

Recommendations of the German Institute for Human Rights in the Course of the Second Review of Germany under the UN Human Rights Council's (HRC) Universal Periodic Review (UPR) 2013

The numbering of the recommendations refers to the paragraph numbers in the report.

The footnotes refer to recommendations made by States during the first UPR round and which are most pertinent to the recommendations made by the Institute.

The German Institute for Human Rights recommends to Germany:

6. The ratification of:

- The Optional Protocol to the UN Convention on the Rights of the Child (CRC) on a Communications Procedure; and
- The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

8. As well as the ratification of:

- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW);¹
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP);² and
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

9. To clarify that the extraterritorial application of human rights obligations arises from the respective Conventions themselves.³

10. As a result of the German Constitutional Court's jurisprudence concerning the interpretation of fundamental rights in light of international human rights law:

- To the courts: consistently implement this jurisprudence; and
- To the Federal and State Governments: assess the constitutionality of legislative proposals by reference to UN human rights treaties and the ECHR and follow a human rights approach in the government reports in specific policy areas (*e.g.* the poverty report, the report on persons with disabilities;

11. To better utilize international monitoring procedures:

- Discuss the reports of the Federal Government regarding the State reporting procedures and the UPR, as well as the recommendations made in the German

¹ Recommendation No 1 (Azerbaijan, Egypt, Algeria, Morocco, Ecuador) and No 2 (Mexico, Algeria).

² Recommendation No 5 (Ecuador).

³ Recommendation No 6 (Pakistan).

Parliament, in all relevant committees, and regularly review the implementation of the recommendations; and

- A systematic involvement of the State Parliaments with human rights obligations and recommendations of the UN treaty bodies and of the Human Rights Council (HRC);

12. To strengthen independent national monitoring:

- Equip and select the leader of the National Preventative Mechanism corresponding to the requirements of the Optional Protocol;⁴ and
- Enact a legal basis for the German Institute for Human Rights as Germany's national human rights institution according to the Paris Principles;

13. To actively engage in the work of the UN-Open-ended Working Group on Ageing;

14. To base the actions of Federal, State, and local authorities, in particular of the police and courts, on a broader understanding of racism;⁵

15. To address in the commissions of inquiry on the series of right-wing terrorist murders of migrants, the issue of whether and how forms of institutional racism prevented the effective investigation of the crimes;

16. To legally ban discriminatory ethnic profiling;

17. To remove barriers through the enforcement of anti-discrimination laws⁶:

- Introduce a right to class action in the General Equal Treatment Act and corresponding funding possibilities;
- Establish and strengthen consultation structures; and
- Strengthen the Federal Anti-Discrimination Agency financially and in its independence and grant it investigatory powers and supporting rights in lawsuits;⁷

18. To strengthen human rights principles in integration policy for migrants by abolishing structural barriers to equal participation in the labor market and full inclusion in society;⁸

19. In all States (Länder) and in the federal police:

- Ensure the identification of individual police officers on duty;
- Improve the documentation of police violence and to take procedural precautions that will ensure an independent, impartial, and effective prosecution in cases of alleged police violence.⁹

⁴ Recommendation No 9 (Benin, United Kingdom).

⁵ Recommendation No 19 (Pakistan) with reference to the recommendation of the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

⁶ Numerous recommendation concerns the improvement of combating discrimination in certain areas or of persons belonging to certain groups, see Recommendation No 12 (Pakistan), No 22 (New Zealand), Nr. 31 (Azerbaijan), No 37 (Egypt and Malaysia).

⁷ Recommendation No 9 (Finland).

⁸ Recommendation No 11 (Netherlands); Recommendation No 12 (Pakistan).

20. To adopt measures ensuring the right to liberty of residents in elderly care facilities in Germany and to vigorously curb the scope of freedom-restricting measures in these facilities;

21. Regarding persons with psychosocial disabilities, to establish a practice of psychiatric care nationwide that is based on voluntary participation of the persons concerned and to strongly consider the voices of the persons concerned in the reform process;

22. To protect women with disabilities against violence:

- Ensure nationwide access to barrier-free protection and support facilities for women affected by violence; and
- Ensure effective protection and complaint mechanisms to women that live in specialized facilities;

23. To expressly prohibit irreversible surgeries on intersexual children incapable of consenting, when a surgery does not serve a life-saving purpose, and to create the conditions for qualified advice for parents and the persons concerned;

25. To strengthen the respect for, and protection of economic, social, and cultural rights:

- Align national government reporting and lawmaking in the economic and social fields with economic and social rights;
- Promote their justiciability through the training of judges and lawyers; and
- Ratify the Optional Protocol to the ICESCR (*see* Recommendation No. 8);

26. To align the German Asylum and Residence Law concerning the treatment of unaccompanied minor refugees with the Convention on the Rights of the Child (CRC);¹⁰

27. To review the compatibility of German law with the CRC in a comprehensive and systematic manner and to ensure the monitoring of the CRC through an independent body;

28. To comprehensively improve human rights education:

- Broaden and intensify human rights education in schools;
- Ensure in-depth treatment of international human rights law throughout legal training;
- Intensify human rights education including the practical implementation of human rights within the training of police, security bodies, and prison authorities; and
- Ensure human rights education for medical and care personnel, as well as other social professions;

And for this purpose:

- Develop obligatory curricula, practice-oriented teaching content, and standards of human rights education;
- Educate teaching personnel; and
- Create corresponding competence centers at universities and teacher training centers;

⁹ Recommendation No 23 (Netherlands and Dschibuti).

¹⁰ Recommendation No 24 (France).

29. To further develop the national action plan regarding the UN Convention on the Rights of Persons with Disabilities so that it will result in a comprehensive, rights-based, and result-oriented instrument;

30. That the Conference of the Ministers of Education and Cultural Affairs takes a leadership role in the realization of the right to inclusive education;¹¹

31. To safeguard the voting rights of persons with disabilities:

- Abolish the laws that exclude persons under guardianship in all matters and those who live in forensic institutions following a criminal court decision; and
- Conduct barrier-free elections, and to provide necessary individual support for persons with disabilities.

32. To legally restore effective judicial review against the deportation in “safe third countries”;

33. To safeguard the rights of asylum seekers and refugees:

- Significantly decrease the maximum duration of pre-deportation custody;
- Generally prohibit pre-deportation custody orders against persons belonging to particularly vulnerable groups, such as unaccompanied minors;
- Create a legal and *de facto* framework so that traumatized and psychologically ill persons are not detained, but instead receive necessary treatment;
- More strongly prevent human rights violations during deportations;

34. To safeguard undocumented migrants’ rights to healthcare and effective judicial protection by abolishing the public healthcare services’ and courts’ duty to transfer undocumented migrants’ personal data to the Aliens Department and law enforcement agencies;¹²

35. To safeguard the rights of victims of human trafficking:

- Create regulations that will grant these persons a temporary residence permit on the basis of criteria consistent with human rights; and
- Align the public compensation system for victims of crimes with the offense of human trafficking;

36. To safeguard the human rights orientation of development cooperation:

- Undertake human rights impact assessments of projects of bilateral development cooperation;
- Develop standards for these assessments that will satisfy human rights requirements;
- Also apply these standards to the implementation of all ODA-eligible projects; and
- Ensure that the competent Ministry exercises control over the State executing agencies;

¹¹ Recommendation No 34 (New Zealand).

¹² Recommendation No 38 (South Africa, Canada and Pakistan).

37. To immediately implement the International Aid Transparency Initiative (IATI) self-commitments by submitting an implementation plan;

38. To set up a complaint mechanism in Germany for persons are affected by bilateral development projects.