

NGO Group for the Convention on the Rights of the Child
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the Rights of the Child.**

Document Title:

**Statement of the coordinating committee of the national coalition on the
initial report of the federal government on UN CRC**

Region:

Western Europe, Europe

Country:

Germany

Issued by:

National Coalition für die Umsetzung der UN-Kinderrechtskonvention

Date of publication of NGO Report:

Date of presentation to presessional working group:

06/95

CRC Session

(at which related national state party report was submitted):

10th Session : Oct - Nov 95

Language:

English

Document Text

[Link to related state party report at UNHCHR](#)

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Preliminary remarks

1. Basic attitude of the Initial Report

With its "Initial Report of the Federal Republic of Germany submitted in accordance with Article 44 of the Convention on the Rights of the Child" (hereinafter called "Initial Report") United Nations, Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Initial Reports of States Parties due in 1994; Addendum; Germany, CRC/C/11/Add. 5*, Geneva 1994., the Federal Government reiterates its view that the Agreement of the United Nations on the Rights of the Child (hereinafter called "Convention") is of prime importance and "provides impetus for domestic reforms in the areas of legislation and other measures" (p.4). Yet at the same time the Federal Government sees no need for political action, since it holds the German legal position to be corroborated by the Convention. The Federal Government claims that the only reason why it chose to introduce the necessary ratification law in the German Bundestag was because from its point of view it was ensured that there was no need to amend national legal provisions. In order to preclude possible misunderstandings in this respect, the Federal Government has also confirmed its previous declarations (reserves) in the Initial Report (Annex, p.71/72).

From the point of view of the Coordinating Committee of the National Coalition for the implementation of the UN Convention on the Rights of the Child (hereinafter called "NC"), this

position of the Federal Government accentuates its defensive and even inconsistent attitude towards the Convention.

In addition, the Federal Government has narrowed down the implications of its Initial Report even further: In relation to the "Situation and Development of Living Conditions of Children in Germany (1991 - 1994)" it refers to a planned Report on this topic (p.43). Moreover the Federal Government will report on new developments and on the progress made (article 44, paragraph 1) only in the next (Five-Year) Report (p.5). The Federal Government thus refers to texts that are not yet in existence.

2. Points of departure of the National Coalition

From the NC's point of view the Convention can only be understood adequately if the implementation of the rights of the child is regarded as a continuous task. In this respect the NC thinks it particularly important that the Convention goes beyond the goal of Protection and accords equal weight to the goals of Provision and Participation.

In this respect the translation of the original English phrase "the best interests of the child" with the German term "Kindeswohl" also needs some clarification: according to general German legal terminology, the term "Kindeswohl" is primarily used to legitimate protective state intervention when laws have been violated (i.e. withdrawal of the parental right to custody of the child when the "Kindeswohl" has been violated). In contrast to this, the Convention establishes a positive meaning that obliges governments not only to see to protective measures, but also to the provision of children. In this way, it sets up the obligation to work towards the creation of childfriendly living conditions in all matters pertaining to the interests of children.

The NC considers it imperative to elucidate this legal advance - also to the general public - and to develop instruments for the implementation of practical childfriendliness on all levels of responsibility.

Against this background the NC holds a differentiated position on the Initial Report. On the one hand, it appreciates the detailed description of the German law norms complying with the articles of the Convention or implementing them that is provided by the Initial Report. It also holds a basically positive view - despite the deficiencies pointed out in section 1 above - on the "Summary of key aspects of the actual living situation of children and juveniles in Germany" (p. 43 ff.) and on the list of "Developments in the years 1991 to 1994" (p. 57 ff.) contained in the Initial Report.

However, the basic attitude of the NC on the Convention on the other hand necessitates the supplementation of the Federal Government's Initial Report in several respects; this applies to the information on the actual living situation of children as well as to the assessment of advances and difficulties in the implementation. *The NC considers it imperative* to monitor precisely those areas in detail that are cited in the declaration of reserve continually emphasized by the Federal Government.

The following sections thus present important supplements. They do not claim to be comprehensive. As far as the creation of positive living conditions in Germany is concerned, the professional and social standards that have been developed in the country have to be the yardstick for the implementation of the Convention. Given the comparatively privileged position of children in Germany, it is also necessary to examine in how far German politics has contributed to the improvement or deterioration of the situation of children in other parts of the world.

The selection of the articles actually dealt with is not meant to constitute a ranking. The structure of the supplementary comments corresponds as closely as possible to the guidelines of the Committee on the Rights of the Child. General guidelines regarding the form and content of the initial reports to be submitted by States Parties under article 44, paragraph (a), of the Convention (15 October 1991) which have also been followed by the Initial Report.

In addition, the individual members of the NC retain the right to present further suggestions to the Committee on the Rights of the Child.

General Implementation Measures

3. Children's Rights in the Constitution of the Federal Republic of Germany

Until now, the text of the German Constitution (Grundgesetz) mentions only the right of the child to protection explicitly. Because of German unification the constitution had to be amended. On this occasion, important voices from politics, academia and society suggested that the provision of the child should be added as a separate right explicitly laid down in the constitution. This demand - which was also put forward in view of the Convention - did not obtain a majority. This was mainly justified by asserting that children could implicitly lay claim to all the basic rights and that the parental "duty" to educate and care for their children, which had already been laid down in the previous constitution, provided an adequate framework allowing children to obtain their rights.

The NC considers it imperative to engage in a new effort towards amending the constitution - also in the federal Länder - in order to safeguard a thoroughgoing implementation of the Convention.

4. Implementation of the Convention (article 4)

Germany has a federal state structure. Within the framework of local self-government, the administrative and financial responsibility for important social, economic and cultural services for children and families lies with elected representative bodies on the local level.

The NC considers it imperative in this respect to clarify that in view of the federal structure of the Federal Republic of Germany authorities at the local level as well as those responsible at the level of the Länder and the central government are equally bound to the obligations that Germany has incurred.

Although Germany is an affluent country, the insufficient funding available to political and administrative bodies at the levels referred to hampers the implementation of children's rights - measured against the socially possible levels - to a considerable degree. The insufficient organization of the social environment for children is also noted in the Fifth Family Report of the Federal Government which refers to the "structural recklessness of society towards families with children".

The NC considers it imperative to examine also in the municipalities and administrative districts whether all relevant measures for children are pursued "to the maximum extent of their available resources". There should be more detailed reporting on the implementation of the obligations arising from the Convention - particularly with regard to the obligation set out in article 4 - on the level of the Länder and municipalities.

5. Information on the Convention (article 42)

The contents of the Convention should be made widely known to adults and children alike (article 42). Despite the measures taken so far, mainly on the level of the Länder, the Convention is still largely unknown in Germany.

Because of the federal structure and the different responsibilities arising from it, all administrative levels have to be involved in the information effort: the Länder for example as far as schools as well as radio and television networks are concerned, the municipalities for example in the area of non-school youth services.

The NC considers it imperative to develop a comprehensive concept and separate measures at all levels for the spread of information in a real dialogue with these state institutions, with Non-Governmental Organizations and with children and to report on these efforts.

6. Availability of the Initial Report (article 44, Paragraph 6)

Already at an early stage Non-Governmental Organizations have commented on the implementation of the Convention in Germany. At first this was done through contributions to the Child Commission of the German Bundestag, later in a number of statements on the "preliminary partial draft" of the Initial Report of the Federal Government presented by the responsible ministry. On these occasions the Non-Governmental Organizations pointed out areas in which according to their view the Convention has not been implemented. In this way they contradicted the view of the Federal Government referred to in section 1 above that the obligations arising from the Convention have by and large been implemented. The Federal Government did not make it clear, if and in which ways it would take other opinions into consideration in its Initial Report.

Furthermore, the NC regrets that the Government has neither presented the Initial Report submitted in August 1994 to a wide public nor held public meetings on this matter.

The Non-Governmental Organizations have agreed to join in an evaluation of the Initial Report. A first assessment of important issues is brought together in the statement of the NC presented here.

Subsequently the Initial Report and this statement are to be widely disseminated in order to deepen the public debate on the contents of the Convention. The NC would like to contribute to this process with its planned open "Forum UN Convention on the Rights of the Child".

States Parties are obliged "to make their reports widely available to the public in their own countries". Therefore the NC considers it imperative to develop a practical concept which allows for regular monitoring of the implementation of the Convention and effective reporting to the general public.

General Principles

7. Well-being of the child (article 3)

The "Priority Clause" in article 3 demands that the best interests of the child are to be concretely considered in political decision-making. From the NC's point of view, this establishes at least the obligation to bring the interests of the coming generation to the fore in all matters pertaining to them in order to further public debate.

Moreover, the "Priority Clause" becomes significant in German law mainly within the framework of so-called discretionary decisions. Here different interests have to be balanced, e.g. in town planning law, where planning, economical, ecological, traffic-related and social interests are set against each other, or in alien law, where state interests collide with the residential needs of those concerned. The NC considers it imperative to ensure, as far as possible, within a framework of implementing regulations that the "Priority Clause" is taken into consideration. Care should also be taken, through appropriate concerted measures, to make the legal position created by the Convention widely known to those concerned with administrative routines and the administration of justice.

8. Development assistance, right to life (article 6 and others)

More than once, the Convention singles out international cooperation as particularly important for the implementation of children's rights. This is confirmed on two occasions in the Initial Report (pp. 28 and 32). *Additionally, the NC considers it imperative* to discuss the following aspects:

Positive achievements:

The manifold positive achievements by state institutions and private initiatives in Germany in assisting children in all parts of the world should be presented.

Development Assistance:

International organisations such as UNICEF, UNDP and UNFPA have calculated that additional finances amounting to 30 to 40 billion dollars per year would be needed to improve the fulfillment of basic needs of children in the developing world. These could be raised by utilizing 20 % of the development assistance of the industrial nations and 20 % of the state budgets of the developing countries themselves for these basic needs. According to figures for 1994 from the Federal Ministry for Economic Cooperation, the share of German development assistance allocated directly to the fighting of poverty amounts only to 13 %. Moreover, the share of German development assistance in the gross domestic product (at present 0.34 %) is moving further away from the internationally agreed level of 0.7 %. Lastly, negative effects on children's rights to life and survival arising from injunctions by international financial institutions must be avoided. Strains can be caused, for example, by structural adjustment measures resulting in cuts in health and education services that can lead to the total breakdown of these services that are vital to children.

Armament deals:

Regarding armament exports and military assistance the detrimental effects on children need special consideration. It must be explicated, if and how the Government wants to use its influence to ensure that (mis)investments in the unproductive military sector do not increase, since the resulting public deficit regularly imposes burdens on the civil infrastructure and thus also on children, and if it intends to support the worldwide ban on arms with particularly devastating effects on children (such as landmines).

Child Labour:

Like most other industrialized nations, Germany also profits from child labour in developing countries. *The NC takes the view* that Germany has the obligation - beyond measures to combat prohibited child labour in one's own country - to strive for greater justice in world trading relations in order to contribute to the reduction of child labour.

Child prostitution:

The NC holds the opinion that additional measures are needed besides the amendments of criminal law that have already been effected. Only in this way can the sexual abuse of children by sex tourists in South East Asian, Latin American and African countries be combatted effectively. Thus, for instance, bilateral treaties with the target countries of sex tourists and a claim enforcement act for associations are needed, since victims usually are not in a position to file their claims effectively in the Federal Republic.

9. Respect for the views of the child (article 12)

The NC takes the view that article 12 is the provision containing the most substantial regulation of the children's right to participation.

All those concerned such as child and youth welfare offices, schools as well as child and youth services are called upon to create and expand adequate opportunities for children to voice their opinions and to have them considered. This includes introducing children's interests into planning and administrative procedures. *The NC considers it imperative* to supplement the examples given in this context in the Initial Report both quantitatively and qualitatively. Moreover, it is necessary to clarify what can be done on part of the state authorities to promote attempts in this direction.

As far as public youth services are concerned, the regulation in § 8 KJHG (Child and Youth Services Act) grants extensive information and participation rights to children and juveniles, depending on their stage of development. *The NC holds the view* that these rights should be extended to other matters pertaining to children. Institutions and other services should be created and supported in order to enable children to actually make use of their rights.

Civil rights and liberties

10. Access to appropriate information (article 17)

The NC shares the view put forward by science that especially advertising and violence in the media have negative effects on children, particularly in the context of otherwise strained conditions of life.

The NC considers it imperative to set out how the stipulated "development of appropriate guidelines for the protection of the child from information and material injurious to his or her wellbeing" (article 17e) is to take place in Germany, and how these regulations can become effective. In this context, the spread of new technologies as well as the internationalization of the media and the exchange of information call for new approaches in international cooperation. In this context it should also be reported whether the protection of the child by means of voluntary media self-control referred to in the Initial Report is really effective.

The legal responsibility for media policy lies mainly with the Länder. *The NC considers it imperative* that the Report explicates how state authorities "encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29" (article 17a) or "encourage the production and dissemination of children's books" (article 17c).

Family environment and alternative means of care

11. Parental responsibility (article 18), separation from parents (article 9)

The Federal Government has declared its reforming intentions in the area of the Law of Parent and Child as well as family law in several sections of the Initial Report (p.28, 32, 95 ff.). At the same time, it has also reiterated its reserves with regard to articles 2, 9 and 18. The NC holds that the intended reform of these legal areas in Germany will have to comply with the aims of the Convention.

Therefore, the NC considers it imperative that the reform will serve particularly to implement the rights of the child according to articles 2, 8, 9 and 18 which are referred to in the reserves, since

- according to current law, children born in and out of wedlock are still not granted equality of status in important respects,
- a common right to custody for divorced parents is only possible as an exception as far as children born in wedlock are concerned and generally unattainable for parents of children born out of wedlock,
- the right to access has so far been mainly construed as a right pertaining to the parent and not to the child and a right of contact between a child born out of wedlock and the child's father has not been sufficiently developed,
- in the legal provisions concerning adoption, affiliation (acknowledgement of paternity) in general as well as artificial reproduction and host mothers in particular, the right of the child to

knowledge of his or her descent is not or only insufficiently taken into account.

The necessity for the reform items enumerated above also derives from the relevant jurisdiction of the Federal Constitutional Court, which in this respect has drawn attention to the incompatibility of current law with the Constitution in several of its decisions.

12. Abuse and neglect (article 19), sexual exploitation and sexual abuse (article 34)

In Germany it is assumed that 150,000 children are physically abused, more than one million hit by their parents with objects and 108,000 sexually abused each year. The extent of child neglect cannot be quantified, some authors speak of 100,000 children in this respect. Concepts and strategies of state authorities to curb violence against children are not described in the Initial Report.

It is also against this background that *the NC thinks it insufficient* that the "prohibition of abuse" is only specified according to section 1631, subsection 2 of the Civil Code in the sense of a clear distinction between permissible and prohibited measures (p.25). *In contrast, the NC considers it imperative* to specify by means of appropriate legal norms that - according to Article 19 - children have to be educated by non-violent means and that degrading educational measures, particularly those harmful to the body and the mind, are not permissible.

The goals of this non-violent education should be pointed out by means of information campaigns accompanied by various measures supporting education in the families. *The NC considers it imperative* to specify beyond the account supplied in the Initial Report to which qualitative and quantitative extent such measures are implemented and financed.

Similarly, in the area of the protection of children from prostitution and child pornography effective measures are only possible if sufficient financial resources for adequate services are available. At present the resources are insufficient. Another problem in this area is that valid figures on the frequency of such cases are not available.

Furthermore, the stiffening of the provisions of criminal law described in the Initial Report that was to bring about an increased protection of children from pornographic exploitation has remained largely ineffectual in practical terms. *The NC considers it imperative* to report how the criminal prosecution is quantitatively equipped to deal with these tasks and how it accommodates to the special problems of the children concerned.

Basic health care and the well-being of the child

13. Survival and development (article 6, paragraph 2)

In this context, the Initial Report refers to questions of radiation protection (p. 68). From the NC's point of view the problem of environmental strains that children are endangered by or should not be exposed to also encompasses the increase of so-called environmental diseases (i.e. allergies, pseudo-croup, asthma, skin irritations); other factors to be considered are the general problematic of upper limits for substances constituting a health hazard and the detrimental emissions of carbon dioxide into the atmosphere to which Germany contributes to a considerable degree.

The NC considers it imperative to provide appropriate figures relating to these developments. In addition, it should be reported by which means the Federal Government, the Länder and the municipalities endeavour to safeguard the life environments of children now and in future in such a way as to ensure that health hazards for children do not arise. In this context, the effectiveness of these efforts and the usage of childappropriate measuring techniques should also be addressed.

14. Child-care services and facilities (article 18, paragraph 1)

The Initial Report emphasizes the significance of these social services (p. 29, 64 f., 66). After the kindergarten reforms of the 1970s that were endorsed by the the Child and Youth Services Act which came into force in 1991, the kindergarten in Germany is supposed to be an educational facility for all children and not only for those of working parents. In 1992, the Act on Assistance to Pregnant Women and Families established a legal right to a kindergarten place which is to come into effect from January 1996 onwards for all children above the age of 3. The Federal Government reports that the implementation of this right meets with considerable difficulties in the Länder and municipalities.

The NC considers it imperative with regard to the implementation of the right to a kindergarten place to specify - beyond the question of opening times addressed in the Initial Report (p. 29) - how an adequate offer corresponding to the demand can be realized as far as quality and quantity are concerned. The quality of pedagogical services is also determined by general and inservice training of pedagogical staff. In addition, the question of how the danger of deteriorating quality can be offset has to be addressed from a professional point of view.

15. Standard of living (article 27, paragraphs 1 to 3)

On the one hand, the Initial Report refers to social expenditures for the support of families and children that "have contributed to an overall positive development in the financial situation of families" (p.46). On the other hand it points out that children and juveniles in families on welfare have "in the last few years - due to the difficult state of the economy - [...] come to comprise an increasingly higher percentage of the total population" (p.45).

The manner in which children come to grow into this society depends primarily on the resources available to parents for the upbringing of their children. According to the definition of poverty by the EU (less than 50 % of the income available on average) 21.9 % of the children in the new Länder and 11.8 % in the old Länder have to be regarded as poor. All in all 2.2 million children are affected in this way, with 1 million children living on welfare. According to 1993 figures 500,000 children live in settlements for homeless people. In Germany, incomes and property have shifted with particularly adverse effects on singleparent families and families with children.

With reference to the constitutional protection of the family (article 6, GG) and the equality principle (article 3, GG), the Federal Constitutional Court has stated that those parts of the income needed to safeguard the sociocultural subsistence minimum of children must not be taxed. This stipulation has not been implemented so far.

The NC considers it imperative to delineate the strategies that - taking into account the entire system of taxes, tax-exemptions and other financial transfers - would result in children no longer constitu-ting a poverty hazard for families in the middle and lower income ranges. Within the framework of the implementation of Article 27, it should be set out in detail what tax reliefs are granted to families to enable them to meet the expenses for the safeguarding of positive living conditions for their children from their own incomes.

Education, recreational activities and cultural activities

16. Recreational activities, leisure and cultural activities (article 31)

The Initial Report evidently underlines the significance of the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts set out in article 31. It also refers to a number of basic legal provisions and areas of support.

However, the NC considers it imperative to examine the actually obtaining situation regarding play areas for children and the effects of current cuts in public finances for these purposes (i.e. concerning holiday programmes and recreational facilities). In addition, standards and guidelines for the implementation of the right to play, leisure, recreational facilities etc. have to be developed to provide guidance for its implementation. Basic requirements concerning housing, town planning and the management of open spaces have to be included.

Social protection measures

17. Alien children

A large number of the 1.7 million alien children and juveniles were born and grew up in Germany, i.e. they spent all their lives here (p. 43 ff.). In contrast to many other countries the "ius soli" does not apply in Germany (p. 14). Therefore even children of the second or third immigrant generation generally remain aliens, even if their and their parents' sphere of life has always been the Federal Republic of Germany.

The Initial Report has ruled out the equal treatment of German children and children of migrants by endorsing the declaration of reserve laid down by the Federal Republic of Germany. Thus it is held, for example, that article 29, paragraph 1 (e) cannot be interpreted to mean "that children from families of guest workers living in the Federal Republic of Germany or children of other foreign origin have a right to receive instruction in their native language in the country in which they reside" (p.32).

The NC expresses serious doubts whether the legal position of alien children as practised at present in Germany is compatible with the stipulations of the Convention. The Federal Government should be asked which measures in the area of citizenship law (i.e. dual citizenship) could further equal treatment, or by what other means the stipulations of the Convention can be applied in an equal manner to German children and children of migrants.

18. Refugee Children (article 22)

The NC supports the view put forward in the Initial Report (p.34 f.) that the refugee children referred to in article 22 are "especially in need of protection". As far as the stipulated "appropriate protection and humanitarian assistance" is concerned, however, the declaration of reserve endorsed in the Initial Report and the current practice in Germany clearly contradict the aims of the Convention.

The NC considers it imperative with regard to the implementation of article 22 to examine the current practice of treating young refugees and draws attention to the following problem areas.

Refugees who are minors:

Refugee children are generally only protected from immediate deportation if they demand political asylum. Merely because of their age these children can only rarely prove the individual persecution demanded within the framework of German asylum procedures. In addition, they are often drawn into political and military conflicts against their own will. The NC holds the view that on humanitarian grounds a limited right of residence (temporary residence permit) for refugee children is required. This would have to allow for trustful and child-specific care, education and health care independent of the highly strenuous asylum procedures.

Non-accompanied refugee children

According to present practice, unaccompanied refugees of minor age are treated as persons seeking political asylum. In order to apply for asylum, children under the age of 15 need an officially appointed guardian. These children face particular difficulties, because in practical terms the statutory guardianship authorities are overburdened and actually not in a position to

carry out their duties - which are of central importance for the asylum applications of minors - in an adequate manner. Thus in Hamburg, for example, the appointment of a statutory guardian takes several months; this city has the largest number of unaccompanied refugee children and during the period referred to the situation of these children is totally insecure.

Refugees who are minors above the age of 15 are practically treated as adults: guardianships are only rarely appointed for them, they are accommodated in living quarters for adults and youth-specific care is not available. Furthermore, there are several hundred homeless refugees of minor age in Hamburg, who are temporarily accommodated by compatriots or acquaintances or else live in the streets.

Third States Provision:

The provision that border authorities can reject an application for political asylum without scrutiny if the applicant comes from a "safe third state" does not correspond to the spirit of article 22 and is unreasonable as far as children are concerned.

Airport Provision:

According to this provision, applicants for political asylum are interned at the airports and express verification procedures are carried out. Generally they are immediately deported if their application is "evidently unfounded" or if the flight came via a "safe country". In these procedures, the special needs of children and juveniles to be protected are not taken into consideration.

Equality of treatment:

According to information available to the NC refugees and German nationals are not treated equally. Particularly with regard to schooling, health care and other care services the standards cannot be compared to those offered to German children.

19. Drug abuse (article 33)

Drugs constitute a threat particularly to children (p. 41). Apart from heroin, cocaine, hashish etc the problem area "drugs and addiction" also includes alcohol, nicotine, medical drugs, pathological game addiction and nutritional disorders. As of 1994, there are 2.5 million alcoholics, 800,000 addicts to medical drugs and 100,000 drug addicts (heroin, cocaine). Figures on pathological game addiction and nutritional disorders are difficult to obtain. Abuse and addiction of this kind depend on many factors related to socio-economic living conditions. There are no figures on addicted children. Children and juveniles are also affected indirectly when they are impeded in their development by addicted parents.

The NC considers it imperative that the relevant penalties as well as the measures in the social and educational system presented side by side in the Initial Report are explained in more detail. In relation to the practical implementation of article 33 it should be clarified how deficits in the living conditions of children can be exposed through adequate research into the causes of drug abuse, so that material help as well as information and education can be adequately applied. According to the views of the NC drug addicted children and juveniles must not be criminalized and pushed into destitution. Therefore information and help must come before deterrence and punishment; all young addicted persons must immediately be offered help oriented towards their specific clinical syndromes and needs.

Final remarks

At a later stage, the NC will also consider those parts of the Initial Report not referred to so far. A review of the actual situation of children will hardly be successful, however, on the legalistic basis that is offered at present. Yet the Initial Report can serve as a good starting point for the discussion on the implementation of the Convention.

The NC reiterates its view that Germany should renounce its reserves related to the implementation of the Convention.

The discussion of the Initial Report by the Committee on the Rights of the Child in Geneva could have a stimulating effect on the constructive debate regarding helpful implementation measures in Germany. In this manner, the foundation for the cooperation between the Federal Government, other state authorities and institutions as well as Non-Governmental Organizations, those concerned and committed citizens could also be enhanced. This would be in accordance with the principle of partnership and cooperation of public and private youth services for the well-being of young people and their families laid down in German law.

The NC would like to contribute towards a process in which the Initial Report of the Federal Government, the Statement of the NC and the consultations between the Committee on the Rights of the Child and the Federal Government can be used to enhance the debate on the Convention on the Rights of the Child in Germany.

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