National Coalition
for the Implementation of the UN Convention on the Rights of the
Child
in Germany

Supplementary Report of the National Coalition
to the Third and Fourth Report of the Federal Republic of
Germany
to the United Nations pursuant to Article 44, para. 1 (b)
of the Convention on the Rights of the Child

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Introduction

This Supplementary Report by the National Coalition (NC), which has over 100 member organisations, has been prepared together with its members.

The Supplementary Report includes the views of children and young people from various situations in life by incorporating member organisation reports with children and young people and two National Coalition events with children and young people: The First National Conference for the Rights of the Child Kinderrechte haben Vorrang (Children's Rights have Priority) (2009) and the 15th Open Forum Kinderrechte in Deutschland: Worten folgen Taten (Children's Rights in Germany: Deeds follow Words) (2010). The Supplementary Report draws additionally on the findings of the First Children and Young People's Report and the nationwide Children's Rights Camp (2008), organised by the socialist youth organisation SJD- Die Falken; in both cases, the findings are also being presented to the UN Committee.


According to Article 44 of the United Nations Convention on the Rights of the Child (UN CRC), the Federal Government is required to submit a report on the progress of and difficulties in realising children's rights. For this reason, each point in the report requires clarification indicating which target legal standards are assumed. Only on this basis can one then judge whether progress has been made or to what extent obstacles to implementation were encountered.

The Federal Government continues to fail to comply with this approach as called for under Art. 44 UN CRC. The Report is a social report furnished with many individual details but lacking, in its listing of a wide range of measures, an indication of which State Party obligations are being taken as the concrete basis. Similarly, there is no statement on the question of where individual human rights are to be assumed. A serious critical consideration of the legal view, outdated under international law and expressed on the occasion of the Reservation, that the Convention does not establish any such rights would have been needed.

In an approach complying with the Convention, it would have become obvious that children's fundamental rights are being by-passed and, in view of the large number of unsolved future problems, the "policy for children" requires a fundamentally new character. If Art. 6 guarantees the right to life and survival, then dramatic developments – above all, global warming, the
financial and economic crisis, the growth of a huge mountain of debt, and global poverty – need to be considered since they pose an existential threat to livelihoods and world peace and imply the systematic destruction of opportunities for the up-and-coming generations. Therefore, despite indisputable advances in individual instances, the Report has fundamental flaws. It does not meet the requirements of Art. 44 UN CRC.

The National Coalition recommends that the UN Committee call for the Federal Government:

1. not to gear its future reporting solely to changes over the previous reporting period but also to take, in each case, the substance of the provisions under international law as a point of orientation;

2. to identify in their policy for children, pursuant to the Convention on the Rights of the Child, global future risks and the pertinent measures taken on which the chances of future generations depend.

1 General Implementation Measures

A. Implementing Children’s Rights (Art. 4 and 41)

The enumeration of legislative measures (Nr. 11) underlines the concrete efforts Germany is making to improve the situation of children. The withdrawal of the 1992 declaration of Reservations (Nr. 18) now implemented signals the unqualified acceptance of the Convention on the Rights of the Child as a binding policy benchmark.

The legally required reference to Art. 4 UN CRC would have shown that numerous "suitable measures" have not taken place:

- There is still no express embodiment of children's rights in the Basic Law (Grundgesetz - GG) (Nos. 19-20). In view of the constitutional law provisions in nearly all of Germany's Länder, even if they vary in their range, it is not understandable why the Federation has neglected to use the Basic Law, which is highly regarded by the population, for further developing the sense of right and wrong in Germany.

- The National Action Plan “For A Child-Friendly Germany 2005-2010” has initiated a broader discussion on children's rights even if civil society was not sufficiently involved in its
implementation and there were hardly any implementing programmes on the Land and local authority levels. The Federal Government may be planning to draw up perspectives for “refining the intentions of the NAP”, but it excludes any continuation of the Action Plan.

- There has as yet been no suitable permanent central mechanism created to coordinate the Convention’s implementation on the national level, between the political levels of the Federation and the Länder, and between the individual Land governments pursuant to the Concluding Observations (CO) Nr. 12, 2004 (Nos. 24-25). The coordination on the level of the respective ministers is limited to their particular policy concerns. As yet, no moves have been made to take up the NC’s suggestions on a monitoring system within the existing federal structures. The reference to a “steering group” and “interim report” as part of the NAP process (Nr. 16) fails to appreciate the NAP’s terms of reference and its time limitation. Expanding the German Institute for Human Rights to supervise the implementation of the requisite provisions in the United Nations Convention on the Rights of Persons with Disabilities ought to be a landmark decision.

- The details on the Convention on the Rights of the Child Index proposed by the Committee (Nos. 26-27) fail to appreciate that the objective is not to produce a report on social conditions but to collect data on children’s legal reality as benchmarked by the Convention on the Rights of the Child.

- Pursuant to Art. 4 UN CRC, the "appropriate measures" on civil and political rights are to be introduced without delay and without qualification. The economic, social and cultural rights are to be realised “to the maximum extent of their available resources”. There is no transparency of efforts in this area, as called for by the UN Committee, nor any demonstration of a prioritisation of measures for the care and support of children, nor a plan for development.

- There are also omissions in terms of international obligations (Nos. 31-32). Positive efforts are evident in development policy. However, given the present state of development, achieving the Millennium Development Goals is less than likely – and especially achieving the "0.7 goal" by 2015. In this context, there is a need for clear statements on how the obligations are to be concretely met.

- The latest ILO estimates (data 2008, Report May 2010) show that exploitative child labour is declining slower than expected. There are still 115 million children exposed to this worst form of work, above all in sub-Saharan Africa. The majority of the children are working in the informal sector and one in six is working in agriculture.
As far as the European Union's (EU) Strategy on Children's Rights is concerned, it is not evident how the Federal Government will be concretely engaged. There has been no appropriate integration of non-governmental organisations as part of the Federal Government's involvement in fora on the EU Strategy on Children's Rights arranged within the European Union. Under the so-called Dublin II Regulation that identifies the Member State responsible for examining an asylum application, Germany has evaded its responsibility for child refugees at the expense of Europe's border states despite the priority of the child's right to care and protection being enshrined in Art. 24 of the Charter of Fundamental Rights of the European Union. One consequence here is the scandalous conditions of Greek juvenile prisons.

The National Coalition recommends that the UN Committee call for the Federal Government to:

3. establish an overview of where, after the withdrawal of the Reservations, concrete steps are still pending in the Convention's implementation, especially in relation to the right to asylum, the right of residence and social legislation;

4. speak out against the objections of including children's rights in the Basic Law (GG) and pave the way for a change to the constitution;

5. consider continuing the National Action Plan: "For a Child-Friendly Germany. 2005-2010";

6. comply with the repeated suggestion of the UN Committee to commission an independent human rights organisation with the establishment of a coordination and monitoring system to observe and support the Convention's implementation in the Federation and the Länder; furthermore, to equip this institution with sufficient personnel and financial resources and give it the authority to receive complaints on violations of the rights of the child, to investigate them in a form suitable for children, and effectively process these complaints;

7. develop a Children's Rights Convention Index based on the legal standards in the Convention on the Rights of the Child;

8. present a development plan in agreement with the Länder for the purpose of medium-term financial planning where, on the basis of the fundamental challenges
in the Convention, the key data of the resources required for implementation are made public;

9. present their plans on how they intend to achieve the Millennium Development Goals;

10. anchor the target group of children and young people as a cross-sectional task in development cooperation. All development policy programmes, i.e., including those which are directed towards abolishing the worst forms of child labour, have to take the rights of the child as a point of reference. In this context, the right to education is especially important, as is the right of the child to be heard.

11. place exploitative child labour within the informal sector more in the focus of development policy and develop suitable strategies to enforce the rights of the child under the conditions in this sector;

12. move forwards the development of the Strategy on Children's Rights of the European Union with the appropriate involvement of non-governmental organisations to ensure that the legal standards in the Convention on the Rights of the Child are taken as the basis of its European activities and, in particular, concretely support European border states in abolishing 'child prisons'.

B. Dissemination of Information on the Convention on the Rights of the Child (Art. 42)

Despite the various measures to disseminate information on the Convention on the Rights of the Child (Nos. 43 ff.), the general state of information is unsatisfactory. In a Flash Eurobarometer survey commissioned by the EU Commission on familiarity with children's rights in the EU Member States, Germany was ranked at 21 out of 28, putting it in the lower section. A national survey produced a similar result: only every seventh child between 6 and 15 years old knows the UN Convention on the Rights of the Child.

The description in the Federal Government Report omits to mention that achieving a general awareness of rights in the spirit of the Convention has not yet proved really possible – nor has this been achieved by the non-governmental organisations involved. For this reason, there is not
only a need for knowledge dissemination; in a next step, efforts have to focus on ensuring that
the explicit respect for the rights of the child are more intensively implemented in all areas of life.

The National Coalition recommends that the UN Committee call for the Federal
Government to:

13. provide all children with information at regular intervals, e.g., when they start
school. Children should be involved in making the Convention known. Additional
initiatives ought to be taken to make people more aware of the importance of the
Convention in every area of life. The initiatives to make the Convention widely
known should, as already recommended by the 2004 UN Committee, especially
reach disadvantaged groups, e.g., asylum seekers, refugees and ethnic minorities.

C. Duty to Report (Art. 44), Making the Reports on Implementing the Convention
widely known in the State Party's Country (Art. 44, para. 6)

The Third and Fourth State Party Reports were published on the web page of the Federal
Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) and provided as a
printed version. However, there was neither a press release issued on the Report nor any other
form of publicity.

The National Coalition recommends that the UN Committee call for the Federal
Government to:

14. accompany the Federal Government's Report and the Concluding Remarks of the
UN Committee on the Rights of the Child with the requisite public relations work
and publish a version suitable for children.

15. provide the funding in future as well to support the reporting by children and
young people.

II. Definition of the Child

Notwithstanding the federal statutory regulation that children reach the age of majority on turning
18, according to §80 subs. 1 and subs. 3 Residence Act (AufenthG) and pursuant to §12 subs. 1
Asylum Procedure Act (AsylVfG), 16 to 18-year-old foreign minors are considered to have their
own legal capacity under residence and asylum law. As a result, they have to file their applications at the immigration authorities or at the Federal Office branch themselves and conduct the proceedings independently. Young people of 16 or 17 are often not capable of understanding the significance of the asylum laws. This situation of statutory discrimination has not changed since the last Report.

The National Coalition again recommends that the UN Committee call for the Federal Government to:

16. apply and observe the age limit of 18 as specified in the Convention to the group of foreign children, who are especially in need of protection, and include it in all the laws concerning these groups.

III. General Principles

A. Non-discrimination (Art. 2)

As the Report shows (Nos. 64 ff.), the precept of non-discrimination pursuant to Art. 2 UN CRC is supported by a series of measures that are in particular directed against de facto discrimination as well as right-wing activities, especially those which are xenophobic. Nevertheless, here too it is evident that the Convention's standards tend to be understood as programmatic rather than as obligatory in a statutory sense. If this were not the case, the discrimination against children with disabilities through their exclusion from the general school system would not only have been presented exemplarily (Nr. 69) but, with reference to Art. 2, 3, 23, 28 UN CRC and the United Nations Convention on the Rights of Persons with Disabilities, it would have clearly been indicated that the concern here is with concrete State Party obligations and individual rights that have to culminate in the creation of an 'inclusive educational system'.

There is no change in the discrimination against children from ethnic minority backgrounds. In legal terms, this concerns the Social Code – Book Eight (VIII) Child and Youth Services (KJHG - Kinder- und Jugendhilfegesetz), the Residence Act (AufenthG) and the Asylum Seekers Benefits Act (AsylbLG). By linking child and youth welfare benefits to residence status, the Social Code – Book Eight (VIII) excludes children without a legal residence status from all child and youth welfare services, including those of early education and development in child day care facilities. Pursuant to §55, Nr. 7 of the Residence Act (AufenthG), a foreigner who is a minor can be
The perspective of gay and lesbian adolescents is entirely absent from the Third and Fourth State Party Reports of the Federal Republic of Germany. With young gay and lesbian people coming out ever earlier, there are additional risks of growing up, or risks that are expressed in other ways – for example, it has been shown that members of this group are more likely to commit suicide.

In the end, child poverty does not only contravene the standards of economic security set by the Convention but, moreover, gives rise to discrimination in many areas in everyday life, on this see VI.C.

The National Coalition recommends that the UN Committee call for the Federal Government to:

17. combine the protection against the discrimination of children with disabilities with the implementation of the United Nations Convention on the Rights of Persons with Disabilities and press for the realisation of children's rights through the Länder, especially in the educational sector;

18. examine under the precept of freedom from discrimination all the provisions that impact children of foreigners and alter such provisions if need be. In particular, the Social Code – Book Eight (VIII), the Residence Act (AufenthG) and the Asylum Seekers Benefits Act (AsylbLG) are to be amended in such a way that, irrespective
of the legal residence status of the child or her/his parents, all children are entitled to the same services and rights as other children in Germany.

19. focus more on real discrimination in safeguarding the interests of children from ethnic minority backgrounds;

20. establish a consistent anti-discrimination policy to support young people in the discovery of their same sex identity and protect them against discrimination from their peers, teachers and trainers. In addition, specific supporting, facilitative and advisory services for the particular psychological strain involved in coming out and for the development of a gay and lesbian life style are to be provided.

21. develop a comprehensive strategy against child poverty containing measures which, on the foundation of a poverty-proof basic security benefit for children, combat the real discrimination experienced from being excluded from participating in society.

B. The Best Interests of the Child (Art. 3)

Throughout the entire Report, it would have been necessary to critically review in all the measures presented the principle of priority enshrined in Art. 3 CRC. Although the best interests of the child is considered a guiding principle (Nr. 76), there is no recognition of this being a binding evaluative guideline applicable to all legislation, administrative authorities and administration of justice and that this guideline does not merely apply to the Child and Youth Services Act (KJHG), family law and children taking part in court proceedings. As yet, the Federal Government has not taken account of the scholarly remarks made on this issue¹ and does not undertake a systematic process of informing all the pertinent authorities so as to prevent the frequent violations of this legal principle. The priority of the child's best interests is disregarded to an especially high degree in the case of minors and refugees seeking asylum, as it is in the case of children from educationally disadvantaged families with low social status, see VI.C., VII.A. and VIII. A..

The Federal Government has not implemented Recommendation Nr. 27 by the 2004 UN Committee.

The National Coalition recommends that the Committee call for the Federal Government to:

22. instigate concrete initiatives to make the principle of prioritising the child's best interests familiar in all areas of the legislative, executive and judicature and underline that compliance with it is a prerequisite for lawful actions. The concrete initiatives should include enshrining the prioritising of the child's best interests in the constitution and in formally enacted laws, especially in the legislation on foreigners and asylum seekers.

C. The Right to Life, Survival and Development (Art. 6)

In view of the increasing cases of developmental disorders among children in Germany, it is noticeably that the Federal Government's Report only addresses Article 6 in a short paragraph (General Principles, C/80, p. 26) dealing exclusively with the right to life and survival with reference to the Basic Law (Grundgesetz – GG). This is insufficient.

The National Coalition recommends that the Committee call for the Federal Government to:

23. establish concrete requirements for the proper and healthy development of children in basic developmental areas and set a target based on concrete indicators which can be used repeatedly to measure social developments. Here, reference is to be made to existing reports such as, for example, the 13th Kinder- und Jugendbericht (Report on Children and Young People), drafted in 2009 on behalf of the Federal Government, which presents the requirements for healthy development in different age groups and for achieving very concrete goals.

24. safeguard the future basis for life when implementing Article 6.
D. Taking Account of the Opinions of the Child (Art. 12)

The Federal Government gives a correct and extensive picture of the participation of children and young people (Nos. 81 – 103), though without ever inferring legal obligations from the Convention on the Rights of the Child. The realisation of the right to vote for under-18s in some Länder and local authorities described in the Federal Government's report (Nr. 84) is welcomed. However, there is a regrettable absence of the discussion on the right to vote for children and young people in particular on the federal level, e.g. in reaction to the suggestion of providing a right to vote irrespective of age if children and young people indicate their interest in taking part in an election by having themselves registered in the electoral list.

In general, it remains unclear that the participation of children and young people is the most important expression of their subject position as independent persons. Deficits continue to be evident from the outset, both in formalised procedures as well as in everyday life. Even if political influence is limited here, the task of politics includes highlighting a need for a culture based on the respect for children's rights and supporting initiatives, for instance, in the educational sector, which make participation into an everyday experience and not just into teaching materials. In addition, participative processes need to be bindingly anchored and children given the requisite and appropriate support in exercising their rights.

In consumer protection, the aim should be to involve children more than before in health and product safety issues in the sense of actively exercising their rights as consumers.

The National Coalition recommends that the Committee call for the Federal Government to:

25. include the participative rights of children and young people into the targeted integration of children's rights into the Basic Law (GG) and politically advocate the requisite changes in the Land and local constitutions, provide participatory forms suitable for children in all judicial and official procedures, supply information on children's rights in all institutions where children and young people stay, and create easily accessible drop-in centres and complaints offices;

26. support the drafting and binding implementation of quality standards for participation on all levels, especially on the local level,

27. set in motion a comprehensive dialogue on all political levels on the voting age for local authority, Land parliament, Bundestag and Euro-elections as well as in local
referendums or public petitions with the aim of driving forward a lowering of the voting age on all federal levels.

IV. Civil Rights and Freedoms

A. Name and Nationality (Art. 7)

According to the Federal Government's Report, the right to a birth certificate is, in principle, being implemented. However, on the basis of the current Civil Status statute, there is a delay in issuing the birth certificate in a number of cases if, for example, paternity is disputed or unclear or the requisite documents cannot be produced. The same applies when the mother cannot produce any identity documents. This results in children being without a birth certificate for months on end and thus unable to claim, for example, health insurance services.

Refugee children born in Germany but not in possession of a birth certificate cannot be entered into the register of residents in their parents' country of origin if they return there. Hence, they are also unable to obtain any documents there. The findings of a UNICEF survey of Roma children in Kosovo is exemplary here (UNICEF July 2010). Of the 173 people interviewed for this survey, 65 were not registered and 48 of these were children; they have no Kosovan documents whatsoever and are thus *de facto* stateless in their own country. The children had either never been given a birth certificate at birth or else were unable to take it with them in the hectic and pressure during their night-time deportation.

There are often considerable difficulties in obtaining a birth certificate for a newborn with an illegal residence status since the registry offices which are responsible for issuing birth certificates are required to check residence status and, as a public authority, are under an obligation to communicate the information to the immigration authorities. If picked up by the authorities, without a birth certificate the parent cannot even prove that the child is her or his own, and this results in the additional danger of the parent and child being separated.

Every year, 40,000 children are granted German nationality at birth along with the nationality of their parents. When they reach the age of majority, they then have to decide either against the country of their parents or against the country in which they live. If this duty of choice is not complied with, German nationality can be withdrawn - an unwarranted discrimination given that in the meantime dual nationality is allowed for over 50% of those newly naturalised.
The National Coalition recommends that the Committee call for the Federal Government to:

28. clarify through the appropriate regulations that all children are to receive a birth certificate immediately after birth which, if need be, can be supplemented or amended on the presentation of the requisite documents;

29. arrange for birth certificate duplicates to be issued unbureaucratically;

30. introduce the statutory changes to exempt registry offices from their duty to convey information pursuant to §87 subs. 2 Residence Act (AufenthG);

31. facilitate permanent multiple citizenship for young people from ethnic minority backgrounds and abolish the duty of choice in the Nationality Act (StAG).

B. Maintenance of Identity (Art. 8)

At present, there are around 80 so-called 'baby hatches' where babies can be anonymously left at a drop-off point and which are intended to prevent babies being abandoned or killed. Around 130 hospitals offer the anonymous delivery of babies. However, this also makes it impossible for the children to trace their genetic origins. The possibility of anonymous sperm donation is another area which raises the same problems.

The National Coalition recommends that the Committee call for the Federal Government to:

32. strengthen the confidential provision of assistance for expectant mothers to reduce the risk of abandoned babies, babies left at drop-off points and anonymous births.

C. Right to Freedom of Expression (Art. 13)

In Germany, children as creators of and actors in media are dramatically underrepresented – in all forms of media. There are hundreds of radio and TV broadcasters for adults, but only a handful for children. There are thousands of newspapers written by adults for adults but not one regularly published nationwide newspaper produced by children for children. In Germany, only a fraction of the media for children is actually produced by children themselves, and of this only a fraction is produced by disadvantaged children.
The National Coalition recommends that the Committee call for the Federal Government to:

33. ensure that children are able to effectively participate in the production of non-commercial media which realise the information and educational mandate, and are provided with their own formats and supported in the production processes.

D Right to Freedom of Thought, Conscience and Religion (Art. 14)

The provision of Islamic religious instruction is still in its initial stages and is strikingly out of proportion to the number of Muslim children and young people at state schools. The same applies to funding for the organisations arranged by Muslim children and young people themselves.

The National Coalition recommends that the Committee call for the Federal Government to:

34. ensure Islamic religious instruction is provided for Muslim children and guarantee the freedom of religion by supporting the self-organisation of young people in all religious communities whose activities take place with the framework of the constitution.

G. Access to Appropriate Information (Art. 17)

The new media are part of the everyday life of young people. The statutory basis provided by the Youth Protection Act (Jugendschutzgesetz -JuSchG) and the Interstate Agreement on the Protection of Minors in the Media (Jugendmedienschutz-Staatsvertrag der Länder – JMStV) are comprehensive and also adequate for the offline sector. Nonetheless, as the Federal Government concedes (Nr. 122), there are deficits in implementation. A new interstate agreement is being prepared for the online sector intended to create comparable standards of protection to those already existing in broadcasting but which are lacking in the Internet (Nr. 121). Computer games in particular have a great fascination for male adolescents. Through online computer games, accompanied by chat rooms and fora, youth culture gains new accents which have their own significance. Here, the existing age rating system and sales restrictions applicable to standard retail trade in a fixed location are not sufficient for the protection of young
people. The planned revision of the Interstate Agreement on the Protection of Minors in the
Media should be evaluated to see whether it can provide the protection needed.

The tenor of most pertinent surveys is that children watch television when they have nothing
‘better’ to do. Therefore, the two to three hours which, according to the statistics, children spend
in front of the TV every day is an alarming figure. In addition, they are often catered for with TV
formats, especially on the commercial broadcasters, which do nothing to encourage their
development or expand their knowledge and are educationally worthless.

The National Coalition recommends that the Committee call for the Federal Government
to:

35. intensify their efforts to provide equal opportunities to use the Internet for all
children in Germany; in particular, educationally disadvantage children and those
living in poverty must be supported to enable them to become proficient in the use
of media. This includes promoting measures to strengthen media literacy in the
sense of a critical and responsible appropriation and not merely the technical
skills needed to cope with the media.

36. encourage the Länder to adopt the acquisition of media literary in the curricula of
all educational institutions. Here, further training for the teachers must be the first
step, although the training of specialists and parents in all areas of modern media
use is also needed.

37. require further measures from the providers of media content and access
providers so that they can do justice to their responsibility. This includes
providing effective youth protection filters on the pages of computer games
providers, and also for online games and additional products (Nr. 121, Federal
Government Report).
V. Family Structure and Alternative Care

A. Guidance by Parents (Art. 5), Parental Responsibility (Art. 18 paras. 1-2), Separation from Parents (Art. 9)

In Germany, support for parents in their responsibilities is not implemented in the required and statutorily defined manner. In some Länder, despite the requisite guidelines in federal law, there is no provision for the "General furtherance of education and upbringing by the family" (§16 The Social Code – Book VIII) in Land law and consequently, no overall coverage of services.

In addition, there is a lack of the resources required in public and independent youth welfare to support families at risk. The provision for the assistance in education and upbringing anchored in the legal claim of the parents or people having parental powers is often granted in accordance with the local authority budget.

The financial bottlenecks and staff shortages, in some cases considerable, make it impossible for the guardians appointed in the local youth welfare offices to provide sufficient care to meet the statutory requirements. Youth welfare guardians are, at times, responsible for over 200 wards and, for this reason, can hardly manage to give sufficient personal attention to individual wards, or attain prompt and direct knowledge of the ward's situation and initiate the required measures in the case of undesirable developments. Under these circumstances, the child's involvement in the decisions taken by the youth welfare guardian is inadequate.

In many child guidance offices, parents have to accept long waiting times because the office does not have sufficient capacity. There is no comprehensive network of advice centres designed for children and young people.

Only a few local authorities provide support services in the parents' language or have language and culture professionals available for mothers or fathers who do not speak sufficient German. Even the help plan statutorily guaranteed under §36 The Social Code – Book VIII in situations where the child's welfare is at risk does not prescribe an interpreter with the result that mothers or fathers who do not speak sufficient German are then unable to participate in the help plan as stipulated in the law.

In their quest for state assistance for personnel support in caring for and looking after their children (parental assistance), parents with disabilities are often not only confronted with the
reservations of the service and care providers but in quite a number of cases, due to the lack of clarity in the present legal position, have their request for services turned down or else get caught up in the conflicts of responsibilities between the social welfare and child and youth welfare providers.

Despite the creditable efforts at expanding childcare provision undertaken by the Federal Government, the Länder and the local authorities, there is no existing provision of childcare places for the under threes to meet the demand. The situation here is especially dramatic in the west of Germany. Although, according to estimates, at least 35% of parents are looking for a childcare place for children under-three, in some Länder there are only childcare services available for approximately 10%.

In Germany, since there are no unified qualitative standards for day care and childcare facilities, the services on offer differ considerably. These differences have dramatic consequences, especially for young children, since individual teaching and care, which is so crucial in the first years of life, is not possible everywhere. In some Länder, for instance, one early years educator is responsible for slightly less than five children under three years old, while in other Länder, s/he has to look after nearly eight children.

According to Art. 9 UN CRC, the child has a guaranteed right to stay with her or his mother – even in prison. In fact, though, in most Länder, newborns are still taken away from mothers in custody directly after birth, and placed in foster families or put up for adoption. This prevents breastfeeding, which is important in developing a stable bond.

The National Coalition recommends that the Committee call for the Federal Government to:

38. guarantee, together with the Länder and the local authorities, the needs-based provision of financial and personnel resources in public and independent child and youth welfare to meet the demand and thus also ensure the support of mothers and fathers or other persons having parental powers. This provision should be aligned with the number of children and such social stress factors as, for example, transfer payment quotas. The requisite needs formulas should be developed for this purpose. Consideration needs to be given to whether the statutory regulations have to be formulated in a more binding manner.
39. ensure the planned amendment to the Guardianship Act (Vormundschaftsgesetz) gives priority to individual guardianships, establishes binding regulations on the personal contact between guardian and ward, sets legal standards for the personal supervision of the ward’s care, upbringing and education and a corresponding limit on the number of official guardianships, and includes guidelines on the appropriate interdisciplinary qualifications of guardians, legal standards for structures separate from the youth welfare office’s provision of services, as well as legal standards for the effective involvement of the ward in decisions;

40. enact the regulation effective in the entire social law pursuant to §17.2 in the Social Code – Book One for people with a hearing disability on meeting the costs for communication assistance by the responsible service providers equally in child and youth welfare for the parents, legal guardians or children who cannot be communicated with in a sufficiently differentiated way in a common language;

41. undertake to clarify, if necessary by law, the right of mothers and fathers with disabilities to personnel support in caring for and looking after their children;

42. pay more attention to qualitative factors in extending day care provision and agree jointly with local authorities and independent service providers on the appropriate quality standards;

43. ensure statutorily and financially together with the Länder that pregnant women in custody are not separated from their newborns after birth and receive the health and psychosocial support to meet their needs.

B. Family Reunification (Art. 10)

As a rule, the children of foreign nationals are only allowed to move to the parent(s) living in Germany up until the age of 16 – and, moreover, only when their means of subsistence is guaranteed (§32 Residence Act - AufenthG).

The strict rules on the subsequent immigration of children to join their families are increasingly leading to what is termed ’migrant orphans’. The procedures for family reunification are often very protracted, the legal position and the administrative practice are coined by mistrust against the applicant and hence do not comply with the principle of the Convention that family reunifications are to be carried out in a positive, humane and expeditious manner.
In the Federal Government's Report, the topic of family reunification under Nr. 293 only makes reference to the situation of recognised refugees. However, if as a result of a stay of deportation e.g. for humanitarian reasons, refugees are issued with a temporary residence permit or their deportation is only suspended, i.e., they only have a temporary suspension of deportation, a child's subsequent immigration to join her/his family or a family reunification pursuant to §29 Residence Act (AufenthG) is not allowed – often permanently.

The National Coalition recommends that the Committee call for the Federal Government to:

44. stipulate a statutory right for children of foreign nationals to family reunification up until the age of 18 and prioritise the child's best interests in issues under the aliens law that effect the unity of the family;

45. embody in law a right to subsequent immigration to join the family for parents and children with a residence status for humanitarian reasons and in the case of a temporary suspension of deportation continuing for a longer time irrespective of pre-requisites such as adequate living space and a secured livelihood. This should also take into account family relations outside the nuclear family. The right to family unity is also to be embodied in a law; this is connected with forbidding family separation through deportation or obligations on residence or the place of abode.

C II illicit Transfer and Non-Return (Art. 11)

Conflicts over parental care and right of access and, in particular, illicit transfer abroad can impact any family that comes, at least in part, from an ethnic minority background. The situation can become especially problematic for children without a German passport who spend more than six months abroad after abduction by one parent since then there is a danger of their residence permit expiring pursuant to §51 subs. 1 Nr. 7 Residence Act (AufenthG).

The National Coalition recommends that the Committee call for the Federal Government to:

46. introduce an amendment to repeal the term of six months in the case of a parent abducting a child.
D. Securing the Recovery of Maintenance Claims for the Child (Art. 27 para. 4)

The standardisation of minimum maintenance for minor-age children is welcomed (Nr. 144). However, the annual minimum maintenance for minor-age children in the first age group has been set at 87% of the objective minimum standard of living. It is important to ensure the same equal opportunities and fair participation for children especially in the first years of life and, in particular, during the periods of 'peak stress' in connection with the birth.

The National Coalition recommends that the Committee call for the Federal Government to:

47. to set the minimum maintenance for children at 100% of the objective minimum standard of living from the start.

E. Children Deprived of their Family Environment (Art. 20)

When a child lives permanently in a foster family for her or his own protection and has developed close relationships there, the "desirability of continuity in a child's upbringing" pursuant to Art. 20 para. 3 UN CRC is not being given due consideration. In numerous cases, the strong parental rights in Germany allow the biological parents to remove the child from the foster family even after many years. The legal protection of social parenthood is insufficient. This is not in accordance with the child's best interests.

The National Coalition recommends that the Committee call for the Federal Government to:

48. ensure through statutory and delegated legislative provisions that the child's need to form close relationships and the relationships developed are given the appropriate weight in all phases of placement in foster and residential care as a significant aspect of the child's best interests.
H. Maltreatment and Neglect (Art. 19), Physical and Psychological Recovery and Social Reintegration (Art. 39)

The measures listed in the Federal Government's Report on the improved protection of children from violence and neglect are all very much to be welcomed. Nonetheless, there still continue to be around 20% of children who experience violence in their upbringing.

The activities listed in the Federal Report as preventative measures or early assistance (Nr. 154 ff.) are encouraging but simultaneously indicate that there is, as yet, no comprehensive local coverage of low-threshold assistance services for parents and children, on this see V.A.

The recent cases taken up by the media, but also the current cases of sexual violence against children perpetrated by staff in institutions, have clearly shown that measures to prevent sexual violence against children have to be improved, especially in schools and facilities for children with disabilities but also in youth welfare facilities and other institutions, e.g., in the sport and cultural sectors, and implemented comprehensively. This has to occur by way of applying children's rights approaches in their work. Here, the implementation of children's participatory rights has a key function. Moreover, especially for advisory services in cases of sexual violence against children, the skills in the existing advice centres have to be honed and ombudsmen or women appointed. The Federal Government's move to establish a roundtable against child abuse is welcomed. The Federal Government has to play a role in supervising the implementation of the recommendations currently being drafted.

In the Child and Youth Services Act (KJHG - Social Code – Book Eight), children and young people do not have a right of their own to help for their upbringing and education, such as being taken into an institution of stationary care, appointed an advisor on socio-educational problems or provided with a case helper for intensive socio-educational care.

In schools, pupils exercise physical and psychological violence against other pupils in the form of terrorising and tyrannising (bullying and mobbing) and use media in cyber-bullying. Frequently, teachers are not trained to deal with such problems and do not have the time to deal with them. There is no widespread coverage of school social work at all schools, and often it does not have the regular funding to ensure its work is continuous.
The National Coalition recommends that the Committee call for the Federal Government to:

49. enshrine in law the right of parents or those having parental powers to all forms of early assistance and make the provision of such services obligatory;

50. ensure in cooperation with the Länder and local authorities as well as social service providers that the measures to prevent sexual and other violence as part of a comprehensive children's rights approach becomes standard in all facilities and services for children and that facilities and external advice centres deal with incidents competently and are provided with the requisite appropriate resources.

51. drive forward the drafting of an updated “National action plan for the protection of children and young people against sexual violence and exploitation” incorporating the results of the roundtable on child abuse and guarantee the requisite provision of financial and personnel resources for the implementation of the measures.

52. strengthen the implementation of child and youth welfare services for children. This includes an own right to help in upbringing and education in the Social Code – Book Eight and similarly the binding implementation of youth work (§11 Social Code – Book Eight) and youth social work services (§13 Social Code – Book Eight). Consideration needs to be given to whether the statutory regulations have to be formulated in a more binding manner.

53. carry out better research into the causes of intrafamily violence and violence between children and take this knowledge as a basis for political measures;

54. strive to provide better prevention training for teaching staff and parents and training in how to deal with all forms of violence between pupils.

VI. Basic Health and Welfare

A. Children with Disabilities (Art. 23)

Although Germany has ratified the United Nations Convention on the Rights of Persons with Disabilities, the vast majority of children with disabilities are still being pushed into special needs facilities. Only around 15% of the pupils with disabilities are attending a mainstream school, in comparison to over 70% in other European countries. Separating out children with learning difficulties is especially concerning; these children account for around half of all those separated
out. This group includes a disproportionate number of young boys as well as children from ethnic minority and socially disadvantaged backgrounds.

According to §1 of the Social Code – Book Eight, youth welfare services are responsible for all children and thus also for children with disabilities. Hence, pursuant to §22a, children with and without disabilities are in principle to be furthered in groups together in day care facilities. Despite the increase in the number of inclusive day care facilities, in Germany around 35% of the children with disabilities are in special facilities under the aegis of schools and child and youth welfare services.

There are different responsibilities in social security legislation and in the authorities providing support services for children with a physical or mental disability on the one hand, and children who are emotionally disturbed on the other, which leads to unequal treatment and deficits in care. For example, youth welfare offices often turn down applications for educational assistance for children and young people with physical or mental disabilities and only ascertain a need for rehabilitation, thus refusing to grant educational help. On the part of the youth welfare facilities and staff, the requisite resources, skills and structures are lacking to integrate these children appropriately in their services. The responsibility in a single Social Code including all children still remains to be realised.

Many public places and facilities for children are not suitably equipped for people with disabilities. In low threshold services, for example, in family education or youth work, children with disabilities or their parents are not represented as a matter of course. In the designation of children with disabilities, they are frequently referred to – as they are in the Federal Government's Report – as disabled children. This puts the emphasis on the disability and not on the child.

The National Coalition recommends that the Committee call for the Federal Government to:

55. vigorously pursue the establishment of inclusive school education and ensure that the necessary resources are available, also through the use of the resources available in the special schools.

56. further pursue and implement the consolidation of responsibility for all children in one Social Code, the so-called 'large solution', as a contribution to reducing discrimination – under the stipulation that in the process the extent and quality of
the treatment, support and integrative services for children with disabilities remains the same, 'customised' assistance is possible and the parents of children with disabilities are not called on to contribute to the costs more than is already the case.

57. disseminate an appreciation of inclusion in the public sphere and make every effort to ensure that this is anchored in all educational training.

B. Health and Welfare (Art. 24)

There has been a significant shift in the health risks threatening children and young people. It is no longer the acute physical illnesses which are a cause for concern, but the chronic, psychological and psycho-somatic illnesses as well as an unhealthy lifestyle. These so-called 'new morbidities' include attachment disorders in the bond between parents and infants, regulatory disorders, illnesses exacerbated by the environment such as allergies, lack of exercise and excess weight, emotional developmental and behavioural problems as well as proneness to the early use of alcohol, nicotine and other drugs. The KiGGS survey by the Robert Koch Institute has found that children and young people from socially disadvantaged families and from families with ethnic minority backgrounds are especially affected by a range of health risks.

The rise in illnesses from the start of school that are exacerbated by the environment give particular cause for concern. In a variety of ways, school as a life-world has a negative impact on the health of children. Pupils do not enjoy any 'work and safety provisions', which are a matter of course in the adult world of work.

- For example, many adolescents in secondary schools work far more than 40 hours a week for school, mainly sitting, in an unhealthy environment and often under psychological pressure.
- There is no limit on the time children have to be or ought to be working in or for school.
- Although there are set times for breaks in the morning, these do not sufficiently take into account the children's needs. The times allowed for movement or unstructured play are similarly undefined. The opportunities for such activities in the school yards are often very limited and, given unfavourable weather, usually do not take place at all.
- Frequently, the learning environment (light, air, acoustics, size of rooms, furniture, cleanliness) do not meet health standards.
At the same time, there has been a rise in the prescription of psychostimulants for children between the time they start school and puberty specifically intended to combat attention disorders and increased motor activity.

Numerous studies of children show a connection between, on the one hand, stress at school, classroom atmosphere, social integration, appreciation from the teaching staff, appropriate performance requirements and, on the other, the children's psychological health, well-being, self-esteem and school achievement.

As is evident from the 13th *Kinder- und Jugendbericht* (Report on Children and Young People), there is still an increased growth rate for depression among children and young people far above the average for the population. This phenomenon reflects a social specification of demands on young people exceeding their resources to cope and, on the other hand, a lack of the requisite social support for them. Children are especially exposed to psychological pressure in the school context through the high expectations placed on their success by parents and school, the system of evaluating their work and the curricula, which have so much added material that they leave no room for individually guided learning.

Passive smoking is a health risk in an informal setting caused by adults who smoke around children. Doctors estimate that every year sixty infants die in Germany from passive smoking. Smoking is common in 60% of all households with children under six years old.

Protecting children from substances hazardous to health is counteracted by a range of advertising and sponsoring, for example, by breweries, confectionary makers or other foodstuff producers above all in the sports sector and at individual child and youth welfare events. Even the programmes on public service radio and television watched by numerous children and young people broadcast advertising messages for intoxicants or other foodstuffs harmful to health.

In Germany, around 20% of children in hospital are still accommodated in adult facilities. With increasing cuts for financial reasons in the numbers of beds for children with acute illnesses, ever more children are again being placed in adult beds in hospitals. The majority of them do not then receive any medical, nursing or psycho-social care designed for children.

In terms of psychotherapy for children, there is a marked lack of provision for children with psychological illnesses. With the exception of the large cities, the standard waiting time is over four months.
There are at least 24,000 women affected by genital mutilation living in Germany and 6000 girls at risk of being temporarily sent to their countries of origin for genital mutilation. There is a lack of effective and, above all, preventive protective measures. Doctors, midwives and hospital personnel play a major role in providing advice and education, but they are often not sufficiently well informed.

Children, whose biological gender cannot be initially established unequivocally (Intersex), and their parents do not receive the support necessary from experienced professionals on further procedures which reflect the child's best interests.

Half of the families with a child suffering from a rare chronic illness feel they are poorly informed, while 70% of the families affected feel they are left to cope with the situation alone. Around four million people in Germany suffer from rare chronic illnesses. Half of all rare illnesses emerge during childhood and adolescence.

The National Coalition recommends that the Committee call for the Federal Government to:

58. ensure the provision of continual, professionally qualified services to encourage exercise and the supply of free healthy food and drink for all young people in day care facilities and schools;

59. enter into a dialogue with pupils, parents and educationalists and their associations on the maximum study time for children with the object of arriving at limits that will be valid throughout Germany;

60. comprehensively support children in their psycho-social development through services and strategies promoting health and prevention in areas related to health which are open to all and have been developed with the participation of children; in this case, the schools ought to be prioritised as the location of these programmes;

61. drive forward the political discussion on a ban on smoking in closed rooms when children are present;

62. make every effort to ensure that children and young people needing stationary treatment – especially in the phase from infant to school age – are primarily treated, also pre- and post-operatively, in facilities designed for children;

63. make every effort and, if necessary, introduce the requisite legal amendments to ensure that in planning the provision of psychotherapy and psychiatry for children
and young people, the needs of the children and young people are established separately and flow into the organisation of the psychiatric and psychotherapist practices. In improving the provision of psychotherapeutic services for children, special attention should be given to those areas with a weak infrastructure.

64. draft a national strategy against female genital mutilation together with those affected and representatives from the Federation, Länder and local authorities which provides for among other things the sensitisation of experts in contact with girls potentially affected, information for the girls and their family on their rights and help services, and the creation of knowledge exchange and further development;

65. make every effort to ensure that intersexuality gains a stronger public profile, is included in the training of the medical specialists dealing with this concern, and that children and parents receive the requisite advice;

66. establish a national strategy for the treatment of rare illnesses. This is to facilitate a procedure coordinated with all those involved, take into account the concerns and expertise of patients and their relatives, the doctors and therapists responsible for the treatment as well as doctors and scientists in research, and bundle already existing activities on the national level.

C. Standard of Living (Art. 27 paras. 1-3)

At present, around every sixth child is considered to be poor. The at-risk-of-poverty rate among children is approximately 18% and thus considerably higher than the figure of around 14% for the general population; it has also risen faster over the last years. Despite the material social benefits provided by the state, these children are living below the poverty line recognised across Europe. The children especially affected are those from single parent families, families with at least three children or more, and families from ethnic minority backgrounds, above all when experiencing unemployment or a precarious job situation.

The difference in the at-risk-of-poverty rate between the eastern and western Länder has become more pronounced, with figures of around 19% of the population in the eastern and 13% in the western Länder.

In international comparisons, the evaluations of Germany’s situation vary depending on the methods of data collection and reference groups. Hence, in contrast to the positive comparisons
within Europe cited by the Federal Government's Report (Nr. 217), UNICEF 2010 ranks Germany among the lower third of the OECD states in terms of the material poverty of children.

The Federal Constitutional Court has pointed in its judgement to the lack of consideration of child-specific needs, e.g., in clothing or education, in calculating the standard guideline rates, thus criticising the previous calculation of a level of subsistence allowing a life in human dignity. From a child's rights perspective, the present Federal Government draft for a revised version of the guideline rates for children is to be viewed critically.

The child benefit increase listed by the Federal Government (Nr. 220) did not help those on basic security benefits according to the Social Code – Book II, since the increase is set off against the basic security benefits. Under the Federal Government's present plans on budget consolidation, the same applies to the parental allowance paid during the first year of a child's life. In future, this is also to be set off against the basic security benefits of those able to work, with the result that families no longer enjoy the previous level of financial support during the first years of a child's life.

The additional benefit for children (Nr. 220) is intended to prevent families with children whose family income, despite working, is below the poverty line from becoming recipients of basic security benefits according to the Social Code – Book II. However, since the application procedure is very elaborate and complicated, many parents are defeated by it and do not claim the benefit.

When parents are receiving the basic security benefits for those fit to work according to the Social Code – Book II and do not sufficiently satisfy the requirements of looking for work, in accordance with the statutory basis (§31 Social Code – Book II) they are subject to sanctions in the form of reductions of financial support for three months. In the case of a repeated breach of the duty to look for work, the situation can develop to a point where families with children are only living from vouchers and do not receive any further financial benefits.

The statutorily prescribed and intensified practice of sanctions constitutes a particular problem in the case of the unemployed aged between 15 and 24 in need of assistance. Where there is a failure to comply with their duty, their standard social security benefit is cut entirely for a maximum of three months pursuant to §31, subs. 5 Social Code – Book II. Should there be a repetition, the rent and heating costs are no longer paid for either. As a result, young people aged between 15 and 18 are especially exposed to the risk of homelessness and criminality.
The National Coalition recommends that the Committee call for the Federal Government to:

67. align the calculation of benefits to secure a level of subsistence allowing a life in human dignity to meet children's needs and rights and monitor them in regular intervals. Aside from financial benefits, this also includes establishing and expanding local low threshold infrastructure services in the education, leisure, sport and culture sectors accessible for all children;

68. bundle the transfer benefits for children in the sense of having a poverty-proof basic standard of social welfare which children are entitled to in their own right;

69. drive forward the needs-based expansion of day care for children over one year old and hence enable single parents in particular to take up a job paying a living wage;

70. include the maintenance requirements for children in calculating the statutory minimum wages;

71. amend the Social Code – Book II so that benefit sanctions against parents are suspended directly after the necessary cooperation has (again) been provided;

72. amend the Social Code – Book II so that sanctions against young people under 25 are given a broad latitude to allow them to be aligned with the individual case and are compulsorily linked to youth welfare services.

VII. Education, Leisure and Cultural Activities

A. Education

According to the division of authority between the Federation and the Länder under the Basic Law (GG), education falls under the (exclusive) responsibility of the Länder. The Federal Government's reporting suffers from not having clarified that the Länder, as a result of their agreement to the conclusion of a treaty under international law (Lindau Agreement), are obliged to provide the Federal Government, as Germany's responsible representative in foreign affairs, with the basis for reporting in conformity with the Convention. As a result, the Report is lacking a comprehensive presentation of how the rights of the child are realised in the Länder.
1. General Information

The right to education for all children in Germany is not implemented for children in the asylum-seeking procedure and without a legal residence status.

Almost without exception, school attendance is now also mandatory in Germany for children in the asylum procedure, though in some Länder this only applies after a stay of three or six months. However, successfully participating in the lessons is often hampered if not entirely prevented by the lack of money for teaching materials and participating in school activities, cramped housing conditions, and, since asylum-seeker hostels are often in outlying districts, the long journeys to school.

Children with an illegal residence status are only required to attend school in Bavaria, Bremen, Hamburg, North-Rhine Westphalia and Schleswig-Holstein. However, a number of statutory regulations prevent their access to day care facilities and schools. Publicly-funded day care facilities and the schools as public authorities are under the federal statutory duty to convey information to the immigration authorities pursuant to §87 subs. 2 Residence Act (AufenthG) if they acquire knowledge of the residence of persons without a residence permit. In practice, the various Länder regulations and the duty to convey information lead to considerable legal uncertainty for children with an illegal residence status and their parents, as well as for the school authorities, management and teaching staff. This more often than not results in children and young people not attending day care facilities or school for fear of the discovery of their lack of a legal residence status.

2. Day care of children

Studies show that children who have taken advantage of early education as under-threes are considerably more successful in their educational biography than children who have not had this opportunity. This applies especially to children from social disadvantaged backgrounds. Despite the considerable efforts at present to expand day care and thus implement the right to early education, there are still specific gaps that need to be filled.

The proportion of under-threes in western Germany in education ranges from 4% to 36%. In contrast, the average of the under-threes in education in 2009 in eastern Germany was an encouraging 45%.
The proportion of children from an ethnic minority background in education in day care, both for the over and under-threes, was significantly lower than for children from a non-ethnic minority background. On the basis of the available data, it is not possible to say whether social factors play more of a role here than cultural ones.

As far as the all-day care of school children is concerned, there are major regional differences between east and west. The overall care proportion of just under 20% in western Germany continues to lag significantly behind the figure of around 74% for eastern Germany. In terms of quality measured by the staffing ratio in day care facilities, the difference between western and eastern Germany is the other way round: the average staff to child ratio in western Germany is one member of staff to 8.9 children while in eastern Germany this ratio is 1 to 12.3.

3. School

School in Germany infringes the right to equal opportunities pursuant to Art. 28. para. 1. The current Education Report 2010 (Bildungsbericht 2010) confirms the problem, shown in particular in the PISA surveys, of children in difficult social conditions being disadvantaged. School does not only not compensate for social differences, it intensifies these differences through selection mechanisms.

Around 22% of the 15-year-old pupils in Germany represented in the international PISA II survey belong to the so-called 'risk groups' whose maths ability is only at primary school level after completing the mandatory years of schooling and who cannot understand even simple texts. Both in primary and secondary schools in most Länder, the skills deficit experienced by pupils whose parents immigrated to Germany is the equivalent to lagging behind by over one school year. Aside from the social background and their parents' level of education, the influencing factors also include the background of immigration as such.

In 2008, 7.5% of the 15 to under-17 year olds left school without completing their secondary school certificate. The majority of those without a secondary school certificate – around 55% - came from special schools, primarily with learning as a focal point of support, where a secondary school leaving certificate cannot always be acquired. The pupils from ethnic minority backgrounds, accounting for 13% of a year, continue to leave general secondary schools without a school leaving certificate twice as often as pupils from non-ethnic minority backgrounds, while the latter obtain university entrance qualifications three times more frequently.
School refusal in the active form of avoiding attending school and in the passive form of inner withdrawal and not participating in the learning process are widespread problem signals for pupils in their relationship to school. However, no figures are available on its prevalence and extent throughout Germany. For example, in the first half of the school year from 2006 to 2007 in Berlin, 11.8% of lower track school pupils did not attend school for over 20 days, and 5.5% for even more than 40 days.

Art. 28 para. 2 UN CRC safeguards human dignity in the way children are dealt with at school yet, according to the children, there are significant indications of problems in this area. They describe the behaviour in schools as often being too authoritarian, subjecting, discriminating, and compromising. Only a few children and young people experience definite participation at school. A survey carried out by the Kinderbarometer 2007 (Children's Barometer) found that every fifth child felt herself or himself made a fool of by the teacher's questions in the week before the survey.

Some young people from abroad who first arrive in Germany when they are aged between 15 and 17 experience difficulties obtaining schooling since at this age they are considered to have 'theoretically' completed their obligation to attend school even if they have not, or only partially, attended school in their countries of origin. Problems of this kind are known, for example, from Bavaria.

4. Training

Despite the lack of skilled personnel already becoming evident in Germany, there are neither sufficient training positions for apprenticeships nor sufficient efforts being made to integrate special needs applicants into training programmes. 34% of pupils leaving general secondary schools do not immediately find a place for vocational training but are put into the so-called transition system. The transition system covers all the programmes run by extra-curricula organisations and school educational programmes that do not offer a vocational qualification. This includes programmes providing a partial qualification that can be credited as the first year on a subsequent training programme or provide the foundation for acceptance onto a programme leading to a formal full qualification. As a result, though, too many young people continue to remain without school leaving qualifications and without training both in the short and long term; at present, 17% of the age group between 20 and 30 years old are affected.
Even with the same school qualifications, young people from abroad are disadvantaged on the training market. The proportion of young people in this group who start vocational training after finishing general secondary school is around 44% compared to approximately 68% among young German nationals.

For young people from abroad without a secure residence status, legal restrictions make acceptance onto a vocational training programme additionally complicated, depending on their residence permit: young asylum seekers cannot start a training programme at all during their first year in Germany and afterwards can apply but have a lower priority than German national applicants or other asylum seekers in the same category with a secure residence status.

The National Coalition recommends that the Committee call for the Federal Government to:

73. urge the Länder to fulfil their contractual duties in the education sector;
74. further drive forward its efforts to extend early education and keep to its planned legal right for children to early education. Here, children from ethnic minority backgrounds need to be given special consideration. In this connection, a complete exemption from day care costs should be considered. In this process of expansion, the qualitative aspects are to be given due weight, in particular a suitable staffing ratio, to ensure comprehensive early education appropriate for children.
75. strive towards ensuring that the Länder design the school educational system in a way that secures individual support for a child’s abilities for all children irrespective of their social or cultural background. The number of school leavers without a secondary school leaving certificate is to be reduced.
76. strive towards ensuring that the Länder secure relations based on human dignity between the teaching staff and pupils in the schools and without psychological hurt and other degrading behaviour;
77. create, in cooperation with the Länder and local authorities, a network of youth welfare programmes to deal with estrangement from school at an early stage, offering suitable support together with the school, and initiating changes in everyday school life. There need to be sufficient assistance programmes as an alternative to school for school refusers.
78. ensure through the appropriate statutory and other measures that all school leavers from general secondary schools are offered a vocational training place leading to a recognised vocational qualification, and that comprehensive programmes for accompanying individual support are provided. In this connection, the opening of vocational training to young people from ethnic minority backgrounds is especially to be moved forwards. All the statutory hurdles to acceptance on a vocational training course are to be abolished for young people from abroad without a secure residence status.

79. exempt by a change in the law all public institutions in the educational and training sector from the duty to convey information pursuant to §87 subs. 2 Residence Act (AufenthG), embody in all Land school laws the right and duty of children with an illegal residence status to attend school, and make it clear that proof of legal residence can neither be requested when children start day care nor when they start school. The passage of the law in the Social Code – Book Eight whereby children with an illegal residence status are excluded from access to the services in Book Eight (§6 subs. 2, Social Code – Book Eight) is to be deleted. In addition to the funds to secure a livelihood pursuant to the Asylum Seekers Benefits Act (AsylbLG), funds are also to be provided for educational participation.

B. Educational Goals (Art. 29)

Schools in Germany do not sufficiently develop the personality, talents and physical abilities as well as, in some cases, mental abilities. The Federal Government's Report predominately presents 'education' in a one-sided way as measurable knowledge and cognitive abilities (Nos. 234 – 240). School promotes and evaluates one-sided cognitive abilities, above all in academic-track schools. As a rule, schools do not recognise mental, physical, artistic, organisational, social, and civil society achievements that do not tie in with the curricula or take place outside the school as achievements relevant to examinations. In particular, the orientation in academic-track schools offering university entry examinations (Abitur) towards consistently high achievement in different skills areas often hampers children with specific cognitive skills and talents (e.g. mathematics-natural science, linguistic) on the road to their university entry exams, or prevents them from taking this road altogether, and thus from continuing to a (university) education corresponding to their particular abilities.
On the topic of human rights education, the Federal Government's Report refers generally to anchoring the topic in the curricula and the use of mediation as a chance to practice violence-free conflict resolution in many schools (Nos. 252-256). However, the findings on violence in many schools, see above VII A.3, point to considerable gaps in implementing human rights principles at school.

The support outlined for child and youth projects of associations working in environmental protection and nature conservation (Nr. 255) has been considerable reduced over the last years. Children from ethnic minority backgrounds are not sufficiently supported in the cultures of their countries of origin. The current Immigration Report notes that little attention is usually given in day care facilities to encouraging the skills of children from ethnic minority backgrounds in the languages of their countries of origin. Neither the National Report on Education nor the reports by the Federal Government Commissioner for Migration, Refugees and Integration provide any data on lessons in the children's languages of origin.

The National Coalition recommends that the Committee call for the Federal Government to:

80. strive towards ensuring that a holistic concept of education is realised both inside and outside school and, in connection with this, guarantee the individual promotion of all the abilities of children. The access to formal and informal fields of learning has to be more equitably structured and in particular secured for children from disadvantaged backgrounds.

81. strengthen the efforts to comprehensively anchor human rights and especially children's rights in the lessons at school and everyday life at school and regularly evaluate the success of these efforts;

82. strive to ensure that all Länder provide support for children from ethnic minority backgrounds to meet their needs and that instruction is given in their language of origin and culture of origin.

C. Leisure, Recreation and Cultural Activities (Art. 31)

The lives of children growing up is characterised by islandisation, domestication and media consumption. Increasingly, childhood takes place in interior spaces, in front of the computer and TV. As a result, children have less contact with the natural environment, and social contacts
have to be organised. Moreover, the steady growth of traffic areas pushes children out of public space. It has become increasingly difficult to independently explore the environment around the home or play without danger on streets and pavements, or in squares. Natural free spaces, or ones that can be shaped, are rare. Consequently, children lack the opportunities for some fundamental experiences of their own and the corresponding practice as a basis in developing practical life skills.

Increasingly, residents are taking a stand against loud play and games. Across Germany, complaining neighbours cite the environmental protection law and manage to have day care centres closed, restricted opening times for school yards, playgrounds and playing fields or, for example, children forbidden to play on private areas. The noise made by children is put in the same category as the noise made by industry.

A particular difficulty here is that around one third of local authorities have no more funds available to exchange and renew play equipment or re-organise and re-design playgrounds. As a result, when the equipment can no longer be repaired, playgrounds are gradually dismantled.

Children have increasingly less leisure and relaxation time. Either there are no opportunities to use leisure for recreation, and sport and cultural activities, or they cost money. The school breaks are too short, and school yards offer too few possibilities for active play. Schools hardly offer any space where children can withdraw; the pupils are forced to be constantly in groups.

School also impacts free time through the increase in homework and the longer daily hours at school caused by cutting the academic-track school curricula from nine to eight years. Many children and young people have no time for themselves, for friends, recreation, exercise, artistic activities, or involvement in voluntary work.

Modern technologies, school canteen catering and less time in the family do not allow children the chance to develop practical skills for life. In the meantime, children and young people have to be taught basic cultural techniques completely outside the family, for instance, the activities connected with eating, such as shopping, preparation and eating together, washing up and hygiene. In comparison, contributions to youth work and work in youth associations fell by a fifth between 1995 and 2007. Over the last ten years, recreational events for children and young people have experienced massive cuts on the Federation and Land levels. These cuts have especially impacted poor children.
The National Coalition recommends that the Committee call for the Federal Government to:

83. increasingly align urban planning and development to the needs of children and young people in public space, establish the corresponding urban development programmes and develop instruments to safeguard their interests in public space;

84. re-appraise the noise of children in the Federal Government's noise protection laws and call on the Länder to re-draft their noise protection guidelines;

85. strive to ensure that there are sufficient opportunities for active breaks at school and for pupils to withdraw on their own from time to time;

86. strive to ensure that all-day schools especially offer chances to experience all aspects of personality development;

87. ensure that children and young people find enough opportunities, time and space for self-organised, informal learning, activity for its own sake, involvement in voluntary work, cultivating their social relations and developing their talents. The facilities supporting children in this area are to be regularly made available and funded.

VIII. Special Protection Measures

A. Refugee Children (Art. 22) and Minor-Age Asylum Seekers

The asylum procedure for children seeking asylum is largely governed by the Asylum Procedure Act (Asylverfahrensgesetz – AsylVfG). In §12, it is stated that minor-age children who are at least 16 years old are considered capable of performing procedural acts in asylum issues. Even after withdrawing the Declaration on the occasion of ratifying the UN CRC, the Federal Government takes the view that §12 Asylum Procedure Act (AsylVfG) is merely a question of a right for the young person. For this reason, there is no legal requirement for a guardian in applying for asylum. In particular, this results in unaccompanied minors being without the assistance of a guardian at the start of their asylum procedure (asylum application).

The appointment of a guardian takes place under the provision of shelter and protection pursuant to §42 Social Code – Book Eight and takes several weeks or months. However, the asylum application is usually submitted during this period. At that point, the clearing procedure
addressed in Nr. 278 of the Federal Government's Report where the further procedure is to be clarified, for example, family reunification in a third country, voluntary return, an application for a right to residence for humanitarian reasons or an application for asylum, can no longer be implemented. The clearing procedure is not carried out comprehensively, even if there have been some positive changes during the reporting period. On the basis of a legal capacity from 16, some Länder still have numerous young people over the age of 16 accommodated in hostels for adults and families and who do not receive any special support.

The principle of the priority of the child's best interests is not enshrined in the Asylum Procedure Act (AsylVfG).

According to the UNHCR and non-governmental organisations, the figure mentioned in the Federal Government's Report under Nr. 286 only relates to the cases of child soldiers known to them in this period. According to the organisations, the real numbers may well be somewhat higher. The design of the asylum procedure for over-16 year olds is especially disadvantageous for child soldiers: usually, the application for asylum and the asylum hearing take place very soon after entering the country and without in-depth advice, support and psychological counselling. As a result, former child soldiers are frequently not open in the hearing and their true reasons for flight can often only first be introduced during the later course of the procedure.

Since procedural responsibility in asylum procedures for young people over 16 is statutorily enshrined, the airport procedure for asylum seekers solely requires applications for guardianship for unaccompanied refugees under 16 and only for unaccompanied refugees over 16 if these are arranged by a third party, usually the airport social services. After the asylum application has been rejected, the young refugees often spend a longer time in the closed airport hostel until their return to the country of origin or a third country has been organised, or they are after all granted leave to enter Germany. According to the Federal Government's Report (Nr. 282), the asylum procedure including any possible subsequent emergency court procedure, must be implemented within a deadline period of 19 days as a rule. If this is not possible, the person from abroad is allowed to enter the Federal Republic of Germany for the further implementation of her or his asylum procedure. In reality, though, minor-age children whose asylum application has been rejected have often been kept significantly longer in the airport hostel until a return is possible or entry into Germany is granted in retrospect.

There is no procedure that guarantees that the child's best interests are respected in cases of rejection or expulsion at the border. The Federal Government takes the view that residence law
provisions proceed according to §42 Social Code – Book Eight. There is no mandatory
requirement to ask the youth welfare office to intervene, nor to appoint a guardian. Nr. 287 of the
Federal Government’s Report only gives figures for the rejection or expulsion of young people
under 16 years old, but not for young people over 16.

The Report does not mention the difficulty of establishing a child refugee’s age. However, this
plays a decisive role since if mistakes are made in age assessment, children are denied
extensive rights. Despite the considerable significance of age assessment in each individual
case, the minimum standards for establishing a child refugee’s age as detailed in General
Comment No. 6 (CRC/GC/2005/6, 1 Sept. 2005) No. 31 are not complied with in Germany.

The only legal basis for age assessment is contained in §49 subs. 3 and 6 of the Residence Act
(AufenthG). In practice, the process of age assessment varies considerably in different regions.
In some regions, age assessment is carried out by the immigration authorities as part of
inspection. In other regions, age assessment falls under the responsibility of the youth welfare
office. The family courts, which are responsible for establishing a suspension of parental care
and appointing a guardian, are involved in a variety of ways.

In the context of subsidiary protection, minors frequently fail to meet the high threshold set by
§60 subs. 7 sentence 1 Residence Act (AufenthG) which specifies a substantial individual
danger to life or limb. For example, the Federal Office for Migration and Refugees and the courts
consider that the danger which a minor is exposed to is a general danger which only then leads
to a protection status when the threshold of “extreme danger” is crossed. There is no review of
the child’s best interests.

In contrast to the positive portrayal in the Federal Government’s Report under Nr. 291 ff, many
minor-age refugees continue to be taken into custody pending detention. In answer to a
parliamentary question (Official Records 16/11384), the Federal Government stated that
nationwide solely between 2005 and 2007 there were 377 unaccompanied minor refugees who
spent up to six months in custody pending deportation. Non-governmental organisations have
recorded a significant number of suicide attempts, physical injuries, maltreatment and separation
of children from their families in connection with deportation or custody pending deportation.

The European guidelines too (EU Return Directive, Art. 17; Imprisonment during the so-called
Dublin procedure; EU Reception Directive, Art. 11 (Draft)) go against the strict provisions in the
UN CRC.
Germany has around 30,000 minor-age children whose legal residence status is a temporary suspension of deportation, which is usually granted for short periods between two weeks and six months. The young refugees’ insecurity caused by the chain of continually re-granting temporary suspensions hampers their development.

In the hostels or other accommodation where minor-age young girls or women are placed, there is lack of the appropriate opportunities for support, trauma work, and possible therapies in their own language, as well as general gender-sensitive services and a corresponding protective space.

Children who are refugees are legally discriminated against by the so-called 'residence obligation' (§56 Asylum Procedure Act (AsylVfG) for asylum seekers and §61 Residence Act (AufenthG) for those with a tolerated status) and prevented from developing freely. Their freedom of movement and participation in social life are restricted. For example, there are known cases during the Reporting Period where unaccompanied under-age children were not given permission to visit their relatives in a different city. It is positively to be noted that during the Reporting Period and afterwards some Länder (Bavaria, North-Rhine Westphalia, Schleswig-Holstein, Berlin and Brandenburg) took a decision to relax the residence obligation, a move which will also benefit children and young people.

As a rule, asylum seekers and tolerated minors are subject to a separate social welfare law. The benefits to provide the subsistence minimum in accordance with the Asylum Seekers Benefits Act (AsylbLG) are around 30% less than the payments otherwise standard. Frequently, only non-cash benefits are granted. Children, who are subject to the Asylum Seekers Benefits Act (AsylbLG), are excluded from medically essential treatment which would be granted under the standard law governing social welfare benefits. This treatment includes physiotherapy or speech therapy in the case of developmental disorders. In practice, children are not granted many of the treatments and payment they are also entitled to according to the Asylum Seekers Benefits Act (AsylbLG), such as glasses or psychotherapy to treat post-traumatic stress disorders.

Primary health care is not provided for children with an illegal residence status. Even where a legal right exists to the costs being met, e.g., through an employment contract within the national insurance system, no advantage is taken of the health care facilities. They are not used because of the official duty incumbent on public authorities to convey information pursuant to the Residence Act (AufenthG) and, in the health sector, these authorities include the statutory health insurances, the publicly administered hospitals and the health and social welfare offices.
On 12 April 2010, the Federal Government signed an agreement with the government of Kosovo on the repatriation of people from Kosovo obliged to leave the country. This agreement could apply to nearly 12,000 people of Roma, Ashkali and Kosovo Egyptian backgrounds. The findings from a UNICEF survey show that children from these families who are to be deported to Kosovo from Germany in the coming years hardly have any perspective there for schooling, medical aid and social integration. In the political and legal guidelines of the German and Kosovan sides, the well-being of the children play practically no role at all.

The National Coalition recommends that the Committee call for the Federal Government to:

88. reform the entire law on aliens in line with the standards in the UN CRC, in particular
89. ensure that in the case of unaccompanied minor-age refugees who apply for asylum the hearing only takes place after a guardian has been appointed and the possibility of in-depth advice, care and psychological support;
90. establish in the Asylum Procedure Act (AsylVfG) and subordinate provisions that the child's well-being will be considered as the primary factor to comply with in the asylum procedure and in all decisions on minor-age refugees. This must apply as well and in particular to the airport procedure, possible dismissal or return at the border, and for decisions on deportation.
91. guarantee adherence to the standards in General Comment No. 6 in assessing the age of unaccompanied minor refugees;
92. ensure that training programmes are regularly held for the special commissioners for unaccompanied minor refugees at the Federal Office for Migration and Refugees;
93. ensure through legal guidelines that children are not placed in custody pending deportation;
94. ensure that the child's best interests are the decisive factor in decisions on residence permits for those with a longstanding tolerated status. Children and young people who have grown up and are integrated in Germany should be granted a permanent right of residence, the chain of continual temporary suspensions of deportation is to be abolished;
95. prevent by the requisite amendment to the legal guidelines children with a temporary residence permit for the time of the asylum procedure
Aufenthaltsgestattung) or a temporary suspension of deportation (Duldung) from having to live for a longer time in hostel accommodation;

96. abolish the residence obligation on all refugee children;

97. exempt by a requisite legal amendment the public institutions concerned with the health care of people with an illegal residence status and their financial settlement of accounts, in particular the social welfare offices, the public health departments, and the statutory health insurances, from the duty to convey information pursuant to §87 subs. 2 Residence Act (AufenthG). Possibilities for voluntary insurance have to be created for people with an illegal residence status, for example, access to a private insurance.

C. Sexual Abuse and Trafficking in Human Beings (Art. 34 and 35)

Germany is a target country, country of origin, and transfer country for child trafficking. There is at present a lack of effective witness protection for minor-age prostitutes from abroad – the girls and young women need the provision of support services and ought not to be discredited as criminals. In particular, the protection ought not to depend on whether the victims are prepared to give evidence in court.

In view of the undiminished and, according to the latest UN Office on Drugs and Crime estimates, increasing trafficking of human beings, and also the trafficking of children, it is noted that Germany still has not ratified the 2005 Council of Europe Convention against Trafficking in Human Beings. Rights to accommodation, medical care, advice, information in an understandable language, and legal assistance are also to be provided independent of the criminal prosecution.

The National Coalition recommends that the Committee call for the Federal Government to:

98. ratify and completely implement the Council of Europe Convention against Trafficking in Human Beings, here especially the implementation of all obligations on support and protection and the guarantee that support provided for a victim will not depend on the willingness to appear as a witness.