



Global Monitoring



Report on the

status of action against commercial
sexual exploitation of children

GERMANY



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Glossary of terms and acronyms

AIDS: Acquired Immune Deficiency Syndrome

BKA: Federal Criminal Police (Bundeskriminalamt)

BMFSF: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend)

BTW: Federal Association of the German Tourist Industry (Bundesverband der Deutschen Tourismuswirtschaft)

Code of Conduct: A code for travel and tourism companies, providing guidance on the protection of children from sexual exploitation

CRC: Convention on the Rights of the Child

CSE: Commercial sexual exploitation

CSEC: Commercial sexual exploitation of children consists of criminal practices that demean, degrade and threaten the physical and psychosocial integrity of children. There are three primary and interrelated forms of commercial sexual exploitation of children: prostitution, pornography and trafficking for sexual purposes. Commercial sexual exploitation of children comprises sexual abuse by the adult and remuneration in cash or in kind to the child or a third person or persons.

CST: Child sex tourism, or the commercial sexual exploitation of children by men or women who travel from one place to another, usually from a richer country to one that is less developed, and there engage in sexual acts with children, defined as anyone under the age of 18.

DRV: German Association of Travel Agents (Deutsche Reisebüro und Reiseveranstalter-Verband)

ECPAT: End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes

EU: European Union

FSM: Voluntary Self-Control Multimedia Service Providers (Die Freiwillige Selbstkontrolle Multimedia-Diensteanbieter)

Grooming: Preparing a child for sexual abuse and exploitation

GTZ: German Technical Cooperation
HIV: Human immunodeficiency virus
ICT: Information and communication technologies
ICTSD: International Centre for Trade and Sustainable Development
ILO: International Labour Organization
ILO/IPEC: International Labour Organization/International Programme on the Elimination of Child Labour
INGO: International non-governmental organization
INHOPE: International Association of Internet Hotlines
IOM: International Organization for Migration
IRC: Internet Relay Chat
ISP: Internet service provider
IT: Information technology
LKA: German Federal States Police (Landeskriminalamt)
MoU: Memorandum of Understanding
NGO: Non-governmental organization
NPA: National plan of action
OSCE: Organization on Security and Cooperation in Europe
ProPK: German Criminal Police Force of the State and Federal States (Polizeiliche Kriminalprävention der Länder und des Bundes)
STIs: Sexually transmitted infections
UN: United Nations
UNDP: United Nations Development Programme
UNHCR: United Nations High Commissioner for Refugees
UNICEF: United Nations Children's Fund
UNOHCHR: United Nations Office of the High Commissioner for Human Rights
WHO: World Health Organization
WTO: World Tourism Organization

Foreword

Ten years have passed since the First World Congress against Commercial Sexual Exploitation of Children (CSEC) was held in 1996 in Stockholm, Sweden. The Stockholm Congress was a landmark event, providing testimony that convinced the world that sexual violations against children exist in all nations, irrespective of cultural differences or geographic location. It marked the first public recognition by governments of the existence of CSEC and resulted in a commitment to a global Declaration and Agenda for Action, which was formally adopted by 122 governments, as a guide to the specific measures that must be taken for counteraction.

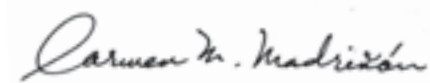
Since 1996, many actors around the world have focused their efforts around this common Agenda for Action and more government and non-government entities have linked, to ensure positive change for children and to protect their right to live free from sexual exploitation. This broad societal alliance (bolstered by a Second World Congress held in Yokohama in 2001, during which the number of countries adopting the Agenda rose to 159 - a figure which has since risen to 161) has made progress in improving protection for children from commercial sexual exploitation. However, the increasing sophistication of resources available to those who seek to exploit children have grown in equal measure. Responding to these challenges requires far more coordinated and targeted work to be undertaken to avoid retrogression.

Experience demonstrates that the level of responsibility and role that a government takes to set and uphold standards of protection, like the lead taken for protecting children's rights, determines the nature, quantity and quality of what the country achieves for its children. Governments can and have accelerated progress for implementation of the Agenda for Action, often opening new and important channels for such work. Nevertheless, their actions have not been uniform and, as these country profiles attest, far more urgent work must be done to protect children from such heinous violations, as these are still perpetrated with impunity in many countries.

This report aims to provide a baseline of information on actions taken and remaining gaps for addressing CSEC in each country, based on the framework of the Agenda for Action, to enable more systematic assessment of progress on implementation of this commitment. It also seeks to contribute to other international mechanisms that exist to protect children's rights; the *Convention on the Rights of the Child (CRC)* and the *Optional Protocol on the sale of children, child prostitution and child pornography* so as to strengthen the implementation and action against commercial sexual exploitation of children at all levels.

Another important objective of these reports is to stimulate the exchange of experience and knowledge among countries and different actors to create a dialogue that can further work against CSEC. While much has been achieved over the last 10 years, many gaps still remain. The implementation of the Agenda for Action is urgently required, for as the reports clearly illustrate, there is a compelling need for global action to protect children from these inhuman violations.

This project is the result of a broad and global collaboration. ECPAT International (EI) would like to thank all those who participated in the work and contributed their inputs, in particular the ECPAT member groups in the countries examined, local experts who provided valuable information and insights, other organisations that shared their experience and information, the dedicated staff and volunteers in the Secretariat of EI and the generous donors who backed the project (more extensive acknowledgements can be found in the Regional Report). This work would not have been realised without their support and solidarity.



Carmen Madriñán
Executive Director, ECPAT International

Methodology

The Agenda for Action against Commercial Sexual Exploitation of Children provides a detailed framework and categories of actions to be taken by governments in partnership with civil society organizations and other relevant actors for combating commercial sexual crimes against children. Broadly, these actions are focused on: 1) Coordination and Cooperation; 2) Prevention; 3) Protection; 4) Recovery, Rehabilitation and Reintegration; and 5) Child Participation. The Agenda for Action is thus the formal and guiding structure used by governments that have adopted it and committed to work against CSEC. As such, the Agenda for Action is also the main organising framework for reporting on the status of implementation of the Agenda as seen in the World Congress of 2001 and in the Mid-Term Review meetings held between 2004 and 2005. It has been used in the same way to structure and guide the research, analysis and preparation of information presented in these reports on the status of implementation of the Agenda in the individual countries.

Preparatory work for this report involved a review of the literature available on sexual exploitation for each of the countries where ECPAT works. A number of tools were prepared, such as a detailed glossary of CSEC terms, explanatory literature on more difficult themes and concepts and a guide to relevant CSEC-related research tools, to assist researchers in their work and to ensure consistency in the gathering, interpreting and analysing of information from different sources and parts of the world.

Early desktop research revealed a lack of information in the areas of Recovery, Rehabilitation and Reintegration; and Child Participation. After extensive efforts to collect information relevant to these areas for each of the countries covered, it was decided that as this information was not consistently available, the reports would focus only on those areas of

the Agenda for Action where verifiable information could be obtained. Thus, the report covers: Coordination and Cooperation; Prevention; and Protection, and where information on the other two areas was available, it has been included under the specific country or in the regional overview.

Research of secondary sources, including CRC country reports, alternative CRC reports, the reports of the Special Rapporteurs, submissions for the recent UN Study on Violence against Children, as well as research and field studies of ECPAT, governmental and non-governmental organizations, and UN agencies, provided the initial information for each report. This information was compiled, reviewed and used to produce first draft reports. In-house and consultant specialists undertook a similar process of review to generate information on specialised areas of the reports, such as the legal sections. Nevertheless, researchers often encountered a lack of information. While sources also included unpublished reports and field and case reports of ECPAT and other partners, many countries lacked up-to-date data and information on areas relevant to this report.

Despite these limitations, sufficient information was gathered to provide a broad overview of the situation in each country. Subsequently, first drafts were prepared and shared with ECPAT groups, which then supplemented the information with other local sources and analysis (taking care to identify them and source appropriately). Upon receipt of these inputs, a series of questions were generated by the ECPAT International team for deeper discussion through teleconferences, which involved ECPAT groups and specialists invited by them. The information from these discussions was used to finalise inputs to each of the reports. These consultations proved to be invaluable for analysis of the country situation.

They also served as a measure for triangulating and validating information as different actors offered their perspective and analysis based on their direct work.

As previously noted, the information of each country report is organised to correspond to the structure of the Agenda for Action. Thus all reports feature: (i) an overview of the main CSEC manifestations affecting the country; (ii) analysis of the country's National Plan of Action (NPA) against CSEC and its implementation (or the absence of an NPA); (iii) overview and analysis of coordination and cooperation efforts during the period under review; (iv) overview and analysis of prevention efforts; (v) overview and analysis of protection efforts, which includes detailed information on national legislation related to CSEC (see www.ecpat.net for further details); and (vi) priority actions required.



GERMANY

Germany has been noted as a destination country for trafficking in children for sexual purposes, although data collection on the problem remains limited. Most children who enter Germany in this way are Eastern European girls smuggled to brothels through prostitution rings, deceived by false promises of a job, vocational training or a holiday trip. They are usually recruited in their countries of origin, in particular Moldova, Ukraine, Russia, Belarus, but also Nigeria, Brazil and some Caribbean countries. Once in Germany, the traffickers try to pass the girls off as adults. A number of unaccompanied minors (UAM) trafficked to the country and cared for at reception centres and youth care facilities have also disappeared from these centres and have reportedly been forced to work as prostitutes. In other cases, children are trafficked for the production of pornographic materials.¹

Germany has also been identified as a source country for tourists seeking sex with children, who seem to choose destinations such as Cambodia, Thailand, Brazil, Kenya, Sri Lanka, and also the Czech-German border region. While child sex tourism had reached shocking proportions along this border region, good law enforcement cooperation has resulted in a decrease of cases in the past few years.

German nationals exploiting children in Morocco

At the beginning of 2006, several cases of sexual exploitation of Moroccan children by German nationals emerged in Agadir², suggesting that Morocco has become a preferred destination for German child sex tourists (incidents of exploitation by other European nationals have also been noted there in recent years). Organisations working on the prevention of sexual exploitation of children in tourism in Morocco have maintained contact with ECPAT Germany to monitor the situation.

A series of cases of suspected child abuse committed by Germans in foreign destinations have been followed up closely by the Federal Criminal Police (BKA) Office, ECPAT Germany and their partners. A workshop held in Berlin in 2004 contributed to better cooperation between child rights organisations and law enforcers from Germany and other countries, with a view to collecting evidence, enforcing extraterritorial legislation and ensuring compensation to victims.

The past few years have seen an increase in cases of child pornography, most of them in relation to the distribution of such materials, as it is very difficult to collect enough evidence to file charges in production cases. In the few federal states where police have conducted random investigations on the Internet, a considerable amount of child pornography has been found.³ There is also evidence that mobile phones provide an increasingly unsafe environment for children. ECPAT Germany reports that between 2005 and 2006, the police found a number of mobile phones pertaining to minors that contained pictures and films of extreme sexual violence, some made by youth, and involving their colleagues and other children. The circumstances under which such images are created are unknown.

German links to an Internet child pornography ring

A global Internet child pornography ring was smashed in 2003 during an international police operation codenamed "Marcy". The leading member, aged 29 years old, was sentenced in Germany to three and half years' imprisonment, and admitted to a psychiatric clinic, as the authorities concluded that he was mentally ill and likely to commit the same crime again. In an initial search in 2002, the discovery of photographs and films of children being sexually exploited stored on his computers, led the police to 26,500 suspects in 166 countries. During the probe, a Court in the German city of Halle ordered an Internet service provider (ISP) to supply information on the suspects, including on 38,000 email addresses.

In late 2006, the Internet police of Baden-Württemberg investigated 2,200 "paedocriminals" worldwide as part of a wide law enforcement effort. The alleged criminals come from 82 countries on five continents, 383 of them from Germany. The police found videos and images displaying brutality towards captive children aged as young as two. Particularly alarming was the fact that such files had been offered to an unlimited group of persons for downloading, and were also offered to children and youth.

Germany adopted the *Stockholm Declaration and Agenda for Action* in 1996 and reaffirmed its commitment in Yokohama in 2001.

NATIONAL PLAN OF ACTION (NPA)

In July 1997, the Government approved the *Working Programme against Child Abuse, Child Pornography and Sex Tourism*, as a preliminary programme following the First World Congress. The *Plan of Action for the Protection of Children and Juveniles from Sexual Violence and Exploitation* was approved in 2003.⁵ It was developed by several stakeholders, including non-governmental organisations (NGOs), community representatives, government ministries, child rights organisations, and the federal police, who formed an effective monitoring and evaluation working group that meets twice a year.

The Plan led to a legal reform in relation to sexual criminal offences the following year,⁶ particularly in relation to child pornography offences.

Prevention programmes were also developed, and included a free emergency hotline for children and young people, a parents' helpline and a virtual child protection centre. Closer cooperation with the destination countries of sex tourists was established through projects that support child victims and at-risk groups of children, and also through police training and new bilateral agreements for legal assistance projects.

The formation of a working group as an evaluation mechanism has been successful, particularly in terms of keeping the issue of commercial sexual exploitation of children (CSEC) on the political agenda. Recent recommendations include the harmonisation of German law with relevant international conventions; addressing child pornography and the sexual exploitation of children through new technologies; and starting a programme to work with juvenile offenders to prevent exploitation of children by other minors. Nevertheless, child participation remains very weak, and mechanisms to improve it shall be discussed at a conference planned for 2007 to assess the last few years of the Plan's implementation.

COORDINATION AND COOPERATION

Local and National Level

In September 2003, the Federal Government established the *Bund-Länder Working Group on the Protection of Children and Juveniles against Sexual Violence*, to support the implementation of the *Plan of Action for the Protection of Children and Juveniles from Sexual Violence and Exploitation*. It has proved to be a successful evaluation and monitoring instrument, although its role in improving coordination needs to be enhanced.

The Bund-Länder Group comprises approximately 25 representatives from government, the Länder local authorities, police, community and NGOs. It meets twice a year⁷ and members report on the issues they are responsible for, latest efforts, challenges and gaps, and also to decide on priority actions.

Regional and International Level

Cooperation at European level has been satisfactory, especially bilateral cooperation in the form of agreements and joint initiatives. But cooperation with eastern European countries is still weak and requires continuous development (as it only began after the fall of the Soviet Union); the same applies to the Baltic States, although overall collaboration has been gradually facilitated through the new European Union (EU) memberships. Practical obstacles in efficiently investigating cases of sexual exploitation of children must be overcome, mainly in relation to differences in legislation and major language problems.⁸ There have been efforts to address such difficulties though, by harmonising the legislation between certain countries and improving law enforcement cooperation.

In 2002, a German-Czech-Polish Tri-national Working Group was established in Prague to intensify cooperation against the prostitution of children and trafficking.⁹ Comprising representatives of the Ministries of Internal Affairs of each country, the local police, border guards and NGOs,¹⁰ it has effectively improved collaboration in the area and ensured that more attention is given to the problem in the political agendas of each country.

In 2003, the German-Czech Working Group on Combating the Transnational Sexual Abuse of Children agreed on a number of specific measures for jointly combating the

prostitution of children along the borders. Very concrete actions ensued: the establishment of joint investigation groups; guest visits by Czech police officers to the Federal Office of Criminal Investigation; joint police trainings; internships at the Federal Crime Authorities; meetings between law enforcers and NGOs to enhance investigation on child sex offenders; the leaflet campaign *Little Souls – Great Danger on the Czech Border*, and awareness raising initiatives targeting minorities.

Major initiative to implement the Optional Protocol

In 2004, the German Technical Cooperation (GTZ)¹¹ launched the project 'Protection of Minors against Sexual Exploitation', with a view to implementing the *Optional Protocol on the sale of children, child prostitution and child pornography (Optional Protocol)*. The project is conducted in countries and regions where German cooperation is particularly active, such as the Dominican Republic, Vietnam, Cambodia, Kenya and Tanzania. It involves training of police staff, justice departments, educational and public health institutions; education and information dissemination; rehabilitation of victims; and the provision of advisory services to governmental and non-governmental players on the development of codes of conduct for the tourism sector. The project will run until December 2007.¹²

PREVENTION

Several preventative activities and campaigns have taken place, particularly in relation to child sex tourism. But the many organisations working on CSEC prevention rarely engage in joint prevention programmes. The Länder has not effectively improved cooperation in this regard, although it is trying to ensure that there is no overlap between all such initiatives. An assessment of the actual impact of the prevention efforts undertaken thus far would be important in order to inform appropriate action.

Since 1997, Terre des Hommes Germany has been running several projects on combating sexual exploitation of children in tourism. In 1999, the Missio International Catholic Aid Association started the Guardian Angel Campaign against the prostitution of children and sex tourism, which has included activities in German airports and with tour operators and airline companies.

In 2005, the Federal Association of the German Tourism Industry (Bundesverband der Deutschen Tourismuswirtschaft - BTW) signed the *Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism* in the presence of Her Majesty Queen Sylvia of Sweden. BTW is the umbrella association of the German tourism industry and includes, besides the German Association of Travel Agents (DRV), some major tour operators, airport and railway companies, airlines, hotel chains, marketing companies and others. As part of the Code's implementation, ECPAT Germany regularly conducts training for tourism students and other stakeholders, and good cooperation has been established with local and regional police officers.

Tourism Watch (Heinz Fuchs) and the ECPAT tourism working group published an analysis on the implementation of the *Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism*, named "Reiseanalyse". This well-known marketing research study, clearly showed that tourists are aware of the *Code of Conduct* and want more prevention measures to be taken by the industry to prevent sexual exploitation of children in tourism.

In 2003, outreach worker Cathrin Schauer produced an alarming report on children involved in street prostitution on the German-Czech border.¹³ The report provides a detailed picture of the problem in this region, heavily frequented by German tourists.

The regional 'Joint East-West Research on Trafficking in Children for Sexual Purposes in Europe - the Sending Countries', conducted by the ECPAT Europe Law Enforcement Group in 2004, provided important data to inform countering initiatives in Germany and in the other countries involved. As part of the follow-up project, the 'Joint East-West Multi-Stakeholder Training Programme on Trafficking in Children for Sexual Purposes', ECPAT Germany has undertaken training of law enforcers with its twinning partner from Belarus.

Confused assumptions persist

Not all German schools make use of filtering software, as the federal states are responsible for the educational system and this kind of software is installed only in schools located in certain regions. It thus falls on the teachers to ensure the safety of the students. Unfortunately, some teachers believe that filtering software might have a negative influence on the media competence of the students, which results in the software not being used in certain schools even if available.¹⁵

Aiming to raise awareness on the need to counteract the production and distribution of child pornography through the Internet, in 2004 a nationwide initiative was carried out by the German Criminal Police Force of the State and the Federal States (ProPK) and the Voluntary Self Control Multimedia Service Providers (FSM). Internet service providers (ISPs) who joined the project include AOL Germany, T-Online International and Arcor. They have since worked hand in hand with ProPK, saving relevant data to facilitate investigations, blocking access to child pornographic websites and shutting down chatrooms where unsafe activities have been detected.¹⁴ While actual blocking systems have not been implemented to date, in 2006 the German police had a meeting with experts from Scandinavian countries to learn more about such systems.

PROTECTION

Germany ratified the *Convention on the Rights of the Child (CRC)* in 1992 and made a declaration stating that the CRC does not imply that illegal aliens may lawfully stay in Germany, and that the CRC does not restrict Germany's right to pass laws and regulations regarding the entry and stay of aliens in Germany. Germany signed the *Optional Protocol on the sale of children, child prostitution and child pornography (Optional Protocol)* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)* in 2000. At the time of writing, Germany had not ratified either of these critical international legal instruments - a significant gap in its protection of children against commercial sexual exploitation. Germany ratified *ILO Convention No. 182* in 2002.

At regional level, Germany signed the Council of Europe's *Convention on Action against Trafficking in Human Beings* in 2006. The Government signed the *Convention on Cybercrime* in 2001 but has not ratified it to date.

Legislation

The Federal Republic of Germany consists of 16 federal states, known as Länder or Bundesländer. The *Basic Law for the Federal Republic of Germany*, Germany's constitution, divides authority between the Federation and the Länder. The Federation has exclusive

legislative power in areas such as foreign affairs and defence, but there is concurrent legislative power in areas such as civil law, criminal law, and labour law, among others. In the system of concurrent legislative power, the Länder has the power to enact legislation as long as and to the extent that the Federation has *not* exercised its legislative power by enacting legislation.

In practice, the Länder regulates internal affairs, educational policy, cultural and communal affairs issues. With concurrent legislative power, however, there are situations where the Federation enacts legislation that the Länder must implement - child and youth protection is one such area, and this can pose a problem because there may be 16 different regulations implementing laws that structure childcare services or address the needs of trafficking victims.

Prostitution of Children

German law should be further strengthened to conform to international standards to protect children against prostitution. While German law prohibits facilitating sexual acts with a child, it does not punish the clients who purchase sexual services from a child. Nor does it define the prostitution of children.

German law prohibits some activities related to the prostitution of children, as well as a number of general sexual offences. The German *Criminal Code* prohibits abetting child prostitution by inducing a person under 18 years of age to commit sexual acts on or in front of a third person for compensation, or allowing sexual acts to be committed on a person under 18 years of age by a third person. Violators may be punished with up to five years' imprisonment or a fine; attempt of this offence is also punishable.¹⁶ German law further bans facilitating – which includes supporting or negotiating – sexual acts of a person under 16 years of age on or in front of a third person, or sexual acts of a third person on a person under 16 years of age; punishment may be up to three years' imprisonment or a fine.¹⁷ It is also illegal to provide a person under 18 years of age a dwelling, place to stay, or residence for purposes of prostitution; punishment may be up to three years' imprisonment or a fine.¹⁸

With respect to prostitution, German law also prohibits: (1) managing a prostitution business, where persons are held in personal or financial dependency;¹⁹ (2) promoting

prostitution of a person under 18 years of age by furnishing a dwelling, place to stay, residence or similar services;²⁰ or (3) encouraging another person, for whom a dwelling has been provided for purposes of prostitution, to engage in prostitution or exploiting that person for prostitution.²¹ Violators of these offences may be punished with up to three years' imprisonment or a fine.²²

The *Criminal Code* also bans pimping and makes it illegal to exploit another person engaged in prostitution or, for material gain, to supervise another person's prostitution, including preventing a person from leaving prostitution. Punishment for these offences may be between six months' and five years' imprisonment.²³ This law also prohibits professionally promoting another person's prostitution by procuring clients; punishment may be up to three years' imprisonment or a fine.²⁴

Finally, German law contains several sexual offence crimes, including child sexual abuse (CSA) (prohibiting sexual acts with a child under 14 years of age) and rape.²⁵ The sexual abuse statute includes a provision that prohibits grooming, making it illegal to exert influence on a child by showing him/her pornographic illustrations or images, or by playing pornographic audio recordings or other sexual speech. Offenders may receive three months' to five years' imprisonment.²⁶

Trafficking in Children for Sexual Purposes

Germany has made significant progress by enacting legislation that prohibits trafficking for sexual exploitation and trafficking in human beings. At the same time, while these laws provide increased punishment for cases involving children, a "child" in these laws is defined as a person under 14 years of age, rather than all persons under 18 years of age, as required by the *Convention on the Rights of the Child*. Moreover, the trafficking for sexual exploitation law prohibits bringing a person into Germany but does not address the acts of recruiting, transferring, harbouring, or receiving a person. These acts are addressed in the law prohibiting trafficking in human beings. German law would be strengthened and would better protect children against trafficking for sexual purposes if these provisions were combined into one streamlined law.

In February 2006, Germany revised its trafficking law to specifically address trafficking in human beings for sexual exploitation.²⁷ German law prohibits bringing a person into Germany for purposes of prostitution or to perform sexual acts on or in front of a third person, where the trafficked person faces hardship in the foreign country in which s/he

resides. Offenders may be punished with six months' to ten years' imprisonment.²⁸ If the trafficked person is under 21 years of age, punishment is the same,²⁹ but if the trafficked person is a child – under 14 years of age – punishment may be at least one year and up to 10 years' imprisonment.³⁰ Punishment is also at least one year and up to 10 years' imprisonment in cases involving: (1) serious physical harm;³¹ (2) danger of death;³² (3) acting professionally or as a member of a gang for the purpose of trafficking;³³ (4) leading a person into prostitution using threats or deception;³⁴ or (5) using threats or deception to force a person into prostitution or performing sexual acts on or in front of a third person.³⁵ Attempt of any of these acts is also punishable.³⁶ The Court may decrease punishment under special conditions.³⁷

German law further prohibits recruiting, transporting, transferring, harbouring or receiving a person for the purpose of trafficking in human beings.³⁸ Offenders may be punished with three months' to five years' imprisonment.³⁹ If the trafficked person is a child – under 14 years of age – or if serious physical harm or the danger of death is involved, punishment is increased to at least one year and up to 10 years' imprisonment.⁴⁰ This increased punishment also applies to cases involving violence, threats, or acting professionally or as a member of a gang for the purpose of trafficking.⁴¹ Attempts of all of these crimes are also punishable.⁴²

In addition, under the *Criminal Code*, it is illegal for a person to indefinitely leave a child under 18 years of age with another person for compensation, or with the intent of enriching himself or a third person. Similarly, it is illegal to take a child indefinitely, for purposes of compensation or enrichment. Violators who commit these offences may be punished with up to five years' imprisonment or a fine.⁴³

This statute further prohibits procuring the adoption of a person under 18 years of age or engaging in activities with the goal of having a third person indefinitely take in a person under 18 years of age for purposes of compensation or enriching a third person. Punishment may be up to three years' imprisonment or a fine, and is increased to up to five years' imprisonment or a fine where, in cases of adoption, the perpetrator causes a person to be brought into Germany or taken abroad.⁴⁴ Attempts of all of these offences are punishable,⁴⁵ and punishment is increased to between six months' and ten years' imprisonment where the violator: (1) acts for profit, professionally or as a gang member, for purposes of continuing to traffic children; or (2) places a child in danger of substantial physical or emotional harm.⁴⁶ Under special conditions, the Court has discretion to mitigate punishment where, in light of the impact on the child, the perpetrator's guilt is slight.⁴⁷

Child Pornography

German law includes provisions that ban producing, distributing or possessing certain forms of child pornography. By limiting child pornography to depictions of child sexual abuse, however, German law falls short of international standards. German law must expand its definition of child pornography to include all depictions of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, rather than just child sexual abuse images. German law should be clarified to include electronic and digital child pornographic images. Guidelines are also needed to monitor and intercept telecommunications related to inducing child sexual abuse via the Internet and disseminating child pornography online.⁴⁸

German law prohibits certain activities related to pornography and certain types of child pornography. Under the *Criminal Code*, disseminating pornographic materials under circumstances that make them accessible to persons under 18 years of age, in other public displays, or via radio, is an offence that may be punished with up to one year's imprisonment or a fine.⁴⁹ Furthermore, it is illegal to disseminate, publicly display, produce, obtain, supply, offer, import or export, among other activities, pornographic materials depicting child sexual abuse. Violators may be punished with three months to five years' imprisonment.⁵⁰ If the depiction of child sexual abuse reflects actual events, and if the perpetrator acted professionally or as part of a criminal gang, punishment is increased to between six months and ten years' imprisonment.⁵¹ Possessing or undertaking to possess for one's self or a third person, pornographic materials that depict actual child sexual abuse is an offence that may be punished with up to one year's imprisonment or a fine.⁵² In addition, exchanging child pornography through closed Internet user groups may be punished with up to five years' imprisonment,⁵³ and if this offence is committed for a commercial purpose, or by an organised crime group, punishment may be up to ten years' imprisonment.⁵⁴ Currently, German law contains no provisions addressing Internet service providers' responsibility for regulating child pornography on the Internet.⁵⁵

German law also makes it illegal for one or more persons to engage in sexual intercourse or other sexual acts with a child, thereby endangering a child physically or emotionally, with the intent to produce pornographic material that will be disseminated or publicly displayed, as outlined by *Criminal Code* Section 184. Violators of this offence may be punished with up to two years' imprisonment.⁵⁶ It is also illegal to groom a child by using publications to influence a child to engage in sexual activities with an adult. This provision also prohibits offering, demonstrating or promising a child to someone else for purposes of sexually abusing the child, or conspiring with another person to sexually abuse a child.⁵⁷

In September 2006, the Federal Republic of Germany began the process of reforming these child pornography laws, particularly regarding depictions of the sexual parts of a child. The reforms may also harmonize the age provisions with international standards.

Extraterritorial Legislation

German law applies to acts committed abroad that constitute the criminal offences of trafficking and the distribution of pornography, regardless of the legality of those acts in the country where they took place.⁵⁸

There are however several practical obstacles to the implementation of extraterritorial law – especially with respect to the collection of evidence that will be acceptable in German Courts – in the countries where a German citizen is suspected of abusing a child. Law enforcement and judicial cooperation must be strengthened to reduce impunity.

Child Protection Units

Witness protection programmes in German states have been harmonised since January 2002 but do not have child-specific provisions. The protection of children under the *Aliens Act* is considered insubstantial. Under German law, child witnesses under 16 years of age may have their testimony audio or video recorded for presentation in the course of legal proceedings in certain circumstances.⁵⁹ There is also a provision for testimony by video and for testimony to occur away from the presence of the accused. In addition, a lawyer may be assigned to provide support to a child witness, or even to represent a child witness to a violent crime.⁶⁰

Support Services for Children

Provisions for care and guardianship for children involved in extraterritorial cases, trafficking cases or in cases involving migrant minors are not implemented in the federal states, despite the fact that there are good laws in this regard; their implementation at federal state level is insufficient.

In June 2005, a new law was adopted regarding the development of the child

and youth welfare services (Gesetz zur Weiterentwicklung der Kinder und Jugendhilfe – KICK): all public youth welfare institutions were required to ensure that their staff did not have a police record in relation to crimes against children (sexual abuse, trafficking, pornography), and to request a certificate from the police for this purpose.

Training Law Enforcement Personnel

Training for law enforcers on CSEC issues has developed well, however judges and prosecutors are not sensitised on how to adequately handle sexual crimes against children and remain somewhat reluctant to receive training. This resistance has been particularly problematic in relation to the enforcement of extraterritorial legislation, as related cases usually take longer to be resolved and may not receive the necessary follow up.

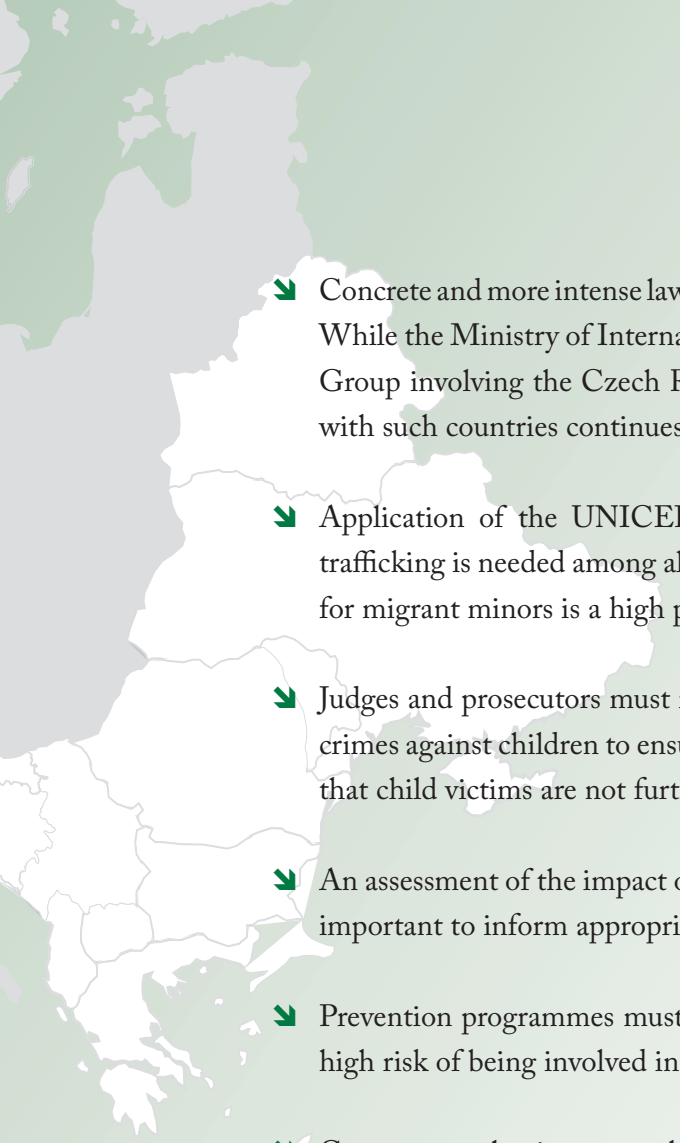
Police and law enforcement exchanges take place mostly between the German Federal Police (BKA), the German Federal States Police (LKA) and eastern European countries, financially supported by an EU programme. There are also some training and exchange programmes between Germany and western and eastern European countries (such as the AGIS programme of the European Commission).

Worth mentioning is a law enforcement workshop held in Berlin in 2004, attended by 50 representatives from the Home Office, the Federal Ministry for Family Affairs, Senior Citizens, Women & Youth (BMFSFJ), the Federal Ministry of Justice, the Foreign Ministry, the Federal Bureau of Criminal Investigation, police and criminal investigation departments, lawyers, judges, NGO representatives (ECPAT member organisations) as well as police officers from Thailand, the Philippines, Sri Lanka and Cambodia. The aim was to improve cooperation on criminal prosecutions of German offenders abroad. The response was very positive and agreements were made to expedite exchange of information.



PRIORITY ACTIONS REQUIRED

- Germany must ratify the *Optional Protocol on the sale of children, child prostitution and child pornography (Optional Protocol)*, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)*, the Council of Europe's *Convention on Cybercrime* and *Convention on Action against Trafficking in Human Beings*.
- German law should be reviewed in order to clearly define child prostitution related offences and include punishments for those who purchase sex from a child.
- German law on trafficking in children could be strengthened by combining all relevant provisions into one streamlined law. Protection against trafficking should also be granted to all children under 18 as required by the *Convention on the Rights of the Child*.
- German law on child pornography must be amended to include all depictions of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, rather than just child sexual abuse images. The law must also cover electronic and digital child pornographic images. Provisions must also be included to allow for the monitoring and interception of telecommunications related to inducing child sexual abuse via the Internet and to disseminating child pornography online.
- To reduce impunity and ensure enforcement of extraterritorial law, police and judicial cooperation must be strengthened with countries that register a higher level of crimes against children as being committed by German nationals – particularly with a view to ensuring that evidence acceptable in German Courts is collected.

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- Concrete and more intense law enforcement cooperation along the borders is needed. While the Ministry of Internal Affairs plans to terminate the Tri-national Working Group involving the Czech Republic and Poland, it is essential that collaboration with such countries continues and is further enhanced.
 - Application of the UNICEF guidelines for the protection of child victims of trafficking is needed among all relevant stakeholders. Similarly, adequate protection for migrant minors is a high priority.
 - Judges and prosecutors must receive training on various aspects of handling sexual crimes against children to ensure effective enforcement of the law and also to ensure that child victims are not further victimised during criminal proceedings.
 - An assessment of the impact of the prevention efforts undertaken thus far would be important to inform appropriate action.
 - Prevention programmes must give more attention to migrant minors who are at a high risk of being involved in commercial sexual exploitation.
 - Concrete mechanisms must be put in place to ensure youth participation in policy making, and in programme design, implementation and evaluation.
 - Increased action to prevent child abuse through new technologies is required, in particular to ensure that Internet service providers (ISPs), who have expressed their commitment take concrete action.
 - Installing filtering software to protect children from entering websites that contain pornography, sensitising and training school staff regarding online safety by integrating such information into school curricula, is recommended to ensure protection of children in the online environment.

Endnotes

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- ¹⁰ The Government of the Federal Republic of Germany. *Investigation by the Secretary General of the United Nations on Violence against Children: Questionnaires for Governments*. Office of the United Nations High Commissioner for Human Rights. May 2005.
- ¹¹ GTZ has the corporate form of a "GmbH" (closed limited company) in the private sector. It is owned by the German Federal Government. The GTZ Supervisory Board has representatives of four Federal Ministries: the Federal Ministry for Economic Cooperation and Development (BMZ), Federal Foreign Office, Federal Ministry of Finance, and Federal Ministry of Economics and Labour. GTZ has offices in 67 countries worldwide. (Source: German Technical Cooperation (GTZ) [Deutsche Gesellschaft für Technische Zusammenarbeit]. *GTZ: Organisation*. Accessed on 7 December 2005 from: <http://www.gtz.de/en/unternehmen/1720.htm>)
- ¹² German Technical Cooperation. *Convention Project: Protection of Minors against Sexual Exploitation*. Accessed on 7 December 2005 from: http://www.world-tourism.org/protect_children/reunions/berlin2005/report/GTZ.pdf
- ¹³ Schauer, Cathrin. *Children in Street Prostitution - Report from the German-Czech Border*. ECPAT Germany and UNICEF Germany. 2003.

- ¹⁴ Heuck, Jennifer. *Comparative Report on Child Pornography on the Internet in Germany and New Zealand*. ECPAT Deutschland e.V. and ECPAT New Zealand. Auckland. 9 March 2005.
- ¹⁵ Ibid.
- ¹⁶ *German Criminal Code*, Section 180(2). The same punishment applies to inducing a child under 18 years of age in a person's care for purposes of upbringing, education, or employment relationship to commit sexual acts on or in front of a third person or allowing sexual acts to be committed upon the child. *German Criminal Code*, Section 180(3).
- ¹⁷ Ibid. Section 180(1).
- ¹⁸ Ibid. Section 180a(2)(1).
- ¹⁹ Ibid. Section 180a(1)(1).
- ²⁰ Ibid. Section 180a(2)(1).
- ²¹ Ibid. Section 180a(2)(2).
- ²² Ibid. Section 180a(1).
- ²³ Ibid. Section 181a(1).
- ²⁴ Ibid. Section 181a(2).
- ²⁵ Ibid. Sections 176, 176a, 176b, 177, 178, 179.
- ²⁶ Ibid. Section 176(4)(4). As of 1 April 2004, showing a child pornographic images in order to have the child repeat the portrayed acts is a crime. Response of the Government of the Federal Republic of Germany to the UN Violence Study Questionnaire, p.18.
- ²⁷ Ibid. Section 232.
- ²⁸ Ibid. Section 232(1).
- ²⁹ Ibid. Section 232 (1)
- ³⁰ Ibid. Section 232 (3)(1)
- ³¹ Ibid. Section 232 (3)(2)
- ³² Ibid.
- ³³ Ibid. Section 232 (3)(3)
- ³⁴ Ibid. Section 232 (4)(1)
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- ³⁶ Ibid. Section 232 (2)
- ³⁷ Ibid. Section 232 (5)
- ³⁸ Ibid. Section 233a (1)
- ³⁹ Ibid. Section 233a (1)
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- ⁴³ Ibid. Section 236(1).
- ⁴⁴ Ibid. Section 236(2).
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- ⁴⁹ *German Criminal Code*, Section 184(1), (2).
- ⁵⁰ Ibid. Section 184(3).
- ⁵¹ Ibid. Section 184(4).
- ⁵² Ibid. Section 184(5).
- ⁵³ Response of the Government of the Federal Republic of Germany to the UN Violence Study Questionnaire. p.18.

- ⁵⁴ *German Criminal Code* (as amended in 2003), Section 184b (3). (Source: The Federal Government of Germany. *Investigation by the Secretary General of the United Nations on Violence against Children: Questionnaires for Governments*. Office of the United Nations High Commissioner for Human Rights. May 2005.)
- ⁵⁵ Heuck, Jennifer. *Comparative Report on Child Pornography on the Internet in Germany and New Zealand*. ECPAT Deutschland e.V. and ECPAT New Zealand. Auckland. 9 March 2005.
- ⁵⁶ *German Criminal Code*, Section 176a(2).
- ⁵⁷ *Ibid.* Section 176.
- ⁵⁸ *Ibid.* Section 6(4), 6(6).
- ⁵⁹ Response of the Government of the Federal Republic of Germany to the UN Violence Study Questionnaire. p. 28.
- ⁶⁰ *Ibid.* pp. 27-28.



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