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Consideration of reports of States parties

List of issues in relation to the report submitted by Germany under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Addendum**Replies of Germany to the list of issues ***

[1 November 2013]

The Federal Republic of Germany would like to submit the following additional, updated information in response to the list of issues to be taken up in connection with the consideration of the initial report of Germany (CRC/C/OPSC/DEU/1) of 1 July 2013

Reply to the issues raised in paragraph 1 of the list of issues (CRC/C/OPSC/DEU/Q/1)

The Federal Republic of Germany has ensured that the actions described in article 3 (in connection with article 2) of the Protocol are included in their entirety within its criminal law.

Trafficking in children for the purpose of sexual exploitation

Section 233a (assisting in human trafficking) of the German Criminal Code (*Strafgesetzbuch* – StGB) is primarily applicable to acts of delivering or accepting. Pursuant thereto, criminal liability is incurred by whoever assists in human trafficking by recruiting, transporting, referring, harbouring or sheltering another person. Whoever induces a person under twenty-one years of age 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, commits human trafficking for the purpose of sexual exploitation (section 232 (1), second sentence). The offering of a child fulfils the elements of inducing human trafficking for the purpose of sexual exploitation pursuant to section 232 (1), second sentence, section 26 StGB.

Additionally, depending upon the circumstances of the specific case, particularly the age of the victim, the elements of section 235 (1), (2) and (4) StGB (abduction of minors from the care of their parents), section 236 (1), 4 no. 2 (child trafficking) and section 171 (violation of duties of care or education) as well as section 176 (5) StGB (promising to supply a child for sexual abuse) may be fulfilled as well. Prosecution for participation in criminal offences pursuant to sections 176 et seqq. StGB (sexual abuse of children), sections 177 et seqq. StGB (sexual assault by use of force or threats; rape), section 182 (sexual abuse of juveniles) is also possible. The above-mentioned criminal offences particularly protect children under fourteen and/or sixteen years of age. Prosecution might also be possible under sections

239 StGB (unlawful imprisonment), section 240 StGB (using threats or force to cause a person to do, suffer or omit an act) and/or for participation in such offences.

Trafficking in children for the purpose of trade in organs

Trafficking in children for the purpose of trade in organs is included in the criminal law by way of participation in criminal offences pursuant to sections 18 and 19 of the Transplantation Act (*Transplantationsgesetz*). Also potentially applicable are the criminal offences of section 235 (1), (2) and (4), second sentence, StGB (abduction of minors from the care of their parents), section 236 (1), (4), no. 2 (child trafficking) and section 171 (violation of duties of care or education); to some extent, however, these would apply only if the victim is under the age of fourteen/sixteen. Prosecution might also be possible under section 239 (unlawful imprisonment), section 240 (using threats or force to cause a person to do, suffer or omit an act) and/or for participation in such offences, as well as for offences under sections 223 et seqq. StGB (causing bodily harm).

Child trafficking for the purpose of engaging the child in forced labour

Section 233a StGB (assisting in the trafficking of human beings, see above) is primarily applicable to actions involving delivery or acceptance. Section 233 (1), second sentence, provides that whoever subjects a person under twenty-one years of age to slavery, servitude or bonded labour or makes him work or continue to work for him or a third person under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity, shall be subject to criminal prosecution. The offering of a child fulfils the elements of inducing human trafficking for the purpose of exploitation of labour force pursuant to section 233 (1), second sentence, section 26 StGB.

Additionally, depending upon the circumstances of the specific case, particularly the age of the victim, the elements of section 235 (1), (2) and (4) StGB (abduction of minors from the care of their parents), section 236 (1), (4) no. 2 (child trafficking) and section 171 (violation of duties of care or education) may be fulfilled as well. Prosecution might also be possible under sections 239 (unlawful imprisonment), section 240 (using threats or force to cause a person to do, suffer or omit an act) and/or for participation in such offences.

Adoption trafficking

The States parties are to criminalise improperly inducing consent by intermediaries for the adoption of a child in violation of applicable international legal instruments on adoption. In Germany, this is taken into account by sections 240, 235 (1) and 236 (2), second sentence, StGB.

An international convention on adoption, the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention, Federal Gazette 2001 II p. 1034), is relevant in this regard. The circumstances under which consent to adoption is improper are indirectly contained in Article 4 letter c nos. 2, 3 and Article 4 letter d nos. 3, 4 of the Hague Adoption Convention. These provisions require that the authorities of the home State have specifically ensured that the person whose consent for adoption is required has provided consent without any influence and the consent has not been induced by any payment or counter-performance.

If the agent for adoption uses force or threat of appreciable harm to induce the consent necessary for adoption pursuant to the respective applicable law, he makes himself criminally liable pursuant to section 240 StGB (using threats or force to cause a person to do, suffer or omit an act). If he uses deception, this will generally fulfil the elements of the offence of abduction of minors from the care of their parents pursuant to section 235 (1) StGB. If the agent for adoption induces the consent of another person for adoption for a fee, he incurs criminal liability pursuant to section 236 (2), second sentence, StGB (child trafficking).

It should also be pointed out that pursuant to section 1741 (1), second sentence, of the German Civil Code (*Bürgerliches Gesetzbuch* - BGB), those who take part for the purpose of adoption in a procurement or transportation of a child that is unlawful or contrary to public policy, or have commissioned a third party with this or rewarded him for this should accept a child only if this is necessary for the best interests of the child. This rule makes acceptance, which must otherwise merely serve the child's best interests, more difficult and is designed to take preventive action against child trafficking and comparable practices.

Child prostitution

There are plans, in the context of transposing Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, to expand the offence of trafficking in human beings to cases involving the practice of begging (section 232 (1) no. 2 StGB-new).

Reply to the issues raised in paragraphs 2 and 3 of the list of issues

Germany does not keep any case-related flow statistics. It is therefore not possible to track how and with what outcome the judiciary deal with suspected cases registered by the police. The Federal Ministry of Justice is part of a working group which is seeking a solution to this problem.

The statistics quoted below are chiefly drawn from the Police Crime Statistics. The Police Crime Statistics comprises a register of those suspected cases which are registered with the police. The data can only be broken down according to age and gender of the victims. Please refer to the enclosed tables.

Child trafficking for the purpose of sexual exploitation (section 232 (1), second sentence, StGB)

The number of recorded cases has dropped steadily over the period under review (2010: 478 suspected cases; 2011: 492 suspected cases; 2012: 385 suspected cases).

The elements of the offences set out in sections 236 (1), (4) no. 2 (child trafficking), 176 (5) (supplying a child for sexual abuse) and 182 (sexual abuse of juveniles) StGB may also be applicable in some cases:

	<i>2010</i>	<i>2011</i>	<i>2012</i>
Section 236 StGB	7	7	6
Section 176 (5) StGB	242	209	131
Section 182 StGB	1043	1077	1071

Child trafficking for the purpose of trade in organs (sections 18, 19 Transplant Act)

No cases involving children were registered in the period under review. In some cases the element of the offence set out in section 236 (1), (4) no. 2 StGB may be applicable (for numbers, see above).

Child trafficking for the purpose of work exploitation (section 233 (1) StGB)

The number of registered suspected cases dropped from 56 in 2010 to 51 in 2011 and to 28 in 2012. In some cases, section 236 (1), (4), no. 2 StGB may be applicable (for numbers, see above).

Adoption trafficking (section 236 (2), second sentence, StGB)

Cases are registered if they involve the consent of another person being obtained to give up a child for adoption for a fee. The figures are contained in those for child trafficking in accordance with section 236 StGB.

Child prostitution (section 180 (2) StGB)

The number of suspected cases rose in the period under review from 126 (2010) to 151 (2011) and then dropped again to 133 (2012).

Child pornography (section 184b, 184c StGB)

The data available in this regard are taken from the criminal prosecution statistics, which are not yet available for 2012. They refer to the number of persons convicted:

	<i>2010</i>	<i>2011</i>
section 184b StGB	2047	1611
section 184c StGB	57	90