

Answers by the German Federal Government

Questionnaire of the Special Rapporteur on the human rights of migrants: Ending immigration detention of children and seeking adequate reception and care for them

1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.

In Germany, “immigration detention”, including of that of children, does not occur, with the exception of individuals who are taken into custody as they await deportation under special circumstances. That is why we refer to “custody awaiting deportation” in the answers.

According to section 62 (1) of the Residence Act, *“custody awaiting deportation shall not be permissible if the purpose of the custody can be achieved by other, less severe means which are also sufficient. The detention shall be limited to the shortest possible duration. Minors and families with minors may be taken into custody awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child”* (an English translation of the relevant law, sections 62 ff. of the Residence Act, is available at http://www.gesetze-im-internet.de/englisch_aufenthg/index.html).

In accordance with section 62 of the Residence Act and Article 17 (1) of the Return Directive, unaccompanied minors and families with minors may be taken into custody awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child. Therefore, detention of minors is generally deemed to be inappropriate.

Regarding unaccompanied minors, according to section 58 (1a) of the Residence Act, deportations of unaccompanied minors are allowed only in exceptional cases, if a member of the family, a person possessing the right of care and custody or an appropriate reception centre has verifiably assured that they are able to receive and accommodate the minor and care for him or her. Consequently, unaccompanied foreign minors in Germany are generally protected against deportation and thus not taken into immigration detention.

In cases where minors and families with minors are detained, the special situation of this group of people is always taken into consideration. If no less coercive instrument is available, age-appropriate needs of minors in detention are adequately taken into account.

Furthermore, special efforts are made to release minors as quickly as possible from detention and to house them in age-appropriate accommodation.

In accordance with section 62a (3) sentence 3 of the Residence Act and Article 17 (2) of the Return Directive, detained families pending return shall be provided with separate accommodation guaranteeing adequate privacy. Furthermore, age-specific needs during detention are to be taken into account. According to section 62a (3) sentence 1 of the Residence Act and Article 17 (3) of the Return Directive, minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education. Section 62a (3) of the Residence Act and Article 17 (4) of the Return Directive state that unaccompanied minors shall insofar as possible be provided with accommodation in institutions with personnel and facilities that take into account the needs of persons their age.

However, most federal states - which are responsible for implementing the respective legislation - completely refrain from placing unaccompanied minors, pregnant women, families or single parents with minor or school-age children into deportation custody. In addition, if detention cannot be avoided in cases of families with minor children, authorities will request custody for only one parent, generally the father. Parents are thus not placed into deportation detention jointly with their minor children. The family will then be reunited prior to return at the exit location, for example at the airport.

2. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.

Non-custodial measures are prioritised under German law (see answer to question 1). Favoured action includes imposing reporting obligations and/or territorial restrictions on the family, as well as accommodating unaccompanied minors in youth welfare institutions.

In addition, in Germany, voluntary assisted return has political priority over forced return. There are several programmes available to persons and families that promote both return and reintegration.

3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education (e.g. by ensuring effective access to *inter alia* adequate reception, healthcare, education, legal advice, family reunion).

Given the broadness of the question, an exhaustive answer is not possible.

Health:

Healthcare services and psychological support are in general accessible for all minors, regardless of their migration status and whether or not they are accompanied.

Education:

In Germany, access to school education is guaranteed for all children seeking asylum. The question of compulsory education is regulated by the school laws of the states. Regulations regarding compulsory education also apply to children of asylum seekers, usually after their residential assignment to a local authority. Moreover, minors have the right to attend school regardless of their residence status.

Asylum applicants may in general be allowed to take up vocational training three months after lodging an application for asylum. If the asylum procedure has not been incontestably concluded nine months after the application was made, the foreign national is allowed to take up gainful employment. These rules do not apply to asylum applicants from safe countries of origin who applied for asylum after 31 August 2015.

Accompanied children in the federal states' reception facilities can benefit from a programme that aims to promote reading skills ("Lesen bringt uns weiter. Lesestart für Flüchtlingskinder"). The programme is funded by the German Government.

Furthermore, in recent years the German Government advanced the quantitative and qualitative expansion of early childhood education and care services by passing the 2008 Childcare Funding Act (Kinderförderungsgesetz, KiföG) which grants all children from the age of one year onwards – irrespective of their origin – the statutory right to attend an early childhood education and care centre or family daycare facility.

Family reunion:

Parents of unaccompanied foreign minors who have been granted a residence permit after being recognised as entitled to asylum or as refugees in accordance with the Geneva Convention on Refugees may apply to join their child in Germany who is a third-country national. When siblings apply for family reunification, the German Government assumes that, pursuant to section 32 (1) of the Residence Act, parents and children may be reunited at the same time if they intend to live together as a family in the federal territory. However, in these cases, it must be examined whether the family's subsistence is deemed to be secure and whether the family has sufficient living space. Moreover, pursuant to section 36 (2) of the Residence Act, family members may, on a case-by-case basis and in order to avoid particular hardship, be entitled to subsequent immigration if the necessary prerequisites are met. Since 1 August 2018, parents of foreign minors who are entitled to subsidiary protection may be permitted to join their child in Germany pursuant to section 36a of the Residence Act, provided the prerequisites stated therein are met. Since 18 March 2016, Germany had previously suspended its regulation permitting family members to join individuals entitled to subsidiary protection.

Family life/best interests:

In Germany, the youth welfare services provide help and assistance regarding all kinds of family issues. They also actively counter possible hazards to minors. Kinship and family ties are hereby always taken into account. If the responsible authorities (i.e. the Federal Office for Migration and Refugees) detect a potential threat to the best interests of a child during an asylum procedure, the competent youth welfare services (Jugendämter) are contacted. Pursuant to section 72 (1), sentence 1 of Social Code, Book VIII (SGB VIII), youth welfare offices should employ as full-time staff only those persons who are suited by personality to their specific tasks and who have received the proper training for these tasks (Fachkräfte) or who are capable of performing these tasks thanks to specialised experience in social work. Pursuant to section 72 (1), sentence 2 of SGB VIII, if required by the particular task, only properly trained staff or properly trained staff with the necessary additional training are to perform such tasks. Pursuant to section 72 (3) of SGB VIII, youth welfare offices are also required to ensure that their staff have access to further training and advisory services.

Asylum procedure:

Should indications point to domestic violence or other abuse, minors are given a private hearing separate from their accompanying family members. The UNHCR is allowed to take part in every hearing.

Specific rules regarding unaccompanied minors:

Unaccompanied minors are not allocated to reception facilities for (asylum seeking) adults and families. Child and youth services in Germany have the primary responsibility for housing and caring for unaccompanied foreign minors and for guaranteeing that this group of persons is housed and cared for in a way that provides for their well-being.

Once it has been ascertained that they have entered Germany, unaccompanied minors are (temporarily) taken into care by the youth welfare office, in accordance with sections 42a and 42 of SGB VIII. By law, from the time it takes the minor into temporary care (vorläufige Inobhutnahme), the youth welfare office is authorised and required to take all legal action needed to ensure the minor's well-being; the minor is to be involved and the probable wishes of his or her custodial adult or guardian (Personensorge- oder Erziehungsberechtigter) are to be taken into appropriate account (section 42a (3) and section 42 (2), sentence 4 SGB VIII). This temporary "right of emergency representation" thus ensures that the unaccompanied foreign minor has legal representation that takes his or her interests into account. This representation is not the responsibility of a specific person but rather of the youth welfare office. It does not arise from the specific appointment of a representative, but by law. This ensures that the person in question can be represented as soon as he or she is taken into (temporary) care, without complications and insofar as necessary. In addition, according to section 42 (3), sentence 4 SGB VIII, the youth welfare office must initiate the appointment of a guardian (Vormund) or carer (Pfleger) for the unaccompanied foreign minor without delay. While a minor is in (temporary) care, the youth welfare office must arrange temporary accommodation for him or her with a suitable person or in a suitable institution or other type of accommodation and must ensure the minor's well-being. This care can be ended only when it is clear where the minor will subsequently reside. When a minor is taken into care, the youth welfare office first determines his or her individual need for child and youth services and whether he or

she has relatives in Germany or another EU country. Then the minor receives socio-educational provision for children with problems, either in foster care (section 33 SGB VIII), in care homes or other types of accommodation with social worker support (section 34 SGB VIII), intensive individual social and educational support (section 35 SGB VIII), or in the framework of youth social work in a form of accommodation with social and educational support (section 13 (3) SGB VIII). Some unaccompanied minors need special care or specific therapies; others need assistance only with regard to training or occupational measures and/or integration services, such as leisure activities (sport, outdoor education, etc.). The type and extent of child and youth services provided is based on the individual need.

Unaccompanied minors in Germany also have access to school and vocational training. In principle, minors granted temporary leave to remain and those whose asylum applications are still being processed are required to attend school; the federal states are responsible for the relevant rules.

If an unaccompanied minor applies for asylum, a special representative for minors is deployed in the asylum procedure by the Federal Office for Migration and Refugees. These special representatives are trained to understand and deal with the needs and concerns of unaccompanied minors.

Reception (accompanied minors in reception facilities):

Social benefits during the asylum procedure including during the length of stay in reception centres are granted under the Asylum Seekers' Benefits Act; these consist of cash, benefits in kind and vouchers and are adjusted to the demand of families with minors. This includes certain additional benefits for education and participation in social and cultural life for children, adolescents and young adults. Also, access to health services is ensured for minors as well as for their families during the asylum procedure.

The issue of family reunification and family ties is also addressed during the allocation of refugees. Families are generally allocated to a single facility.

Within the federal system, responsibility for the accommodation of refugees lies with states and municipalities. Nonetheless, on 21 August 2019, a new law was introduced making the protection of women and vulnerable persons such as children in refugee accommodation centres mandatory. The federal states are obliged to ensure protection of vulnerable groups (section 44 (2a) of the Asylum Act: *"The Länder shall take appropriate measures to ensure the protection of women and vulnerable persons when accommodating persons requesting asylum pursuant to subsection 1"*). According to section 44 (3) of the Asylum Act, operators of reception centres shall require persons working in these centres who supervise, look after, educate or train minors or carry out other activities where they are likely to come in contact with minors to submit, prior to their hiring or before taking up longer-term voluntary work, and at regular intervals, police certificates of good conduct pursuant to the Federal Central Criminal Register Act. Operators of reception centres may not employ persons or volunteers who have been convicted of certain criminal offences, i.e. breach of duty of care or upbringing, sexual abuse or human trafficking. The same applies to collective accommodation housing for foreigners who are no longer required to live in a reception centre.

In 2016, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) together with UNICEF and other partners, launched the Federal Initiative for the protection of refugees and migrants living in refugee centres in Germany to improve the protection, care and support of children and women and other vulnerable persons living in refugee centres and to contribute to their well-being and integration.

Using the findings of their work, the members of the initiative published the first ever nationwide Minimum Standards for the Protection of Children, Adolescents and Women in Refugee Accommodation Centres in Germany in July 2016. The minimum standards were revised and enhanced in 2017 and 2018. In those revisions, the various partners took steps to focus in particular on the differing groups in need of protection, such as children, adolescents and women. The new title – Minimum Standards for the Protection of Refugees in Refugee Accommodation Centres – reflects the inclusion of other groups and takes account of multiple forms of discrimination and protection needs.

The aim of the minimum standards is to secure protection and ensure support for all refugees in such centres. This applies in particular to groups that are in need of protection due to their age, gender, sexual orientation or gender identity, disabilities, religion, ethnic, national or social origin, political beliefs, status of health or other status. The Minimum Standards are non-binding; they serve as guidelines for the development, implementation and monitoring of protection plans in all refugee accommodation facilities. They may also be used as guidance when developing protection plans for specific federal states and municipalities. The Minimum Standards can be downloaded at <https://www.bmfsfj.de/bmfsfj/service/publikationen/mindeststandards-zum-schutz-von-gefluechteten-menschen-in-fluechtlingsunterkuenften/117474>.

To put the standards into practice, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth funded the position of protection coordinator in 100 refugee centres participating in the initiative nationwide (2016-2018). The protection coordinator helps centre management develop, implement, monitor and evaluate the centres' protection plan. UNICEF developed training materials and tools to ensure effective implementation and monitoring of the standards. Since 2019 the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth has funded nationwide multipliers for the protection of refugees and migrants in refugee accommodation centres as well as a project to develop measures to monitor and evaluate the implementation of the protection plan and a service centre that supports the federal initiative.

4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.

As mentioned in the answers to questions one and two, "immigration detention" in Germany only appears in the context of deportation. Voluntary return is the preferred form of return. One of the pre-conditions for assisted voluntary return is good information on existing programmes and counselling for possible returnees in order to facilitate informed

decisions. Providing such information and counselling at the right point in the migration process is therefore one of the challenges.

5. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?

Non-state actors, such as welfare associations, refugee councils and NGOs, offer legal and socio-psychological counselling to persons who are obliged to leave the country or may lose their right to stay. They play an important role in finding viable solutions for families. They also play a role in return counselling and can draw attention to the possibilities of voluntary return. In addition, some of them offer counselling directly in immigration deportation centres.