Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Germany - 4th Session - 2009
2nd February 2009, 10am - 1pm

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National Report

28. Overcoming the integration gaps remains a particular challenge. The educational achievement of migrants, or more precisely of children and young people having an immigration background, forms an important foundation for successful integration. Very many immigrants have long found their place in society. They are successful and contribute their skills and achievements to the wellbeing and cultural diversity of the country. Nevertheless, in some quarters, problems of integration have increased in recent years. Integration has yet to become a reality for some sectors of second and third generation immigrants. Of all the European states having labour migration, Germany is the country whose migrants tend to be most at variance with the indigenous population in terms of educational background and socio-economic status. In 2006 12.6 per cent of 25 to 65 year olds having an immigration background had no general school leaving certificate and 41.5 per cent possessed no vocational qualifications. Admittedly some allowance has to be made in these results for significant differences depending on the country of origin. The Federal Government has stated that the support of children and young people having an immigration background is to be a focal point of its policy. The "National Integration Plan" represents an important instrument of integration policy. A range of integration initiatives are being launched at Federal level and in the Länder, local authorities and civil society.
36. The tackling of extremism is one of the focal points in the work of the Federal Agency for Civic Education. Its function is to promote understanding of political situations, raise democratic awareness and strengthen disposition toward political involvement. Its educational material range is therefore always designed to reinforce the powers of civil society. Prevention through the raising of awareness, together with concrete support for arguing against extremist, racist and xenophobic attitudes and slogans, form important elements of this work. An example is the “Keep Racism out of School” project, which offers children and young people the opportunity to actively influence the atmosphere at their school by consciously opposing any form of discrimination, harassment and violence.

37. Since 2001 the Federal Government’s youth policy has placed emphasis on the action programme “Young People for Tolerance and Democracy – against Right-wing Extremism, Xenophobia and Anti-Semitism”. From 2001 to 2006 a total of 4,470 preventive and educational prototype measures and projects were promoted, primarily in the sphere of information, education and interaction aimed at young people, with a total of EUR 192 million under the CIVITAS, ENTIMON and XENOS programmes.

38. Germany is actively involved in the XENOS “Integration and Diversity” Programme, and during 2007-2013 is making available EUR 200 million from funds received from the European Social Fund (ESF). The programme aims to increase tolerance and the awareness of democracy, and to reduce xenophobia and racism. It comprises primarily preventive measures against exclusion and discrimination in the labour market and society. The programme is targeted predominantly at young people and young adults in transition between education and work. Particular attention is also directed at young people with a migration background who are having problems with integration into the labour market and society.

41. The Federal Government is actively committed to the creation of a framework to make it easier for men and women to reconcile a career with family commitments. Development of child-care is a political priority. Another important step was the introduction in 2007 of the "parental allowance" and the “Partner months”. The new Partner months scheme is partly aimed at giving fathers greater opportunity to become more involved in childcare or even take over childcare duties. Initial figures for 2007 indicate that this new arrangement has been successful. In 2007 for instance almost 60 per cent of fathers who drew Parental allowance took the opportunity to take 2 months' parental leave and 20 per cent took the full twelve months.

44. The Federal Government opposes any form of violence against women. In 2007, the Second Action Plan to combat violence against women was adopted. Its main goals are to improve the efficiency of the measures and the protection of affected women. The Action Plan covers all forms of violence and determines where there is currently special need for action: in strengthened provision for female migrants, women with disabilities, in healthcare and in the earliest possible prevention. The Action Plan rolls together more than 130 Federal Government measures. Activities at Federal and Länder level are conducted in close cooperation with non-governmental organizations in joint working groups on “domestic violence” and “trafficking in women”. In order to identify and preclude risks to children in good time, in particular in connection with domestic violence, the Federal Ministry of Family Affairs is developing the programme "Early Help for Parents and Children and Social Earning Warning Systems", integrating into that the theme of domestic violence as a central risk factor. Forced marriages are serious infringements of human rights. For this reason the Federal Ministry for Family Affairs is promoting a model project for the development of an online counselling service for young migrant women affected by forced marriage and domestic violence.

53. Social legislation is governed by the Code of Social Law. This primarily encompasses social security benefits, such as health insurance, pension insurance, accident insurance, unemployment insurance and long-term care insurance. It also governs state welfare benefits such as educational grants, child benefit and housing benefit. In addition the Code of Social Law establishes claims to support through youth services and social benefits, as well as the rights of the disabled to participate in working life.

54. The principle of social justice incorporates the right to the safeguarding of a minimum subsistence level. In Germany this means not only the maintenance of a material level of subsistence, but also opportunities for economic and social participation and attainment for all members of society. As the level of prosperity achieved in Germany is relatively high, the poverty risk threshold, set at a net monthly income2 of EUR 781 for a one person household, is also higher than in many other countries. As part of its poverty and wealth reporting the Federal Government has been reviewing the social situation in Germany at regular intervals since 2001. The Federal Government provides these reports to highlight not just the trends in income and property but also the central trends and challenges in respect of participation in the labour market, education, family and children, health provision, housing and political involvement. The results of the 3rd Poverty and Wealth Report of 2008 confirm that the welfare state continues to be effective in its protective and motivational role. Financial transfers and family benefits have enabled the percentage of those at risk of poverty in Germany, including children, to fall below the European average. The findings of the OECD study “Growing unequal”, published in October 2008, which ranks Germany around the middle of the OECD ratings scale, are also in keeping with those of the 3rd Poverty and Wealth Report. The study confirms that motivational strategies and financial incentives to find work can reduce poverty, and in this respect the German labour market reforms (No. 54) are pointing in the right direction.

58. A key educational policy target is the ability to offer to all children and young people, particularly from migrant families, the opportunity to best develop their full potential through education in school or at work, or via further education. To achieve this, sweeping fundamental changes have been introduced in all education sectors in recent years, with special priority given to the manifold efforts to ensure quality at all levels of the education system, from day nurseries and schools right through to higher education. The emphasis is on early and individual support, as well as targeted encouragement of language skills, to provide consistent support to educationally disadvantaged children.

59. At the heart of the "National Integration Plan" lies the improved educational participation of children and young people coming from an immigration background. The Federal Government and the Länder have committed themselves to guarantee demand-based intensified language tuition before school enrolment by 2012.
In recent years both Federal Government and Länder have introduced far reaching measures to strengthen pre-school education and provision, day nursery care, and individual support such as the promotion of language skills for all children from three years old. Through its qualification initiative the Federal Government is striving, together with the Länder, to improve educational opportunities from pre-school education, through school and training, right up to degree level, and to enable advancement through education. From 2013 onward children aged from 2 years have a legal right to childcare.

The obligation to attend school applies as much to children with disabilities as it does to those without. Depending on special educational needs and the level of development this may involve integration into mainstream schools or specific provision in special or special needs schools. Special needs teachers in Germany are highly professional. Integration schools and classes are constantly being expanded in many Länder. Pupils in special schools are to be increasingly led to a general secondary school certificate beyond the certificate specific to their special schools.

The prohibition of torture is upheld by the German Courts. This can be demonstrated by a case heard in 2007, in which a German court passed sentence on two police officers, who in a child abduction case, had threatened the kidnapper while in police custody with ill-treatment in order to learn the whereabouts of the kidnapped child, as the police believed it still possible for the child to be found alive. In the criminal proceedings against the kidnapper and murderer, the statements he made to the police under this duress were not used.

Federal Government policy places clear focus on integration. Through its integration summit and the resulting National Integration Plan, Germany has pursued a successful course and placed integration policy on a new footing: for the first time all levels of government—Federal Government, Länder and local authorities—-together with representatives of civic society and migrants came together to agree a sustainable integration policy. Clear targets and over 400 concrete measures and voluntary commitments from government and non-governmental players are set out in a National Integration Plan. The improvement of integration courses, nationwide language tests for pre-school children and stronger involvement in the educational sector are some of the important measures to have come out of this.

The German Government is to use its National Action Plan to implement the resolutions of the Durban World Conference against Racism (2001). The Federal Government is to furthermore push through important programmes for the prevention and combat of racism. Hence 2007 saw the launch of the programme “DIVERSITY IS GOOD FOR YOU. Young People for Diversity, Tolerance and Democracy”, for which the Federal Republic is making available the sum of EUR 19 million annually until 2010. The aim of the programme is to highlight diversity, tolerance and democracy as values for society as a whole, and to win children and young people over to these ground rules for peaceful and democratic coexistence. This prevention-oriented programme is complemented by another programme, also launched in 2007 (“Competent. For Democracy – Advice Networks against Right-wing Extremism”) for cause-driven intervention against right-wing extremism, which receives funding of EUR 5 million annually.

By 2013 the Federal Republic and the Länder aim to progressively develop a needs-based, quality-oriented care offering for a nationwide average of 35 per cent of children under the age of three, on which they will expend around EUR 12 billion. These measures should result in substantial improvement to the quality of the range of day care centre and day nursery offerings. Particular emphasis will be placed on the early promotion of language skills. The aim is to give all children right from the start the best possible encouragement and support in their individual and social development.

UN Compilation

1. In 2004, the Human Rights Committee (HR Committee) regretted that Germany maintains its reservations to the ICCPR and the ICCPR-OP1.7 The Committee on the Rights of the Child (CRC) recommended in 2004 and in 2008 that Germany proceed to ratifying the OP- CRC-SC8 and the Committee against Torture (CAT) called upon it in 2004 to ratify OP-CAT.9 The Committee on the Elimination of Racial Discrimination (CERD) encouraged in 2008 Germany to consider ratifying the ICRMW.10

8. In 2008, CERD welcomed the adoption of the General Equal Treatment (GET) Act which prohibits discrimination on the grounds of race and ethnic origin, gender, religion and belief, disability, age and sexual orientation.29 However, CERD regretted the absence of a definition of racial discrimination in domestic legislation and expressed concern, inter alia, about the increase of reported racial-related incidents and the fact that many Roma and Sinti continue to experience discrimination.30 It recommended, inter alia, that Germany consider adopting a clear and comprehensive definition of racial discrimination;31 increase its efforts to prevent racially motivated offences on the internet and ensure that relevant criminal law provisions are effectively implemented; 32 take more resolute action to prevent and punish perpetrators of racially motivated acts of violence against members of the Roma/Sinti, Muslim and Jewish communities and against German nationals of foreign origin and asylum-seekers, in particular of African origin;33 take effective measures to counter the incitement to discrimination and violence in the media and to overcome the disadvantages brought about by persistent discrimination.34 CRC recommended in 2004 that Germany undertake the necessary steps to prevent and combat discriminatory disparities and de facto discrimination against foreign children or children belonging to minorities.35

15. In 2004, CRC and the HR Committee noted with concern the persistence of domestic violence despite legislation adopted by Germany. CRC recommended, inter alia, that Germany strengthen awareness-raising campaigns in order to prevent and combat child abuse, evaluate the work of existing structures and provide training for professionals involved in such cases.46

18. While noting the efforts undertaken in this regard, CRC expressed concerns in 2004 at the increasing number of street children in Germany, as well as the high percentage of foreign children among them. CRC called upon Germany to pursue its efforts to prevent and reduce this phenomenon by addressing its root causes, with a special emphasis on the protection of foreign children; to ensure that street children are provided with adequate food, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development; and to ensure that these children are provided with recovery and reintegration services for physical, sexual and substance abuse, and services for reconciliation with their families.49 On the same issue, the ILO
Committee of Experts in 2007 requested Germany to provide information on the effective and time-bound measures taken or envisaged to protect street children from the worst forms of child labour.50

19. In addition to the reservations to article 40 (2) (b) and (v), CRC expressed concern in 2004 at the increasing number of children placed in detention, disproportionally affecting children of foreign origin, and that children in detention or custody are placed with persons up to the age of 25 years. CRC recommended that Germany take all appropriate measures to implement a juvenile justice system in conformity with the Convention and with other United Nations standards in this field; ensure that deprivation of liberty is only used as a measure of last resort and for the shortest possible time; that guarantees of due process are fully respected; and that persons under 18 are not detained with adults.51

21. CESCR in 2001 and CRC in 2004 noted with concern the lack of sufficient childcare facilities and recommended that Germany take measures to establish more childcare services. CRC also called upon Germany to ensure that quality child care is available to all children.53

22. In 2004, CRC expressed concern that the abduction of children by either of their parents is a growing problem. The Committee recommended inter alia that Germany effectively apply the Hague Convention on the Civil Aspects of International Child Abduction of 1980 to all children abducted into Germany and encourage States which are not yet parties to this Convention to ratify or accede to it and, if necessary, conclude bilateral agreements to deal adequately with international child abduction.54

28. In 2004, CRC noted the approval of the Programme of Action 2015 for Poverty Reduction, and welcomed the first national report on poverty in 2001. CRC also noted with concern the prevalence of poverty, mainly affecting large families, single-parent families, families of foreign origin and disproportionally families from the eastern part of Germany. CRC recommended inter alia measures to accelerate the elimination of child poverty, and continuing to provide material assistance and support to economically disadvantaged families.61

29. According to the Special Rapporteur on the right to education, several studies undertaken under the OECD PISA programme (Programme for International Student Assessment) have revealed that in Germany there is a high co-relation between social/migrant background of students and educational achievement. This, among other reasons, has been a trigger for education reform. The Special Rapporteur urged the Government to reconsider the multitrack school system, which is selective and could lead to a form of de facto discrimination. The Special Rapporteur believed that the classification process which takes place at lower secondary level (average age of students is 10, depending on each Land’s regulation) does not assess students in an adequate manner and instead of being inclusive, is exclusive. 62 The Special Rapporteur also believed that the education authorities might be attaching disproportionate weight to the linguistic competence of schoolchildren, given that one of the key elements of the classification assessment is their proficiency in German. This element has the effect of discriminating against schoolchildren of foreign origin whose mother tongue is not German.63 The Special Rapporteur further stated the one of the major challenges facing Germany relates to the situation of the disabled, 64 and one of the main difficulties in this area arises from the fact that the education authorities offer very limited opportunities to the parents of disabled children to choose the best options for their sons or daughters.65

30. In 2008, CERD recommended that Germany take effective measures to ensure the integration of children of non-citizens in the regular school system and to reconsider the problem of the transfer of such children to special schools for “under-achievers” (Sonderschulen) including the criteria for any such transfer, and to improve current arrangements to support German language skills of such children.66

35. In 2004, CRC noted with concern that refugee children between 16 and 18 years of age do not benefit from the rights contained in the Youth Welfare Act; that Roma children and other children belonging to ethnic minorities may be forcibly expelled to countries their families have been fleeing; that the national requirements and procedures for family reunification for refugee families are complex and too long; and that some children of asylum-seekers in the Land Berlin were denied the right to a birth certificate because of incomplete documentation provided by the parents.71

36. In 2008, CRC (on OP AC) expressed concern that unaccompanied children may be detained. It recommended that Germany provide protection for asylum-seeking and refugee children arriving in Germany who may have been recruited or used in hostilities abroad.72 On the same issue, UNHCR informed that according to the German Asylum Procedures Act, minor refugees between 16 and 18 years are treated like adults in the asylum procedure. In particular, they are included in accelerated procedures, e.g. the airport procedure. Certain minor asylum-seekers encounter difficulties in accessing primary and secondary schools, as a consequence of the fact that in some of the German Länder they are not obliged to go to school. Special attention will continuously have to be paid to ensure that all vulnerable asylum-seekers receive fair treatment in the asylum procedure and the treatment they are entitled to under the EC Reception Conditions Directive.73

41. In 2008, CRC (on OPA C) welcomed Germany’s contributions to projects for the rehabilitation and reintegration of child soldiers in several countries experiencing conflict or in post-conflict situations.79

42. In its voluntary pledge submitted on 5 April 2006 in support of its candidacy to the membership of the Human Rights Council, Germany committed, inter alia, to strive to further increase its support to OHCHR; to readily submit itself to the universal periodic review of its own human rights obligations and its record of promoting and protecting human rights within Germany, whenever the Council wishes; to continue to give special emphasis to the strengthening of gender equality, the rights of women and the rights of the child; and to take steps to ratify OP-CAT and OP-CRC-SC.80

45. After his 2006 mission, the Special Rapporteur on education recommended that studies be carried out to clarify the actual school attendance situation of asylum-seeking children, refugee children or children without the proper papers; and also to appraise as a matter of urgency the legal framework for the protection and promotion of the human right of such children to education, including exploring...
opportunities for children living under poverty; adopt policy measures in response to the emerging phenomenon of working poor; and

stigmatisation and exclusion, and lower chances of making their voice heard.98

education, vocational training (15 per cent remain without any training), health service (and thus lower life expectancy), social

closer to 5 million.97 According to JS2, 3 million children are at risk of falling below the existence minimum, implying less access to

poverty,96 indicating that in its latest report, the Government identifies about 1.3 million people economically active who need

3. AI and JS2 called on Germany to formally acknowledge the full applicability of the International Covenant on Civil and Political

 Rights (ICCPR) to persons subject to its jurisdiction in situations where its troops or police forces operate abroad.6 Child Rights (JS1)7

and JS2 recommended that Germany withdraw the reservation to the Convention on the Rights of the Child (CRC),8 even if the

Bundesländer do not agree, as it has the legal power to do so.9

7. KOK and GIHR reported that in August 2007 the Government concluded on broad modifications in the German Aliens Act, to include

measures for the protection of victims of trafficking.14 KOK noted that the modifications fell short of the demands voiced by NGOs,

particularly when it comes to residence law policies,15 while GIHR noted that a series of new restrictions of rights of migrants and

asylum seekers were introduced at the same time.16 GIHR also reported that the amendments introduce a new permanent residence

permit for some categories of persons having legally lived for more than 6 or 8 years in Germany (6 years for families, 8 years for

singles),17 but found some of the regulations related to this new permit, as raising serious questions of practicability, and having

potentially discriminatory effects against parts of the immigration population, possibly even being inconsistent with children’s rights.18

13. JS1 noted that an NGO Coalition comprised of 100 organisations was set up in 1996 under the auspices of the German Child Welfare

Organisation, which since then has been monitoring the implementation of Germany’s obligations under the CRC.32 JS2 reported that

recommendations by CEDAW on consulting with independent women's organisations in preparing the National Report are still unmet.33

22. The League for Children’s Rights (LCR) indicated that the legal construction of an authority called Jugendamt has not served to

guarantee children’s rights and protect them from physical and psychological damage.61 According to LRC, the Jugendamt is not

subject to any efficient supervision,62 and frequently oversteps its competences without being sanctioned.63 LCR also reported deficits

in the system of child’s attorney, psychiatric and psychological experts, and legal tutors.64 LCR recommended that the legal position of

the Jugendamt and its agents be profoundly modified,65 and concrete remedial actions be elaborated in detail by a group of independent

experts, with the execution of remedial actions reported to the European Commissioner for Human Rights at least once a year until full

approval is obtained.66

23. JS2 reported that meaningful data on the extent of domestic and sexual violence such as homicide, forced marriage, and violence in

institutions (as psychiatric institutes), is not available.67 JS2 urged that Germany seek better protection and relief for the victims of

domestic and sexual violence under the civil and criminal law.68 JS2 believes that adequate training for relevant professionals (law

enforcement, judiciary, medical and care personnel) should be ensured, paying special attention to cultural issues, disabilities, and

victims of trafficking.69 It also believes that better provisions are needed (e.g. in Immigration and Residence Law) to protect and

counsel victims of forced marriages and victims of human trafficking.70 COE recommended that Germany develop policy strategies to

offer more effective protection to women and girls with disabilities against sexual violence and ensure that victim support and

counselling services for women victims of violence adequately cater for women and girls with disabilities.71

26. COE recommended that Germany ensure that the devolution of legislative powers in regard to prison administration does not lead to

a lowering of prison standards and that the social reintegration of prisoners remains the principal aim of imprisonment.77 COE also

recommended promoting the accommodation of juvenile offenders in open prison facilities and continue providing adequate funding for

alternative sanction measures including victim-offender mediation; providing for the possibility of appeal by juvenile offenders or other

type of independent review against the scope of educational measures set out by a court decision; to apply secured custody in an

extremely considered manner and provide people kept under secured custody with adequate medical treatment or other care that

addresses their specific situation.78

28. JS2 indicated that measures taken by Germany against forced marriages have not been sufficient, with fundamental changes to

immigration law needed to ensure secure living conditions, such as residence permits being made independent of marital status, and

women and girls with German residency who are forced to marry abroad having a right to return.82

33. JS2 reported estimations that approximately 13 per cent of the German population (including foreign nationals) suffer from

poverty,96 indicating that in its latest report, the Government identifies about 1.3 million people economically active who need

additional subsidies from the Government, because their wage does not sustain them, while independent sources suggest this figure is

closer to 5 million.97 According to JS2, 3 million children are at risk of falling below the existence minimum, implying less access to

education, vocational training (15 per cent remain without any training), health service (and thus lower life expectancy), social

stigmatisation and exclusion, and lower chances of making their voice heard.98

34. COE recommended that Germany develop comprehensive policy measures to tackle child poverty and to improve educational

opportunities for children living under poverty; adopt policy measures in response to the emerging phenomenon of working poor; and
consider the introduction of minimum wages.99 GIHR and JS2 noted that the Federal Government’s 2008 “Poverty and Wealth Report” raises a number of problems related to poverty that have an obvious human rights dimension, but the report itself hardly ever refers to human rights.100

35. GIHR was concerned that some categories of children suffer from structural discrimination in the German school system.101 GIHR reported that many of these children drop out of the education system too early, without a real chance of finding a work place or an apprenticeship.102

36. AI and JS2 indicated that the competency for regulating all matters of education lies with the 16 Länder, with legal uncertainty as to whether children without residence permits have the right to primary education in some Länders.103 Moreover, headmasters of schools are required to report the identity of a child without a residence-permit to the aliens’ authority; which frequently leads to the start of the deportation procedure.104 COE recommended that Germany ensure that irregular migrants can effectively access their right to education.105

37. GIHR reported that institutions of early childhood education and care are not sufficiently available throughout the country, particularly in the Western and Southern regions.106 Quality of early childhood education is often very poor and does not support the children’s learning, particularly in terms of language.107 The Länder likewise fail to invest enough human and financial resources into primary schools to address this issue.108

43. JS2 indicated that medical treatment of undocumented migrants is currently offered by non-state institutions, such as churches or NGOs, situation which leads to major gaps particularly in relation to children, pregnancies and child birth.124

44. JS2 reported that refugees and their children are forced to live in difficult conditions in refugee centres for years, particularly in deportation camps.125 COE recommended inter alia that Germany consider alternative ways of accommodating asylum-seekers after their initial stay in the first reception centres, which respect the privacy of asylum seekers and enable them to retain a substantial degree of personal autonomy; review the proportionality of the restrictions placed on the freedom of movement of asylum seekers, especially in cases when they are applied over several years; provide health care for the essential treatment of illness for all asylum-seekers; prepare guidelines on minimum standards for accommodating asylum-seekers to ensure that all asylum-seekers are offered an adequate standard of living; restrict the use of pre-deportation detention to cases when it is thoroughly justified and when it is clear that the deportation can in fact take place in the immediate future so that the length of pre-deportation detention would not normally exceed a few weeks; and provide free legal counselling to rejected asylum seekers who are in pre-deportation detention so that they can access a remedy to contest the grounds of their detention.126

45. GIHR reported that unaccompanied foreign minors and refugee children are routinely pushed into burdensome, not child-friendly asylum proceedings, which are generally unsuccessful.127 Frequently, unaccompanied minors remain in the status of “toleration” (Duldung) and thus live in permanent fear of deportation.128 Once these children have attained 16 years of age, they are frequently excluded from the Child Welfare Service and placed in adult accommodations for asylum-seekers.129 The existing practice to determine the age of the children is also problematic and runs counter to the best interests of the child.130 JS1 and JS2 stated that refugee children need a secure status for a long term stay and recommended inter alia that a special protection status be introduced for all unaccompanied children who cannot return but have also no chance for asylum, guaranteeing them the right to education, access to the youth welfare system and to legal guardianship.131

Final Report

11. Referring to a question about the right to education, Germany acknowledged that disadvantages for migrants persist and emphasized its efforts to have a full programme of pre-school language courses for migrants in place by 2012. Furthermore, the cooperation with parents is being enhanced, provision of all-day schools expanded, and teacher training improved.

12. Germany stated that although the number of undocumented immigrants living in Germany is unknown, the Government is keen to ensure that they are treated with dignity. From fear of being deported, many are unwilling to disclose their status, which leads to problems regarding access to health as well as school education for children. Many illegal migrants do not send their children to school as they will risk disclosing the parents’ status. To address this problem, a revision of the law is suggested whereby schools will no longer need to report to immigration authorities.

13. Regarding the issues of forced marriages, forced prostitution and trafficking in human beings, Germany noted that it works towards improving the situation of victims, notably women, inter alia through witness protection programmes. Joint task forces between the Federal Government and the Länder on trafficking of women, on domestic violence and on forced evictions have been established. These problems including the sexual exploitation of children and child pornography through misuse of the internet are taken seriously.

14. Addressing an advance question on the right of residence for victims of forced marriages and forced evictions, the delegation explained that EU directives have been incorporated into German law in 2007. Victims of forced marriages have a right to return after having to leave the country due to a forced marriage provided they have inter alia resided in Germany for eight years and attended school in Germany for six years and as long as their absence from Germany does not exceed 5 years.

15. Germany stated regarding the situation and rights of street children that the estimated number of 5,000 to 7,000 children living on the street has not increased in recent years. Efforts are being made establish contact with them and to integrate them into society.

16. Germany stated about the protection of children of prison inmates that most children are, with the State’s help, cared for by inmates’ relatives. Only 5 per cent are sent to children's homes. Additionally, wards in which women can live together with their children have been established.
21. Germany informed that the Optional Protocol to the Convention against Torture (OP-CAT) has been ratified and entered into force in January 2009. Regarding the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC), the procedure at the national level was complete, but not the ratification process.

26. Poland referred to the issue raised by the League for Children’s Rights concerning the overstepping by the Jugendamt (Office for Youth) of its competences. It asked whether the Government had analyzed the activity of Jugendamt towards parents with other than German citizenship in the light of international obligations, in particular the right to respect for family life. In this context, Poland recommended Germany to establish a form of effective judicial control over administrative decisions of Jugendamt.

36. Cuba noted the practice of race-related acts to which vulnerable groups, including migrants and Roma and Sinti minorities, are victims. It referred to an OHCHR study that cautioned that attention should be paid to xenophobia as a “gateway drug” leading to right-wing extremism. It noted CEDAW’s concern on the situation of minority and migrant women suffering from discrimination. Cuba recommended Germany take the necessary measures to avoid the stigmatization of migrants and ethnic or religious minorities living in the country and to ensure that they do not become the subject of racism, racial discrimination, xenophobia and other forms of related intolerance, including the prohibition of any organization and propaganda based on racist or xenophobic ideologies. It recommended Germany take the necessary measures to ensure the protection of the rights of all children, and specially to resolve the problem of the so-called street children by ensuring that their basic needs are covered including education, health, housing and food, and correspond to a society that is rich and developed.

37. The United Kingdom recommended that Germany continue that consultation in its follow up and implementation of the UPR outcome. It noted stakeholders’ submission raised concerns about the treatment of migrants victims of forced marriages, forced prostitution or human trafficking. It requested information about the steps taken on these issues since the Second Action Plan to combat violence against women. It also recommended that Germany take steps to ensure that women and girls with German residency who were forced to marry abroad have a right to return. The United Kingdom welcomed Germany’s ratification of the OP-CAT and recommended that Germany set a clear timetable for the establishment or designation of national mechanisms and grant adequate resources for the effective functioning of these mechanisms.

38. Pakistan noted the efforts to tackle xenophobia and racism, as well as policies to address economic, social and cultural rights. It asked, inter alia, for details on the Office of the Federal Ombudsman. Pakistan recommended that Germany: a) acknowledge the full applicability of ICCPR to persons subject to its jurisdiction both at home and abroad; b) in the context of counter terrorism measures fully respect the provisions of international human rights instruments including ICCPR and CAT; c) repeal any legislation that infringe upon individuals’ right to privacy such as the video surveillance of private homes; d) ensure full access to primary health care, education and judicial recourse to all persons present on its territory irrespective of their legal status; e) take concrete actions to deal with the discriminatory practices on the grounds of religion in access to employment and social integration; and f) pay special attention to the recommendations of the Special Rapporteur on racism who cautioned that xenophobia needs to be addressed squarely to avoid right-wing extremism.

40. Germany informed that one fifth of its population is of foreign origin and that Germany makes every effort to integrate migrants into society. It pointed out that since 2000, children of migrants born on German soil and whose parents have been living in Germany for a long time have obtained German citizenship when they are born. Germany stressed that child protection is to be further improved through the Federal Child Protection Act which was adopted by the government in January 2009 and sets out the competencies of the Jugendämter (Offices for Youth). There is made no difference in regard to families with parents not having German nationality.

41. The elimination of the gender pay is an important aim for Germany. On the equal treatment of men and women, Germany reported that new programmes have been started to facilitate the re-integration of women into working life after giving birth to children and parental allowances have been introduced, which led to the fact that now more men take over more child-care responsibilities in their families.

47. Algeria noted the reported increase of incidents of racist characters especially against Muslim, Roma, Sinti and asylum-seekers, in particular of African origin. Algeria recommended that Germany give diligent follow-up to recommendations of CERD in 2008, in particular the prevention of racially motivated offences, guaranteeing the equal enjoyment of the right to adequate housing, lifting obstacles encountered by asylum-seekers for schooling their children, and inclusion in their legislation of a specific provision making ethnic racial or religious hatred an aggravated circumstance in criminal matters. Given the importance attached by Germany to combating racism, racial discrimination, xenophobia and related intolerance, including within its own border, Algeria recommended that Germany should intensify its efforts in the area with a more committed contribution to the preparatory process for the Durban Review Conference with a view to ensuring its success. In order to be more persuasive in its approach vis-à-vis third parties, Algeria recommended that Germany should set an example itself by accepting that the thousands of migrant workers from its development partners should be able to live in Germany and benefit from the protection of the ICRMW as it can truly protect the most elementary rights. Algeria recommended that Germany should accede to this Convention.

49. Slovenia noted that the Special Rapporteur on the right to education indicated that education authorities might attach disproportionate weight to linguistic competence of schoolchildren of foreign origin. It noted that CERD recommended reconsidering the problem of the transfer of children of non-citizens to special schools for “under-achievers”. In its voluntary pledge Germany committed to take steps to ratify OP-CAT and OP-CRC-SC. While noting the ratification of OP-CAT, Slovenia expressed its wish that Germany speed up the process of the ratification of the OP-CRC-SC.

51. Saudi Arabia noted that the measures of the national action plan against racism are in accordance with the Durban Declaration. It made reference to the hate crimes motivated by race or religion classified as crimes of xenophobia. It noted the measures taken to
promote education in the pre-school period, improve language skills, and to provide free education including to children with disabilities. Saudi Arabia recommended Germany continue to implement the national action plan to combat terrorism in order to eliminate xenophobia and Islamophobia. It also recommended that Germany continue to implement the national integration plan to increase access to education for children of migrant workers.

52. India noted the introduction of anti-terrorism legislations in the 1970s to deal with the situation arising from violent acts of the Red Army Faction. It noted CERD’s concerns about the increase of reported racist incidents involving the Roma and Sinti, and that the Committee on the Elimination of Discrimination against Women (CEDAW) drew attention to discrimination against Roma and Sinti. The Human Rights Committee had expressed concern that persons belonging to a certain religious organization or belief were disqualified from obtaining employment in the public service. India asked for information regarding German states having issued legislation forbidding teachers in public schools to wear certain religious symbols.

56. Turkey noted problems related to the education of the migrant population. Turkey noted that the views of the Special Rapporteur on the right to education could be considered in a review of the existing school system, which seems discriminatory against school children of foreign origin and not of German mother tongue. Turkey said it believed the practice of dual citizenship would enhance the political participation of migrations and their integration. It therefore recommended that Germany consider the suggestions made by CERD in this respect. Turkey noted that the amendment introduced to the migration law requiring knowledge of German applies only to those for whom an entry visa is required, and considered that this discriminatory practice should end.

63. Italy noted that the European Commission against Racism and Intolerance (ECRI) recommended the adoption of legislation providing for racist motivation to be considered as an aggravating circumstance in all offences. CERD recommended the adoption of a comprehensive definition of racial discrimination. Italy noted that both ECRI and CERD encouraged Germany to take steps to ensure the integration of children who do not have German citizenship into the regular school system. Italy welcomed the National Integration Plan and asked about measures taken to promote integration. Italy recommended Germany take fully into account the relevant recommendations of CERD aimed at ensuring the integration of non-German children into the regular school system.

66. Bosnia and Herzegovina, observing that the German Institute for Human Rights acts as an independent human rights institution, asked Germany to elaborate on its activities and obligations. It requested information on State legislation to protect children from abuse of drugs, tobacco, alcohol and other toxic substances. It asked if Germany intends to ratify the OP-CRC-SC.

68. Argentina noted that Germany is working on the establishment of a national prevention mechanism required by the Optional Protocol to the Convention against Torture. It requested information on the implementation proposals. Argentina noted that the National Integration Plan is an important tool for integration policy. Argentina considered the measures in the Plan and other policies important for giving effect to the CERD recommendations that require the full integration of non-national children in the regular school system.

69. Canada noted the Special Rapporteur’s observation on the right to education, particularly the young age that children are selected for streaming into the academic and non-academic schools, and recommended that Germany consider enabling children to move between streams at a later age. Canada also recommended that special attention should be paid ensuring that children of migrant background are not denied academic opportunities based primarily on their acquired proficiency in the German language. Canada recommended that Germany explore with the Ministries of Education at the state levels the incorporation of more content in school curricula on the longstanding historical contribution of the Roma and Sinti communities to German society and culture. Canada also noted that the requirement of public institutions to report irregular migrants to the Aliens’ Authority. It recommended that the Government ensure that measures to control irregular migration do not operate to impede access to primary health care, education and judicial authorities.

71. New Zealand recommended that Germany adopt time-bound measures to increase children with disabilities’ access to inclusive education in mainstream schools, and that it ensure funding for the specific services necessary to help such students reach their full learning potential and participate along with other students. New Zealand recommended that Germany strengthen measures to counter discriminatory attitudes, for example by including sexual orientation and gender identity in public education and equality programmes and initiatives. It further recommended that German law on transsexuality be modified promptly to facilitate registration of a change of gender on official documents, without requiring transsexuals to divorce, in line with the decision of the Constitutional Court. It recommended that the government continue to prioritise gender mainstreaming and to ensure that appropriate mechanisms are in place to implement, monitor and review the Government’s strategy.

72. Morocco noted with interest inter alia the national integration plan and programme which provides for language courses, integration and orientation. Given all that had been done, Germany should accede to the ICRMW and Morocco encouraged Germany to do so. Morocco noted that the expulsion and the escorting to the borders of undocumented people sometimes includes entire families which penalizes children that do not speak German. Morocco called on Germany to show more understanding and flexibility during such expulsions and to take into account the social and humanitarian aspects regarding the families. Morocco welcomed the dialogue that had begun with the Muslim community. Morocco was pleased to see the interest by Germany in implementing the recommendations of the
Durban Conference.

77. Chile asked how Germany plans to overcome the discrimination of various types that affect women as indicated in the stakeholder summary. Chile asked about additional measures to reduce the levels of school dropout by immigrants’ children and to reduce the wage gap between women and men and how the victims of forced marriages could be better protected. Chile commended Germany for establishing as a crime the offence of trafficking in persons for sexual exploitation and asked about steps to improve the support to victims.

78. Germany stated regarding education, that the performance gap between migrant and native students was not only related to migrant status but that socio-economic status, educational level of parents and language spoken at home and with peers partly account for educational achievement. In the framework of the national integration plan, Germany has started 400 different measures in that context. Last year, 750 millions Euros were invested into this particular area, with the view to ensuring equal opportunities and better integration of migrant children.

Conclusions and Recommendations

4. Withdraw reservations and declarations to the Convention on the Rights of the Child and to ratify its optional protocol OP-CRC-SC (Brazil);

10. Encourage the visit of the Special Rapporteur on trafficking in persons, specially women and children, within the framework of the open and permanent invitation extended to special procedures (Mexico);

13. Increase its efforts to prevent racially motivated offences and adopt required legislation as well as ensure that relevant criminal law provisions are effectively implemented (Islamic Republic of Iran); adopt laws to punish racist acts (Chad); give diligent follow-up to recommendations of CERD in 2008 in particular the prevention of racially motivated offenses, guaranteeing the equal enjoyment of the right to adequate housing, lifting obstacles encountered by asylum-seekers for schooling their children, and inclusion in their legislation of a specific provision which establish ethnic racial or religious hatred as an aggravated circumstance in criminal matters (Algeria); implement the recommendations of the CERD, including the adoption of a clear definition of racial discrimination in its domestic legislation, adoption of legislative measures and that would criminalize incitement to racial hatred, and effective sanctions for hate crimes (South Africa); adopt a clear and comprehensive definition of racial discrimination, in full compliance with CERD recommendations (Brazil);

24. Take the necessary measures to ensure the respect of the Convention on the Rights of the Child to make sure minors are not imprisoned with adults (France); establish a form of effective judicial control over administrative decisions of the Office for Youth called Jugendamt (Poland);

25. Take necessary measures to ensure the protection of the rights of all children, and specially to resolve the problem of the so-called street children ensuring that their basic needs are covered including education, health, housing and food, and correspond to a society that is rich and developed (Cuba);

32. Take fully into account the relevant recommendations of CERD aimed at ensuring the integration of non-German children into the regular school system (Italy); pay special attention to ensure that children of migrant background are not denied academic opportunities based primarily on their acquired proficiency in the German language (Canada); continue to implement the national integration plan to increase access to education for children of migrant workers (Saudi Arabia);

33. Consider enabling children to move between streams at a later age, noting the Special Rapporteur’s observation on the right to education and particularly the young age that children are selected for streaming into the academic and non-academic schools (Canada);

34. Adopt time-bound measures to increase children with disabilities’ access to inclusive education in mainstream schools, and that it ensure funding for the specific services necessary to help these students reach their full learning potential and participate along with other students (New Zealand);

35. Consider a strategy to address inequalities for children at high risk of exiting the education system too early as highlighted in OHCHR summary (Australia);

36. Explore with the Ministries of Education at the state levels the incorporation of more content in school curricula on the longstanding historical contribution of the Roma and Sinti communities to German society and culture (Canada);

41. Take steps to ensure that women and girls with German residency who were forced to marry abroad have a right to return (United Kingdom);

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