement to maintenance. In addition, it is currently being examined whether the existing child maintenance law still adequately reflects today's social developments, especially if both parents participate more in child care and in working life.

## **f) Children deprived of a family environment (art. 20)**

### **Placement of children in foster families.**

119. In accordance with art. 6 para. 2 of the Basic Law, care and upbringing of children are the natural right of the parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty. If parents are unable to perform their duties, the State's role of guardian intervenes. The yardstick for both the parental right and for the State's role of guardian is constituted by the best interests of the child. Separation of the child from his or her parents against the will of the parents is however subject to strict conditions under the law with regard to parental rights. In accordance with art. 6 para. 3 of the Basic Law, and based on this section 1666 of the Civil Code, it is only permissible on the basis of a court ruling, and if the physical, psychological or emotional well-being of the child is at risk. It must also not be possible to counter the risk in another way, including through public support measures (section 1666a subsection (1) of the Civil Code). The law thus expresses the notion that the separation of the child from his or her parents should only be the last resort, given its incisive impact. In proceedings concerning a risk to the best interests of the child, the family court is to discuss with the parents and the youth welfare office how the endangerment of the best interests of the child can be averted.

120. The placement of children in foster families constitutes help with upbringing in accordance with section 27 of Book VIII of the Social Code. Their structure is governed by section 33 of Book VIII of the Social Code. Whether placement in a foster family constitutes appropriate assistance for the upbringing of the child is examined by the specialists in accordance with the specific circumstances of the individual case in question, taking into account the proportionality and involvement of the parents and of the child or juvenile concerned, thereby safeguarding the best interests of the child. The suitability of family support benefits should always be considered as a matter of priority. The aim of counselling and support is to improve the educational conditions in the family of origin within a reasonable period of time with regard to the development of the child or juvenile so that they can bring the child or juvenile up again themselves. Accompanying counselling and support for the families are to be provided during this period in order to promote the child's or juvenile's relationship with the family of origin. If a sustainable improvement in the upbringing conditions in the family of origin cannot be achieved within this period, a different life perspective that is conducive to the well-being of the child or juvenile and designed to last is to be worked out with the persons involved (section 37 subsection (1) of Book VIII of the Social Code).

121. Separation of the child from his or her parents ordered by the family court need not be permanent. In fact, it must be cancelled by the court if there is no longer any danger to the best interests of the child (section 1696 subsection (2) of the Civil Code). The court is to review more prolonged custody measures ex officio at suitable intervals (section 166 subsection (2) FamFG).

122. Annex 2, sections 6.2 and 6.4, contains statistical information on the take-up of help with upbringing and the transfer of parental custody to the youth welfare office or to a third party as a guardian or curator in accordance with section 1666 subsection (3) No. 6 of the Civil Code.

### **Support for families.**

123. There are various training and support programmes available at *Länder* level, both for foster parents and for the original parents. Further information can be found in Annex 1. Reference is also made to section 6b.

### **Equipment of child and youth welfare facilities.**

124. Help with upbringing in accordance with sections 27 et seqq. of Book VIII of the Social Code can also be provided in a residential child and youth welfare facility. The legislative requirements for a licence to operate such a facility are provided at federal level in section 45 of Book VIII of the Social Code.

### **Placement of children in other countries of the European Union.**

125. In accordance with section 27 subsection (2), sentence 3, of Book VIII of the Social Code, help with upbringing in accordance with sections 27 et seqq. of Book VIII of the Social Code is to be provided within Germany as a matter of principle; it may only be provided abroad if this is necessary in accordance with the assistance planning in order to achieve the objective of the assistance in the individual case. The implementation of intensive educational measures abroad is subject to strict stipulations laid down in Book VIII of the Social Code.

126. Placement of a child in another EU Member State is carried out in accordance with art. 56 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (“Brussels IIa Regulation”). Accordingly, the prior consent of the competent local authorities must be obtained as a

matter of principle for the placement of children and juveniles abroad (consultation procedure). The Brussels IIa Regulation is currently under revision. Germany is actively involved in the negotiations.

**g) Periodic review of placement (art. 25)**

127. Reference is made to the comments in the Third and Fourth State Party Reports.<sup>31</sup>

**h) Adoption (art. 21)**

128. The Federal Constitutional Court ruled on 19 February 2013 that an adopted child may be adopted by the civil partner of the first adopting partner. The legislature adapted the written law accordingly by enacting the Act Implementing the Federal Constitutional Court's Ruling on Successive Adoption by Civil Partners (*Gesetz zur Umsetzung der Entscheidung des Bundesverfassungsgerichts zur Sukzessivadoption durch Lebenspartner*) of 20 June 2014. Since the Act introducing the Right to Marriage for Same-sex Couples (*Gesetz zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts*) came into force on 1 October 2017, same-sex couples, like all other married couples, may only adopt a child jointly.

129. Reference is made to section B.I.3.c of the Common Core Document.

**i) Illicit transfer and non-return (art. 11)**

130. The legal situation in the case of child abduction is portrayed in detail in the Second as well as the Third and Fourth Reports.<sup>32</sup> The “Central Contact Point for Cross-border Family Conflicts (ZANK)” acts as a contact point for individuals concerned and government agencies.

**j) Measures to ensure the protection of children with incarcerated parents and children living in prison with their mothers**

131. If a child is separated from a parent due to incarceration, it must be ensured that regular contacts are possible in line with the child's sense of time in order to take account of the best interests of the child. The *Länder* are responsible for the prison system. Annex 1 contains examples of *Länder* prison legislation and special assistance and support measures for families with an incarcerated parent. It also contains details of prison facilities where mothers can be accommodated with their children.

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<sup>31</sup> para. 110 et seqq. CRC/C/DEU/3-4

<sup>32</sup> paras. 454 et seqq. CRC/C/83/Add. 7; paras. 137 et seq. CRC/C/DEU/3-4

## **7. Disability, basic health and welfare (arts. 6, 18 paras. (3), 23, 24, 26 and 27 paras. 1-3 and 33)**

### **Measures taken to ensure the dignity, self-reliance and active participation in the community of children with disabilities (art. 23)**

132. Information regarding the Federal Government Commissioner for Matters relating to Persons with Disabilities can be found in section B.II.3.i of the Common Core Document.

#### **Inclusive education.**

133. The declared aim of the Federation and the *Länder* is to further improve the situation of learning together, which is why inclusion is being promoted as a priority. The aim is to ensure equal access to education for all.

Section 8a contains more details on early childhood education, in which amongst other things inclusive education in child day care centres is being enhanced with the federal programme entitled “Language child day care centres: Because language is the key to the world”.

134. School education is under the sovereignty of the *Länder*, which individually regulate inclusion in the *Land* legislation, and are responsible for providing schools with financial resources.<sup>33</sup> The number of pupils with special educational support attending general schools has risen from roughly 84,700 in 2007/08 to almost 206,000 in 2016/17 since the Convention on the Rights of Persons with Disabilities was ratified. Of the total of 523,800 pupils receiving special educational support, around 318,000 (60.7%) were taught in special needs schools in the 2016/17 school year. This means that the special needs school rate has fallen significantly since 2007 (84.3%). There is an increased need for action with regard to the school-leaving qualifications of pupils receiving special educational support in special needs schools. A national average of 71.3% left special needs schools in 2016 with no *Hauptschule* school leaving certificate or higher (2007: 76.7%). Detailed statistical information is contained in Annex 2.

135. The foundations for changes in the teacher training system that do justice to the changed qualification profile of teachers working in inclusive schools have already been laid by the outline specifications entitled “Teacher Training for a School of Diversity – Joint Recommendation of the German Rectors’ Conference and the KMK” (2015).

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<sup>33</sup> cf. resolution of the KMK entitled “*Inklusive Bildung von Kindern und Jugendlichen mit Behinderungen in Schulen*” (2011).

### **Combating violence against children with disabilities.**

136. Children and juveniles with disabilities, as a particularly vulnerable group, also benefit from violence protection concepts and from the possibility of lodging complaints inside and outside the facility. The installation and implementation of participation procedures and complaint mechanisms to safeguard the rights of children and juveniles in facilities as a prerequisite for granting an operating permit, as provided for in section 45 subsection (2) No. 3 of Book VIII of the Social Code, is dealt with in section 1f. It must also be ensured that the facility's funding institution develops, applies and regularly reviews a violence protection concept in order to safeguard the rights and welfare of children and juveniles in the facility.

137. The design of the facility that is to be submitted in accordance with section 45 subsection (3) No. 1 of Book VIII of the Social Code must provide information on measures to develop and secure quality. These measures relate to the service and quality development agreements entered into by the public funding institution and the facility provider (sections 78a et seqq. of Book VIII of the Social Code), which also entail measures for protection of violence for children and juveniles in the respective facility. Protection against violence, in particular for women and girls with disabilities, is also entrenched in NAP 2.0.

### **Information and support for families with children with disabilities who have a migration background.**

138. This target group receives information and support through various measures such as events or advisory services. Cf. Annex 1 for details.

#### **a) Survival and development (art. 6 para. 2)**

139. Reference is made to section 3c.

#### **b) Health and health services, in particular primary health care (art. 24)**

140. Promoting and maintaining children's health and further improving medical care is a concern of the Prevention Health Care Act, which entered into force in 2015. Amongst other things, its aim is to strengthen the settings of child day care centres and schools and to make more disease prevention and health promotion services available. The starting points for the initiatives are the results of the study on children's and juveniles' health in Germany

(KIGGs), which the Robert Koch Institute (RKI) presented for the third time on behalf of the Federal Government in 2018.<sup>34</sup>

141. Diseases that are contributed to by an unhealthy lifestyle consisting of an unbalanced diet and lack of exercise are to be significantly reduced with the National Action Plan entitled “IN FORM – Germany’s national initiative to promote healthy diets and physical activity” of the BMG and the Federal Ministry of Food and Agriculture (BMEL). The *Länder*, local authorities and civil society are also involved in the implementation of the action plan. Within the framework of IN FORM, the BMEL has for instance promoted and established the networking centres for school and child day care centre catering in the *Länder*. Together with the National Quality Centre for Nutrition in Child Day Care Centres and Schools (NQZ), founded by the BMEL in 2016, they are doing important work to improve catering in child day care centres and schools. A wide variety of IN FORM projects and materials, as well as activities of the *Länder*, promote nutrition education, thus supporting healthy growing up. The Act on the Extension of Quality and Participation in Child Day Care (Gute-KiTa-Gesetz) also envisages that “measures and wholistic education in the fields of child development, health, nutrition and physical activity” may be promoted,

142. Amongst other things, the Action Plan will be further developed with a focus on the first 1,000 days of life and on the special needs of children. With a view to ensuring healthy diets for children, the BMEL is particularly committed in the years to come to the widespread application of nutrition education modules, the nutrition-related further training of child day care centre staff and teachers, the closer linking of meals in child day care centres and schools with nutrition education, the dissemination of the established quality standards of the German Nutrition Society (DGE) for school and child day care centre catering, as well as the intensification of basic research into child and youth nutrition. The BMG is also committed to the prevention of overweight and obesity in children with the funding priority “Prevention of childhood obesity”.

143. A central concern of the Equal Health Opportunities Cooperation Network, founded at the initiative of the Federal Centre for Health Education, is to enhance health promotion and disease prevention in children, among others, with particular emphasis being placed on equal health opportunities. Integrated municipal health strategies are designed to improve the health opportunities of people in disadvantaged situations in cities, municipalities and rural districts.

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<sup>34</sup> <https://www.kiggs-studie.de>

144. The KMK has created trend-setting framework conditions for schools with a variety of recommendations and resolutions, including on health education, health promotion and disease prevention, consumer education and competence, and school sports.<sup>35</sup> A healthy diet forms part of the school curricula, and is addressed in various subjects, as well as in cross-curricular and extracurricular activities. To this end, the Federal Centre for Nutrition (BZfE) provides a wide range of teaching materials and accompanying further training modules for teaching and other pedagogical specialists.

145. The importance of promoting a healthy diet and physical activity in early childhood education is reflected in the corresponding (statutory) educational mandates and concepts of the *Länder*, and in various other measures. Annex 1 contains some appropriate examples.

146. When it comes to also enabling children from disadvantaged families to enjoy a healthy lifestyle, reference should also be made from the outset to Early Childhood Intervention (see section 5a). Reference is made to section 7c with regard to the Recommendation on the Monitoring of Follow-on Formula Milk Products. Comprehensive statistics on children's health are provided in Annex 2.

**c) Efforts to address the most pressing health challenges, to promote the physical and mental health [...] of children and to prevent and deal with communicable and non-communicable diseases**

147. Section 6f contains information on the placement of children in foster families, which constitutes help with upbringing in accordance with section 27 of Book VIII of the Social Code. Annex 1 contains an explanation of the stipulations for the placement of children in psychiatric hospitals, using *Hamburg* as an example.

**Protection of children during measures involving deprivation of liberty in clinics and homes.**

148. The Act on the Introduction of a Family Court Reservation of Approval for Measures involving the Deprivation of Liberty of Children (*Gesetz zur Einführung eines familiengerichtlichen Genehmigungsvorbehaltes für freiheitsentziehende Maßnahmen bei Kindern*) entered into force on 1 October 2017 with the aim in mind of improving the protection of children who are in psychiatric hospitals or facilities of child and youth welfare or of assis-

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<sup>35</sup> Health education: <http://www.kmk.org/bildung-schule/allgemeine-bildung/faecher-und-unterrichtsinhalte/weitere-unterrichtsinhalte/gesundheitserziehung.html>; consumer education: <https://www.kmk.org/fileadmin/Dateien/pdf/PresseUndAktuelles/2013/Verbraucherbildung.pdf>; school sports: <http://www.kmk.org/dokumentation/veroeffentlichungen-beschluesse/bildung-schule/sport.html>).

tance for people with disabilities. Measures involving deprivation of liberty – such as bed bars, fixations or sedative drugs – may be necessary in individual cases in order to protect a child from self-endangerment, or to protect third parties. The requirement for authorisation introduced by the addition of a subsection (2) to section 1631b of the Civil Code guarantees that parental consent to measures carried out on their child involving deprivation of liberty will be reviewed in future by an independent body, namely the family court. This ensures that these incisive measures are applied only as a last resort in order to avert an acute risk of self-harm or of harm to others. As part of the approval procedure, the family court must, amongst other things, obtain a written certificate from a doctor specialising in child and youth psychiatry and psychotherapy who has examined the child personally. At the same time, the child is appointed a procedural adviser in each individual case, who identifies what his or her interests are and asserts them in the proceedings. The legislature has also laid down a maximum duration for the measures involving deprivation of liberty, subject to an extension in individual cases authorised by the courts.

### **Psychological counselling and support.**

149. Children and juveniles in Germany, as well as their families, have access to a wide range of psychological counselling and support services, as well as to medical care for mental illnesses, including in various healthcare facilities. These include the public health service, represented by the paediatric and youth medical services, as well as the in-patient medical sector (e.g. clinics for child and youth psychiatry and psychotherapy, clinics for paediatric psychosomatics), and the out-patient sector (including registered doctors for child and youth psychiatry and psychotherapy, paediatric and youth psychotherapists, paediatric and youth physicians, medical care centres, social paediatric centres and interdisciplinary treatment in institute out-patient departments for paediatric and youth psychiatry). Examples of psychological advice and support can be found in Annex 1. General family support and counselling activities are included in section 6b.

### **Diagnosis and treatment of attention deficit hyperactivity disorders (ADHD and ADD).**

150. ADHD and ADD are diagnosed by specialised doctors and psychotherapists with special expertise in children and juveniles with behavioural disorders. To ensure evidence-based diagnostics and therapy, a medical-scientific guideline of the highest level of development, adopted in May 2017, is available to them for guidance.<sup>36</sup> After the diagnosis has been made,

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<sup>36</sup> <https://www.awmf.org/leitlinien/detail/II/028-045.html>

the treatment takes place in accordance with the guidelines on several levels within an individually-adapted, multimodal treatment concept. This may include counselling for parents and other people close to the child or juvenile, psychotherapeutic and psychosocial interventions, as well as drug treatment. The decision on the diagnostic and therapeutic measures indicated in the individual case is made by the treating physician on his or her own responsibility, in consultation with the parents and the affected child or juvenile, in accordance with professional law. The *Land* Medical Associations are responsible for ensuring that the law on the exercise of the medical profession is observed.

151. With regard to drug treatment, the Federal Joint Committee (G-BA), which is the supreme decision-making body of the joint self-administration of physicians and health insurance funds in Germany, stipulated stricter binding requirements for the diagnosis of ADHD and ADD and the prescription of medicinal products containing methylphenidate in September 2010. Further details can be found in Annex 1.

152. A conference of experts held in December 2014 also contributes to the further improvement of medical care for children, juveniles and adults with ADHD and ADD, as a result of which the “Central ADHD Network”, together with professional associations and organisations, has developed new benchmarks taking care of people with ADHD and ADD.<sup>37</sup>

### **Inattentiveness in class and diagnosis of mental disorders**

153. Inattentiveness in class can have various causes, including – among many others – psychological problems affecting the child. Teachers and other professionals in schools and school facilities play an important role in identifying social, pedagogical or psychological problems in the school environment, and in providing pupils and their parents with initial advice in this regard. School psychology services and social psychiatry services can also contribute to the assessment of psychological problems in children. Reference is made to the above comments on the diagnosis and treatment of mental disorders in children.

### **Measures against the stigmatisation of mentally-ill children.**

154. Psychological abnormalities in childhood and adolescence are by no means unusual. According to the findings of KiGGs, around 20% of children and juveniles show at least temporary indications of such abnormalities. In addition to ensuring good medical care for the men-

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<https://www.bundesgesundheitsministerium.de/themen/praevention/kindergesundheit/aufmerksamkeitsdefizitsyndrom.html>

tally ill, one goal is to reduce the discrimination and stigmatisation of affected people. The BMG for example supports the Mental Health Action Alliance in this regard. Together with the German Association for Psychiatry and Psychotherapy, Psychosomatics and Neurology (DGPPN), it awards the DGPPN Antistigma Prize on an annual basis. The topic of mental health is also being addressed in schools and child day care centres, for example through initiatives such as Irrsinnig Menschlich e.V. with the project “Are you crazy? Well so what!”.

155. In addition, the BMG is initiating targeted measures under the “Promotion of children’s health” funding priority, particularly aimed at caring for children and juveniles with chronic diseases and mental illnesses.

156. Furthermore, the care of children of mentally-ill parents is to be improved, since children with a mentally-ill parent are at greater risk of developmental and behavioural problems and of developing their own mental illnesses. An interdisciplinary working group that has been meeting since February 2018, composed of representatives from ministries, professional organisations and experts, is to develop proposals to improve the situation of children from families in which at least one parent is mentally ill or addicted. The working group’s final report is expected to be submitted to the German Bundestag in the first half of 2019.

### **Promotion of breastfeeding.**

157. For many years now, the BMEL has been working through the National Breastfeeding Commission (NSK)<sup>38</sup>, as well as via the nationwide “A Healthy Start to Life” network,<sup>39</sup> to promote breastfeeding. The NSK advises the Federal Government, issues guidelines and recommendations, and supports initiatives to remove existing barriers to breastfeeding. The NSK for instance published recommendations in 2017 on behalf of the BMEL to increase the acceptance of breastfeeding in public. The “A Healthy Start to Life” network supports young parents and specialists with uniform nationwide recommendations for action, including on the subject of promoting breastfeeding.

158. The BMEL is already strictly implementing the International Code of Marketing of Breast-milk Substitutes in its area of responsibility by, for example, ensuring that strict requirements for the labelling of breast-milk substitutes are in place when legal standards are drawn up or revised. Furthermore, the BMEL is contributing towards the development of quality standards for breast-milk substitutes.

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<sup>38</sup> [www.bfr.bund.de/de/nationale\\_stillkommission-2404.html](http://www.bfr.bund.de/de/nationale_stillkommission-2404.html)

<sup>39</sup> [www.gesund-ins-leben.de](http://www.gesund-ins-leben.de)

159. The Prevention Health Care Act of July 2015 expanded health screening for children and juveniles and made it prevention-orientated. The updated Children's Guideline, which was adopted by the Federal Joint Committee and which entered into force in September 2016, expressly stipulates that the doctor must advise parents on breastfeeding and infant feeding as part of the screening that takes place during the first seven months of life (U2 to U5).

160. Annex 2 contains a figure providing empirical data on the duration and type of breastfeeding.

#### **d) Reproductive health rights of adolescents**

161. All children and juveniles are entitled to access to age-appropriate sex education. In addition to sex education in schools, which at *Länder* level is the responsibility of the Ministries of Education and Cultural Affairs, the Act on Assistance to Avoid and Cope with Conflicts in Pregnancy (*Schwangerschaftskonfliktgesetz – SchKG*) of 27 July 1992 in Germany provides a legal mandate to the Federal Centre for Health Education, under the professional responsibility of the BMFSFJ. The aim of this legal mandate is to enable all people to deal responsibly, healthily and self-determinedly with sexuality and family planning within a comprehensive framework.

#### **e) Measures to protect children from substance abuse (art. 33)**

162. The Act on the Protection of Children and Juveniles from the Dangers of Consuming Electronic Cigarettes and Electronic Shishas (*Gesetz zum Schutz von Kindern und Jugendlichen vor den Gefahren des Konsums von elektronischen Zigaretten und elektronischen Shishas*) entered into force on 1 April 2016. This reform of the Youth Protection Act placed e-cigarettes and e-shishas, both with and without nicotine, on an equal footing with other tobacco products, and banned their use by minors.

163. Even today, the 2012 National Strategy on Drug and Addiction Policy continues to point the way with a special focus on target group-specific addiction prevention, health promotion and early intervention. Cooperation is to be boosted that especially links youth welfare work, addiction assistance and schools. The Federation, the *Länder*, local authorities, social insurance, welfare associations, public and independent funding institutions, as well as self-help, work together to provide and fund services. There is a nationwide network of over 1,400 addiction counselling centres in Germany, and their confidential counselling services can also be used by juveniles.

164. The Federal Centre for Health Education conducts regular and ongoing nationwide campaigns, aiming to inform children and juveniles in an appropriate manner about the negative consequences of legal and illegal substance abuse and to prevent abuse. Brochures in simple language are also available for people with little knowledge of German, in addition to information in their mother tongue. As a result of increased demand, disease prevention and counselling services for excessive media consumption and online dependence have also emerged.

165. Prevention work in schools is carried out with various extracurricular partners in accordance with the KMK's recommendation entitled "Health Promotion and Prevention in Schools" from 2012. Counselling and further training also help professionals in schools to deal with situations in schools that are relevant under criminal law (e.g. alcohol consumption, sale of drugs); this is regulated by law at *Länder* level.

166. Efforts have been stepped up in the period under report to make services available to the estimated three million children who are affected by the addiction of a parent. An interministerial working party has been set up for this purpose by resolution of the Bundestag (see paragraph 7c).

167. Annex 1 contains information on addiction prevention campaigns of the Federal Centre for Health Education, further measures of the Federation and measures of the Federal *Länder* to protect children from drug abuse as well as counselling and care for children from families affected by addiction.

168. The proportion of juveniles who describe themselves as smokers fell from 12.9% to 7.4% between 2010 and 2016. The proportion of juveniles who consume alcohol at least once per week had fallen to 10% by 2015, having remained constant at 13% to 14% between 2010 and 2012. Details as well as selected medical diagnoses due to drug use by children and juveniles are included in Annex 2.

**f) Social security and childcare services and facilities (arts. 26 and 18 para. 3)**

169. A reform of integration assistance under the Federal Participation Act (*Bundesteilhabegesetz* – BTHG) of 23 December 2016 will come into effect as per 1 January 2020, also resulting in improvements in the benefits available to children with physical and mental disabilities (i.a. including with regard to the use of parents' income and assets).

**g) Standard of living (art. 27 paras. 1-3)**

170. It is a central concern of the Federal Government that all children should be able to grow up with a decent standard of living. It has therefore agreed on a package of measures to combat child poverty, as was agreed in the Coalition Agreement between the parties forming the Federal Government. Material assistance and support for economically-disadvantaged families will be increased with this in mind. This is intended to relieve the burden on low-income families, especially lone parents and families with a large number of children, who are at a higher risk of poverty.

171. With regard to the supplementary child allowance, the package of measures includes an increase in benefits and improvements in the benefit system, as well as improvements in the education and participation package: The supplementary child allowance will be increased, so that – together with child benefit – the child’s needs equal to the material subsistence level to be exempted from taxation, except for benefits in accordance with the Education and Participation Package, are catered for. Moreover, the redesign of the supplementary child allowance is supposed to take account of the particular circumstances of low-income families, especially lone parents. These regulations are intended to ensure that the benefit runs out slowly (and does not suddenly cease being paid altogether) as income rises, and that people are left with more of their own income.

172. Children, juveniles and young adults from low-income families are entitled to various dedicated benefits for education and participation. The improvements in these benefits are to include an increase in the school starter package, the abolition of contributions towards the cost of lunch in child day care centres and schools and in transport to school, as well as general support for learning, regardless of whether there is an immediate risk that the child will not progress to the next grade. In addition, obstacles to the take-up of the benefit are to be removed, including through measures to reduce bureaucracy.

173. The Advance Maintenance Payment Act (*Unterhaltsvorschussgesetz*) was expanded in July 2017, so that maintenance advances are now granted until the child reaches the age of majority (18th birthday), subject to certain conditions. The maintenance advance is a state benefit for children of lone parents. It helps to secure children’s financial livelihood if the other parent does not pay maintenance, or only partially or not regularly. Yet the state only makes advance payments for the defaulting maintenance debtor, i.e. the advance maintenance authorities demand recourse if the defaulting parent is capable.

174. With the Act on the Extension of Quality and Participation in Child Day Care which entered into force on 1 January 2019 the quality and participation in childcare services will be improved.

175. The Coalition Agreement also provides for the introduction of a legal entitlement to full-time childcare for schoolchildren. This is intended to make it easier for parents to work, and thus protect their families from poverty (see also section 8a).

176. The *Länder* take a variety of additional steps in order to ensure that all children grow up with an adequate standard of living; see Annex 1 for more details. Annex 2 contains detailed statistical information.

## **8. Education, leisure and cultural activities (arts. 28-31)**

### **a) The right to education, including vocational training and guidance (art. 28)**

#### **Early childhood education.**

177. Children from the age of three until they start school have been legally entitled since 1996 to receive promotion in a child day care centre in accordance with section 24 subsection (3) of Book VIII of the Social Code. All children who have reached the age of one have also been entitled to early childhood promotion in a day care centre or in-home child day care (section 24 subsection (2) of Book VIII of the Social Code) since 1 August 2013. This entitlement applies to children under the age of one, subject to certain conditions – for example if the parents are in employment or looking for work. The time span of the claim depends on the individual need (section 24 subsection (1) of Book VIII of the Social Code).

178. A demand-orientated care system is needed in order to enforce the legal entitlement. One focus is therefore the expansion of services in child day care facilities and in-home child day care. The Federation contributed a total of roughly 6 bn. Euro towards the expansion of the child day care system in the last legislative period. It has been contributing 845 mill. Euro per year, and EUR 945 mill. from 2017 to 2018, to the operating costs on a permanent basis since 2015. The “Act on the Further Quantitative and Qualitative Expansion of Child Day Care” (*Gesetz zum weiteren quantitativen und qualitativen Ausbau der Kindertagesbetreuung*) entered into force in 2017. It forms the basis of the fourth “Childcare Funding” investment programme. This will enable 100,000 additional pre-school childcare places for children to be created between 2017 and 2021, with an investment volume of EUR 1.126 bn. Qualitative improvements can also be promoted. The Federation has already contributed a total of

3.28 bn. EUR via the three investment programmes on “Childcare Funding” in 2008-2013, 2013-2014 and 2015-2018 for the expansion of childcare places for children aged under three.

179. The efforts undertaken by the Federation, the *Länder* and the municipalities in the last ten years to expand the range of childcare services in line with demand and orientated towards quality, as well as the legal entitlement to a childcare place for children from the age of one, which entered into force in 2013, are having an effect: The national average childcare rate for children under three has doubled since 2006. Demand for child day care services continues to rise. More and more parents are asking for care for their child earlier and earlier. At the same time, birth rates are rising, and families with a refugee background have entered the country whose children also need a childcare place.

180. 762,361 children under the age of three were in child day care in Germany in 2017. This is 42,803 more children than in the previous year. The care rate for this age group was 33.1%. The care rate for children aged from three to five was 93.6% in 2017. The range of care services has also been expanded in recent years for the age group of the over-threes. The number of children in care aged from three to starting school rose from 2,333,326 to 2,374,877 between 2016 and 2017.<sup>40</sup> Annex 2 contains a detailed description of the data on child day care.

181. The BMFSFJ has been working with the Federal *Länder* since 2014 in a quality development process to develop a common basis for child day care in order to improve its quality. The Conference of Youth and Family Ministers of the Federal *Länder* adopted key points for a Quality Development Act in May 2017, based on the interim report entitled “Further Developing and Financing Early Education” from 2016. With the Act on the Extension of Quality and Participation in Child Day Care from 14 December 2018 following on from this, the Federation supports the *Länder* until 2022 with overall EUR 5.5 bill. to implement measures to develop quality in child day care services and to reduce contributions by parents up to freedom of charge.

182. Annex 1 contains an overview of the programmes with which the Federation is helping the *Länder*, municipalities and funding institutions to enhance the quality of child day care. Also presented are legal and other measures taken by the *Länder* in early childhood education, especially those aimed at creating equal educational opportunities.

### **Comparable quality standards in schools.**

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<sup>40</sup> See also the Federal Government’s annual publication entitled “*Kindertagesbetreuung Kompakt. Ausbaustand und Bedarf*” regarding the status quo of child day care.

183. An essential task of the KMK in the school sector is to contribute towards creating equivalent living conditions throughout Germany. Uniform, comparable quality standards are being sought in schools in order to promote the mutual recognition of certificates and diplomas. The *Länder* coordinate closely among one another in this regard.

184. The educational standards of the KMK for the various qualifications in central teaching subjects provide a binding framework of skills which pupils should master at a specific point in their educational biography. In addition, there is a broad consensus across the borders of the *Länder* regarding the content taught in schools. Pupils can receive support from the receiving school if they transfer to a school in another *Land* and need to catch up on certain subjects.

#### **A school system with multiple levels.**

185. The three-tiered secondary school system hardly exists in Germany any more. Many *Länder* have a two-tier system consisting of grammar schools (*Gymnasien*) and a type of school that integrates the three traditional school tiers (comprehensive school). Other *Länder* have both grammar schools and a type of school that combines the *Hauptschule* and *Realschule* tiers. Others, in turn, have a large number of integrative systems in addition to the traditional types of school. In addition, the *Länder* are taking a wide range of other measures to make it easier for pupils to transfer between the tiers of the school system in order to ensure that all pupils achieve the highest possible qualification through targeted individual support. The entitlement to attend the upper grammar school level can be acquired at all types of secondary school in the general education system, providing that they achieve the intermediate school leaving certificate, and their performance is adequate. The proportion of *Hauptschule* school-leavers has fallen significantly in recent years in favour of intermediate school leaving certificates (from 25.2% of the school-leaving cohort in 2010 to 20.8% in 2016). The trend towards higher qualifications is also continuing in school types with several levels of education. The proportion of people entitled to study has risen nationwide to over 50% of the peer population since 1992. In addition, more and more juveniles are acquiring higher school-leaving qualifications at vocational schools after leaving general education. These schools are thus making a major contribution towards enhancing fair opportunities and education. Further statistical information can be found in Annex 2.

#### **Children from ethnic minorities in schools.**

186. The actions focus primarily on preserving the cultural identity of Sinti and Roma and improving their social integration in education. In 2015, the Remembrance, Responsibility and Future Foundation (EVZ), together with representatives of the *Länder*, the Federation and NGOs, drew up “Recommendations for the equal participation of Sinti and Roma in education in Germany”. Individual *Länder* have concluded State Treaties or framework agreements with the Sinti and Roma minority. Additionally, *Brandenburg* and *Schleswig-Holstein* are home to minority groups whose educational interests are given special consideration. More details can be found in Annex 1.

**b) The aims of education (art. 29) with reference also to the quality of education**

187. The guidelines of the educational objectives and principles are set out in the Second Report.<sup>41</sup>

**c) Cultural rights of children belonging to indigenous and minority groups (art. 30)**

188. Reference is made to section 8a.

**d) Education on human rights and civic education**

189. Human rights education is part of the core area of schools’ educational mandate, and is set as a primary educational goal in all *Länder* Constitutions and School Acts. It covers all fields of school activity. The aim of human rights education in schools is the development of esteem, tolerance and respect for other cultures, as well as a fundamental responsibility vis-à-vis society.<sup>42</sup>

190. In view of the current social and political challenges, the Standing Conference of Ministers of Education and Culture of the *Länder* in the Federal Republic of Germany (KMK) has made democracy education its main topic for 2018.

191. Extracurricular political youth education also aims to enable young people to participate actively in shaping society. The Federation supports it to the tune of approximately 10 million EUR per year.

192. Human rights and democracy education are also anchored in early childhood education in various ways. Further details can be found in Annex 1.

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<sup>41</sup> para. 743 CRC/C/83/ Add. 7

<sup>42</sup> Cf. the KMK’s recommendation entitled “*Empfehlung zur Förderung der Menschenrechtserziehung in der Schule*” in the version from 2000. The recommendation is currently being revised to take account of recent developments.

**e) Rest, leisure, play, age-appropriate recreational activities, and free participation in cultural life and the arts (art. 31)**

193. The Federal Government promotes the cultural and sporting activities of children and juveniles as part of non-formal education through a variety of projects. The offers are to be low-threshold and inclusive. See Annex 1 for more information on this and on other measures to implement art. 31 of the Convention, including programmes to promote urban development. The *Länder* also promote the cultural education of children in and out of school in a wide variety of ways. Annex 1 furthermore contains examples, including on the legal anchoring and financial scope of support for artistic and cultural education at *Land* level.

**9. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d) and 38-40)**

**a)“Refugee children” (art. 22), unaccompanied asylum-seeking children, children affected by migration**

194. The Federal Government is highly committed to the comprehensive protection of the rights of refugees and children affected by migration. There was a continuous increase in immigration by people aged under 18 with foreign citizenship, which rose from 66,165 to 392,340 between 2010 and 2015. The number of first asylum applications lodged for the under-18s rose continuously, from 23,936 to 261,383, between 2012 and 2016. 400,490 under-18s seeking protection lived in Germany as of 31 December 2016.

**Equal and child-friendly treatment for each child.**

195. All foreign and non-foreign children receive equal treatment in Book VIII of the Social Code (section 6 of Book VIII of the Social Code) as a matter of principle so that, for example, unaccompanied minor foreigners are entitled to the same protection and support as German minors in the case of child and youth welfare benefits. The Federal Government promotes its own federal programmes in order to prepare and support equal access to child day care for children with migration and refugee backgrounds.

196. The schools are responsible for the integration and language promotion of young refugees who are required to attend school. Given the aspiration that no child or juvenile with a refugee background may be left behind, the *Länder* and the municipalities have made great efforts in recent years, and have invested considerable financial resources in additional schooling and educational opportunities for refugee or asylum-seeking school-age children

and juveniles. Schooling is organised in the *Länder* from the outset regardless of residence status and prospects to remain. *Land*-specific regulations apply with regard to the start of schooling for young refugees required to attend school after entering the country. In addition, individual *Länder* have developed procedures to record the abilities and competences as well as language skills of refugees and asylum-seekers, in some cases as early as in the initial reception facilities or before they are assigned among the municipalities.

197. In addition to admission to regular classes, continuous language support in all subjects is of particular importance for the integration of recently-immigrated pupils. Supported by trans-*Länder* projects such as “Support for children and juveniles with a migration background” (FörMig) and “Education through Language and Writing” (BISS), the *Länder* have implemented a large number of skill-building and further training measures for continuous language promotion. A report by the KMK of October 2016 gives a general overview of the measures taken in the *Länder* to integrate young refugees through education.<sup>43</sup> The Federal Agency for Civic Education offers teaching materials that can be used for lessons in the Welcome Classes.<sup>44</sup> Further activities to support the integration of refugee children into the education system can be found in Annex 1.

198. The age threshold for the capacity of minor refugees to represent themselves vis-à-vis the Federal Office for Migration and Refugees (BAMF) was raised to 18 in the period under report, analogous to the arrangement for not only legally advantageous declarations of intent on the part of minors in accordance with the Civil Code. 16 and 17-year-olds have to be legally represented vis-à-vis the BAMF since 24 October 2015. Minors may not formally apply for asylum on their own.

199. Various programmes of the Federation aimed at enforcing the right of refugee children to participate in education are described in section 8a and Annex 1, respectively.

200. Reference is made to section 6d with regard to the right to family reunification by way of subsequent immigration by family members.

### **The age assessment.**

201. The implementation of the age assessment of unaccompanied minor refugees is regulated in section 42 f of Book VIII of the Social Code, and provides for a combination of different

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<sup>43</sup> [https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen\\_beschluesse/2016/2016\\_10\\_06-Report-Integration.pdf](https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2016/2016_10_06-Report-Integration.pdf)

<sup>44</sup> <http://www.bpb.de/lernen/themen-im-unterricht/212105/unterrichtsmaterial-fuerwillkommensklassen>

methods: If a foreign person is (temporarily) taken into care, his or her minority must be determined on the basis of identity documents or similar documents clearly indicating the person's age. Alternatively, a qualified visual inspection is to be carried out which, in addition to the evaluation of the external appearance, also includes the estimation and evaluation of the overall impression by means of the information on the stage of development obtained in the initial interview. In cases of doubt, the youth welfare office must, at the request of the persons concerned or of their representatives, or ex officio, arrange for a medical examination to assess the age of the presumed minor foreign person. A combination of the methods currently offers the most reliable way of assessing age under the circumstances. Age is assessed with respect for human dignity and for the physical integrity of children and juveniles.

Some Federal *Länder* have guidelines or recommendations for action for the implementation of these regulations. Further details can be found in Annex 1.

### **Identification of child soldiers.**

202. In order to do justice to the special needs of minor-age asylum-seekers, “decision-makers” are deployed at the Federal Office for Migration and Refugees as specially-trained special commissioners for unaccompanied minors. In the context of the asylum procedure, and in particular when questioning children and juveniles on the causes of their flight, their tasks include identifying “refugee children” who are particularly vulnerable. Two further groups of special commissioners are deployed to care for minors who have been traumatised, tortured or persecuted on a gender-specific basis: special commissioners for traumatised persons and torture victims, and special commissioners for persons persecuted on a gender-specific basis. All special commissioners receive comprehensive legal, cultural and psychological training on an ongoing basis in basic and advanced training courses.<sup>45</sup> Annex 1 contains an example of the practice of identifying child soldiers in *Berlin*.

203. Germany grants asylum to former child soldiers under certain circumstances, e.g. if they would once again be at risk of forced recruitment if they were to return. Whether such circumstances apply will be examined separately on a case-by-case basis.

### **Accommodation of asylum-seeking children and juveniles.**

204. The Act on the Improvement of the Accommodation, Care and Assistance for Foreign Children and Juveniles (*Gesetz zur Verbesserung der Unterbringung, Versorgung und Be-*

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<sup>45</sup> para. 7 CRC/C/OPAC/DEU/CO/1; para. 18 d CRC/C/OPAC/DEU/CO/1.

*treuung ausländischer Kinder und Jugendlicher*) came into force on 1 November 2015, with the aim in mind of ensuring accommodation, care and support appropriate to the special protection needs and other needs of unaccompanied minor refugees through a *Landwide* and nationwide reception obligation. The unaccompanied foreign minors are placed throughout Germany according to their needs and, where appropriate, are distributed to other Federal *Länder*.

205. Unaccompanied minor refugees are taken into the care of the youth welfare office, and are not obliged to live in a reception facility. (cf. esp. sections 42a and 42 of Book VIII of the Social Code). A formal application for asylum can only be lodged by the legal representation (youth welfare office; guardian), as minors have no legal capacity to act in the proceedings. Minors arriving in Germany together with their families remain with their families (in reception centres where appropriate); no changes are planned in this regard. The number of minors taken into care due to their unaccompanied entry from abroad rose continuously between 2010 and 2016; the number fell in 2017. The majority of unaccompanied minor refugees are aged between 16 and 17. Further details can be found in Annex 2.

206. A federal initiative was founded under the joint leadership of the BMFSFJ and the United Nations International Children's Emergency Fund (UNICEF) in order to protect refugees in refugee accommodations. Minimum standards for the protection of women and children against violence were developed within this initiative for the first time. Annex 1 contains more details as well as examples from the Federal *Länder* for the accommodation of minor refugees and for special protective measures.

### **Educational and participation benefits for asylum-seeking children.**

207. In order to improve the situation of asylum-seeking children, juveniles and young adults, the Act Amending the Asylum-Seekers Benefits Act and the Social Courts Act (*Gesetz zur Änderung des Asylbewerberleistungsgesetzes und des Sozialgerichtsgesetzes*) provides with effect from 1 March 2015 that there is already an entitlement to benefits for education and participation from the start of residence in Germany. This was intended to prevent the exclusion of those affected, for example from joint lunches in schools and child day care centres. Basic educational and participation opportunities are thus opened up in good time. Prior to the change, people had access to education and participation benefits after 48 months' residence at the earliest.

### **Incarceration of asylum-seeking children.**

208. Detention pending deportation in Germany is governed by sections 62 and 62a of the Residence Act and – with regard to the proceedings – by the Act on Procedure in Family Matters and Non-Contentious Matters. Minors and families with minors may only be taken into detention pending deportation in special exceptional cases, and only for as long as is appropriate taking into account the best interests of the child. In some *Länder*, minors are not taken into detention pending deportation, or this is usually dispensed with. See Annex 1 for more information.

### **Transmission of personal data to immigration authorities.**

209. The collection and transmission of personal data is extensively regulated in sections 86 to 91g of the Residence Act – also taking data protection regulations into account. In accordance with section 87 of the Residence Act, public bodies are obliged to notify the immigration authorities of circumstances of which they become aware, in particular the unauthorised residence of foreign nationals. Schools and educational institutions are exempted from this obligation in order to provide access to educational opportunities for children and juveniles residing in Germany without permission.

### **b) Children belonging to a minority or an indigenous group (art. 30)**

210. Reference is made to section 8c regarding the cultural rights of children from minority or indigenous groups.

### **c) Children in street situations**

211. Reference is made to the remarks in the Third and Fourth State Party Reports regarding basic care for children in street situations.<sup>46</sup> Annex 1 contains information on projects of the Federation and the *Länder* for children in street situations.

### **d) Children in situations of exploitation, their physical and psychological recovery and social reintegration**

212. Reference is made to sections 5c, 7e and 10. Reference is also made to the First and Second Reports and to section B.I.3.a of the Common Core Document (ILO Convention).<sup>47</sup> An example is given in Annex 1 of a measure at *Länder* level to combat child labour.

213. Section 25 subsection (4a) of the Residence Act contains a special humanitarian provision for granting a residence permit for victims of human trafficking. Further improvements in residence rights for victims of human trafficking entered into force on 1 August 2015 in the

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<sup>46</sup> para. 229 CRC/C/DEU/3-4

<sup>47</sup> paras. 109 et seqq. CRC/C/11/Add.5; paras. 849 et seqq. CRC/C/83/Add. 7.

shape of the Act on the Redefinition of the Right to Remain and on Termination of Residence (*Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung*).

214. A residence permit is now to be issued if, amongst other things, the person concerned shows a willingness to testify as a witness in the criminal proceedings regarding the offence committed against him or her. In addition, victims of human trafficking are offered prospects for residence in Germany beyond the end of the criminal proceedings against the offenders in the event that the foreigner's continued presence in Germany is necessary on humanitarian or personal grounds or due to public interests. In accordance with this provision, the extension of the residence permit is no longer contingent on whether the foreigner's continued presence is necessary for the implementation of criminal proceedings.

215. Furthermore, victims of human trafficking may also be granted a residence permit in accordance with other provisions regardless of their involvement in criminal proceedings. A title can especially be considered for minor victims of human trafficking, for instance in accordance with sections 23a and 25 subsection (4) or subsection (5) of the Residence Act. Measures terminating residence may be temporarily suspended for the duration of any impairments to health if substantiation is provided in accordance with section 60a of the Residence Act. In this case, however, no residence permit is issued, but rather a temporary suspension of deportation (*Duldung*).

#### **e) Children in conflict with the law, child witnesses of crimes and juvenile justice**

216. Reference is made to the Third and Fourth State Party Reports<sup>48</sup>, as well as to sections A.II.7, A.II.8 and B.II.2.b of the Common Core Document. Reference is also made to the remarks in sections 10f (criminal law relating to young people) and 1g (further and advanced training in the judiciary).

217. It should furthermore be pointed out that Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132 of 21 May 2016, p. 1) has now come into force. It contains numerous guarantees to reinforce the procedural rights of accused persons aged under 18 in criminal proceedings, and to improve their protection, including provisions concerning the last-resort nature of measures involving deprivation of liberty. Transposition into national law, which must take place in Germany by 11 June 2019, is also to specify and in part expand a number of relevant provisions of German criminal procedural

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<sup>48</sup> paras. 302-309 CRC/C/DEU/3-4

law relating to young people. This will ensure that the particular vulnerability of young accused persons in criminal proceedings is taken into account over and beyond the law that is already in force.

218. Annex 1 cites examples of statutory provisions at *Land* level in *Hamburg* and *Schleswig-Holstein* aiming to limit measures involving deprivation of liberty to the minimum that is absolutely necessary, and to primarily provide for an educational form of juvenile penalty. Annex 2 provides statistical information.

**f) Children involved in armed conflict (art. 38), their physical and emotional recovery and social reintegration (art. 39)**

219. The participation of minors in armed conflicts in which the Bundeswehr is involved is ruled out in Germany.

**10. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

220. Information regarding the implementation of the Optional Protocol can be found in Annex 1.

**11. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

221. Information regarding the implementation of the Optional Protocol can be found in Annex 1.

**Further recommendations**

222. The aim is being pursued during this legislative period in accordance with the agreement reached in the Coalition Agreement to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Federal Government continues to consider the signing and ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to be inappropriate for the reasons set out in a declaration made when the Convention was adopted by the United Nations General Assembly in 1990.

223. Germany strives to ensure the political implementation and interpretation of the Convention in the bodies of the United Nations. Furthermore, a joint resolution of the EU and of the Group of Latin American States on the rights of the child will be introduced.

224. Germany is involved in the Ad hoc Committee for the Rights of the Child (CAHENF) for the implementation of the Council of Europe Strategy for the Rights of the Child, which runs from 2016 to 2021. The mandate of the CAHENF, which monitors the implementation of the Council of Europe Strategy for the Rights of the Child, has been extended up to and into 2019.

225. See section 1h on for follow-up and dissemination.