Making the implementation of children’s rights measurable

Description of the process of developing children’s rights indicators for the German context

November 2019
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1 Introduction

In April this year, the German Government presented its combined fifth and sixth state report to the UN Committee on the Rights of the Child. This report outlines the progress made, as well as the setbacks faced, in the implementation of the Convention on the Rights of the Child (referred to as the Convention/UN CRC below). The state report will form the basis for the constructive dialogue between the UN and Germany as a State party. The aim of this constructive dialogue is to be able to label the status of implementation of the UN CRC in Germany and to discuss together how its implementation can be taken further. The question of how to measure the extent of implementation of children’s rights in Germany therefore needs to be addressed as well.

In state reporting procedures, the question of how we can actually measure the extent of the implementation of a Convention and the rights it contains, and which policy recommendations can be derived from the knowledge obtained, arises regularly. The UN High Commissioner provides an answer to these questions by recommending the development of human rights indicators. In 2017, the National CRC Monitoring Mechanism of the German Institute for Human Rights launched a process aimed at developing “pilot” children’s rights indicators for Germany. This process – which adapts the requirements of the UN High Commissioner for the development of human rights indicators to the UN CRC – is described and explained in this report.

2 Background

The German Institute for Human Rights, Germany’s independent National Human Rights Institution in accordance with United Nations requirements (known as the “Paris Principles”), was explicitly recommended for monitoring the UN CRC following Germany’s latest periodic review before the UN Committee on the Rights of the Child in 2014. Starting in November 2015, the Institute established the National CRC Monitoring Mechanism for this purpose and entrusted it with the task of independently observing and monitoring the implementation of the UN CRC at federal and state level, and right down to local level. The description of the task is broad, especially considering that the Monitoring Mechanism has limited capacity available. In addition, it does not have access to a nationwide structure of children’s rights officers, or similar

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1 More information on Germany’s current state procedure for reporting to the UN Committee on the Rights of the Child can be found on the web pages of the National CRC Monitoring Mechanism of the German Institute for Human Rights at: https://www.institut-fuer-menschenrechte.de/monitoring-stelle-un-krk/staatenberichtsverfahren/
3 See UN Doc. A/RES/48/134, 20 December 1993; section 1(1) of the Act on the Legal Status and Mandate of the German Institute for Human Rights.
4 This became possible because, to implement the recommendation of the UN Committee on the Rights of the Child, the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) allocated the funding required for establishing an independent monitoring mechanism, which was moved to the German Institute for Human Rights.
5 Website of the UN Committee on the Rights of the Child: https://ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx
6 Five people (two of whom are researchers) currently work at the Monitoring Mechanism.
officials, at state level, or to children’s offices or children’s advocacy groups at local level throughout Germany.

Since beginning its work in November 2015, the team at the Monitoring Mechanism has repeatedly faced the challenge of processing the children’s rights topics it has identified as particularly relevant in a German context – in discussion with civil society, the academic community and children and young people themselves – and selecting a justifiable collection of topics from the wide range of concerns. This is further complicated by the fact that fundamental information required to assess the implementation of an article of the Convention is often unavailable. For example, in the context of the significant influx of refugees in 2015, this was the case for the question of the extent to which child refugees were being given access to education (to nurseries and schools) on arrival in Germany. It soon became clear that – apart from the problem of the federal states’ different procedures – the number of school-age children was not even being recorded on initial reception, let alone the allocation of children to the local schools. When information of this kind is missing, it is often only possible to perform reliable assessments of children’s rights with great difficulty and it remains unclear whether such shortcomings are unfortunate isolated cases or potential structural human rights violations.

In light of this, the National CRC Monitoring Mechanism launched the process of developing children’s rights indicators for the German context in accordance with the requirements of the UN High Commissioner for human rights indicators in September 2017. The initial medium-term objective on the way to developing children’s rights indicators is the development of pilot children’s rights indicators for selected rights that can demonstrate the benefit of indicators for the development of policy recommendations. The long-term objective of the process is ultimately to regularly collect children’s rights-based data and information through further children’s rights indicators that make it possible to obtain management-related knowledge on the implementation of children’s rights and, in particular, to make it usable in policy advice.

Following the first expert conferences on the fundamental issue of developing children’s rights indicators for the German context (in particular the expert conference of children’s rights network National Coalition Germany e.V. in June 2017), the Monitoring Mechanism held talks with the body responsible for the German Government’s Child and Youth Reports, the German Youth Institute (DJI), and organised the first consultation in partnership with the Institute in September 2017. During this consultation, the joint decision was made to develop initial pilot children’s rights indicators for the German context by the end of 2019.

### 3 United Nations requirements for human rights indicators

In this article, an indicator is to be defined as a piece of evidence or information that can be used to establish whether a certain situation has arisen or a certain event has occurred. A human rights indicator has informative value because it can provide

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7 The applicable state legal provisions according to an annual survey on this topic by the National CRC Monitoring Mechanism can be found at: www.landkarte-kinderrechte.de
(some) information about a human rights issue. In accordance with the requirements of the UN High Commissioner, human rights indicators refer to the normative content of the right they are to measure. This ensures that indicators are tailored specifically to a precise right and overlaps with other rights are avoided.

Based on the work of the OHCHR, human rights indicators ideally provide a "set" of information that may comprise various types of sub-indicators – be they qualitative or quantitative, objective or subjective. To assign human rights indicators to a precise right, it is essential to firstly break the specific right down into attributes. Attributes describe the different dimensions of the State obligations for a specific right. The indicators selected and assigned are linked to the attributes of the specific right, which is usually codified in a precise article of the Convention. When breaking a right down into attributes, the focus is not only on the core of an article or right. Instead, it is broken down into attributes using a holistic approach where the various dimensions of the State obligations for a precise article are considered as a whole and then put into clusters.

The first "product" of an indicator development process is an indicator matrix. This refers to a specific article and shows up to five attributes on the x axis. Different (types of) indicators which are intended to provide information about the extent to which the relevant attribute, i.e. the dimension of an article determined, has been implemented, are assigned to each of these attributes on the y axis.

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9 Quantitative indicators refer to pieces of information that can be presented in numerical form, while qualitative indicators are non-numerical pieces of information. See UN, Office of the High Commissioner for Human Rights, Human Rights Indicators - A Guide to Measurement and Implementation, 2012, p. 16 f.

10 Subjective indicators are pieces of information relating to people’s perceptions and opinions, while objective indicators are pieces of information that are verifiable. See UN, Office of the High Commissioner for Human Rights, Human Rights Indicators - A Guide to Measurement and Implementation, 2012, p. 17 ff.

11 On the concept of the minimum core, see for example UN, Committee on Economic, Social and Cultural Rights (1990): General Comment No. 3: The Nature of States Parties’ Obligations (article 2, paragraph 1), UN Doc. E/C.12/1990/8, Annex III, paragraph 10. In some situations, the Federal Constitutional Court (BVerfG) also breaks down a right into a core and a marginal area, see for example BVerfG, order of 16 May 1995, BVerfGE 93, 1, 13.


13 The sample indicator matrices shown in the High Commissioner’s guide are relevant to the development of an indicator matrix, see UN, Office of the High Commissioner for Human Rights, Human Rights Indicators - A Guide to Measurement and Implementation, 2012, p. 88-101; in the guide there are 14 indicator matrices for different rights. The identification of the attributes of article 9 of the UN International Covenant on Economic, Social and Cultural Rights by the UN Social Committee is also relevant, see UN, Committee on Economic, Social and Cultural Rights (2008): General Comment No. 19 – The right to social security (article 9), UN Doc. E/C.12/GC/19, paragraph 2. However, these examples of work only serve as an orientation because they first have to be tailored to a national context.
Once an indicator matrix is available, existing data sets and information can be assigned to the individual indicators and, if necessary, further data collection can be carried out. The collation of this data and information will then form the basis for an evidence-based human rights analysis. In this regard, human rights indicators are primarily an analysis tool, but their development itself also already involves analysis. When developing human rights indicators, it is possible to illustrate the dimensions of the obligations contained within a right and relevant obligations and state efforts become visible. The development process can also reveal where the data required has simply not yet been collected and where data is missing.

To ensure the validity of the indicators to be selected, the High Commissioner has developed the RIGHTS criteria\(^\text{14}\) to serve as a guide and working aid. According to these, the following criteria are to be checked when selecting indicators:

\[\text{Figure 2: RIGHTS criteria for indicators}\]

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\begin{array}{|l|l|}
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R & \text{The validity of an indicator and the scientific reliability of the informative value (for example, data sets must not be based on any suggestive questions; the sample size must be sufficient; the study design must not be inconsistent)} \\
I & \text{Diversity of data or indicators (an attribute should not only be measured with subjective indicators)} \\
G & \text{The data can be disaggregated (broken down) by prohibited grounds of discrimination}\(^\text{15}\) \\
\hline
\end{array}
\]


\(^{15}\) A non-exhaustive list of relevant prohibited grounds of discrimination is provided in article 2 UN CRC.
Indicators are thus selected by linking general scientific standards to the human rights perspective; when developing children’s rights indicators, this is the children’s rights perspective. During this procedure, two criteria that will especially shape the pilot process stand out in particular: indicators must be easy to understand and simple to apply and only data that can be obtained with reasonable outlay or is already available should be used. An indicator matrix is developed on the basis of a complex scientific method – but this complexity must in no way be reflected in the indicator matrix itself. This approach is also particularly important because the acceptance of children’s rights indicators outside the academic community will depend on it.

4 Why are explicit children’s rights indicators required?

The UN CRC is part of the human rights protection system and also is directly applicable without restriction in Germany since April 1992 – or at least since July 2010\(^\text{17}\). As a State party to the UN CRC, Germany is obliged to implement the normative standards of the rights of children. The UN Committee on the Rights of the Child regularly calls on State parties to develop children’s rights indicators for the relevant context in their country. This request was also made of Germany as part of the most recent state reporting procedure in 2014.\(^\text{18}\) The UN Committee has summarised its recommendations on the subject in General Comment No. 5, where it describes the development of indicators and data collection as “basic requirements” for an effective implementation of the UN CRC.\(^\text{19}\)

In Germany, the actual situation of children growing up is not currently investigated on the basis of data in accordance with the areas of action described in the UN CRC. Although there is extensive social reporting on children and young people in parts of Germany, none of these data collection activities are based on children’s rights requirements or tailored to these. Accordingly, policy decisions are often made on the basis of reports of problems in civil society or dramatic isolated cases, rather than on the basis of a children’s rights analysis that draws on explicit and broad collections of data on the living situation of children in Germany informed by children’s rights. Policy decisions which have thus far been made without appropriate data collection run the risk of being insufficiently based on evidence. This may therefore also have a negative impact on the laws and state measures derived from these decisions.

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16 Human rights are universal, inalienable, indivisible and interdependent.

17 In July 2010, the German Government withdrew reservations declared under international law upon ratification.


Indicators which are to measure the implementation of the UN CRC must be based on the human rights requirements. Children’s rights indicators are indicators that refer to and reflect children’s rights issues and principles. Their aim is to assess and monitor the promotion and protection of children’s rights. The basis for developing indicators is the interpretation of the UN CRC in the light of the General Comments and the recommendations of the UN Committee on the Rights of the Child in connection with periodic reviews. It is also useful to consider the recommendations of other monitoring committees of human rights treaties.

In the long term, a children’s rights-based data report with which information is generated that provides management-related knowledge at an intersubjective level for tracking the status and development of children’s rights in Germany is to be created. It could measure and illustrate the impact of policy measures over the years, for example.

The development of explicit children’s rights indicators is ultimately also a necessary consequence of the methodological recommendations from the High Commissioner. Even if many rights from the UN CRC have an equivalent in other UN human rights conventions, the rights from the UN CRC have different content, particularly with regard to the general principles of the UN CRC – the right to non-discrimination (article 2 UN CRC), the best interests of the child as the primary consideration (article 3(1) UN CRC), the child’s right to life, survival and development (article 6 UN CRC) and the child’s right to be heard and have his views taken into account (participation) (article 12 UN CRC). Therefore, the normative content of the right of the child to freedom of religion in article 14 UN CRC is different from that of the general right to freedom of religion in article 18 of the UN International Covenant on Civil and Political Rights, for example. However, it is the specific dimension of a norm that is to be determined according to the RIGHTS criteria. This is easiest to reflect in explicit children’s rights indicators.

5 Process description

The National CRC Monitoring Mechanism is currently working to develop initial pilot children’s rights indicators by the end of 2019 in partnership with the German Youth Institute and with the involvement of key stakeholders. The aim is to demonstrate clearly with the pilots how children’s rights indicators can be used to analyse and assess the progress of the implementation of individual children’s rights.

5.1 Selection of the articles of the UN CRC for the pilot children’s rights indicators

When developing suitable indicators for measuring the implementation of the UN CRC, numerous interests must be taken into account. Even when choosing the topics, various positions need to be balanced. A consultation process is required to determine which topics are to be the initial focus and what exactly is to be “measured”. The selection of indicator sets can also be affected by parties’ interests to a particular degree. Due to the Institute’s independence which is guaranteed by law, the National

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21 Out of the RIGHTS criteria presented, the criteria of the relevance and simple application of an indicator are particularly open to subjective judgement.
CRC Monitoring Mechanism of the German Institute for Human Rights can take on the role of process manager and therefore also mediate between civil society, the academic community and the state during the development of children’s rights indicators.

To select the articles of the UN CRC for which initial pilot children’s rights indicators are to be developed, the Monitoring Mechanism and the DJI therefore invited both representatives of children’s rights organisations and of the unit of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth responsible for coordinating the implementation of the UN CRC within the Government to an expert workshop in April 2018 (as a follow-up to the first consultation in September 2017). During the workshop, the experts present selected the articles of the UN CRC that they believed were relevant to a German context. The bases for this selection were the Concluding Observations of the UN Committee on the Rights of the Child from Germany’s most recent state reporting procedure. These were to guide participants with regard to potential topics that are relevant in the German context.

The outcome was that the following three articles (listed here according to the number of times they were mentioned) were nominated for the further organisation of the pilot process: the child’s right to have his or her wishes taken into account in judicial proceedings (article 12(2) UN CRC), the right to social security (article 26 UN CRC) and the right to protection from violence, maltreatment and abuse (article 19 UN CRC).

5.2 Examination of the selected articles of the UN CRC
The Monitoring Mechanism and the DJI have used the ranking of articles of the UN CRC relevant to the German context worked out during the expert workshop as the basis for pushing ahead with the development of potential pilot children’s rights indicators according to the four steps specified by the UN High Commissioner and firstly for checking their feasibility.

Step 1: Determining the normative content of a right and identifying attributes

In summer 2018, the Monitoring Mechanism put contracts for expertises for article 12(2) UN CRC, article 19 UN CRC and article 26 UN CRC out to tender with the aim of determining the normative content of the relevant right and identifying up to five potential attributes. At the time, the tenders were designed to be worked on by tandem partners with expertise in both law and social science. However, this invitation to tender was unsuccessful. In the end, the normative sorting and identification of attributes was performed exclusively by legal specialists. The resulting expert opinions formed the basis for a workshop in which the Monitoring Mechanism and DJI reviewed and modified the attributes identified by the experts. The outcome was preliminary findings with regard to the attributes of article 12(2) UN CRC, article 19 UN CRC and article 26 UN CRC.

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22 The experts attending from the Extended Executive Board of the National Coalition Germany – Network for the Implementation of the UN Convention on the Rights of the Child e.V. stressed clearly during the workshop that they could only participate as private individuals with their respective expertise and not as delegates who could speak on behalf of an organisation. This kind of legitimacy of the selection of potential children’s rights that are of particular relevance to Germany was explicitly requested for the long-term development of children’s rights indicators.

23 However, the participants were specifically not restricted to these topics alone.

24 (1) Opportunity to express a view and actual consideration, (2) child-appropriate setting of the hearing and child-appropriate dialogue, (3) right to information, (4) right to (preparation, empowerment and) support.
and article 26 UN CRC. The preliminary attributes determined in this way in turn formed the basis for the initial brief assignment of potential indicators.

**Step 2: Translation into context-relevant indicators**

Sub-indicators must then be assigned to the attributes. By way of an example, we will look at article 12(2) UN CRC and the right of the child “[...] to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body [...]”. The “opportunity to express a view and actual consideration” was identified as a preliminary attribute in the workshop. Following initial brief deliberations, the number of hearings of children – meaning every human being below the age of eighteen years in accordance with article 1 UN CRC – during proceedings in family courts according to section 159 of the German Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (FamFG) was proposed in the workshop as one of the indicators which should make this right “more precisely” tangible. Even this basic quantitative information – basic because questions regarding the child-appropriate organisation of a hearing of children (question of how) can only be answered in a meaningful way if children are actually being heard (question of whether) – is not currently available to the German Government for its report to the UN Committee on the Rights of the Child.

**Step 3: Selection of structural, process and outcome indicators**

It is then useful to develop structural, process and outcome indicators for each attribute according to the recommendations of the UN High Commissioner.

*Structural indicators* are often outlined briefly as the legal implementation of State “obligations”. They describe the relevant legal obligations and the implementation programmes of a State party put in place on this basis. Taking the UN CRC as an example, this could be the status of the ratification of the UN CRC and its Optional Protocols and their enshrinement in law, drawing up action plans, etc. With regard to the example from article 12(2) UN CRC, the enshrinement in law of the hearing of children who have reached the age of 14 (section 159 FamFG provides for in-person hearing as a basic principle and this can only be omitted in exceptional cases; this rule and exception system has a binding dimension) and the hearing of children below the age of 14 (mandatory if the hearing is significant to the decision) could be mentioned here.

*Process indicators* are often explained briefly as “efforts”. They measure the efforts of the State party to fulfil its human rights obligations. With regard to the UN CRC and article 12(2) UN CRC, we could look for incentives offered by the State to ensure that

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25 (1) Nonviolent growing up without violence directed against the child, (2) protection from witnessing violence (violent confrontation), (3) prevention for protecting the child from violence, (4) investigation and evaluation of measures and their impact.

26 (1) Ensuring an adequate standard of living for the child through social security benefits, (2) free access to healthcare, (3) available and appropriate support for caregivers of children in favor of children.

27 In this case, both an indicator in the form of an absolute number and in the form of a percentage would be conceivable. An absolute number would provide information about the size of the sample, while a percentage would provide information about the way in which the discretion mentioned in section 159 FamFG is exercised.
children are actually heard in judicial or administrative proceedings that affect them, for example. The quality of proceedings and the openness to participation, etc. are measured using process indicators.

*Outcome indicators* are usually summarized briefly as “intended results”. Their purpose is to measure whether the intended result is actually achieved in reality. In the case of article 12(2) UN CRC, it would be a question of whether and how children have been heard in family court proceedings and whether they also felt that this process was meaningful. Information that can be classified as outcome indicators is, as a whole, an area that still needs further work in Germany in the opinion of the National CRC Monitoring Mechanism. This applies particularly to subjective assessments by the affected children themselves – not just by their representatives. This would come much closer to the aim of the Convention, specifically promoting the participation of children as full members of the human mankind right from the start. It is therefore not only possible, but also necessary, to use subjective indicators – including, but not only, as the expression of a participative element.

Although it seems obvious to view the structural indicators, process indicators and outcome indicators in a causal chain (the process indicators show how the structural indicators are to be implemented and the outcome indicators show the way in which this has been successful), it is important to refrain from this approach, especially in a pilot process. Valid statements about any causality can only be made when indicators have been available for a long time.

**Step 4: Reviewing the indicators for relevance and availability of data**

In accordance with the requirements of the UN High Commissioner, the process of developing pilot children’s rights indicators stipulates that, in the fourth step which has yet to be completed, the relevance and availability of data for the structural, process and outcome indicators identified by the Monitoring Mechanism and DJI with selected experts need to be reviewed. Particular emphasis will be placed on the issue of the relevance of the selected measurement. The Monitoring Mechanism plans to discuss this in partnership with the DJI in a consultation with civil society. The participation of children’s and youth organisations will also play an important role here. Only when this review dialogue has taken place will it be possible to complete the pilot children’s rights indicators with the relevant sets of data and information.

**6 Summary and outlook**

In view of the upcoming state reporting procedure, which began with the submission of the state report in April 2019, the National CRC Monitoring Mechanism is planning to contribute its findings obtained to date in the process of developing pilot children’s rights indicators to the discussions, including as part of the constructive dialogue with the UN Committee on the Rights of the Child.

The long-term aim is to establish a regular, data-based report by Germany on the implementation of the rights of children in Germany in accordance with the
requirements of the UN CRC, which should enable Germany as a State party to make policy decisions beyond “intuited realities”\(^{28}\).

Using children’s rights indicators could help to map development trends over the years and potentially illustrate the impact of individual policy measures; it will also improve the information available on individual rights and contribute to developing a good understanding of the status of implementation of State obligations.

Children’s rights indicators cannot claim to cover all facets of a right, just as analyses based on children’s rights indicators cannot claim to be complete. Other methods will still need to be used additionally for this purpose in future. However, the underlying conceptualisation supports the suitability of children’s rights indicators as a key analysis tool for achieving substantial improvements in the implementation, and the measurement of the implementation, of children’s rights.

2019 marks the 30th anniversary of the UN CRC – a good time to try out a long-overdue method in Germany too by developing pilot children’s rights indicators.