

Written Statement

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By terre des hommes Germany

Update: Implementation of the Optional Protocol on the involvement of children in armed conflict (OPAC) by Germany

Based on our earlier submissions (named in the third paragraph) and new facts and figures and related to the List of Issues and the Answers of the German Government, we want to give a summarized update on the implementation of the Optional Protocol on the involvement of children in armed conflict (OPAC) by Germany.

Compared to the last reporting cycle and the situation in 2014, we see nearly no progress on the implementation of OPAC and the issues 15a-e and 18g-h raised by the Child Rights Committee (CRC) in the List of Issues. In contrary, on several issues, the situation has deteriorated. Both the number of underage Bundeswehr recruits and the number of problematic arms exports have been increasing for many years and continue to be at a high level, and serious violations of children's rights continue to occur as a result.

Detailed information and arguments were presented to the CRC in the *Written Statement* (Feb. 2021) by terre des hommes Germany and Kindernothilfe prior to the Pre-Session as well as in the "[Shadow Report Child Soldiers](#)", authored by human rights expert Prof. Dr. Michael Krennerich and published by Kindernothilfe, terre des hommes Germany, World Vision Germany and the German Coalition to Stop the Use of Child Soldiers, and in the study "[Small Arms in Small Hands – German Arms Exports Violating Children's Rights](#)" (issued by terre des hommes Germany and Bread for the World) - both reports were submitted to the CRC in October 2020.¹

Minors as soldiers in the Bundeswehr and military advertisement directed to minors

Since 2011 till 2021, the German Armed Forces, the Bundeswehr, have recruited more than 15,000 17-year-old boys and girls as soldiers. In 2021, 1239 minors (1000 boys and 239 girls) have been recruited – an increase of 8% compared to 2020 (1148 minors). The minor soldiers receive the same military training as adults and are often housed together with them; the legal protection of minors and the Youth Employment Protection Act are not respected. Even if they are not sent on foreign missions before they reach the age of majority and are not allowed to perform armed guard duty, they are exposed to severe risks. The regulation A-2610/3 "Juveniles and the Bundeswehr" issued in 2021 does not change this. It was done by the Defense Ministry, obviously without considering child rights aspects or expertise. The few protective measures specified there correspond to the problematic practice of previous years and are completely inadequate.

In response to a question from member of parliament Frank Heinrich (Christian Democrats, CDU), in 2021, the Ministry of Defense has published data on the situation of underage soldiers for the first time², after previously refusing to do so for years.

¹ Both studies are available in English at the corresponding UN links (linked above in the text) or (in English and German) at <https://www.tdh.de/was-wir-tun/arbeitsfelder/kinder-im-krieg/materialien-links-adressen/>

² Bundesministerium der Verteidigung Dok. Nr. 1980034-V267, available at https://unter18nie.de/wordpress/wp-content/uploads/2021/09/Antw_Verteidigungsmin_zu_SexGewalt_Suizide_Abbrecher_PsychProbleme_ua_bei_minderjaehrigen_BWSoldat.pdf

The data confirm that minors are exposed to high risks in the Bundeswehr and suffer serious physical and psychological damage, including sexual violence, degrading treatment, accidents, depression, mental disorders and suicides.

In the three years alone from 2018 to 2020, at least eight underage soldiers were injured in accidents, one committed suicide, and 17 reported that they had been victims of so-called "crimes against sexual self-determination," i.e. verbal or physical sexual violence. These are only the reported cases, the number of unreported cases is likely to be high. In almost a third of the cases of sexual violence, superiors are suspected of the crime, which points to abuse of power and a systemic problem by the military structures.

In addition, according to the ministry, almost one in four Bundeswehr soldiers without deployment experience suffers from mental illness. Data on underage soldiers is not available, but it can be assumed that they are disproportionately affected, since scientific studies have shown that young people are particularly mentally unstable and sensitive. An example is the case of an underage soldier who developed a stress-induced preliminary stage of schizophrenia because of the psychological stress he suffered during his time in the German Armed Forces.³

Grave child rights violations in the Bundeswehr including sexual violence were also documented in several media reports and also in reports of the Bundestag's Military Commissioner⁴ (see Chapter 5.3, Shadow Report Child Soldiers). Due to the obvious problems with minor soldiers, the current Military Commissioner Eva Högl is a supporter of lifting the recruitment age to 18 – as for example expressed in a radio interview at Deutschlandfunk.⁵

According to the Military Commissioners annual reports, in the Bundeswehr between 2017 and 2021, underage recruits or recruits who had just come of age were affected by sexual abuse, rape, and humiliating sexualized initiation rituals (e.g., dancing naked on a pole). The overall number of criminal sexual assaults recorded by the Armed Forces quadrupled from 2015 (86) to 2019 (345) and was still 303 cases in 2021. Data on how many minors were affected are not published by the Bundeswehr, but the share is probably high due to their high vulnerability. The Military Commissioners annual reports also mention several cases of serious injuries and one death among young recruits during Bundeswehr marches due to supervisor misconduct and excessive military drill.

The evidence from these data and cases is deeply worrying. In general, there is still a big lack of data: Until today, no study or evaluation of the situation of underage soldiers in the Bundeswehr was published, despite promises by the Defense Ministry to do so. Even in cases of serious violations, in general, the Bundeswehr does not mention the age of affected soldiers.

In its reply to paragraph 15(a) of the list of issues, the German government repeats its claim "that the current recruitment of personnel in the Bundeswehr is fully in line with Germany's obligations under international law, including the UN CRC and the OPAC" – ignoring the documented grave child rights

³ Journalist's interviews with Sebastian S. and two other minor soldiers are available at <https://unter18nie.de/wordpress/wp-content/uploads/2021/09/Interviews-mit-Minderj%C3%A4hrigen-1.pdf> ; The interviews were used for the text "I thought I would become a man in the Bundeswehr" about minor soldiers in the German national newspaper "Die Welt", Sept. 2021: <https://unter18nie.de/2021/09/16/welt-artikel-ich-dachte-ich-werde-bei-der-bundeswehr-zum-mann/>

⁴ The Bundestag's Military Commissioner ("Wehrbeauftragter") is elected by the national parliament ("Bundestag") for a term of five years. The commissioner regularly visits barracks and dialogues with soldiers and once a year reports to the parliament on the situation at the Bundeswehr, problems and needs.

⁵ <https://www.deutschlandfunk.de/wehrbeauftragte-hoegl-zum-rechtsextremismus-wir-brauchen-100.html>

violations, the legal assessments of international law experts as Prof. Dr. Michael Krennerich and Dr. Hendrik Cremer, the position statement of the Children's Commission of the German Parliament (2016)⁶ and the repeated call for lifting the recruitment age to 18 of the CRC.

Among many others, just the simple facts, that the Bundeswehr is making long term soldier contracts (duration up to 10 years or more) with minors, signed by their legal guardians, that cannot be terminated after the probation period of 6 months and that not even have to be re-signed by the minors when they become 18, show clearly, **that the obligations of the OPAC, only allowing voluntary recruitment of minors, are not fulfilled.** Harsh punishments happen, including detention for weeks in arrest cells, if minor soldiers try to get out of these contracts and don't show up for work.

Instead of stopping Bundeswehr advertising directed to minors, as the CRC has been calling for since 2008, new and more expensive advertising campaigns are constantly being launched, many of them in social media, including several You Tube-series, or at trade fairs such as the computer games trade fair "Gamescom" and the youth trade fair "YOU" with a clearly under-age target group. In addition, several hundred so called "Youth officers" or military "Career Advisors" visit schools and teacher trainings, reaching hundred thousands of children and thousands of teachers every year. In Bundeswehr advertisements and school visits of soldiers, risks of being a soldier such as trauma, injury and death are virtually not mentioned, instead the focus is on positive aspects such as teamwork, adventure, good pay and career opportunities (see Chapter 6, Shadow Report Child Soldiers).

Due to the misleading information, harsh treatment and severe rights violations, a large proportion of underage soldiers leave their service with the Bundeswehr prematurely or are dismissed: In 2017 alone, the Bundeswehr dismissed 840 soldiers who had started their service as minors⁷. Hundreds more of them leave the service themselves every year, in 2015 there were 800⁸. In 2020, one in five underage soldiers (21%) left their service in the probation period in the first 6 months (in comparison of 16% of adult soldiers)⁹.

Contrary to the arguments of the German government, expressed also in its reply to paragraph 15 (a) of the list of issues, many youth obviously don't know what it means to become a soldier. The recruitment of minors is in many cases an obvious lose-lose-situation, for the Bundeswehr and even more for the minors who leave with bad experiences after short time during the probation period or try to leave after the probation period and are hindered to leave and punished. It has to be emphasized that the Bundeswehr (as all armed forces) is not an employer as others, as the government arguments. Being a soldier is a profession with high demands and risks, not adequate for minors, contrary to the advertisements and information that the German government, especially the Defense Ministry, is increasingly distributing.

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https://www.bundestag.de/resource/blob/482006/b8fa4487dcd13f0730e96386957ddcff/stellungnahme_militaer_und_jugend_in_deutschland-data.pdf

⁷ Bundestagsdrucksache 19 / 3965

⁸ Bundestagsdrucksache 18 / 7146

⁹ Bundesministerium der Verteidigung Dok. Nr. 1980034-V267, available at

https://unter18nie.de/wordpress/wp-content/uploads/2021/09/Antw_Verteidigungsmin_zu_SexGewalt_Suizide_Abbrecher_PsychProbleme_ua_bei_minderjaehrigen_BWSoldat.pdf

In the coalition agreement of November 2021, the so called „traffic light coalition“ (Social Democrats (red), Liberal Party (yellow), Green Party) defined the following goal for the new legislature: “Ausbildung und Dienst an der Waffe bleiben volljährigen Soldatinnen und Soldaten vorbehalten.“ (“Training and service at the weapon are reserved for soldiers of full age.”). It is still not clear if and how this will be implemented. Current information from parliamentarians and Defense Ministry staff, including high ranks, indicate, that the only change will be the postponement of the shooting training to the time after reaching the age of majority – contrary to earlier plans and the official positions of the government parties SPD (Social Democrats) and Green party to lift the recruitment age for soldiers to 18 years (Straight 18 position). There is even a well-developed concept of the SPD, who is leading the Defense Ministry now, for implementing Straight 18 and offering civil contracts and civil training modules (like sports, physical training, driving license, foreign language trainings, ...) to minors who leave school and are interested in becoming a soldier after reaching majority age. But there is resistance in parts of the Bundeswehr and the Defense Ministry, especially in the human resources department, responsible for meeting the recruitment quotas.

Arms exports

For a long time, Germany is one of the five largest arms exporters worldwide and one of the largest exporters of small arms and related ammunition. In recent years, the German government has regularly approved big amounts of arms exports to countries with child soldiers (e.g. Colombia, Iraq, Pakistan, India, Philippines)¹⁰ or to countries which are involved in armed conflicts with child soldiers (e.g. Saudi Arabia, United Arab Emirates, Egypt et al. in Yemen or Turkey in Syria)¹¹. Additionally, several countries with internal armed conflicts where police or military operate brutally with war weapons in civilian residential areas, killing many children and young people (often in the context of a so called “war on drugs”), have received German arms (Brazil, Philippines, Mexico, et al.) (see also Chapter 10 in Shadow Report Child Soldiers). Drug gangs and other criminal armed groups in these countries recruit and use children as armed guards and fighters, who are child soldiers following the definition of the “Paris Principles on Children Associated with Armed Forces or Armed Groups” of 2007, signed by 112 countries.¹²

These German arms exports contradict both the German government's Political Guidelines on Arms Exports and the EU's Common Position on Arms Exports. The European Parliament, in its resolution of 11 February 2021 on the humanitarian and political situation in Yemen, stressed that “EU-based arms exporters that fuel the conflict in Yemen are non-compliant with several criteria of the legally binding Council Common Position 2008/944/CFSP on arms exports” and called for an “EU-wide ban on the export, sale, update and maintenance of any form of security equipment to members of the military coalition, including Saudi Arabia and the United Arab Emirates”¹³

Ignoring this call and the legally binding EU regulation, in 2021, according to the annual government report on arms exports, the German government approved a huge amount of arms exports to Egypt,

¹⁰ The recruitment of children as soldiers is documented for more than 20 countries, for example in the UN-Secretary General’s Annual Reports on Children and Armed Conflict; see also study “Small arms in small hands” (footnote 11)

¹¹ Study “Small arms in small hands – German arms exports violating children’s rights”, submitted to the CRC in October 2020, available at: see footnote 1 on page 1

¹² <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>

¹³ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0053_DE.html

United Arab Emirates and other countries being member of the military coalition involved in the war in Yemen - alone to Egypt worth 4.3 billion Euros. Between 2015 and 2020, the countries being part of this military coalition received German arms worth at least 6 billion Euros.

In 2021, 64% of German arms exports worth 6 billion euros (new high), went to so-called “third countries” (neither EU, NATO nor NATO-equivalent), where in many cases there are massive human rights violations and war. Egypt, Brazil and other “third countries” were among the Top Ten receivers of German Arms in 2021, in 2020 they included Egypt, Brazil, Qatar and others.¹⁴

The consequences for children are serious and well-known, for example:

Saudi-Arabia, the United Arab Emirates, Egypt and the other member states of the military coalition intervening in Yemen, are using German-made Rheinmetall-bombs and Tornado- and Eurofighter-planes to do unlawful bombings, often targeting hospitals, schools and other civilian targets¹⁵ – since 2015, at least 3,550 children were killed by this military coalition, as documented by the UN¹⁶. German war ships and patrol boats were used by the military coalition to do the unlawful sea blockade, leading to deadly food and medicament shortage in Yemen and the death of many children. And German guns like the Heckler & Koch G3 and G36 rifles are widely used on both sides of the conflict. As child soldiers are widely recruited on both sides, the potential consequences are obvious: they die by German guns or are forced to use them in battle. Since the early 2010s, the G36 assault rifle is also produced in Saudi-Arabia in large numbers in a production line licensed by the German government.

Despite many armed conflicts in the country and reports from the United Nations and Indian non-governmental organizations on serious violations of children's rights, including the recruitment of child soldiers, **India** remains one of the largest recipients of German military equipment. Between 2014 and 2020, licenses worth around €650 million have been granted. India has received at least 3,800 submachine guns since 2015, some going to paramilitary units known for grave child rights violations. German small arms have also been supplied to India via the United States - between 2019-2020, 72,400 SIG716 assault rifles were supplied to the Indian government via SIG Sauer's subsidiary in the USA.¹⁷

In **Brazil**, police and military are equipped with many German weapons, even though they are responsible for one of the highest rates of police violence in the world. Since 2014, German arms exports to Brazil worth around €600 million have been approved, only in 2021 worth €143 million. These included submachine guns, assault rifles, rifles, pistols, small arms ammunition and Airbus H225 helicopters. In the same period, around 34,000 people, including many children and youth, have been killed by police and military forces in state "security operations", in 2021 these were 6,100 people¹⁸. On average, the Brazilian police kills 4 minors every day. Especially the military police

¹⁴ See annual government report on arms exports (Rüstungsexportbericht):

https://www.bmwk.de/Redaktion/DE/Downloads/B/bericht-der-bundesregierung-ueber-ihre-exportpolitik-fuer-konventionelle-ruestungsgueter-im-jahre-2020.pdf?__blob=publicationFile&v=8

¹⁵ <https://www.ecchr.eu/en/event/german-bombs-and-fighter-jets-for-the-war-in-yemen-whats-next-after-the-international-criminal-court-received-a-joint-communication/>

¹⁶ <https://www.securitycouncilreport.org/un-documents/document/s-2019-453-2.php>

¹⁷ Study “Small arms in small hands – German arms exports violating children’s rights”, submitted to the CRC in October 2020, available at: see footnote 1 on page 1

¹⁸ <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>

(“polícia militar”) and some special units are responsible for many brutal massacres, like recently in the suburbs Jacarezinho (2021) and Vila Cruzeiro (2022) in Rio de Janeiro.¹⁹

Recommendations

Arms exports

At the moment, a new arms export control law (“Rüstungsexportkontrollgesetz”) is drafted in the Ministry of Economy. The arms industry is pressing to prevent any tighter regulation. Clear UN recommendations could strengthen those who want strong and effective rules to protect human rights.

Therefore, in addition to the existing recommendation (77c), we would like to propose more recommendations on arms exports in the Concluding Observations, including a legal ban of exports of arms, ammunition and related production facilities to countries involved in armed conflicts and to countries whose state organs are responsible for at least one of the six grave child rights violations in armed conflict or other grave child rights violations, like police killings of children and youth – as also required by the EU Common Position on Arms Exports.

Furthermore, there should be systematic controls of the end use of exported German weapons and ammunition, fixed by law, as this is nearly never done now (only 8 voluntary controls in recipient countries since 2015), leading to huge abuse and illegal re-exports to conflict regions – for example via the USA to Colombia.²⁰

And, following the obligation of the ATT (article 5.3), the German government should use the UN definition of Small Arms and Light Weapons (instead of the narrow EU definition)²¹, and should significantly improve transparency and information on arms exports in general. Now, even the related parliamentary bodies are only informed many months after the licensing decision has been taken and only few and selected information is given.

Recruitment of minor soldiers and military advertisement

In addition to the two existing recommendations in the Concluding Observations (77a & 77b) on the recruitment of minors to the Bundeswehr and Bundeswehr advertisement directed to minors, we would suggest to include three more recommendations on the issue:

First, asking for the annual publication of data on the situation of soldiers that have entered the Bundeswehr as minors - like data on sexual abuse, accidents, mobbing, trauma and psychological problems, depression, suicide and suicide attempts, premature leave of the Bundeswehr.

Second, asking for a set of protection measures for underage soldiers, like: accommodation strictly separate from adults and separated by gender, strict measures for protection from sexual abuse,

¹⁹ Study „Less guns, more youth: armed violence, police violence and the arms trade in Brazil”, 2021, published by terre des hommes Germany & Switzerland and Instituto Sou da Paz. Available (English ,Portuguese, German) at www.tdh.de/policeviolence

²⁰ See “SIG Sauer Pistols in Colombia”, page 46, in study “Small arms in small hands – German arms exports violating children’s rights”, submitted to the CRC in October 2020, available at: see footnote 1 on page 1

²¹ See under “Major Deficiencies of German Arms Export Controls”, issue 1., page 11, and on page 21 in study “Small arms in small hands – German arms exports violating children’s rights”, submitted to the CRC in October 2020, available at: see footnote 1 on page 1

exclusion from riskful and physically or psychologically highly challenging training like long marches or simulation of combat and trained child protection officers in each army unit with minors.

Third, a set of measures to ensure that recruitment of minors is truly voluntary, like: the possibility to leave the military contract any time and with no negative consequences before the 18th birthday and the regular announcement and inclusion of this possibility in the contract, the formal re-signing of the military contract by the recruit after the 18th birthday (including the possibility not to sign) (the parents or legal guardian have previously signed on their behalf), the obligation to include information about the risks of being a soldier in advertisement material, presentations and counselling to avoid biased information and the obligation for the Bundeswehr to inform both parents and to invite them to any counselling talk with minors.

Protection of children fleeing from recruitment as soldiers

The Committee should emphasize, that the use of minors as soldiers or the danger of recruitment by state or non-state armed groups is a child-specific form of persecution as defined under Art. 1 (A) 2 and 1 (F) of the Geneva Convention relating to the Status of Refugees and therefore should lead to **protection and granted asylum** – independent of the type of armed group or if it is considered as terrorist organisation or not (see Chapter 9.2 Shadow Report Child Soldiers).

Legal prosecution and detention of former child soldiers

In regard to some recent cases of detention of former child soldiers in Germany for alleged offenses as underage soldiers belonging to so called terrorist groups, the Committee should make clear that former child soldiers should usually not be punished by law, following OPAC Article 6(3) and the Committee's General Comment No. 10 (2007), but instead should be assisted in dealing with their role as victim and possibly perpetrator through therapy and transitional justice efforts (see Chapter 9.3 Shadow Report Child Soldiers).

By expanding the set of OPAC-related recommendations and making them more specific, the Committee would send a clear signal to the German government, that the ignoring of the previous Concluding Observations, the common violations of child rights and the deterioration of the situation is not acceptable and urgent government action is needed to meet the obligations of OPAC and the Child Rights Convention. Obviously, a strong signal from the UN is needed for a shift in government thinking and activities.

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