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**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

Original: German

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## 68 **Introduction**

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

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

## 80 **General Observations on the Federal Government's Report**

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

86 The Federal Government continues to fail to comply with this approach as called for under Art.  
87 44 UN CRC. The Report is a social report furnished with many individual details but lacking, in  
88 its listing of a wide range of measures, an indication of which *State Party obligations* are being  
89 taken as the concrete basis. Similarly, there is no statement on the question of where *individual*  
90 *human rights* are to be assumed. A serious critical consideration of the legal view, outdated  
91 under international law and expressed on the occasion of the Reservation, that the Convention  
92 does not establish any such rights would have been needed.

93 In an approach complying with the Convention, it would have become obvious that children's  
94 fundamental rights are being by-passed and, in view of the large number of unsolved future  
95 problems, the "policy for children" requires a fundamentally new character. If Art. 6 guarantees  
96 the right to life and survival, then dramatic developments – above all, global warming, the

97 financial and economic crisis, the growth of a huge mountain of debt, and global poverty – need  
98 to be considered since they pose an existential threat to livelihoods and world peace and imply  
99 the systematic destruction of opportunities for the up-and-coming generations. Therefore,  
100 despite indisputable advances in individual instances, the Report has fundamental flaws. It does  
101 not meet the requirements of Art. 44 UN CRC.

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

- 104 1. not to gear its future reporting solely to changes over the previous reporting  
105 period but also to take, in each case, the substance of the provisions under  
106 international law as a point of orientation;
- 107 2. to identify in their policy for children, pursuant to the Convention on the Rights of  
108 the Child, global future risks and the pertinent measures taken on which the  
109 chances of future generations depend.

110 **1 General Implementation Measures**

111 **A. Implementing Children's Rights (Art. 4 and 41)**

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

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

- 118 – There is still no express embodiment of children's rights in the Basic Law (Grundgesetz -  
119 GG) (Nos. 19-20). In view of the constitutional law provisions in nearly all of Germany's  
120 *Länder*, even if they vary in their range, it is not understandable why the Federation has  
121 neglected to use the Basic Law, which is highly regarded by the population, for further  
122 developing the sense of right and wrong in Germany.
- 123 – The National Action Plan "For A Child-Friendly Germany 2005-2010" has initiated a broader  
124 discussion on children's rights even if civil society was not sufficiently involved in its

125 implementation and there were hardly any implementing programmes on the *Land* and local  
126 authority levels. The Federal Government may be planning to draw up perspectives for  
127 "refining the intentions of the NAP", but it excludes any continuation of the Action Plan.

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

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

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

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

154 – The latest ILO estimates (data 2008, Report May 2010) show that exploitative child labour is  
155 declining slower than expected. There are still 115 million children exposed to this worst form  
156 of work, above all in sub-Saharan Africa. The majority of the children are working in the  
157 informal sector and one in six is working in agriculture.

158 – As far as the European Union's (EU) Strategy on Children's Rights is concerned, it is not  
159 evident how the Federal Government will be concretely engaged. There has been no  
160 appropriate integration of non-governmental organisations as part of the Federal  
161 Government's involvement in fora on the EU Strategy on Children's Rights arranged within  
162 the European Union. Under the so-called Dublin II Regulation that identifies the Member  
163 State responsible for examining an asylum application, Germany has evaded its  
164 responsibility for child refugees at the expense of Europe's border states despite the priority  
165 of the child's right to care and protection being enshrined in Art. 24 of the Charter of  
166 Fundamental Rights of the European Union. One consequence here is the scandalous  
167 conditions of Greek juvenile prisons.

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

- 170 **3. establish an overview of where, after the withdrawal of the Reservations, concrete**  
171 **steps are still pending in the Convention's implementation, especially in relation to**  
172 **the right to asylum, the right of residence and social legislation;**
- 173 **4. speak out against the objections of including children's rights in the Basic Law**  
174 **(GG) and pave the way for a change to the constitution;**
- 175 **5. consider continuing the National Action Plan: "For a Child-Friendly Germany.**  
176 **2005-2010";**
- 177 **6. comply with the repeated suggestion of the UN Committee to commission an**  
178 **independent human rights organisation with the establishment of a coordination**  
179 **and monitoring system to observe and support the Convention's implementation**  
180 **in the Federation and the *Länder*; furthermore, to equip this institution with**  
181 **sufficient personnel and financial resources and give it the authority to receive**  
182 **complaints on violations of the rights of the child, to investigate them in a form**  
183 **suitable for children, and effectively process these complaints;**
- 184 **7. develop a Children's Rights Convention Index based on the legal standards in the**  
185 **Convention on the Rights of the Child;**
- 186 **8. present a development plan in agreement with the *Länder* for the purpose of**  
187 **medium-term financial planning where, on the basis of the fundamental challenges**

188 in the Convention, the key data of the resources required for implementation are  
189 made public;

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

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

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

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

205 **B. Dissemination of Information on the Convention on the Rights of the Child (Art.**  
206 **42)**

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

213 The description in the Federal Government Report omits to mention that achieving a general  
214 awareness of rights in the spirit of the Convention has not yet proved really possible – nor has  
215 this been achieved by the non-governmental organisations involved. For this reason, there is not

216 only a need for knowledge dissemination; in a next step, efforts have to focus on ensuring that  
217 the explicit respect for the rights of the child are more intensively implemented in all areas of life.

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

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

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

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

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

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

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

## 239 **II. Definition of the Child**

240 Notwithstanding the federal statutory regulation that children reach the age of majority on turning  
241 18, according to §80 subs. 1 and subs. 3 Residence Act (AufenthG) and pursuant to §12 subs. 1  
242 Asylum Procedure Act (AsylVfG), 16 to 18-year-old foreign minors are considered to have their

243 own legal capacity under residence and asylum law. As a result, they have to file their  
244 applications at the immigration authorities or at the Federal Office branch themselves and  
245 conduct the proceedings independently. Young people of 16 or 17 are often not capable of  
246 understanding the significance of the asylum laws. This situation of statutory discrimination has  
247 not changed since the last Report.

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

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

### 253 **III. General Principles**

#### 254 **A. Non-discrimination (Art. 2)**

255 As the Report shows (Nos. 64 ff.), the precept of non-discrimination pursuant to Art. 2 UN CRC  
256 is supported by a series of measures that are in particular directed against *de facto*  
257 discrimination as well as right-wing activities, especially those which are xenophobic.  
258 Nevertheless, here too it is evident that the Convention's standards tend to be understood as  
259 programmatic rather than as obligatory in a statutory sense. If this were not the case, the  
260 discrimination against children with disabilities through their exclusion from the general school  
261 system would not only have been presented exemplarily (Nr. 69) but, with reference to Art. 2, 3,  
262 23, 28 UN CRC and the United Nations Convention on the Rights of Persons with Disabilities, it  
263 would have clearly been indicated that the concern here is with concrete State Party obligations  
264 and individual rights that have to culminate in the creation of an 'inclusive educational system'.

265 There is no change in the discrimination against children from ethnic minority backgrounds. In  
266 legal terms, this concerns the Social Code – Book Eight (VIII) Child and Youth Services (KJHG -  
267 *Kinder- und Jugendhilfegesetz*), the Residence Act (AufenthG) and the Asylum Seekers Benefits  
268 Act (AsylbLG). By linking child and youth welfare benefits to residence status, the Social Code –  
269 Book Eight (VIII) excludes children without a legal residence status from all child and youth  
270 welfare services, including those of early education and development in child day care facilities.  
271 Pursuant to §55, Nr. 7 of the Residence Act (AufenthG), a foreigner who is a minor can be

272 deported if s/he is receiving assistance in upbringing outside his or her own family in accordance  
273 with the Social Code – Book Eight (VIII), e.g., residential education, and his or her parents only  
274 have a residence status which is a temporary suspension of deportation or s/he is her/himself an  
275 unaccompanied minor-age refugee. The discrimination against children seeking asylum in  
276 respect of the social services granted to them and the restrictions on their freedom of movement  
277 are dealt with in detail under VIII.A.

278 Factually too, foreign children and children from an ethnic minority background suffer from  
279 discrimination in areas such as the educational sector, and in economic, social and cultural  
280 participation, on this see V.A., VII.A., and VI C. The Federal Government has not implemented  
281 Recommendation Nr. 24 given by the 2004 UN Committee.

282 Children with disabilities suffer from a range of discrimination which is both statutorily  
283 determined and appears in the practical implementation, on this see VI.A.

284 The perspective of gay and lesbian adolescents is entirely absent from the Third and Fourth  
285 State Party Reports of the Federal Republic of Germany. With young gay and lesbian people  
286 coming out ever earlier, there are additional risks of growing up, or risks that are expressed in  
287 other ways – for example, it has been shown that members of this group are more likely to  
288 commit suicide.

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

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

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

298 **18. examine under the precept of freedom from discrimination all the provisions that**  
299 **impact children of foreigners and alter such provisions if need be. In particular, the**  
300 **Social Code – Book Eight (VIII), the Residence Act (AufenthG) and the Asylum**  
301 **Seekers Benefits Act (AsylbLG) are to be amended in such a way that, irrespective**

- 302 of the legal residence status of the child or her/his parents, all children are entitled  
303 to the same services and rights as other children in Germany.
- 304 19. focus more on real discrimination in safeguarding the interests of children from  
305 ethnic minority backgrounds;
- 306 20. establish a consistent anti-discrimination policy to support young people in the  
307 discovery of their same sex identity and protect them against discrimination from  
308 their peers, teachers and trainers. In addition, specific supporting, facilitative and  
309 advisory services for the particular psychological strain involved in coming out  
310 and for the development of a gay and lesbian life style are to be provided.
- 311 21. develop a comprehensive strategy against child poverty containing measures  
312 which, on the foundation of a poverty-proof basic security benefit for children,  
313 combat the real discrimination experienced from being excluded from participating  
314 in society.

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

316 Throughout the entire Report, it would have been necessary to critically review in all the  
317 measures presented the principle of priority enshrined in Art. 3 CRC. Although the best interests  
318 of the child is considered a guiding principle (Nr. 76), there is no recognition of this being a  
319 binding evaluative guideline applicable to all legislation, administrative authorities and  
320 administration of justice and that this guideline does not merely apply to the Child and Youth  
321 Services Act (KJHG), family law and children taking part in court proceedings. As yet, the  
322 Federal Government has not taken account of the scholarly remarks made on this issue<sup>1</sup> and  
323 does not undertake a systematic process of informing all the pertinent authorities so as to  
324 prevent the frequent violations of this legal principle. The priority of the child's best interests is  
325 disregarded to an especially high degree in the case of minors and refugees seeking asylum, as  
326 it is in the case of children from educationally disadvantaged families with low social status, see  
327 VI.C., VII.A. and VIII. A..

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<sup>1</sup> Compare Lorz, Alexander: *"Nach der Rücknahme der deutschen Vorbehaltserklärung: Was bedeutet die uneingeschränkte Verwirklichung des Kindeswohlvorrangs nach der UN-Kinderrechtskonvention im deutschen Recht?"* Berlin, 2010, [http://www.national-coalition.de/pdf/PDFs\\_16\\_09\\_10/Expertise\\_Prof\\_Lorz\\_Kindeswohl.pdf](http://www.national-coalition.de/pdf/PDFs_16_09_10/Expertise_Prof_Lorz_Kindeswohl.pdf). Accessed on 24.11.2010

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

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

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

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

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

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

345 **23. establish concrete requirements for the proper and healthy development of**  
346 **children in basic developmental areas and set a target based on concrete**  
347 **indicators which can be used repeatedly to measure social developments. Here,**  
348 **reference is to be made to existing reports such as, for example, the 13th *Kinder-***  
349 ***und Jugendbericht* (Report on Children and Young People), drafted in 2009 on**  
350 **behalf of the Federal Government, which presents the requirements for healthy**  
351 **development in different age groups and for achieving very concrete goals.**  
352 **24. safeguard the future basis for life when implementing Article 6.**

353 **D. Taking Account of the Opinions of the Child (Art. 12)**

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

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

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

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

- 374 **25. include the participative rights of children and young people into the targeted**  
375 **integration of children's rights into the Basic Law( GG) and politically advocate the**  
376 **requisite changes in the *Land* and local constitutions, provide participatory forms**  
377 **suitable for children in all judicial and official procedures, supply information on**  
378 **children's rights in all institutions where children and young people stay, and**  
379 **create easily accessible drop-in centres and complaints offices;**
- 380 **26. support the drafting and binding implementation of quality standards for**  
381 **participation on all levels, especially on the local level,**
- 382 **27. set in motion a comprehensive dialogue on all political levels on the voting age for**  
383 **local authority, *Land* parliament, Bundestag and Euro-elections as well as in local**

384 referendums or public petitions with the aim of driving forward a lowering of the  
385 voting age on all federal levels.

## 386 IV. Civil Rights and Freedoms

### 387 A. Name and Nationality (Art. 7)

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

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

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

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

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

- 415 **28. clarify through the appropriate regulations that all children are to receive a birth**  
416 **certificate immediately after birth which, if need be, can be supplemented or**  
417 **amended on the presentation of the requisite documents;**
- 418 **29. arrange for birth certificate duplicates to be issued unbureaucratically;**
- 419 **30. introduce the statutory changes to exempt registry offices from their duty to**  
420 **convey information pursuant to §87 subs. 2 Residence Act (AufenthG);**
- 421 **31. facilitate permanent multiple citizenship for young people from ethnic minority**  
422 **backgrounds and abolish the duty of choice in the Nationality Act (StAG).**

#### 423 **B. Maintenance of Identity (Art. 8)**

424 At present, there are around 80 so-called 'baby hatches' where babies can be anonymously left  
425 at a drop-off point and which are intended to prevent babies being abandoned or killed. Around  
426 130 hospitals offer the anonymous delivery of babies. However, this also makes it impossible for  
427 the children to trace their genetic origins. The possibility of anonymous sperm donation is  
428 another area which raises the same problems.

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

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

#### 434 **C. Right to Freedom of Expression (Art. 13)**

435 In Germany, children as creators of and actors in media are dramatically underrepresented – in  
436 all forms of media. There are hundreds of radio and TV broadcasters for adults, but only a  
437 handful for children. There are thousands of newspapers written by adults for adults but not one  
438 regularly published nationwide newspaper produced by children for children. In Germany, only a  
439 fraction of the media for children is actually produced by children themselves, and of this only a  
440 fraction is produced by disadvantaged children.

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

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

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

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

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

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

#### 457 **G. Access to Appropriate Information (Art. 17)**

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

469 people. The planned revision of the Interstate Agreement on the Protection of Minors in the  
470 Media should be evaluated to see whether it can provide the protection needed.

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

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

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

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

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

## 493 **V. Family Structure and Alternative Care**

### 494 **A. Guidance by Parents (Art. 5), Parental Responsibility (Art. 18 paras. 1-2),** 495 **Separation from Parents (Art. 9)**

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

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

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

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

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

520 In their quest for state assistance for personnel support in caring for and looking after their  
521 children (parental assistance), parents with disabilities are often not only confronted with the

522 reservations of the service and care providers but in quite a number of cases, due to the lack of  
523 clarity in the present legal position, have their request for services turned down or else get  
524 caught up in the conflicts of responsibilities between the social welfare and child and youth  
525 welfare providers.

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

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

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

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

544 **38. guarantee, together with the *Länder* and the local authorities, the needs-based**  
545 **provision of financial and personnel resources in public and independent child**  
546 **and youth welfare to meet the demand and thus also ensure the support of**  
547 **mothers and fathers or other persons having parental powers. This provision**  
548 **should be aligned with the number of children and such social stress factors as,**  
549 **for example, transfer payment quotas. The requisite needs formulas should be**  
550 **developed for this purpose. Consideration needs to be given to whether the**  
551 **statutory regulations have to be formulated in a more binding manner.**

- 552 39. ensure the planned amendment to the Guardianship Act (*Vormundschaftsgesetz*)  
553 gives priority to individual guardianships, establishes binding regulations on the  
554 personal contact between guardian and ward, sets legal standards for the personal  
555 supervision of the ward's care, upbringing and education and a corresponding  
556 limit on the number of official guardianships, and includes guidelines on the  
557 appropriate interdisciplinary qualifications of guardians, legal standards for  
558 structures separate from the youth welfare office's provision of services, as well as  
559 legal standards for the effective involvement of the ward in decisions;
- 560 40. enact the regulation effective in the entire social law pursuant to §17.2 in the Social  
561 Code – Book One for people with a hearing disability on meeting the costs for  
562 communication assistance by the responsible service providers equally in child  
563 and youth welfare for the parents, legal guardians or children who cannot be  
564 communicated with in a sufficiently differentiated way in a common language;
- 565 41. undertake to clarify, if necessary by law, the right of mothers and fathers with  
566 disabilities to personnel support in caring for and looking after their children;
- 567 42. pay more attention to qualitative factors in extending day care provision and agree  
568 jointly with local authorities and independent service providers on the appropriate  
569 quality standards;
- 570 43. ensure statutorily and financially together with the *Länder* that pregnant women in  
571 custody are not separated from their newborns after birth and receive the health  
572 and psychosocial support to meet their needs.

## 573 B. Family Reunification (Art. 10)

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

577 The strict rules on the subsequent immigration of children to join their families are increasingly  
578 leading to what is termed 'migrant orphans'. The procedures for family reunification are often  
579 very protracted, the legal position and the administrative practice are coined by mistrust against  
580 the applicant and hence do not comply with the principle of the Convention that family  
581 reunifications are to be carried out in a positive, humane and expeditious manner.

582 In the Federal Government's Report, the topic of family reunification under Nr. 293 only makes  
583 reference to the situation of recognised refugees. However, if as a result of a stay of deportation  
584 e.g. for humanitarian reasons, refugees are issued with a temporary residence permit or their  
585 deportation is only suspended, i.e., they only have a temporary suspension of deportation, a  
586 child's subsequent immigration to join her/his family or a family reunification pursuant to §29  
587 Residence Act (AufenthG) is not allowed – often permanently.

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

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

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

## 601 **C Illicit Transfer and Non-Return (Art. 11)**

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

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

609 **46. introduce an amendment to repeal the term of six months in the case of a parent**  
610 **abducting a child.**

611 **D. Securing the Recovery of Maintenance Claims for the Child (Art. 27 para. 4)**

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

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

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

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

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

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

630 **48. ensure through statutory and delegated legislative provisions that the child's need**  
631 **to form close relationships and the relationships developed are given the**  
632 **appropriate weight in all phases of placement in foster and residential care as a**  
633 **significant aspect of the child's best interests.**

634 **H. Maltreatment and Neglect (Art. 19), Physical and Psychological Recovery and**  
635 **Social Reintegration (Art. 39)**

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

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

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

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

657 In schools, pupils exercise physical and psychological violence against other pupils in the form  
658 of terrorising and tyrannising (bullying and mobbing) and use media in cyber-bullying.  
659 Frequently, teachers are not trained to deal with such problems and do not have the time to deal  
660 with them. There is no widespread coverage of school social work at all schools, and often it  
661 does not have the regular funding to ensure its work is continuous.

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

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

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

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

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

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

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

## 685 **VI. Basic Health and Welfare**

### 686 **A. Children with Disabilities (Art. 23)**

687 Although Germany has ratified the United Nations Convention on the Rights of Persons with  
688 Disabilities, the vast majority of children with disabilities are still being pushed into special needs  
689 facilities. Only around 15% of the pupils with disabilities are attending a mainstream school, in  
690 comparison to over 70% in other European countries. Separating out children with learning  
691 difficulties is especially concerning; these children account for around half of all those separated

692 out. This group includes a disproportionate number of young boys as well as children from  
693 ethnic minority and socially disadvantaged backgrounds.

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

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

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

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

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

720 **56. further pursue and implement the consolidation of responsibility for all children in**  
721 **one Social Code, the so-called 'large solution', as a contribution to reducing**  
722 **discrimination – under the stipulation that in the process the extent and quality of**

723 the treatment, support and integrative services for children with disabilities  
724 remains the same, 'customised' assistance is possible and the parents of children  
725 with disabilities are not called on to contribute to the costs more than is already  
726 the case.

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

## 729 **B. Health and Welfare (Art. 24)**

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

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

- 744 – For example, many adolescents in secondary schools work far more than 40 hours a week  
745 for school, mainly sitting, in an unhealthy environment and often under psychological  
746 pressure.
- 747 – There is no limit on the time children have to be or ought to be working in or for school.
- 748 – Although there are set times for breaks in the morning, these do not sufficiently take into  
749 account the children's needs. The times allowed for movement or unstructured play are  
750 similarly undefined. The opportunities for such activities in the school yards are often very  
751 limited and, given unfavourable weather, usually do not take place at all.
- 752 – Frequently, the learning environment (light, air, acoustics, size of rooms, furniture,  
753 cleanliness) do not meet health standards.

754 At the same time, there has been a rise in the prescription of psychostimulants for children  
755 between the time they start school and puberty specifically intended to combat attention  
756 disorders and increased motor activity.

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

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

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

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

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

781 In terms of psychotherapy for children, there is a marked lack of provision for children with  
782 psychological illnesses. With the exception of the large cities, the standard waiting time is over  
783 four months.

784 There are at least 24,000 women affected by genital mutilation living in Germany and 6000 girls  
785 at risk of being temporarily sent to their countries of origin for genital mutilation. There is a lack  
786 of effective and, above all, preventive protective measures. Doctors, midwives and hospital  
787 personnel play a major role in providing advice and education, but they are often not sufficiently  
788 well informed.

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

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

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

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

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

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

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

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

814 **63. make every effort and, if necessary, introduce the requisite legal amendments to**  
815 **ensure that in planning the provision of psychotherapy and psychiatry for children**

- 816 and young people, the needs of the children and young people are established  
817 separately and flow into the organisation of the psychiatric and psychotherapist  
818 practices. In improving the provision of psychotherapeutic services for children,  
819 special attention should be given to those areas with a weak infrastructure.
- 820 64. draft a national strategy against female genital mutilation together with those  
821 affected and representatives from the Federation, *Länder* and local authorities  
822 which provides for among other things the sensitisation of experts in contact with  
823 girls potentially affected, information for the girls and their family on their rights  
824 and help services, and the creation of knowledge exchange and further  
825 development;
- 826 65. make every effort to ensure that intersexuality gains a stronger public profile, is  
827 included in the training of the medical specialists dealing with this concern, and  
828 that children and parents receive the requisite advice;
- 829 66. establish a national strategy for the treatment of rare illnesses. This is to facilitate  
830 a procedure coordinated with all those involved, take into account the concerns  
831 and expertise of patients and their relatives, the doctors and therapists  
832 responsible for the treatment as well as doctors and scientists in research, and  
833 bundle already existing activities on the national level.

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

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

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

845 In international comparisons, the evaluations of Germany's situation vary depending on the  
846 methods of data collection and reference groups. Hence, in contrast to the positive comparisons

847 within Europe cited by the Federal Government's Report (Nr. 217), UNICEF 2010 ranks  
848 Germany among the lower third of the OECD states in terms of the material poverty of children.

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

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

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

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

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

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

- 880 **67. align the calculation of benefits to secure a level of subsistence allowing a life in**  
881 **human dignity to meet children's needs and rights and monitor them in regular**  
882 **intervals. Aside from financial benefits, this also includes establishing and**  
883 **expanding local low threshold infrastructure services in the education, leisure,**  
884 **sport and culture sectors accessible for all children;**
- 885 **68. bundle the transfer benefits for children in the sense of having a poverty-proof**  
886 **basic standard of social welfare which children are entitled to in their own right;**
- 887 **69. drive forward the needs-based expansion of day care for children over one year**  
888 **old and hence enable single parents in particular to take up a job paying a living**  
889 **wage;**
- 890 **70. include the maintenance requirements for children in calculating the statutory**  
891 **minimum wages;**
- 892 **71. amend the Social Code – Book II so that benefit sanctions against parents are**  
893 **suspended directly after the necessary cooperation has (again) been provided;**
- 894 **72. amend the Social Code – Book II so that sanctions against young people under 25**  
895 **are given a broad latitude to allow them to be aligned with the individual case and**  
896 **are compulsorily linked to youth welfare services.**

## 897 **VII. Education, Leisure and Cultural Activities**

### 898 **A. Education**

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

906 1. General Information

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

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

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

926 2. Day care of children

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

932 The proportion of under-threes in western Germany in education ranges from 4% to 36%. In  
933 contrast, the average of the under-threes in education in 2009 in eastern Germany was an  
934 encouraging 45%.

935 The proportion of children from an ethnic minority background in education in day care, both for  
936 the over and under-threes, was significantly lower than for children from a non-ethnic minority  
937 background. On the basis of the available data, it is not possible to say whether social factors  
938 play more of a role here than cultural ones.

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

### 945 3. School

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

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

958 In 2008, 7.5% of the 15 to under-17 year olds left school without completing their secondary  
959 school certificate. The majority of those without a secondary school certificate – around 55% -  
960 came from special schools, primarily with learning as a focal point of support, where a secondary  
961 school leaving certificate cannot always be acquired. The pupils from ethnic minority  
962 backgrounds, accounting for 13% of a year, continue to leave general secondary schools  
963 without a school leaving certificate twice as often as pupils from non-ethnic minority  
964 backgrounds, while the latter obtain university entrance qualifications three times more  
965 frequently.

966 School refusal in the active form of avoiding attending school and in the passive form of inner  
967 withdrawal and not participating in the learning process are widespread problem signals for  
968 pupils in their relationship to school. However, no figures are available on its prevalence and  
969 extent throughout Germany. For example, in the first half of the school year from 2006 to 2007 in  
970 Berlin, 11.8% of lower track school pupils did not attend school for over 20 days, and 5.5% for  
971 even more than 40 days.

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

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

#### 984 4. Training

985 Despite the lack of skilled personnel already becoming evident in Germany, there are neither  
986 sufficient training positions for apprenticeships nor sufficient efforts being made to integrate  
987 special needs applicants into training programmes. 34% of pupils leaving general secondary  
988 schools do not immediately find a place for vocational training but are put into the so-called  
989 transition system. The transition system covers all the programmes run by extra-curricula  
990 organisations and school educational programmes that do not offer a vocational qualification.  
991 This includes programmes providing a partial qualification that can be credited as the first year  
992 on a subsequent training programme or provide the foundation for acceptance onto a  
993 programme leading to a formal full qualification. As a result, though, too many young people  
994 continue to remain without school leaving qualifications and without training both in the short and  
995 long term; at present, 17% of the age group between 20 and 30 years old are affected.

996 Even with the same school qualifications, young people from abroad are disadvantaged on the  
997 training market. The proportion of young people in this group who start vocational training after  
998 finishing general secondary school is around 44% compared to approximately 68% among  
999 young German nationals.

1000 For young people from abroad without a secure residence status, legal restrictions make  
1001 acceptance onto a vocational training programme additionally complicated, depending on their  
1002 residence permit: young asylum seekers cannot start a training programme at all during their first  
1003 year in Germany and afterwards can apply but have a lower priority than German national  
1004 applicants or other asylum seekers in the same category with a secure residence status.

1005 **The National Coalition recommends that the Committee call for the Federal Government**  
1006 **to:**

- 1007 **73. urge the *Länder* to fulfil their contractual duties in the education sector;**  
1008 **74. further drive forward its efforts to extend early education and keep to its planned**  
1009 **legal right for children to early education. Here, children from ethnic minority**  
1010 **backgrounds need to be given special consideration. In this connection, a**  
1011 **complete exemption from day care costs should be considered. In this process of**  
1012 **expansion, the qualitative aspects are to be given due weight, in particular a**  
1013 **suitable staffing ratio, to ensure comprehensive early education appropriate for**  
1014 **children.**  
1015 **75. strive towards ensuring that the *Länder* design the school educational system in a**  
1016 **way that secures individual support for a child's abilities for all children**  
1017 **irrespective of their social or cultural background. The number of school leavers**  
1018 **without a secondary school leaving certificate is to be reduced.**  
1019 **76. strive towards ensuring that the *Länder* secure relations based on human dignity**  
1020 **between the teaching staff and pupils in the schools and without psychological**  
1021 **hurt and other degrading behaviour;**  
1022 **77. create, in cooperation with the *Länder* and local authorities, a network of youth**  
1023 **welfare programmes to deal with estrangement from school at an early stage,**  
1024 **offering suitable support together with the school, and initiating changes in**  
1025 **everyday school life. There need to be sufficient assistance programmes as an**  
1026 **alternative to school for school refusers.**

- 1027 78. ensure through the appropriate statutory and other measures that all schools  
1028 leavers from general secondary schools are offered a vocational training place  
1029 leading to a recognised vocational qualification, and that comprehensive  
1030 programmes for accompanying individual support are provided. In this  
1031 connection, the opening of vocational training to young people from ethnic  
1032 minority backgrounds is especially to be moved forwards. All the statutory hurdles  
1033 to acceptance on a vocational training course are to be abolished for young people  
1034 from abroad without a secure residence status.
- 1035 79. exempt by a change in the law all public institutions in the educational and training  
1036 sector from the duty to convey information pursuant to §87 subs. 2 Residence Act  
1037 (AufenthG), embody in all *Land* school laws the right and duty of children with an  
1038 illegal residence status to attend school, and make it clear that proof of legal  
1039 residence can neither be requested when children start day care nor when they  
1040 start school. The passage of the law in the Social Code – Book Eight whereby  
1041 children with an illegal residence status are excluded from access to the services  
1042 in Book Eight (§6 subs. 2, Social Code – Book Eight) is to be deleted. In addition to  
1043 the funds to secure a livelihood pursuant to the Asylum Seekers Benefits Act  
1044 (AsylbLG), funds are also to be provided for educational participation.

## 1045 B. Educational Goals (Art. 29)

1046 Schools in Germany do not sufficiently develop the personality, talents and physical abilities as  
1047 well as, in some cases, mental abilities. The Federal Government's Report predominately  
1048 presents 'education' in a one-sided way as measurable knowledge and cognitive abilities (Nos.  
1049 234 – 240). School promotes and evaluates one-sided cognitive abilities, above all in academic-  
1050 track schools. As a rule, schools do not recognise mental, physical, artistic, organisational,  
1051 social, and civil society achievements that do not tie in with the curricula or take place outside  
1052 the school as achievements relevant to examinations. In particular, the orientation in academic-  
1053 track schools offering university entry examinations (*Abitur*) towards consistently high  
1054 achievement in different skills areas often hampers children with specific cognitive skills and  
1055 talents (e.g. mathematics-natural science, linguistic) on the road to their university entry exams,  
1056 or prevents them from taking this road altogether, and thus from continuing to a (university)  
1057 education corresponding to their particular abilities.

1058 On the topic of human rights education, the Federal Government's Report refers generally to  
1059 anchoring the topic in the curricula and the use of mediation as a chance to practice violence-  
1060 free conflict resolution in many schools (Nos. 252-256). However, the findings on violence in  
1061 many schools, see above VII A.3, point to considerable gaps in implementing human rights  
1062 principles at school.

1063 The support outlined for child and youth projects of associations working in environmental  
1064 protection and nature conservation (Nr. 255) has been considerably reduced over the last years.

1065 Children from ethnic minority backgrounds are not sufficiently supported in the cultures of their  
1066 countries of origin. The current Immigration Report notes that little attention is usually given in  
1067 day care facilities to encouraging the skills of children from ethnic minority backgrounds in the  
1068 languages of their countries of origin. Neither the National Report on Education nor the reports  
1069 by the Federal Government Commissioner for Migration, Refugees and Integration provide any  
1070 data on lessons in the children's languages of origin.

1071 **The National Coalition recommends that the Committee call for the Federal Government**  
1072 **to:**

1073 **80. strive towards ensuring that a holistic concept of education is realised both inside**  
1074 **and outside school and, in connection with this, guarantee the individual**  
1075 **promotion of all the abilities of children. The access to formal and informal fields**  
1076 **of learning has to be more equitably structured and in particular secured for**  
1077 **children from disadvantaged backgrounds.**

1078 **81. strengthen the efforts to comprehensively anchor human rights and especially**  
1079 **children's rights in the lessons at school and everyday life at school and regularly**  
1080 **evaluate the success of these efforts;**

1081 **82. strive to ensure that all *Länder* provide support for children from ethnic minority**  
1082 **backgrounds to meet their needs and that instruction is given in their language of**  
1083 **origin and culture of origin.**

#### 1084 **C. Leisure, Recreation and Cultural Activities (Art. 31)**

1085 The lives of children growing up is characterised by islandisation, domestication and media  
1086 consumption. Increasingly, childhood takes place in interior spaces, in front of the computer and  
1087 TV. As a result, children have less contact with the natural environment, and social contacts

1088 have to be organised. Moreover, the steady growth of traffic areas pushes children out of public  
1089 space. It has become increasingly difficult to independently explore the environment around the  
1090 home or play without danger on streets and pavements, or in squares. Natural free spaces, or  
1091 ones that can be shaped, are rare. Consequently, children lack the opportunities for some  
1092 fundamental experiences of their own and the corresponding practice as a basis in developing  
1093 practical life skills.

1094 Increasingly, residents are taking a stand against loud play and games. Across Germany,  
1095 complaining neighbours cite the environmental protection law and manage to have day care  
1096 centres closed, restricted opening times for school yards, playgrounds and playing fields or, for  
1097 example, children forbidden to play on private areas. The noise made by children is put in the  
1098 same category as the noise made by industry.

1099 A particular difficulty here is that around one third of local authorities have no more funds  
1100 available to exchange and renew play equipment or re-organise and re-design playgrounds. As  
1101 a result, when the equipment can no longer be repaired, playgrounds are gradually dismantled.

1102 Children have increasingly less leisure and relaxation time. Either there are no opportunities to  
1103 use leisure for recreation, and sport and cultural activities, or they cost money. The school  
1104 breaks are too short, and school yards offer too few possibilities for active play. Schools hardly  
1105 offer any space where children can withdraw; the pupils are forced to be constantly in groups.

1106 School also impacts free time through the increase in homework and the longer daily hours at  
1107 school caused by cutting the academic-track school curricula from nine to eight years. Many  
1108 children and young people have no time for themselves, for friends, recreation, exercise, artistic  
1109 activities, or involvement in voluntary work.

1110 Modern technologies, school canteen catering and less time in the family do not allow children  
1111 the chance to develop practical skills for life. In the meantime, children and young people have  
1112 to be taught basic cultural techniques completely outside the family, for instance, the activities  
1113 connected with eating, such as shopping, preparation and eating together, washing up and  
1114 hygiene. In comparison, contributions to youth work and work in youth associations fell by a fifth  
1115 between 1995 and 2007. Over the last ten years, recreational events for children and young  
1116 people have experienced massive cuts on the Federation and *Land* levels. These cuts have  
1117 especially impacted poor children.

1118 **The National Coalition recommends that the Committee call for the Federal Government**  
1119 **to:**

- 1120 83. increasingly align urban planning and development to the needs of children and  
1121 young people in public space, establish the corresponding urban development  
1122 programmes and develop instruments to safeguard their interests in public space;
- 1123 84. re-appraise the noise of children in the Federal Government's noise protection  
1124 laws and call on the *Länder* to re-draft their noise protection guidelines;
- 1125 85. strive to ensure that there are sufficient opportunities for active breaks at school  
1126 and for pupils to withdraw on their own from time to time;
- 1127 86. strive to ensure that all-day schools especially offer chances to experience all  
1128 aspects of personality development;
- 1129 87. ensure that children and young people find enough opportunities, time and space  
1130 for self-organised, informal learning, activity for its own sake, involvement in  
1131 voluntary work, cultivating their social relations and developing their talents. The  
1132 facilities supporting children in this area are to be regularly made available and  
1133 funded.

## 1134 **VIII. Special Protection Measures**

### 1135 **A. Refugee Children (Art. 22) and Minor-Age Asylum Seekers**

1136 The asylum procedure for children seeking asylum is largely governed by the Asylum Procedure  
1137 Act (*Asylverfahrensgesetz – AsylVfG*). In §12, it is stated that minor-age children who are at  
1138 least 16 years old are considered capable of performing procedural acts in asylum issues. Even  
1139 after withdrawing the Declaration on the occasion of ratifying the UN CRC, the Federal  
1140 Government takes the view that §12 Asylum Procedure Act (*AsylVfG*) is merely a question of a  
1141 right for the young person. For this reason, there is no legal requirement for a guardian in  
1142 applying for asylum. In particular, this results in unaccompanied minors being without the  
1143 assistance of a guardian at the start of their asylum procedure (asylum application).

1144 The appointment of a guardian takes place under the provision of shelter and protection  
1145 pursuant to §42 Social Code – Book Eight and takes several weeks or months. However, the  
1146 asylum application is usually submitted during this period. At that point, the clearing procedure

1147 addressed in Nr. 278 of the Federal Government's Report where the further procedure is to be  
1148 clarified, for example, family reunification in a third country, voluntary return, an application for a  
1149 right to residence for humanitarian reasons or an application for asylum, can no longer be  
1150 implemented. The clearing procedure is not carried out comprehensively, even if there have  
1151 been some positive changes during the reporting period. On the basis of a legal capacity from  
1152 16, some *Länder* still have numerous young people over the age of 16 accommodated in hostels  
1153 for adults and families and who do not receive any special support.

1154 The principle of the priority of the child's best interests is not enshrined in the Asylum Procedure  
1155 Act (AsylVfG).

1156 According to the UNHCR and non-governmental organisations, the figure mentioned in the  
1157 Federal Government's Report under Nr. 286 only relates to the cases of child soldiers known to  
1158 them in this period. According to the organisations, the real numbers may well be somewhat  
1159 higher. The design of the asylum procedure for over-16 year olds is especially disadvantageous  
1160 for child soldiers: usually, the application for asylum and the asylum hearing take place very  
1161 soon after entering the country and without in-depth advice, support and psychological  
1162 counselling. As a result, former child soldiers are frequently not open in the hearing and their  
1163 true reasons for flight can often only first be introduced during the later course of the procedure.

1164 Since procedural responsibility in asylum procedures for young people over 16 is statutorily  
1165 enshrined, the airport procedure for asylum seekers solely requires applications for guardianship  
1166 for unaccompanied refugees under 16 and only for unaccompanied refugees over 16 if these  
1167 are arranged by a third party, usually the airport social services. After the asylum application has  
1168 been rejected, the young refugees often spend a longer time in the closed airport hostel until  
1169 their return to the country of origin or a third country has been organised, or they are after all  
1170 granted leave to enter Germany. According to the Federal Government's Report (Nr. 282), the  
1171 asylum procedure including any possible subsequent emergency court procedure, must be  
1172 implemented within a deadline period of 19 days as a rule. If this is not possible, the person from  
1173 abroad is allowed to enter the Federal Republic of Germany for the further implementation of her  
1174 or his asylum procedure. In reality, though, minor-age children whose asylum application has  
1175 been rejected have often been kept significantly longer in the airport hostel until a return is  
1176 possible or entry into Germany is granted in retrospect.

1177 There is no procedure that guarantees that the child's best interests are respected in cases of  
1178 rejection or expulsion at the border. The Federal Government takes the view that residence law

1179 provisions proceed according to §42 Social Code – Book Eight. There is no mandatory  
1180 requirement to ask the youth welfare office to intervene, nor to appoint a guardian. Nr. 287 of the  
1181 Federal Government's Report only gives figures for the rejection or expulsion of young people  
1182 under 16 years old, but not for young people over 16.

1183 The Report does not mention the difficulty of establishing a child refugee's age. However, this  
1184 plays a decisive role since if mistakes are made in age assessment, children are denied  
1185 extensive rights. Despite the considerable significance of age assessment in each individual  
1186 case, the minimum standards for establishing a child refugee's age as detailed in General  
1187 Comment No. 6 (CRC/GC/2005/6, 1 Sept. 2005) No. 31 are not complied with in Germany.

1188 The only legal basis for age assessment is contained in §49 subs. 3 and 6 of the Residence Act  
1189 (AufenthG). In practice, the process of age assessment varies considerably in different regions.  
1190 In some regions, age assessment is carried out by the immigration authorities as part of  
1191 inspection. In other regions, age assessment falls under the responsibility of the youth welfare  
1192 office. The family courts, which are responsible for establishing a suspension of parental care  
1193 and appointing a guardian, are involved in a variety of ways.

1194 In the context of subsidiary protection, minors frequently fail to meet the high threshold set by  
1195 §60 subs. 7 sentence 1 Residence Act (AufenthG) which specifies a substantial individual  
1196 danger to life or limb. For example, the Federal Office for Migration and Refugees and the courts  
1197 consider that the danger which a minor is exposed to is a general danger which only then leads  
1198 to a protection status when the threshold of "extreme danger" is crossed. There is no review of  
1199 the child's best interests.

1200 In contrast to the positive portrayal in the Federal Government's Report under Nr. 291 ff, many  
1201 minor-age refugees continue to be taken into custody pending detention. In answer to a  
1202 parliamentary question (Official Records 16/11384), the Federal Government stated that  
1203 nationwide solely between 2005 and 2007 there were 377 unaccompanied minor refugees who  
1204 spent up to six months in custody pending deportation. Non-governmental organisations have  
1205 recorded a significant number of suicide attempts, physical injuries, maltreatment and separation  
1206 of children from their families in connection with deportation or custody pending deportation.

1207 The European guidelines too (EU Return Directive, Art. 17; Imprisonment during the so-called  
1208 Dublin procedure; EU Reception Directive, Art. 11 (*Draft*)) go against the strict provisions in the  
1209 UN CRC.

1210 Germany has around 30,000 minor-age children whose legal residence status is a temporary  
1211 suspension of deportation, which is usually granted for short periods between two weeks and six  
1212 months. The young refugees' insecurity caused by the chain of continually re-granting temporary  
1213 suspensions hampers their development.

1214 In the hostels or other accommodation where minor-age young girls or women are placed, there  
1215 is lack of the appropriate opportunities for support, trauma work, and possible therapies in their  
1216 own language, as well as general gender-sensitive services and a corresponding protective  
1217 space.

1218 Children who are refugees are legally discriminated against by the so-called 'residence  
1219 obligation' (§56 Asylum Procedure Act (AsylVfG) for asylum seekers and §61 Residence Act  
1220 (AufenthG) for those with a tolerated status) and prevented from developing freely. Their  
1221 freedom of movement and participation in social life are restricted. For example, there are known  
1222 cases during the Reporting Period where unaccompanied under-age children were not given  
1223 permission to visit their relatives in a different city. It is positively to be noted that during the  
1224 Reporting Period and afterwards some *Länder* (Bavaria, North-Rhine Westphalia, Schleswig-  
1225 Holstein, Berlin and Brandenburg) took a decision to relax the residence obligation, a move  
1226 which will also benefit children and young people.

1227 As a rule, asylum seekers and tolerated minors are subject to a separate social welfare law. The  
1228 benefits to provide the subsistence minimum in accordance with the Asylum Seekers Benefits  
1229 Act (AsylbLG) are around 30% less than the payments otherwise standard.. Frequently, only  
1230 non-cash benefits are granted. Children, who are subject to the Asylum Seekers Benefits Act  
1231 (AsylbLG), are excluded from medically essential treatment which would be granted under the  
1232 standard law governing social welfare benefits. This treatment includes physiotherapy or speech  
1233 therapy in the case of developmental disorders. In practice, children are not granted many of the  
1234 treatments and payment they are also entitled to according to the Asylum Seekers Benefits Act  
1235 (AsylbLG), such as glasses or psychotherapy to treat post-traumatic stress disorders.

1236 Primary health care is not provided for children with an illegal residence status. Even where a  
1237 legal right exists to the costs being met, e.g., through an employment contract within the national  
1238 insurance system, no advantage is taken of the health care facilities. They are not used because  
1239 of the official duty incumbent on public authorities to convey information pursuant to the  
1240 Residence Act (AufenthG) and, in the health sector, these authorities include the statutory health  
1241 insurances, the publicly administered hospitals and the health and social welfare offices.

1242 On 12 April 2010, the Federal Government signed an agreement with the government of Kosovo  
1243 on the repatriation of people from Kosovo obliged to leave the country. This agreement could  
1244 apply to nearly 12,000 people of Roma, Ashkali and Kosovo Egyptian backgrounds. The findings  
1245 from a UNICEF survey show that children from these families who are to be deported to Kosovo  
1246 from Germany in the coming years hardly have any perspective there for schooling, medical aid  
1247 and social integration. In the political and legal guidelines of the German and Kosovan sides, the  
1248 well-being of the children play practically no role at all.

1249 **The National Coalition recommends that the Committee call for the Federal Government**  
1250 **to:**

- 1251 **88. reform the entire law on aliens in line with the standards in the UN CRC, in**  
1252 **particular**
- 1253 **89. ensure that in the case of unaccompanied minor-age refugees who apply for**  
1254 **asylum the hearing only takes place after a guardian has been appointed and the**  
1255 **possibility of in-depth advice, care and psychological support;**
- 1256 **90. establish in the Asylum Procedure Act (AsylVfG) and subordinate provisions that**  
1257 **the child's well-being will be considered as the primary factor to comply with in the**  
1258 **asylum procedure and in all decisions on minor-age refugees. This must apply as**  
1259 **well and in particular to the airport procedure, possible dismissal or return at the**  
1260 **border, and for decisions on deportation.**
- 1261 **91. guarantee adherence to the standards in General Comment No. 6 in assessing the**  
1262 **age of unaccompanied minor refugees;**
- 1263 **92. ensure that training programmes are regularly held for the special commissioners**  
1264 **for unaccompanied minor refugees at the Federal Office for Migration and**  
1265 **Refugees;**
- 1266 **93. ensure through legal guidelines that children are not placed in custody pending**  
1267 **deportation;**
- 1268 **94. ensure that the child's best interests are the decisive factor in decisions on**  
1269 **residence permits for those with a longstanding tolerated status. Children and**  
1270 **young people who have grown up and are integrated in Germany should be**  
1271 **granted a permanent right of residence, the chain of continual temporary**  
1272 **suspensions of deportation is to be abolished;**
- 1273 **95. prevent by the requisite amendment to the legal guidelines children with a**  
1274 **temporary residence permit for the time of the asylum procedure**

1275 (Aufenthaltsgestattung) or a temporary suspension of deportation (Duldung) from  
1276 having to live for a longer time in hostel accommodation;  
1277 96. abolish the residence obligation on all refugee children;  
1278 97. exempt by a requisite legal amendment the public institutions concerned with the  
1279 health care of people with an illegal residence status and their financial settlement  
1280 of accounts, in particular the social welfare offices, the public health departments,  
1281 and the statutory health insurances, from the duty to convey information pursuant  
1282 to §87 subs. 2 Residence Act (AufenthG). Possibilities for voluntary insurance  
1283 have to be created for people with an illegal residence status, for example, access  
1284 to a private insurance.

### 1285 C. Sexual Abuse and Trafficking in Human Beings (Art. 34 and 35)

1286 Germany is a target country, country of origin, and transfer country for child trafficking. There is  
1287 at present a lack of effective witness protection for minor-age prostitutes from abroad – the girls  
1288 and young women need the provision of support services and ought not to be discredited as  
1289 criminals. In particular, the protection ought not to depend on whether the victims are prepared  
1290 to give evidence in court.

1291 In view of the undiminished and, according to the latest UN Office on Drugs and Crime  
1292 estimates, increasing trafficking of human beings, and also the trafficking of children, it is noted  
1293 that Germany still has not ratified the 2005 Council of Europe Convention against Trafficking in  
1294 Human Beings. Rights to accommodation, medical care, advice, information in an  
1295 understandable language, and legal assistance are also to be provided independent of the  
1296 criminal prosecution.

1297 **The National Coalition recommends that the Committee call for the Federal Government**  
1298 **to:**

1299 98. ratify and completely implement the Council of Europe Convention against  
1300 Trafficking in Human Beings, here especially the implementation of all obligations  
1301 on support and protection and the guarantee that support provided for a victim will  
1302 not depend on the willingness to appear as a witness.