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Joint NGO Submission – CHILD RIGHTS –
UPR on FEDERAL REPUBLIC OF GERMANY – February 2009

Submitted by:

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1. We offer the following submission on the situation of child rights in the FEDERAL REPUBLIC of GERMANY for consideration as part of the Universal Periodic Review in February 2009. The submission has particular regard to the government's reservation to the UN Convention on the Rights of the Child (CRC).
2. Germany is state party to the CRC (1992) the Optional Protocol on Children in Armed Conflict (2004), and has signed the Optional Protocol on the sale of children, child prostitution and child pornography (signed 2000).

I. Reservations to the UN Convention on the Rights of the Child (CRC)

3. Germany ratified the UN-CRC on 6 March 1992, and submitted its first report to the UN Committee on the Rights of the Child in 1994, the second one in 2003. The third and fourth report are now in preparation to be submitted as one single report in 2009. An NGO Coalition comprised of 100 organisations was set up in 1996 under the auspices of the German Child Welfare Organisation (AGJ), which since then has been monitoring the implementation of Germany's obligations under the CRC. At the time that the German government ratified the Convention it also entered a reservation that we submit has facilitated the violation of the rights of one of the most vulnerable group of children: unaccompanied minor refugee children. The reservation reads: "...none of the clauses contained therein may be interpreted as imposing any form of restriction on the right of the Federal Republic of Germany to enact laws or decrees dealing with foreigners entering the country or imposing conditions on their -rights of residence, nor on its ability to differentiate between German subjects and foreign nationals."

II. Demands on German government

4. In 1995 and 2004 the UN Committee on the Rights of the Child voiced its concerns over the reservation, including its Concluding Observations of 26th of February 2004: “In light of the 1993 Vienna Declaration and Programme of Action, and in line with its previous recommendations (CRC/C/15/43, para. 22), the Committee recommends that the State party expedite the process for the withdrawal of the reservations and declarations it had made before the submission of its next periodic report and increase, in particular, its efforts to convince the Länder of the need to withdraw them”.
5. The German Parliament took a decision that the reservation should be withdrawn in 1999 and the petition committee of German Parliament renewed the demand to German government to withdraw the reservations in 2004. The child rights working group of the German NGO-Forum Human Rights has documented all decisions regarding the reservation on different political levels since 1991 (www.forum-menschenrechte.de/Publikationen).

III. Government Arguments

6. The Government argues that ratification of the CRC was based on the ‘Lindauer Abkommen’, which allowed the Länder to voice their concerns on asylum issues related to the CRC. Some federal states were concerned that without the reservation Germany would be overwhelmed by large numbers of minors seeking asylum. The reservation was their condition for agreeing to the ratification of the UN-CRC in 1991. Such agreement is necessary under Germany’s federal system. The German government has repeatedly stated that it no longer believes the reservation is necessary, particularly after reform of the child’s law in 1998 (Kindschaftsrechtsreform) came into force, however it doesn’t want to act against the opinion of the Länder – although it has the legal power to do so¹. Nevertheless it has taken some initiatives to persuade the Länder to change their position. The most recent effort was undertaken by the Minister for interior affairs, Wolfgang Schäuble in a letter addressed to all governments of the 16 Länder in 2006 calling on them to support withdrawal of the reservation. On 13th of June 2008 the governments of Rheinland Pfalz, Bremen and Berlin applied to all federal states for withdrawal of the reservation in the Bundesrat (Drs 405/08), which was again refused (session 845 on 13.06.2008), because of lack of majority support.

IV. Effects on children

7. Since 1991 and as a result of this reservation there have been many cases where children whose asylum applications were rejected, were deported. Other examples of the practical effects of the reservation are provided for in the notes accompanying the oral statement on regulations affecting minors in the Federal Republic of Germany submitted by the International federation terre des hommes in 1995 (www.crin.org) and there are still similar cases today in Germany. Another more recent example is

¹ An expert opinion published in 2002 shows that federal government has the legal power to decide Dr. jur. Erich Peter im Auftrag der Kindernothilfe: „Die deutsche Ratifikationserklärung zur UN-Kinderrechtskonvention im Diskurs“, Dokumentation der rechtspolitischen Kontroverse um eine Rücknahme der deutschen Ratifikationserklärung, Bremen, September 2006

provided for in The Shadow Report “Child Soldiers”² submitted pursuant to Article 8 of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts which sets out clear deficits of German authorities in the treatment of former child soldiers who fled to Germany (see: Concluding Observations of the Committee on the Rights of the Child³). One of the main impacts of the reservation is that refugee children are treated as adults from 16 years up. As a result they are not entitled to, nor do they receive, guardian and legal support, and are frequently denied asylum or other protections. Furthermore, these children experience discrimination in the school and medical system in comparison to German children. The effects of this situation which children find themselves forced into because of the reservation becomes evident in the psycho-social centres⁴.

V. Recommendations

8. The German government should withdraw the reservation to the CRC, even if the Bundesländer do not agree, as it has the legal power to do so. Furthermore, there should be a binding legal regulation issued by the Parliament, that the CRC and its Optional Protocols have priority over asylum and aliens law.
9. Children in asylum seeking families and unaccompanied minors should receive support immediately after entry into the country. They should receive a secure status for legal stay of at least 6 months, a kind of orientation period and clearing process. During this time they should receive legal, medical and psychological support. If necessary, neutral, especially trained experts should determine the age of the children during the orientation period, based on dialogue with the children. And the children themselves or their legal guardian should have these period 6 months to decide if they want to ask for asylum and start the asylum procedure or if there are other solutions that are more in the interest of the children. Traumatized children must be identified in the orientation period and receive immediate treatment in psycho-social counselling centres. All unaccompanied minors up to the age of 18, should be represented by a guardian ad litem and receive legal support.
10. All refugee children need a secure residence status for long term stay.
11. Refugee children should not be in detention or in custody depending deportation. The measure of detention of minors prior to deportation should be categorically forbidden. Children should never be forcibly deported. If children came with their parents, the parents should never be forced to leave the country without their children. Repatriation

² Published by Kindernothilfe and terre des hommes in October 2007, available at http://en.kindernothilfe.org/en/Rubrik/Topics/Child+Soldiers-p-195/Shadow+Report+_Child+soldiers_+published-p-194.html

³ Committee on the Rights of the Child, Forty-seventh session, 1 February 2008, CRC/C/OPAC/DEU/CO/1, Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding observations: Germany

⁴ Documentation of different effects for example in: terre des hommes - "Wir bleiben draußen" - Schulpflicht und Schulrecht von Flüchtlingskindern in Deutschland, Bjoern Harmening, Februar 2005, and: terre des hommes & BUMF: Former child soldiers as refugees in Germany, Michaela Ludwig, October 2003, both available at: <http://www.tdh.de/content/themen/schwerpunkte/fluechtlingskinder/materialien.htm>

to the country of origin should only be done on a voluntary basis and if it is in the best interest of the child.

12. Refugee families with children should not be forced to stay in cramped housing conditions for longer than 6 months. Unaccompanied minors up to the age of 18 should be allowed to stay in accommodation separated from adults and with adequate protection.
13. All minor refugees, even with no legal status or papers, should have the right to compulsory school attendance and they should have unhindered access to adequate medical treatment.
14. Minor refugees should have equal chances to access vocational training and – as soon as possible - equal access to the labour market as German minors.