



ECPAT Deutschland e.V.
Arbeitsgemeinschaft zum
Schutz der Kinder
vor sexueller Ausbeutung



ECPAT Germany

Executive Director: Ms. Mechtild Maurer
Address: Alfred-Doebelin-Platz 1, 79100 Freiburg
Phone: +49 761 45687148
Email: info@ecpat.de or maurer@ecpat.de
Website: www.ecpat.de

ECPAT Germany is an alliance of 30 groups and institutions¹ working on child rights issues. It operates in the political, legal, economic and educational sectors, in cooperation with governmental and non-governmental organisations. ECPAT Germany's work focuses on lobby and advocacy work, awareness-raising and training on the issues of sexual exploitation of children, the development of prevention strategies, the protection of child victims, as well as the implementation of the Code of Conduct to protect children from sexual exploitation in tourism.

ECPAT International Special consultative status

Executive Director: Ms. Dorothy Rozga
Address: 328/1 Phayathai Road, Ratchathewi,
Bangkok 10400, Thailand
Phone: +66 2 215 3388
Email: info@ecpat.org
Website: www.ecpat.org

ECPAT International is a global network of civil society organisations working for the eradication of all forms of sexual exploitation of children. For the past 26 years, ECPAT has acted as the international watchdog, monitoring States' response to sexual exploitation of children, and advocating for robust international measures to protect children from sexual exploitation. ECPAT International currently has 97 network members operating in 88 countries.

Submission on Sexual Exploitation of Children in Germany

for the Universal Periodic Review of the human rights situation in Germany

Submitted on: 5 October 2017
Prepared by: ECPAT Germany
In collaboration with: ECPAT International

to the **Human Rights Council**
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Background of the submission

1. The Government of the Federal Republic of Germany has committed itself firmly to combat sexual exploitation of children in recent years. In 2009, the German Government has ratified the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC). The first Report by the Federal Republic of Germany regarding implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was submitted to the commission in April 2013. The German Government has ratified Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) on 20 November 2015, coming into force on 1 March 2016. Furthermore, the Federal Republic of Germany has adopted the Agenda 2030 for Sustainable Development in September 2015.
2. The government is implementing these international standards through national legislation and policy. The federal Government adopted an interdepartmental sustainable development strategy to be implemented as of January 2017 as a commitment to the 17 Sustainable Development Goals of the Agenda 2030. The latest changes in the national legal framework concerning the penal code for sexual offences dates of 21 January 2015² and combating of trafficking in human beings entered into force on the 15 October 2016.³

Methodology and Scope

3. The content of this report is based on ECPAT Germany's own work experience and research.
4. The scope of this submission is limited to sexual exploitation and its different manifestations including the exploitation of children in prostitution and in the context of travel and tourism, sexual violence online including child pornography and the trafficking of children.

Introduction

5. ECPAT Germany aims with this contribution to provide a review of the status of implementation of international obligations and commitments regarding the sexual exploitation of children in Germany in the normative and legal framework.
6. ECPAT Germany very much welcomes the recommendations given to Germany to improve the implementation of human right norms. ECPAT Germany will focus in its contribution on the recommendations focusing specifically on children and sexual exploitation. Therefore, a thematic approach is taken by commenting on the recommendations in four different areas:
 - Recommendations on the general implementation of children rights
 - Recommendations on implementation of protection against exploitation of children
 - Recommendations on implementation of protection from trafficking of children
 - Recommendations on the implementation of rights of migrant children

7. Even though the recommendations cover many important issues, ECPAT Germany wants to point out additional gaps in the current German legislation and normative framework. ECPAT Germany misses recommendations on:
 - a. **Human rights due diligence of the private sector**, including the implementation of the UN guiding principles on business and human rights (2011), especially in regard to children rights.
 - b. Specific business sectors, such as the **travel and tourism sector**. Even though the Global Study on the sexual exploitation of children in travel and tourism⁴ clearly shows the growth of this children rights violation.
 - c. Human rights responsibility towards **children abroad**. Such as children as stakeholders in development projects or children affected by travelling sex offenders.
 - d. Protection of children in **online situations**. This growing phenomenon is not taken into account even though an essential current approach to better protect children from sexual violence and exploitation.
 - e. **Participation of children**. The views of children are not sufficiently taken into consideration, neither in research nor in practice. In this regard Germany is not implementing sufficiently its responsibility to take into account children voices in all decisions that will affect them (UNCRC article 12).
 - f. **Access to justice for children** as victims. As the report by the Fundamental Rights Agency (FRA) by the European Commission⁵ clearly shows, Germany lacks child friendly justice procedures especially when it comes to the involved in judicial proceedings as victims.

Recommendations on the general implementation of children rights

A-124.32. Bring its legislation in compliance with the Convention on the Rights of the Child (Togo)

A-124.169. Federal and State Governments, in consultation with civil society, broaden and intensify existing human rights training in schools as well as the routine training of police, security, prison and health personnel, and set up a monitoring and evaluation mechanism to assess progress (United Kingdom of Great Britain and Northern Ireland)

8. The recommendations by the Committee on the Rights of the Child (CRC) still need to be implemented. There are existing gaps, such as:
 - **Participation of children**. The views of children are not sufficiently taken into consideration, neither in research nor in practice. In this regard Germany is not sufficiently implementing its responsibility to consider children's voices in all decisions that will affect them (UNCRC article 12). Participation of children is not mainstreamed.
 - **Migrant children** do not have full access to all children rights. Please see further information under the recommendations towards the rights of migrant children.
 - Children do not have appropriate **access to justice**.
9. Training on children's rights needs to be a focus to sustainably and effectively implement children's rights. On the one hand, children and young people need to be trained about their rights so that they can claim for them. On the other hand, professionals need to protect the rights of children and this requires training of specific professional groups, such as police, security and health professionals who are considered to be key stakeholder in the prevention and identification of victims. Other stakeholders, such as the aliens departments, the Federal Office for Migration and Refugees and youth welfare offices, need to be taken into consideration as well. ECPAT Germany

holds great expertise in multi-professional training activities in the field of trafficking of children. Experiences clearly show the strong need for awareness raising and training to better protect children.

10. Monitoring and evaluation needs to be done to show progress. The German Government has established a monitoring body in November 2015 within the German Institute for Human Rights (DiMR). It is not a complaints office for minor victims of sexual exploitation or related offences. To establish such an institution was part of the CRC Concluding Observations in 2014.⁶

Recommendations on implementation of protection against exploitation of children

A- 124.24. Ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Liechtenstein)

11. The Lanzarote convention has been ratified on 18 November 2015 and has been in force since 1 March 2016. Besides the implementation of the legal framework in Germany, child prevention measures must be reinforced. There is still only little specific multidisciplinary training for professionals, insufficient programmes for victims of commercial sexual exploitation and awareness raising activities to announce reporting procedures⁷ for extra-territorial cases of sexual exploitation of children.

A - 124.37. Bring its domestic legislation in line with international standards on the sexual exploitation of children and establish a clear definition of child pornography (Costa Rica);

12. This issue is covered by the implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The wording of ‘child pornography’ does not cover the complex phenomenon of sexual abuse material or depictions of children with sexual characteristics⁸. As the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse - an initiative by 18 international partners to harmonise terms and definitions related to child protection - states, the term ‘child pornography’ needs further clarification as the term is used to not only describe child sexual abuse material, but also to describe other forms of offences, such as producing/preparing, consuming, sharing/spreading/disseminating, or possessing of such material.⁹

13. Also, the definition of child trafficking still is not in line with international standards. Child trafficking is linked to forced adoption of children in the German Criminal Code. Minors under 18 years are considered a vulnerable group in the German Criminal Code under the law against trafficking of human beings.

A - 124.142. Take comprehensive measures to combat paedophilia and the rise in child prostitution (Belarus)

14. The *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*¹⁰ recommend avoiding the term of ‘paedophilia’. There are various trends in the field of sexual violence against children. Criminal statistics show an increased number of cases of sexual exploitation online. More cases of young and minor offenders have been reported in the statistics and there are still a high numbers of unrecorded cases.¹¹ More offenders use the www and the darknet to get access to groom children and exploit them. This means new awareness and protection measures are in order.

15. There is no representative research about child prostitution in Germany, a lack that hinders to take effective and well-informed measures against child prostitution. There are still some federal states that do not support counselling centres for potential child victims of prostitution. Especially support for boys exploited in prostitution is very rare. Media reports have been published about the new phenomena of minor refugees exploited in prostitution. Also street workers report that more often also minor refugees are found in prostitution in cities like Berlin or Hamburg.¹² But to date no research has been undertaken seek more information about this phenomenon and undertake appropriate protection measures.¹³

Recommendation on child trafficking

A - 124.138. Take appropriate measures to ensure equal protection for all victims of human trafficking for sexual exploitation under the age of eighteen years (Liechtenstein);

16. The federal Government is still working on a national referral mechanism (NRM) for potential minor victims of trafficking since 2013. In September 2017 a draft was presented in a federal working meeting in Berlin.¹⁴ NRM will cover effective measures on victim protection of trafficked children. A cooperation is planned between the different groups of professionals who are in contact with potential victims of child trafficking to improve victim identification. Though it is the decision of the federal states (Bundesländer) – due to the principles of federalism and subsidiarity – if, and how the federal states will implement such a voluntary instrument.

A - 124.139. Intensify further efforts to prevent and combat human trafficking and to protect its victims (Cambodia);

A - 124.140. Continue its efforts against human trafficking (Costa Rica);

A - 124.141. Safeguard the rights of victims of human trafficking consistent with its human rights obligations (India);

17. The EU Directive 2011/36 is in place since October 2016 and further forms of exploitation are considered human trafficking. Especially minors are affected by exploitation of begging and forced criminality, for example drug dealing. The structures for protection and support with a focus on best interest of the child for these potential victims are not well established. Federal Criminal Police Office states in the Federal Situation Survey Human Trafficking (Bundeslagebild Menschenhandel) for the year 2015 that most of the victims of human trafficking are younger than 21 years.¹⁵ There are no national-wide support systems for underage trafficked victims or potential victims in Germany. Besides a national referral mechanism for child trafficking victims, sufficient funded counselling centers and street outreach work for girls and boys are needed in all federal states.

A - 124.147. Continue its efforts in the field of human trafficking and most importantly facilitate access to justice for the victims (Greece);

18. As of 2017, the access to justice for minor victims has been improved in Germany. There are some rights of witnesses entitling them to get support during their testimony in investigations and the court: every witness, also minors has the right to be accompanied by a confidant during the questioning in the investigation or during the trial stage; every witness. Minors are also entitled to a lawyer during the questioning in the investigation or trial stage. Victims can get support/empowerment by a professional psychosocial support service during the investigation (not

during the questioning) or the trial stage.¹⁶ During investigations minors can give their input by videotaped testimony and in the trial stage they can be heard by video-conference. During the testimony in the trial stage the perpetrator may be excluded from the court room to allow the minor to provide input in absence of the perpetrator, only the plaintiff is in the court room.

19. But still the focus is on the aspect of the prosecution of the offender. Children who have been trafficked and are originally from states outside of the EU, will require a residence permit if they are to reside in Germany lawfully. If they do, they will have to cooperate with immigration departments, police and courts for a temporary residence permit. When they do so, their options are somewhat limited and presently the law does not provide them with the holistic protection they need as trafficked children. Some trafficked children are granted refugee status on the basis that if they are returned to a country of origin, they will be re-trafficked and exploited or subjected to retribution or because they are from states which are generally thought to be unsafe. It is often difficult to prove in practice if a child faces a risk of re-trafficking or persecution in the future, and that the authorities in his or her country of origin will not be willing or able to protect him or her from any reprisals from trafficking gangs.
20. It is necessary to provide specific training for the professionals from special psychosocial support service and the guardians to undertake the appropriate action in the best interest of the child.
21. The children rights-based approach, which focuses on strengthening the position of trafficked persons, should be improved. Counselling centers for trafficked persons have often not sufficient funding and resources to provide comprehensive support for minor victims of trafficking.
22. A comprehensive strategy of human trafficking on national level, which comprises all forms of human trafficking and has a strong focus on the group of children and their best interest and well-being should be implemented in Germany. A national rapporteur, as it has recommended by GRETA should be nominated.

Recommendations on the implementation of rights of migrant children

A - 124.38. Harmonize the immigration legislation in accordance with the Convention on the Rights of the Child (Estonia)

23. The immigration legislation in Germany is not in full compliance with the Convention on the Rights of the Child for the foreign minor victims of human trafficking. For example, in Germany, although trafficked children are theoretically entitled to a residence permit if they participate in a criminal trial against their traffickers, the youth welfare service and the guardians are usually not aware of this provision. It is also the case that many EU children recognised as being trafficked are simply returned to their country of origin after a very limited best interests assessment. As many of these children may have been trafficked by or with the consent of their parents, this may lead to them being re-trafficked.¹⁷

A - 124.183. Continue to work on protecting the rights of migrants, especially the children of migrants (Nigeria);

A - 124.194. Ensure the protection of migrants, refugees and their families in accordance with international standards (Belarus);

A-124.197. Pay particular attention to refugees especially during placement and the detention of asylum seekers and ensure that account is taken of the principle of the best interests of the rights of the child in any decision relating to asylum seeking minors.

24. Germany is one of the countries where many refugees arrive and the right of asylum has been exacerbated through numerous restrictions in recent years. Especially children are affected by this new regulation.
25. Restrictions of family reunifications have been adopted against the well-being of the child. Minors are forced to leave their city of residence while unaccompanied minors and victims of child trafficking have no right of family reunification until the end of March 2018. There is a quota for the residence in each region. The minor refugee cannot choose where he or she would like to live. There is also new regulation adopted to allow authorities to detain refugee children in prisons if there are not sufficient home places available.
26. The new legislation negatively affects the interest of the child. Normally refugee children live in refugee camps, which constitute for a long time the centre of their lives, even though not at all appropriate for children. Most camps are in remote places and impede the access to social inclusion and a child friendly everyday life (due to a lack of privacy, safety, space to play...).¹⁸

Recommendations by ECPAT

27. Recommendations on the general implementation of children rights

- The recommendations by the Committee on the Rights of the Child (CRC) still need to be implemented. There are existing gaps, such as: participation of children, full access to all children's rights for migrant children and access to justice.
- Training on children's rights for children and young people to empower them to claim for their rights and training for professionals to protect the rights of children.
- Monitoring and evaluation needs to be done to show progress. An independent body to monitor the implementation of the Convention at the federal, Länder and community levels, which is empowered to receive and address complaints of violations of children's rights needs to be established.

28. Recommendations on implementation of protection against exploitation of children

- Child prevention measures must be reinforced. There is still only little specific multidisciplinary training for professionals, insufficient programmes for victims of sexual exploitation of children and awareness raising activities to announce reporting procedures for extra-territorial cases of sexual exploitation of children.
- The definition of child pornography must be brought in line with international standards to cover the complex phenomenon of sexual abuse material or depictions of children with sexual characteristics.
- The definition of child trafficking has to be brought in line with international standards. Child trafficking is linked to forced adoption of children in the German Criminal Code. Minors under 18 years are considered a vulnerable group in the German Criminal Code under the law against trafficking of human beings.
- New trends in the field of sexual violence against children have to be analysed and taken into consideration (such as sexual exploitation online, profiles of offenders).
- Data gaps have to be closed in order to take well-informed measures against sexual exploitation. Media reports reveal new phenomena of minor refugees exploited in prostitution. But to date no

research has been undertaken to seek more information about this phenomenon and undertake appropriate protection measures.

- Counselling centres with adequate financial support by the authorities for potential child victims of prostitution are needed, especially support for boys exploited in prostitution is very rare.

29. Recommendation on child trafficking

- The national referral mechanism (NRM) for potential minor victims of trafficking has to be finalized, implemented and monitored.
- To fully implementing the EU Directive 2011/36, the structures for protection and support with a focus on best interest of the child for potential victims of trafficking need to be strengthened. An integrated support system is needed for child trafficking victims with sufficient funded counselling centers and street outreach work for girls and boys are needed in all federal states.
- The access to justice for minor victims has been improved in Germany, but protective measures must be implemented. Training is needed for professionals in order to put these rights into practice.
- A shift of perspective is needed: law enforcement should not only focus on the aspect of the prosecution of the offender but the protection of the victims needs to be the highest priority to avoid the risk of being re-trafficked.
- Specific training for professionals, providing special psychosocial support services and guardians are needed to undertake the appropriate action in the best interest of the child.
- The children rights-based approach, which focuses on strengthening the position of trafficked persons, should be improved. Counselling centers for trafficked persons often do not have sufficient funding and resources to provide comprehensive support for minor victims of trafficking.
- A comprehensive strategy of human trafficking on national level, which comprises all forms of human trafficking and has a strong focus on the group of children and their best interest and well-being should be implemented in Germany. A national rapporteur, as recommended by GRETA, should be nominated.

30. Recommendations on the implementation of rights of migrant children

- New immigration legislation negatively affects the best interest of the child (restrictions of family reunifications, residence quota, and placement in camps). The immigration legislation in Germany has to be brought in full compliance with the Convention on the Rights of the Child.

Attachment: Thematic list of recommendations UPR of Germany, 2nd cycle – 16th session.

¹ SOLWODI Deutschland e.V., Human Help Network e.V., Mission Eine Welt Referat Entwicklung u. Politik, IN VIA Katholische Mädchensozialarbeit e.V., Evang. Jugendarbeit in Bayern, EED Evang. Entwicklungsdienst TOURISM WATCH, Terre des Hommes Deutschland e.V., Hilfe für Kinder in Not, Evang. Jugend im Rheinland, VEM – Vereinte Evang. Mission, Aktion Weißes Friedensband e.V., Kampagne gegen Kinderprostitution AK in der Evang. Kirche von Westfalen Amt für MÖWE, Ev. Kirchenkreis Herne Eine Welt Zentrum Herne, Arge der Evang. Jugend in Deutschland e.V., Helsinki Citizen´s Assembly e.V., Männerarbeit der Evang. Kirche von Westfalen, Don Bosco Mission, BONO-Direkthilfe e.V., FiM – Frauenrecht ist Menschenrecht e.V., Kindernothilfe e.V., Missio Aachen, Bischöfliches Hilfswerk Misereor e.V., KARO e.V., TERRE DES FEMMES e.V., Menschenrechte für die Frau, Kindermissionswerk „Die Sternsinger“ e.V., Brot für die Welt, Studienkreis für Tourismus u. Entwicklung

e.V., Informationszentrum Dritte Welt Iz3W Freiburg, Evang. Frauen in Deutschland e.V., SchlussStrich e.V., roterkeil.net, IJM - International Justice Mission Deutschland e.V., Dortmunder Mitternachtsmission e.V.

² 49. Gesetz zur Änderung des Strafgesetzbuches – Umsetzung europäischer Vorgaben zum Sexualstrafrecht vom 21. Januar 2015.

³ With the implementation of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (2011/36/EU) the Criminal Code was changed regarding trafficking in 2016.

⁴ ECPAT International (2016): The Global Study, initiated by ECPAT International and carried out by 67 partners in a two-year project, reveals the extent of sexual exploitation of children in travel and tourism, what motivates it, the evolving trends and concrete recommendations for action. More at <http://globalstudysectt.org/>.

⁵ Fundamental Rights Agency (2017): Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States <http://fra.europa.eu/en/publication/2017/child-friendly-justice-childrens-view>.

⁶ Committee on the Rights of the Child (2014) Concluding observations on the combined third and fourth periodic reports of Germany: “17. The Committee remains concerned at the continued absence of a central, independent body to monitor the implementation of the Convention at the federal, Länder and community levels, and which is empowered to receive and address complaints of violations of children’s rights.”

<http://www.ohchr.org/EN/Countries/ENACAREgion/Pages/DEIndex.aspx>

⁷ Germany is part of the international campaign “Don’t look away!” and the cooperating stakeholders (government, police, travel industry and civil society) promote the international and national reporting platform

<http://www.reportchildsextourism.eu/> / <http://nicht-wegsehen.net>

⁸ Please see I-KiZ (2016): Combat of the Grey Areas of Child Sexual Exploitation on the Internet: “*Children are presented and exploited as sexual objects in many ways on the Internet. Depictions of children that have clear sexual characteristics or a sexual context are widespread on social networks, forums, blogs and websites. Whilst some depictions display what are already criminal acts, others still lie outside applicable legal standards. What are called “posed depictions”, showing children in sexualised postures, or everyday depictions that are transposed to a sexualised context in order to serve the sexual interests of adults, are not penalised in the same way everywhere and in all cases. But they also harm human dignity, degrade children to sexual objects or propagate them as potential sexual partners.*” (p. 9) www.i-kiz.de/wp-content/uploads/2016_I-KiZ_Grey_Areas.pdf

⁹ Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse; Adopted by the Interagency Working Group in Luxembourg, 28 January 2016, 35-36, <http://luxembourgguidelines.org>.

¹⁰ Ibid., 86.

¹¹ Federal Criminal Office: Criminal statistics 2016

https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2016/pks2016_node.html

¹² Statement from project “Hilfe für Jungs” Berlin January 2017; <http://www.tagesspiegel.de/berlin/treffpunkt-berliner-tiergarten-wie-fluechtlinge-in-die-prostitution-abdriften/19685260.html>, 10.4.2017;

<https://www.welt.de/vermischtes/article163187193/Fuer-10-Euro-hatten-sie-Sex-mit-den-minderjaehrigen-Fluechtlingen.html>, 27.3.2017.

¹³ Terre des hommes: “Weil wir überleben wollen – Kinderarbeit unter Flüchtlingen des Syrien-Konfliktes“, Kinderarbeits-Report 2016, Osnabrück terre des hommes.

¹⁴ In September 2017 the Federal Ministry for Family Affairs invited for a Federal working Meeting on 20.9.2017 in Berlin, in which seven Bundesländer were present.

¹⁵ Federal Crime Office: Bundeslagebild Menschenhandel 2015, Wiesbaden, korrigierte Fassung vom 18.01.2017.

¹⁶ Since 1 January 2017 minors as victims/person injured by crime have the right to get professional psychosocial support by special psychosocial support service (§ 406 g StPO/German Code of Criminal Procedure).

¹⁷ Free to Move, Invisible to Care: Coordination and Accountability towards Romanian Unaccompanied Minors’ Safety, Icarus Project, NSPCC, 2015

¹⁸ BUMF (2017): “KINDHEIT IM WARTEZUSTAND Studie zur Situation von Kindern und Jugendlichen in Flüchtlingsunterkünften in Deutschland“ www.b-umf.de/images/studie-kindheit-im-wartezustand.pdf