

Joint NGO Submission
– UPR on the FEDERAL REPUBLIC OF GERMANY –
02 October 2012

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The German CRPD-Alliance (BRK-ALLIANZ) associates itself to the issues we focus on the submission while presenting its own submission.

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FORUM MENSCHENRECHTE – a coalition of 51 German human rights NGOs, founded 1994 in the aftermath of the Vienna Conference – submits the joint report to the Office of the High Commissioner for Human Rights on the situation of human rights in the FEDERAL REPUBLIC of GERMANY to be considered for the UPR in May 2013.

Studies quoted in the text are enlisted with full title and venue of publishing at the references. Some selected acronyms are identified also at the end of the text.

Volume of Part I and II: 5,517 words.

I. Promotion and Protection of Human Rights on the ground

I.1. General remarks

1. Germany is State party to most of the core international human rights standards with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The German Government continues to refuse ratification.

2. Nominally, the German Government is open for consultation with civil society stakeholders. However, the consultation on the implementation of the first UPR was poor. On specific issues such as social affairs, police matters, or discrimination there was barely any consultation. A midterm review was never organised.

I.2. Implementation of international human rights obligations

3. We appreciate that Germany ratified the International Convention for the Protection of All Persons from Enforced Disappearance in September 2009 and also recognised the competence of the Committee under articles 31 and 32 in June 2012. We regret that enforced disappearance is still not codified as an offence under the German Criminal Code.

4. Germany signed the Optional Protocol (OP) to the Convention on the Rights of the Child in a communications procedure in February 2012 and adopted a draft ratification law but never finalised it. Equally, the Government withdrew its reservations and declarations to CRC but failed to implement this decision. In particular, children seeking asylum are still treated as adults (over the age of 16) without the necessary legal support.

5. Germany did not ratify the OP to ICESCR, nor the UN Convention against Corruption. Germany agreed to make the ICCPR fully applicable to persons subject to its jurisdiction both at home and abroad, but has not fully implemented this pledge.

6. CESCR urged the German Government in May 2011, as did CEDAW in February 2009, to ensure the effective applicability of the provisions of the Covenants in national courts (E/C.12/DEU/CO/5 para. 7; CEDAW/C/DEU/CO/6 paras. 11, 12). The German Federal Constitutional Court has ruled that UN treaty standards on human rights must be taken into account when determining the fundamental rights and rule of law in Germany (case no. 2 BvR 882/09, March 2011). However, the German government does not sufficiently meet these conclusions.

I.2.1. Non-equality, discrimination, racism

7. Germany has established the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) together with the Anti-Discrimination Office (*Antidiskriminierungsstelle*; ADS) at federal level in 2006. The effectiveness of ADS is still profoundly limited. There is barely any cooperation with anti-discrimination organisations or independent women's organisations, contrary to the recommendation of the Special Rapporteur on contemporary forms of racism in 2010 (A/HRC/14/43/Add.2 para. 77.c). The equality strategy of gender mainstreaming has been abandoned. The UN zero-tolerance policy

on Sexual Exploitation and Abuse (SEA) and UN Security Council Resolution 1325 are not implemented in a substantial manner.

8. Women continue to face discrimination in matters of employment and income. They earn an average of 23 per cent less than men (average gross income per hour). This situation persists since 2006 (report of the Federal Office for Statistics, March 2012). Policies on the labour market, social security, health, welfare, and taxation have increased structural discrimination against women, and their risk of impoverishment. Women hold nearly 70 per cent of jobs in the low-wage sector which do not provide for a proper livelihood. Migrant women are disproportionately affected.

9. Despite the introduction of the Act to Revise the Registered Partnership Law (*Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts*) in 2004 and despite recent judgements by the Constitutional Court, same-sex partnerships still face discrimination, especially in tax and adoption matters.

10. Regarding the fight against racism and racist discrimination, decision makers and society tend to see racist incidents through the lens of right wing extremism. This narrow understanding prevents systematic, long-term and human rights centred approaches countering e.g. racist attitudes among the general public (report of the Special Rapporteur on contemporary forms of racism in 2010; A/HRC/14/43/Add.2 para. 78), held by up to half of the German population (FES 2011).

11. Germany does not comprehensively monitor and document crimes committed with racist motivations. Official numbers differ significantly from figures compiled by organisations supporting victims, and there is no official comment by the German Government that addresses the concluding observations by CAT in December 2011 (CAT/C/DEU/CO/5 para. 33). Germany continues to reject the establishment of a centralised database on qualitative and quantitative data provided by victims or witnesses of racist or xenophobic incidents. While incitement to racist hatred is criminalised in § 130 of the Criminal Code in terms of incitement of the people (*Volksverhetzung*), sanctions for hate crimes or aggravating circumstances of ethnic, racial or religious hatred in criminal matters are entirely insufficient. Members of black minority groups in particular are especially vulnerable to serious or violent manifestations of racism. When underground right wing extremists killed nine migrants over the last decade, the victims' families were stereotyped and treated as suspects. Their marginalisation continues, following the perpetrators' self exposure in late 2011.

12. In May 2012, the Administrative Court of Koblenz justified racial profiling by acquitting policemen who had stopped and searched a black student of German nationality because of his skin colour. The Government stated that 'a situation-based approach that draws from the experience of policemen' was not reproachable (German Parliament (Bundestag), Drucksache 17/10007, question No. 2).

13. Germany did not participate with the Durban follow-up conference in 2011, considering it contaminated by anti-Semitic interests. There is no action plan, no specific program nor any legislative or administrative initiative known which would have responded to the number of recommendations on racism during the UPR in 2009.

14. Germany refuses to establish dual citizenship, or to review laws and policies which prohibit religious symbols or clothing for teachers and civil servants, inconsistent with CEDAW and ICERD (according to CAT/C/DEU/CO/5 para. 33; Special Rapporteur on contemporary forms of racism, A/HRC/14/43/Add.2 para. 77.a).

I.2.2 Refugees and migrants

15. CAT has requested the German Government to provide, by 25 November 2012, follow-up information on (a) regulating and restricting the use of physical restraints in all establishments, (b) limiting the number of detained asylum-seekers including the ‘Dublin cases’ and ensuring mandatory medical checks of detained asylum seekers, (c) exercising jurisdiction in accordance with Article 5 of the Convention and providing information about the remedies, including compensation provided to Khaled El-Masri, and (d) ensuring that members of the police in all federal States (*Länder*) can be effectively identified and held accountable when implicated in ill-treatment (CAT/C/DEU/CO/5 paras. 16, 24, 28, 30, 39).

16. CAT expressed concern about the number of asylum seekers held in custody for deportation during the ‘Dublin-II procedure,’ the EU procedure to identify the Member State responsible for examining an asylum application (CAT/C/DEU/CO/5 para. 24, 25). Often, asylum seekers are detained by the Federal Police near the border. Only after detainment is their application for asylum forwarded to the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*; BAMF). Reports claim that more than half of the detainees in such centres are asylum seekers.

17. In case of deportation, the authorities are obliged to assess whether the deportee is able to travel. Severe conditions such as Posttraumatic Stress Disorder may be a hindrance. In practice, this is often not done, even where disease indicators are present. The requirements for obtaining a negative health certificate by the deportee have been continuously aggravated. CAT recommended to ensure mandatory medical checks and systematic examination of mental illnesses or traumatisations of all asylum seekers including the ‘Dublin cases’ by independent and qualified health professionals (CAT/C/DEU/CO/5 para. 24.b). Instead, certifications are frequently issued by physicians closely cooperating with the authorities.

18. The Law on Benefits for Asylum Seekers (*Asylbewerberleistungsgesetz*), intended to cover basic needs, has been declared unconstitutional by the Federal Constitutional Court in July 2012. The Court found that current standards are evidently insufficient for guaranteeing the minimal humane existence. The law also favours benefits in kind (e.g. parcels with clothes, food etc.) or vouchers, limits health care to emergency cases, obliges asylum seekers to live in camps, and restricts their mobility. During the first year, asylum seekers are not allowed to work, and a bureaucratic procedure prevents many from getting permission afterwards. These restrictions are incompatible with the human right to social security in ICCPR (art. 9) and CRC (art. 26.1). The principle of benefits in kind contradicts the human rights principle on enabling an autonomous decision and living in dignity.

19. Unaccompanied minors up to the age of 18 often see their testimonies declared ‘unreliable.’ Minors above the age of 16 are treated as adults and not provided with separate and protected accommodation or similar child related provisions, as required by Art. 3, 6, 12 of CRC and recommended by the Special Rapporteur on contemporary forms of racism (A/HRC/14/43/Add.2 para. 84) and by CAT (CAT/C/DEU/CO/5 para. 27). This is due to the

imprecision of age assessment as well as to the State's interest in migration control. Age assessment requires a specific injunction and the possibility to appeal the decision. Traumatized children (including former child soldiers and other victims of armed conflicts) are often not identified for want of a clearing process and do not receive appropriate treatment in psycho-social counselling centres.

20. At several airports, BAMF (Bundesamt für Migration und Flüchtlinge) conducts the so-called 'airport procedure' under section 18.a of the Law on Asylum Procedure, which applies to asylum-seekers arriving from certain countries or without a valid passport. They are prevented from entering German territory and have to apply for asylum in the transit area. Appeals against refusals have to be filed with an administrative court within just three days, *de facto* restricting the access to a lawyer. This high-speed procedure is highly prone to errors in the decision making. Thus, CAT recommended to exclude unaccompanied minors from the airport procedure (CAT/C/DEU/CO/5 para. 27.a). Forum Menschenrechte considers the entire airport procedure as fault prone and demands its abolition.

21. Despite Art. 8.6 of the EU Returns Directive (2008/115/EC), only three airports in Germany dispose of a monitoring system for forced deportations. These systems and the staff are mainly financed by private foundations, churches and ecclesiastical welfare organisations. Forum Menschenrechte demands that such monitoring systems are established at every airport from which deportations are conducted, and that they are publicly funded.

22. It is estimated that between 500,000 and 1 million foreigners are living in Germany without legal status. Predominantly, they are migrants working under precarious, unhealthy, unsafe and abusive conditions (e.g. in the construction sector, as domestic workers, or in the sex industry). During UPR 2009, it was repeatedly recommended that undocumented migration should not be criminalised or stigmatised. CESCR expressed concern in 2011 that persons with a migration background, with or without status, continue to face serious obstacles in the enjoyment of their rights to education and employment (E/C.12/DEU/CO/5 para. 12). In 2007, the Special Rapporteur on Education requested legal and factual provisions affording undocumented migrants the protection of the human rights system (A/HRC/4/29/Add.3).

23. In practice, undocumented migrants cannot sue their employers without risking deportation. By law, all public institutions except schools are required to report the identity of undocumented migrants to the authorities, contrary to Art. 12 ICESCR and General Comment No. 14, paras. 12, 43. Medical treatment is provided by non-state institutions, such as churches or NGOs, but this leads to gaps particularly in relation to children, pregnancies and child birth.

I.2.3 Police, excessive use of force

24. Reports document excessive use of force and ill treatment by law-enforcement officials, but there is no nation-wide statistical data available, although Germany decided to compile new statistics on crimes including ill-treatment by the police (CAT/C/DEU/CO/5 para. 33). No substantial efforts are known to have been made to prevent law enforcement officers from using excessive force, or to establish independent bodies for investigating complaints of ill-treatment.

25. In some federal States, police officers wear name tags or numbers, but the large majority of States as well as the national Government deny such transparency, recommended by CAT in 2011 (CAT/C/DEU/CO/5 para. 30). This practice has hindered investigations against police officers allegedly implicated in ill-treatment or excessive use of force during demonstrations, often countered by (successful) civil disorder charges. A study by the Berlin Police estimates that around 10 per cent of cases of alleged ill-treatment by the police could not be resolved or prosecuted because of lack of identification.

26. CAT has expressed concern that the National Agency for the Prevention of Torture – comprised of the Federal Agency for the Prevention of Torture and the Joint Commission of the Federal States – lacks sufficient staff, financial and technical resources (CAT/C/DEU/CO/5 para. 13, 14). The President of the Joint Commission resigned in August 2012 because of these insufficiencies. Places of detention can currently be visited only once in four years, preventing adequate discharge of the Agency's monitoring mandate. CAT was also concerned that the Joint Commission is obliged to announce its visits to places of detention in order to gain access.

I.2.4 Children and Human Rights Education

27. When withdrawing its reservations to CRC, the German Government did not adapt several national laws incompatible with CRC's guiding principle, the best interest of the child. This includes the Residence Act and the Law on the Benefits for Asylum Seekers. In at least one federal State (States have the jurisdiction on education), children without legal residence permit still do not enjoy the right to education, because it is left unclear whether headmasters have to report them to the authorities.

28. Most observations of the UN Special Rapporteur on the right to education on his mission to Germany in 2006 remain valid, because very little has changed. In spite of the ratification of UN CPRD, very few disabled children are included in ordinary schools. The high correlation between social/migrant background and educational achievement of students persists, the selective and *de facto* discriminating multi-track school system is intact.

29. Most federal States will not have sufficient facilities to meet the legal entitlement to Early Childhood Care and Education (ECCE), effective from 2013 for all children under the age of three. The access to ECCE is restricted for children with an unsure status of residence, children with disabilities and those from socially disadvantaged families.

30. There is no comprehensive human rights education in the curricula and educational practice in any of the 16 German federal State school systems, as demanded by ICESCR and Resolution A/RES/66/137. Curricula mostly contain abstract references to history and treaties, human rights in practice are not discussed as those of the students. The CRC provision that human rights should be actively promoted in schools and ECCE institutions is not reflected in any standard-setting text. Human rights are not sufficiently well articulated as a focus in the training of teachers and ECCE professions. Teacher training on inclusive education has been introduced only at very few universities following the ratification of UN CPRD.

31. Human rights only play a marginal role in the training of police, military, and similar professional groups, in contrast to the demands by the World Programme for Human Rights

Education, CAT and CESCR. Since the publication of the only authoritative study in 2007, no changes are known to have taken place.

I.2.5 Gender

32. On violence against women, the available data on domestic and sexual violence – such as homicide, forced marriage, and violence in institutions as psychiatric institutes – reveal a concerning picture. A 2012 study of the Ministry on Families, Seniors, Women and Youth (BMFSFJ) based on figures from 2004 shows that one out of four women between the age of 16 and 85 experienced violence by husbands or male partners. According to the Federal Criminal Police Office, 154 in 313 women killed in 2011 were victims of their male partners (Bundesministerium des Innern 2012, p. 27). Another 2012 study of the BMFSFJ on violence against women with disabilities observes high rates of sexual violence suffered by disabled women and girls during childhood and adolescence, i.e. 20-34 per cent (the average rate is around 10 per cent), of which 58-75 per cent include physical attacks. Women with psychological impairment and living in special homes are suffering most. Despite the Violence Protection Law of 2001 (*Gewaltschutzgesetz*), domestic violence still does not constitute a discrete criminal offence (CESCR, E/C.12/DEU/CO/5 para. 23).

33. There are about 360 shelters for women and a number of consultant offices, but their financial survival is neither regulated nor guaranteed at federal level, nor are they properly equipped to attend to women with disabilities, as recommended by CEDAW in 2009 (CEDAW/C/DEU/CO/6, para. 44); see also Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011), Art. 18, 23.

34. CEDAW recommended to consider domestic violence convictions in decisions on custody and visits (CEDAW/C/DEU/CO/6, para. 42). The Council of Europe Convention obliges the State party to “take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.” (Art. 31.2). These provisions are barely met.

35. Women without residence status cannot access protection without running the risk of being deported, and women shelters are ill equipped for attending to them. In 2011, according to the 2012 Federal Government report on women shelters, about 9,000 women were denied shelter for lack of resources. A 2012 revision of the Residence Act compels married female migrants to remain in a violent marriage for longer, by extending the minimum marriage period from two to three years before granting an independent right to reside.

36. The loss of the right of residents to return after six months abroad (s. 51 of the Residence Act) negatively affects women and girls who were forced to marry abroad. Forum Human Rights recommends to extend the return period to three years, favouring a revocation of this paragraph.

37. In May 2011, CESCR addressed the low representation of women in decision-making positions, both in the public and private sectors, and the income gap despite the principle of equal pay in German legislation. The Committee also stated that insufficient child care facilities and persisting gender stereotypes impede women’s equal enjoyment of the right to work (E/C.12/DEU/CO/5 paras. 15, 16).

38. In 2009, CEDAW urged the German Government to start a dialogue with intersexed and transsexual persons to better protect their human rights (CEDAW/C/DEU/CO/6, paras. 61, 62). Unlike transsexuals, who wish to change their sex, intersexed bodies defy the cultural binary of male or female. To this day, intersexed individuals are commonly pathologised, forced to register as male or female, and fitted into a standardised sex by way of irreversible medical surgery. This routinely includes the removal of the gonads at or before the age of two, feminising the body development and requiring lifelong hormone substitution, often inadequate and, with serious physical and psychological side-effects, including depression, kidney failure, osteoporosis, obesity, and inability to work. In 2011, CESCR noted that transsexual and intersexed persons are often considered to be mentally ill which implied discrimination by State policies, legislation or otherwise, violating their sexual and reproductive health rights (E/C.12/DEU/CO/5, para. 26).

39. CAT found that the medical treatment of intersexuals constitutes inhuman and degrading treatment (CAT/C/DEU/CEO/5, para. 20). In 2012, the German Ethics Council finally published its report, challenging the exclusiveness of male or female sex registration and addressing human rights violations by surgery. While the situation of transsexuals was somewhat improved, the Government has yet to protect intersexuals against surgery. The abusive practice continues and claims for damages are being rejected.

I.2.6 Human trafficking

40. Germany acknowledges human trafficking as a human rights violation in accordance with international conventions such as CEDAW (Art. 6), CRC (Art. 35), or the Protocol to Prevent, Suppress and Punish Trafficking in Persons. The ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) by Germany is imminent. By April 2013, Germany has to implement the EU Anti-Trafficking Directive 2011/36/EU of April 2011. In the framework of implementing the EU Returns and Sanctions Directives (2008/115/EC and 2009/52/EC), Germany introduced changes in the Residence Act which affect trafficked persons. The “reflection period” for trafficked persons has been extended from one to three months. The new section 25.4.b of the Residence Act provides for a residence permit for non-EU nationals who have been employed illegally and subject to exploitation for the duration of proceedings, if they cooperate with law enforcement and this is relevant to the criminal proceedings. The permit can be extended for the purpose of claiming unpaid wages.

41. However, the Residence Act does not provide for adequate treatment of victims of human trafficking. Trafficked non-EU nationals who choose not to cooperate with law enforcement or whose cooperation is not needed have to leave the country, stripping them of access to support and protection mechanisms; the same applies after the conclusion of proceedings. The extension of the permit for the purpose of claiming unpaid wages now only applies to illegally employed persons thus excluding trafficked persons who have been employed legally. It should be applicable to all victims of trafficking, not only to those employed illegally. Laws and measures against trafficking in Germany are still predominantly focused on promoting law enforcement instead of victim protection and human rights. The Special Rapporteur on trafficking in persons has not received an invitation.

I.2.7 Poverty

42. The official poverty line in Germany is at 11,278 Euros income per year. An average of about 15.6 per cent of the German population is endangered by poverty in 2011, compared to just 13.9 per cent in 2006. Single households are impacted at a rate of 30 per cent, single parents at 43.0 per cent and unemployed individuals at 70.3 per cent. According to a 2012 UNICEF study, about 1.2 million children are exposed to poverty conditions in Germany. This implies less access to education, vocational training, and health service, further social stigmatisation and exclusion. The income disparity is high: the top 20 per cent generate 4.5 times more income than the lowest ranking 20 per cent. Many cannot sustain themselves by their low-income jobs and need additional subsidies from the government.

43. Food insecurity in Germany has led to an increasing number of food banks, now near 900. Formerly only found in bigger cities, they are now being set up in smaller cities and communities too. Food banks now sustain approximately 1.5 million people, 30 per cent of which are children and youth, 53 per cent adults and 17 per cent older people.

44. In the Eastern federal States, there is an increasing number of older men born between 1942 and 1952, who run the risk of receiving pensions below 600 Euro per month (statistics of the Federal Office on Pensions). Studies foresee the poverty risk for this group as increasing from 13.4 to 23.6 per cent in the year 2023.

1.2.8 Social security

45. CESCR stated in its Concluding Observations (2011) that the integration of East and West still needs to be completed. It recommended to address regional disparities in employment between the Western and Eastern federal States, and to establish employment strategies and plans of action targeting regions where unemployment is most severe (E/C.12/DEU/CO/5 para. 14). The unemployment rate in the Eastern States is still double the rate in Western States.

46. CESCR further addressed the high unemployment rate among persons with disabilities, criticising that the situation has not been effectively taken into consideration by the Government, and expressing concern over the lack of reliable data (E/C.12/DEU/CO/5 para. 17). CESCR recommended to disseminate the Concluding Observations to all levels of German society (E/C.12/DEU/CO/5 para. 38). According to our observations, to date this has been only nominally implemented.

1.2.9 International cooperation

47. In 2011, CESCR expressed concern that the policy-making process on investments by German companies operating abroad does not give due consideration to human rights (E/C.12/DEU/CO/5 para. 9). The Committee also noted the adverse impact of Germany's agriculture and trade policies on the enjoyment of the right to an adequate standard of living and particularly on the right to food in the receiving countries, due to the export of subsidised agricultural products to developing countries. The Committee urged the Government to fully apply a human rights-based approach, also to subsidies, and recommended that development cooperation policies should not result in the violation of the ICESCR (E/C.12/DEU/CO/5 para. 11).

48. CESCR was also concerned that Germany's development cooperation program has supported projects reportedly resulting in the violation ICESCR, such as the land-titling project in Cambodia (E/C.12/DEU/CO/5 para. 11). The German Ministry for Economic Cooperation and Development (BMZ) had publicly declared that human rights will become a major factor in development cooperation related to the land sector in Cambodia. In 2011, BMZ and the Royal Government of Cambodia agreed to assess progress in several areas of land reform, including human rights, and BMZ commissioned a human rights assessment in 2012. It would be important to base the further negotiations between BMZ and the Cambodian partners on the findings and recommendations of this assessment. Human rights concerns expressed by civil society organisations especially with regard to vulnerable groups should also be addressed.

49. In May 2011, BMZ launched its new human rights policy. It states that "German development policy will ensure that bilateral development programmes and projects are compatible with human rights standards and will further develop the requisite instruments, such as appropriate procedures for human rights risk assessment." These procedures should be implemented promptly. Forum Menschenrechte and other civil society organisations welcome the initiative of BMZ to consider setting up a human rights complaint procedure for German development cooperation.

50. While the new UN Guiding Principles (UNGP) on Business and Human Rights have sparked intense debate in Germany around the voluntary aspects of corporate social responsibility (pillar II of the UNGP), the Government has not paid sufficient attention to pillars I (State obligations) and III (remedies). Rather, Germany is currently blocking progressive approaches, such as the initiative of the European Commission to establish reporting obligations for mining companies on their payments to governments (similar to the US Dodd-Frank Act). Furthermore, Germany strives to narrow down the US Alien Tort Claims Act, one of the few instruments to hold companies to account for extraterritorial human rights violations.

II. Challenges and recommendations

51. Germany should ratify the Optional Protocol to ICESCR, the Optional Protocol to CRC on a communications procedure, the UN Convention against Corruption, and the UN Convention on Migrant Workers.

52. The Government should make the ICCPR fully applicable to persons subject to its jurisdiction in situations where its troops or police forces operate abroad.

53. The German Criminal Code should be adapted to ensure that enforced disappearance constitutes a separate offence, according to Article 4 of ICCPED.

54. The German Government should take more targeted action against gender role stereotypes and promote non-discriminatory, egalitarian and partnership-based role models. The Government should further fully ensure the rights of registered partnerships and rainbow families.

55. The Anti-Discrimination Office (ADS) should work comprehensively on both federal and State levels. Gender-differentiated research and gender-sensitive evaluation of studies should be encouraged and access to meaningful data facilitated; on matters such as gender equality, levels of full and part time employment, income levels by sector and gender, discrimination based on race, ethnic origin, age, religion and beliefs, disabilities, and sexual

orientation. Gender mainstreaming should be re-implemented and the UN zero-tolerance policy as well as Resolution 1325 implemented.

56. The Government should promote better protection and relief for the victims of domestic and sexual violence under civil and criminal law. Adequate training for relevant professionals (law enforcement, judiciary, medical and care personnel) should be ensured, paying special attention to cultural issues, disabilities, and victims of trafficking.

57. The German Government should ensure at the federal level that women shelters and consultant offices receive adequate financial support in order to be able to attend to all women, including women with disabilities and migrant women irrespective of their legal status.

58. The German Government should take urgent measures in relation to intersexed people to stop harmful medical practice immediately, train medical staff on gender variance, and compensate victims.

59. The German Government should adopt a comprehensive definition of racism in German law and adopt a new National Plan of Action which will be appropriate to improve the situation of victims of racism. Such a plan of action should be established through consultations with all relevant stakeholders, in particular with the black community and minorities.

60. Germany should explicitly introduce racist motivation as an aggravating circumstance in the Criminal Code, take the necessary measures to guarantee due attention to this factor in the course of investigations, and ensure specific anti-racist training of police officers, prosecutors and judges.

61. Germany should establish a competent expert body with the power to monitor, document, investigate and raise awareness on racist discrimination.

62. The German Government should review and revise school and educational materials in order to remove racist and gender stereotypes and instead focus on the positive effects of social and cultural diversity for the German society.

63. Germany should adjust the methodology of national statistics in order to ensure that all reported crimes with racist motivation are documented; improve training of investigators and law enforcement officials such that they recognise and counter own racist pre-perceptions and that they may recognise hate crimes; take the necessary legal and administrative measures to ensure that racial profiling is not practised.

64. The CRC and its OPs should have priority in relation to asylum and immigration obligations. Refugee children should not stay in detention or deportation camps and should not be subject to forced deportation.

65. Unaccompanied minors up to the age of 18 should be allowed to stay in separate and protected accommodation. Children in refugee families and unaccompanied minors should be supported immediately after entry into the country. Traumatized children must be identified in a screening process and receive immediate treatment in psycho-social counselling centres.

66. A special protection status should be introduced for all unaccompanied children who cannot return but will not be granted asylum or subsidiary protection, guaranteeing them the right to education, access to the youth welfare system and to legal guardianship. Minors, even without legal status, should have the right to compulsory school attendance and to vocational training, as well as to adequate medical treatment without fear of being deported. Refugee families with children should not be forced to stay in cramped housing conditions for longer than 6 months.

67. The German Government should stop the voluntary recruitment and use of children under the age of 18 in its state armed forces (*Bundeswehr*).

68. More legal opportunities in terms of asylum and migration need to be provided in order to improve the access to EU territory. The protection of the family unit should have priority if the question of deportation of a family member arises. Freedom of movement should be permitted also before being accepted as refugee. Traumatized and ill refugees should be treated by independent professionals.
69. Germany should abolish the entire airport asylum procedure.
70. Germany should revoke the Law on Benefits for Asylum Seekers (*Asylbewerberleistungsgesetz*).
71. All relevant professionals and institutions dealing with undocumented migrants should be exempted from criminal prosecution for their assistance, including teachers, nurses, hospitals, schools, pre-schools, kindergarten, youth welfare offices.
72. All children should have access to unlimited health care and primary and secondary education, irrespective of the legal status. The rules for naturalisation should be revised and extended, particularly allowing dual nationality.
73. A national statistical database should be established on alleged cases of ill-treatment by law enforcement officials. Charges against police on excessive use of force should not be countered with charges by the police against the person that has alleged the ill-treatment.
74. Victims of human trafficking should be entitled to residence permits based on humanitarian grounds and irrespective of whether they collaborate with law enforcement. The victims should receive financial support for subsistence according to their specific needs. Their access to claiming compensation and unpaid wages should be improved. The Special Rapporteur on trafficking on persons should be invited to a country visit.
75. The German Government should ensure that human rights impact assessments are carried out in all cases in which export credits or investment guarantees are granted. The Government should ensure that clients of export credit agencies are required to perform adequate due diligence on potential human rights impacts. Germany should prohibit arms export, military aid and police aid if these predictably contribute to violations of human rights or international humanitarian law.
76. The German Government should actively support the implementation of the “UN-Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements” (Special Rapporteur on the Right to Food) at the EU level. Such assessment should systematically be carried out on all EU trade and investment agreements, paying due attention to the effects of the EU Common Agricultural Policy.
77. The German Government should develop instruments, such as appropriate procedures for human rights risk assessment, for bilateral development cooperation.
78. The German Government should progressively implement the UN Guiding Principles and establish a national action plan with the participation of all relevant stakeholders.

References

Bundesministerium für Familie, Senioren, Frauen und Jugend (2010): Gemeinsam gegen häusliche Gewalt. Kooperation, Intervention, Begleitforschung. Forschungsergebnisse der Wissenschaftlichen Begleitung Interventionsprojekte gegen häusliche Gewalt (WiBIG). Berlin, accessible via [http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Gemeinsam-gegen-h_C3_A4usliche-Gewalt-](http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Gemeinsam-gegen-h_C3_A4usliche-Gewalt-WiBIG,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf)

[WiBIG,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf](http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Gemeinsam-gegen-h_C3_A4usliche-Gewalt-WiBIG,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf)

Bundesministeriums für Familie, Senioren, Frauen und Jugend (2012): Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland. Eine repräsentative Untersuchung im Auftrag des Bundesministeriums für Familie, Senioren, Frauen und Jugend. Bielefeld, accessible via [http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Lebenssituation-und-Belastungen-von-Frauen-mit-Behinderungen-](http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Lebenssituation-und-Belastungen-von-Frauen-mit-Behinderungen-Kurzfassung,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf)

[Kurzfassung,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf](http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Lebenssituation-und-Belastungen-von-Frauen-mit-Behinderungen-Kurzfassung,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf)

Bundesministeriums für Familie, Senioren, Frauen und Jugend (2012): Bericht der Bundesregierung zur Situation der Frauenhäuser, Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder. Berlin

Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (2011): Menschenrechte in der deutschen Entwicklungspolitik. BMZ-Strategiepapier, Berlin-Bonn

Bundesregierung der Bundesrepublik Deutschland (2012): Entwurf eines Gesetzes zur Änderung personenstandsrechtlicher Vorschriften (Personenstandsrechts-Änderungsgesetz - PStRÄndG). Bundesrat Drucksache 304/12. Berlin, accessible via http://www.bundesrat.de/cln_101/nn_1934482/SharedDocs/Drucksachen/2012/0301-400/304-12,templateId=raw,property=publicationFile.pdf/304-12.pdf

Deutsche Rentenversicherung/ Bundesministerium für Arbeit und Soziales (2007): Alterssicherung in Deutschland (ASID). Berlin, Tab. 6-3

Deutscher Ethikrat (2012): Intersexualität. Stellungnahme. Berlin, accessible via <http://www.ethikrat.org/dateien/pdf/stellungnahme-intersexualitaet.pdf>

Friedrich-Ebert-Stiftung [ed.] (2011): Die Abwertung der Anderen. Eine europäische Zustandsbeschreibung zu Intoleranz, Vorurteilen und Diskriminierung. Forum Berlin, accessible via <http://library.fes.de/pdf-files/do/07905-20110311.pdf>

German Institute for Human Rights [ed.] (2007): Menschenrechtsbildung für die Polizei. Berlin, Accessible via http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/studie_menschenrechtsbildung_fuer_die_polizei.pdf

Bundesministerium des Innern (2012): Die Kriminalität in der Bundesrepublik Deutschland. Polizeiliche Kriminalstatistik für das Jahr 2011. Accessible via http://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2012/PKS2011.pdf?__blob=publicationFile

Institut für Wirtschaftsforschung Halle – IWH [ed.] (2010): Armut im Alter – Ursachenanalyse und eine Projektion für das Jahr 2023. IWH-Diskussionspapiere Nr. 8, Halle (Saale)

State of Rhenania-Palatinate (Rheinland-Pfalz), Press release 11/2012, accessible via <http://www.mjv.rlp.de/icc/justiz/nav/613/broker.jsp?uMen=613ee68a-b59c-11d4-a73a-0050045687ab&uCon=8f40ae69-1515-6317-84b1-f84077fe9e30&uTem=aaaaaaaa-aaaa-aaaa-000000000042>

UNICEF Innocenti Research Centre (2012): Measuring child poverty. New league tables of child poverty in the world's rich countries. Innocenti Report Card 10, Florence, accessible via http://www.unicef-irc.org/publications/pdf/rc10_eng.pdf

Selected Acronyms

ADS	Anti-Discrimination Office
BAMF	Federal Office for Migration and Refugees
BMFSFJ	German Ministry for Family, Senior Citizens, Women and Youth
BMZ	German Ministry for Economic Cooperation and Development
ECCE	Early Childhood Care and Education
ECFR	European Charter on Fundamental Rights
ECHR	European Convention on Human Rights