

UNIVERSAL PERIODIC REVIEW

GERMANY

16th UPR session (May/June 2013)

UPR Submission prepared by:



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

ECPAT Germany is an alliance of 28 groups and institutions¹ working on child rights issues. It operates in the political, legal, economic and educational sectors, in cooperation with government and non-governmental organisations. ECPAT Germany's work focuses on lobbying and advocacy work, public education and awareness-raising on the issues of commercial sexual exploitation of children, the development of prevention strategies, the protection of child victims, as well as the implementation of the Code of Conduct to protect children from sexual exploitation in tourism.

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In collaboration with:



ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) is the leading global network working to end the commercial sexual exploitation of children, which involves child prostitution, child pornography, child trafficking and child sex tourism. It represents 82 member organizations from 75 countries. ECPAT International holds Consultative Status with the United Nations Economic and Social Council.

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Executive summary

This contribution aims to provide a review of the status of implementation of international obligations and commitments regarding the commercial sexual exploitation of children (CSEC) in Germany.

Internationally and regionally, the country has ratified most essential legal standards regarding CSEC, with the exception of the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, and the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. Although German legislation covers most forms of violence against children, the national legal framework requires further strengthening in order to better protect children from sexual exploitation. Several gaps in the legislation can be identified, rendering children insufficiently protected. Definitions of child prostitution, child pornography and child trafficking ought to be clarified and brought in line with international legal standards. The offence of “knowingly obtaining access, through information and communication technologies, to child pornography” should be included in national legislation. Although German anti-trafficking legislation generally complies with the *UN Trafficking Protocol*, the trafficking provision in the *Criminal Code* should be revised to ensure that all children under the age of 18 are afforded an equal level of protection. Moreover, the government should ensure effective enforcement of anti-trafficking legislation. The existing extraterritorial jurisdiction, as provided for in sections 5 and 6 of the *Criminal Code*, should be expanded to include foreign nationals temporarily residing in Germany.

In providing protection against all forms of CSEC and trafficking, the German government should establish specialised police units nationwide to respond to CSEC offences. Adequate assistance and support services should be provided to child victims of CSEC and trafficking. As such, the *Residence Act* should be amended to ensure that unaccompanied minors from non-EU states have access to adequate assistance and support services. Additionally, German child-friendly investigative and judicial procedures fail to ensure that child victims are well protected during proceedings. The focus is limited to victims who cooperate with law enforcement during the proceedings. All relevant professionals, including law enforcement officials, ought to receive comprehensive training on CSEC and child-friendly procedures. Finally, a nationwide free-of-charge, anonymous 24-hour helpline providing specialised assistance and protection services for child victims of trafficking and sexual exploitation should be established.

I. Current normative and institutional framework for the promotion and protection of human rights

1.1 Legal Framework

1.1.1 International Legal Standards

Germany ratified the *Convention on the Rights of the Child* (CRC, 1989) in 1992, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC, 2000) in 2009, the *UN Convention against Transnational organized Crime* in 2006, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000) in 2006, the *ILO Convention on the Worst Forms of Child Labour* (No. 182, 1999) in 2002 and the *ILO Minimum Age Convention* (1973) in 1976.

Germany has signed but not yet ratified the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* (OPCRC, 2011).

Recommendations:

- **Ratify the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*.**

1.1.2 Regional Legal Standards

Germany has ratified the Council of Europe's *Convention on Action against Trafficking in Human Beings* (CETS 197, 2005) in 2005, the Council of Europe's *Convention on Cybercrime* (CETS 185, 2004) in 2009, and signed the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (CETS 201, 2007) in 2009.

Recommendations:

- **Ratify the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (CETS 201, 2007)**

1.1.3 Domestic Legal Framework

Although German legislation covers most forms of violence against children, the legal framework requires further strengthening, in some respects, in order to better protect children. Several amendments have been made to the *Criminal Code* in 2008 to bring the statute into conformity with the provisions of international and regional conventions; for example, by strengthening the legislation on child trafficking and child pornography, and raising the age of protection from sexual abuse and exploitation.² However, gaps in the national legislation addressing the sexual exploitation of children can still be identified, rendering children insufficiently protected.

² ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Germany.

1.1.3.1 Laws regarding Child Pornography

National legislation addressing child pornography and child trafficking is not fully consistent with relevant international and regional minimum standards. A significant identifiable gap is the lack of a clear definition of “child pornography” in German legislation. According to ECPAT, the definition provided in the Council of Europe’s *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*,³ is the most extensive and complete definition of child pornography and should therefore be incorporated in German national legislation to fully protect children against child pornography and trafficking.

Sections 184b and 184c of the *Criminal Code* prohibit, among other activities, the production, distribution, offering, import, export and acquisition of pornography involving children (under 14 years of age) and juveniles (between 14 and 18), respectively. These sections prohibit not only materials produced as a result of actual sexual abuse, but also realistic representations of sexual activities, such as virtual child pornography. The mere possession of child pornography is punishable; while the possession of juvenile pornography is equally punishable unless the materials received the consent of the juvenile. This provision should be further strengthened by punishing the possession of juvenile pornography, regardless of the consent of a person under 18 years of age.

The *Criminal Code* prohibits the offence of ‘grooming’, as it is illegal to exert influence on a child by showing him/her pornographic illustrations or images in order to encourage the child to repeat the portrayed acts, or by playing pornographic audio recordings or other sexual speeches which are audible to the child.

Although German legislation does not explicitly prohibit accessing child pornography, a recent High Court decision clarifies that accessing/viewing child pornography on the Internet is a crime. According to the High Court of Hamburg, the offence is punishable regardless of the modality of access and the amount of time spent viewing the webpage.⁴ ECPAT welcomes the decision of the High Court; however, it strongly encourages the German government to formally outlaw the accessing/viewing of child pornography on the Internet through legislation. Considering rapid technical developments and the growth of the Internet, the German government should consider including “knowingly obtaining access, through information and communication technology, to child pornography”, as stipulated in the Council of Europe’s *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (article 2 (4)), to national legislation.

³ Article 29 of the Council of Europe’s *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* stipulates that “the term “child pornography” shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes”.

⁴ ECPAT International (2012). *Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Germany*.

Recommendations:

- **Provide a clear definition of child pornography and child trafficking in national legislation, in line with the definition provided in the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*;**
- **Prohibit the mere possession of both child and juvenile pornography, regardless of the consent of the victim(s);**
- **Include the offence of "knowingly obtaining access, through information and communication technology, to child pornography" in the national legislation, in line with the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*.**

1.1.3.2 Laws regarding Child Trafficking for sexual purposes

The U.S. Department of State Trafficking in Persons Report 2012 stipulates that the government of Germany fully complies with the minimum standards for the elimination of trafficking as set out in the *UN Trafficking Protocol*.⁵ Section 232 of the German *Criminal Code* defines trafficking in human beings for sexual purposes as exploiting another person's predicament or helplessness arising from being in a foreign country, in order to induce them to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person, or to suffer sexual acts on his own person by the offender or a third person. An act can qualify as an offence of trafficking for sexual purposes regardless of the means used by traffickers; this principle is in harmony with the article 3 requirements of the *Trafficking Protocol*. Common means include force, threat, serious harm or deception (section 232 (4)). Section 233a prohibits recruiting, transporting, referring, harbouring or sheltering another person for the purpose of human trafficking. According to section 232(3), the penalty of imprisonment ranges from one year to 10 years where the victim is a "child". However, in defining a "child," section 232(3) refers to the definition within article 176(1), which stipulates that the age of sexual consent in Germany is 14. Therefore, the reference to section 176(1) indicates that the higher level of protection mentioned in section 232(3) only applies to children under 14 years of age. This provision should be revised in order to ensure that all children under the age of 18 receive the same level of protection.⁶

In September 2012, Germany also ratified the *Council of Europe Convention on Action against trafficking in Human beings* which also include some important improvement for trafficked children and unaccompanied minors as a high risk group for trafficking.

According to the U.S. Department of State, the lack of sentencing of convicted trafficking offenders to imprisonment is a significant deficiency in the German government's anti-trafficking

⁵ U.S. Department of State (2012). Trafficking in Persons Report 2012: Germany.

⁶ ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Germany.

efforts. Available statistics indicate that the majority of convicted labour and sex trafficking offenders were not required to serve time in prison, placing victims at potential risk when convicted offenders were free after trial.⁷

Recommendations:

- **Revise the German *Criminal Code* section 232(3), in order to ensure that all children under 18 receive equal levels of protection.**
- **Ensure effective enforcement of the anti-trafficking legislation.**

1.1.3.3 Laws regarding Child Prostitution

German legislation does not define child prostitution; however, several activities related to child prostitution are prohibited. The *Criminal Code* prohibits inducing a person under 18 years of age to engage in sexual acts with, or in the presence of, a third person for financial reward, or allowing sexual acts to be committed on a person under 18 years of age by a third person. The shortcoming of this provision is that it focuses on financial reward and does not cover other forms of consideration, such as in-kind reward, as stipulated in article 2(b) of the *Optional Protocol*.

Section 182 of the *Criminal Code* prohibits abusing a person under 18 through taking advantage of an exploitable situation by either engaging in sexual activity or inducing her or him to engage in sexual activity with a third party. With respect to prostitution (regardless of the age of the victim), the *Criminal Code* prohibits: managing a prostitution business, where persons are held in personal or financial dependency; providing a place for a person under 18 years of age to conduct prostitution; and, encouraging another person, for whom a place has been provided for prostitution, to engage in prostitution or exploiting that person for prostitution. The *Criminal Code* also bans pimping and outlaws the exploiting of another person engaged in prostitution or, for material gain, the supervision of another person's prostitution, including preventing a person from leaving prostitution.

Recommendations:

- **Provide a clear definition of child prostitution in the national legislation, in line with the international obligations under the *OPSC*.**

1.1.3.4 Laws addressing the sexual exploitation of children in travel and tourism

Extraterritorial legislation can be used as a tool to combat child sex tourism both in sending and receiving countries. In line with Article 4 of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, German criminal legislation establishes national jurisdiction over crimes related to the commercial sexual exploitation of children. Moreover, German

⁷ U.S. Department of State (2012). Trafficking in Persons Report 2012: Germany.

citizens who sexually exploit children in a foreign country and escape prosecution in the country where the alleged acts were committed can be prosecuted under German law. Provisions regarding extraterritorial jurisdiction in Germany are exemplified in sections 5 and 6 of the German *Criminal Code*.

German extraterritorial jurisdiction applies to acts committed abroad that constitute the criminal offences of trafficking, as well as the distribution of pornography, regardless of the legality of those acts in the country where they took place. The same applies to other offences, such as sexual acts with a child under 14 years of age (section 174(1)) and abusing a person under the age of 18 by taking advantage of an exploitative situation (section 182). However, the reach of German extraterritorial laws only extends to German citizens who have at least one residence in Germany, creating a significant gap in the German capacity to prosecute foreign nationals who reside in Germany.⁸

Recommendations:

- **Expand extraterritorial jurisdiction, as provided for in sections 5 and 6 of the *Criminal Code*, to also include foreign nationals who (temporarily) reside in Germany.**

2. Promotion and protection of human rights on the ground: implementation of international human rights standards

2.1. Key areas of concern regarding the implementation of children's rights to protection against commercial sexual exploitation on the ground

2.1.1. Lack of special federal police units addressing the sexual exploitation of children.

Whilst no special federal police units currently exist to respond specifically to sexual exploitation of children, some Bundesländer (federal states) have established investigation departments specialised in combating child pornography or child trafficking. However, this lies at the discretion of each Bundesland and is subject to the availability of resources. Standardisation across the Bundesländer, as well as an increase in funds and personnel for policing and prosecution are urgently required. Germany ought to establish specialised police units dealing with CSEC offences across all Bundesländer to ensure that all cases are thoroughly investigated and child victims, or children at risk, are adequately identified, assisted and protected. Moreover, the German government should urgently provide resources for training law enforcement officials, prosecutors, judges and other stakeholders, including the civil society organizations, specifically on the intricate areas of child trafficking and CSEC. This would

⁸ ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Germany.

enhance the effectiveness of investigations and success rate of prosecutions of related cases, while improving victim identification and protection.⁹

Recommendations:

- **Establish nationwide, specialised police units responding to CSEC offences;**
- **Provide resources for training law enforcement officials, prosecutors, judges and other stakeholders, including the civil society organisations, on the areas of child trafficking and CSEC.**

2.1.2. Lack of adequate assistance and support services for child victims of CSEC

According to current legislation, children in difficult circumstances, including victims of sexual abuse and exploitation, are entitled to access a number of support services from Youth Welfare Institutions operated by the Bundesländer. In order to avoid stigmatisation, trauma and further victimisation of child victims of CSEC, adequate assistance and support services should be provided. However, most provided services focus on sexual violence against children in general, and are not tailored to the special needs of children involved in commercial sexual exploitation. Similarly, there is an absence of specialised shelters for trafficked children, and the national referral system for trafficking victims is neither effective, nor fully operational. Assistance available for child victims of online sexual exploitation is also limited. Counselling centres remain overworked and overburdened, with waiting periods of over four months until some victims receive an introductory session. Another concern regarding aftercare and support services for victims is the lack of training and capacity building opportunities for professionals providing care to child victims of trafficking and sexual exploitation.¹⁰ In order to ensure the recovery and integration of child victims, the German government should provide tailored capacity building for relevant professionals.

Moreover, the *National Plan of Action for the Protection of Children and Teenagers from Sexual Violence and Exploitation (2011)* requires the establishment of a free-of-charge emergency helpline for children and adolescents. Despite the abundance of anonymous, free-of-charge hotlines run by NGOs, an anonymous, toll-free, 24-hour hotline service does not exist to specifically assist child victims of trafficking and exploitation.¹¹

Recommendations:

- **Provide adequate assistance and support services specifically tailored to the needs of child victims of all forms of CSEC and trafficking;**

⁹ ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Germany.

¹⁰ ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Germany.

¹¹ ECPAT International (2012). Global Monitoring Report on the Status of Action against the Commercial Sexual Exploitation of Children: Germany.

- **Establish a nationwide, free-of-charge, anonymous 24-hour helpline providing specialised assistance and protection services for child victims of trafficking and sexual exploitation.**

2.1.3. Lack of adequate assistance and support services for unaccompanied minors who are identified as victims of trafficking

As previously mentioned, specialised shelters exclusive to child victims of trafficking in Germany do not exist. Unaccompanied minors who are identified as victims of trafficking are generally accommodated by Youth Welfare Institutions in reception centres. However, as unaccompanied foreign children from non-EU states are considered adults under the law upon reaching the age of 16, some may be rejected from reception centres for children by virtue of the *Residence Act* (2007). This results in a lack of access to protection and various forms of assistance, including medical, psychological and legal, that are commonly provided to unaccompanied German children or children from other EU states. This regulation is in conflict with international and regional legal standards.

Recommendation:

- **Amend the *Residence Act* in order to ensure that unaccompanied minors from non-EU states, who are identified as victims of trafficking, have access to adequate assistance and support services.**