

# Germany

## Mid-term Implementation Assessment



**UPR-INFO.ORG**  
PROMOTING AND STRENGTHENING THE UNIVERSAL PERIODIC REVIEW

## Introduction

### 1. Purpose of the follow-up programme

*The second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the development of the human rights situation in the State under review.*

A/HRC/RES/16/21, 12 April 2011 (Annex I C § 6)

The Universal Periodic Review (UPR) process takes place every four years; however, some recommendations can be implemented immediately. In order to reduce this interval, we have created an update process to evaluate the human rights situation two years after the examination at the UPR.

Broadly speaking, *UPR Info* seeks to ensure the respect of commitments made in the UPR, but also more specifically to give stakeholders the opportunity to share their opinion on the commitments. To this end, about two years after the review, *UPR Info* invites States, NGOs and National Institutions for Human Rights (NHRI) to share their comments on the implementation (or lack thereof) of recommendations adopted at the Human Rights Council (HRC).

For this purpose, *UPR Info* publishes a Mid-term Implementation Assessment (MIA) including responses from each stakeholder. The MIA is meant to show how all stakeholders are willing to follow and implement their commitments: civil society should monitor the implementation of the recommendations that States should implement.

While the follow-up's importance has been highlighted by the HRC, no precise directives regarding the follow-up procedure have been set until now. Therefore, *UPR Info* is willing to share good practices as soon as possible and to strengthen the collaboration pattern between States and stakeholders. Unless the UPR's follow-up is seriously considered, the UPR mechanism as a whole could be affected.

The methodology used by UPR Info to collect data and to calculate index is described at the end of this document.

Geneva, 30 January 2012

## Follow-up Outcomes

### 1. Sources and results

All data are available at the following address:

<http://followup.upr-info.org/index/country/germany>

We invite the reader to consult that webpage since all recommendations, all stakeholders reports and the unedited comments as well can be found at that very internet address.

6 NGOs were contacted. Both the Permanent Mission to the UN in Geneva and the State were contacted. The domestic NHRI was contacted as well.

4 NGOs responded to our enquiry. The State under Review did not respond to our enquiry. The domestic NHRI decided not to participate to the Programme.

*IRI*: 28 recommendations are not implemented, 32 recommendations are partially implemented, and 10 recommendations are fully implemented. No answer was received for 0 out of 72 recommendations.

### 2. Index

Hereby the issues which the MIA deals with:

rec. n°	Issue	page	IRI
1	Treaty bodies, Racial discrimination,	page 6	partially impl.
2	Racial discrimination	page 6	-
3	Migrants, International instruments,	page 6	not impl.
4	Migrants, International instruments,	page 6	not impl.
5	Rights of the Child, Right to education,	page 7	not impl.
6	Women's rights	page 7	not impl.
7	Migrants, International instruments,	page 6	not impl.
8	Torture and other CID treatment, International instruments,	page 7	-
9	Treaty bodies, Racial discrimination,	page 8	not impl.
10	Development	page 8	not impl.

rec. n°	Issue	page	IRI
11	Rights of the Child, International instruments,	page 8	fully impl.
12	Migrants	page 8	partially impl.
13	Migrants	page 9	partially impl.
14	Special procedures, Rights of the Child, Right to education,	page 9	not impl.
15	Right to education, Minorities,	page 9	not impl.
16	Racial discrimination	page 9	fully impl.
17	Rights of the Child	page 9	partially impl.
18	Racial discrimination, Minorities, Migrants, Freedom of religion and belief,	page 10	partially impl.
19	Other	page 10	fully impl.
20	Human rights violations by state agents	page 10	not impl.
21	International instruments, ESC rights - general,	page 10	not impl.
22	Migrants, International instruments,	page 6	not impl.
23	Minorities, Migrants,	page 10	partially impl.
24	Minorities, Migrants, Asylum-seekers - refugees,	page 10	partially impl.
25	Migrants, International instruments,	page 7	not impl.
26	Racial discrimination	page 11	partially impl.
27	Other	page 11	partially impl.
28	International instruments, Enforced disappearances,	page 11	fully impl.
29	Rights of the Child, International instruments, Detention conditions,	page 11	fully impl.
30	Racial discrimination, National plan of action,	page 11	partially impl.
31	International instruments, Freedom of religion and belief, Freedom of opinion and expression,	page 11	not impl.
32	Treaty bodies, International instruments, CP rights - general,	page 12	partially impl.
33	Racial discrimination	page 12	not impl.
34	Racial discrimination	page 12	partially impl.
35	Treaty bodies, Right to education, Minorities,	page 12	partially impl.
36	Freedom of religion and belief	page 12	partially impl.
37	Women's rights, Minorities, Migrants,	page 12	not impl.
38	Women's rights, Minorities, Migrants,	page 13	partially impl.
39	Racial discrimination, Minorities, Freedom of religion and belief, Asylum-seekers - refugees,	page 13	fully impl.
40	Development	page 14	not impl.
41	Women's rights, Trafficking, Special procedures, Rights of the Child,	page 14	not impl.
42	Migrants	page 14	not impl.
43	Migrants, International instruments,	page 7	not impl.
44	Migrants, International instruments,	page 7	not impl.
45	Migrants	page 15	not impl.
46	Sexual rights	page 15	partially impl.
47	Racial discrimination	page 15	fully impl.
48	Human rights violations by state agents	page 15	partially impl.
49	Sexual rights	page 15	not impl.

rec. n°	Issue	page	IRI
50	Sexual rights, Human rights education and training,	page 19	partially impl.
51	Rights of the Child, Right to education, Disabilities,	page 19	partially impl.
52	Women's rights	page 19	partially impl.
53	International instruments, CP rights - general,	page 19	fully impl.
54	Right to health, Right to education, Justice,	page 19	partially impl.
55	Torture and other CID treatment, Counter-terrorism,	page 19	partially impl.
56	International instruments, CP rights - general,	page 20	partially impl.
57	Special procedures, Racial discrimination,	page 20	partially impl.
58	Freedom of religion and belief	page 20	partially impl.
59	Other	page 20	partially impl.
60	Rights of the Child, Justice,	page 20	fully impl.
61	Women's rights, Minorities, Freedom of religion and belief,	page 20	partially impl.
62	Racial discrimination, Minorities, Freedom of religion and belief,	page 20	partially impl.
63	Freedom of religion and belief	page 20	not impl.
64	Treaty bodies, Migrants,	page 21	not impl.
65	International instruments, Corruption,	page 21	not impl.
66	Racial discrimination, National plan of action, Freedom of religion and belief,	page 21	partially impl.
67	Rights of the Child, Right to education, Migrants,	page 21	partially impl.
68	Treaty bodies, Racial discrimination,	page 21	partially impl.
69	Migrants	page 21	partially impl.
70	Treaty bodies, Racial discrimination,	page 21	not impl.
71	Torture and other CID treatment, International instruments,	page 22	not impl.
72	Women's rights, Rights of the Child,	page 22	fully impl.
	UPR process, Civil society,	page 22	partially impl.

### 3. Feedbacks on recommendations

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Recommendation n°1: Give diligent follow-up to recommendations of CERD in 2008 in particular the prevention of racially motivated offenses, guaranteeing the equal enjoyment of the right to adequate housing, lifting obstacles encountered by asylum-seekers for schooling their children, and inclusion in their legislation of a specific provision which establish ethnic racial or religious hatred as an aggravated circumstance in criminal matters (Recommended by *Algeria*)

IRI: *partially implemented*

Forum Menschenrechte (FMR) response:

Partially implemented.

Recommendation n°2: Intensify its efforts in the area of combating racism, racial discrimination, xenophobia and related intolerance with a more committed contribution in the preparatory process for the Durban Review Conference with a view to ensuring its success (Recommended by *Algeria*)

IRI: -

FMR response:

No indicators available; rather not, and finally withdrawing from the next summit.

Recommendation n°3: Accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Recommended by *Algeria*)

IRI: *not implemented*

+

Recommendation n°4: *Set an example itself accepting that the thousand of migrants workers from its development partners should be able to live in Germany benefiting from the protection of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as it can truly protect the most elementary rights* (Recommended by *Algeria*)

IRI: *not implemented*

+

Recommendation n°7: Sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Recommended by *Azerbaijan*)

IRI: *not implemented*

+

Recommendation n°22: Take necessary steps to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Recommended by *Ecuador*)

IRI: *not implemented*

+



Recommendation n°25: Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Recommended by Egypt)

IRI: *not implemented*

+

Recommendation n°43: Maintain under study the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from a human rights perspective, recognizing the fact that human rights are universal in nature and therefore are not conditioned by migrant status (Recommended by Mexico)

IRI: *not implemented*

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Recommendation n°44: Accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Recommended by Morocco)

IRI: *not implemented*

German Activist Coordination Group Combating Trafficking in Women and Violence against Women in the process of Migration (KOK) response:

To this date Germany has not ratified nor signed the ICRMW. It is not anticipated that changes with regard to this convention will take place in the near future. The German Institute for Human Rights however, recognises the importance of the convention. In 2007 they published a study by Katharina Spieß, in which the problems that are encountered in relation to human rights of migrant workers and their families are discussed into detail, concluding with the recommendation for Germany to ratify the ICRMW.

FMR response:

No action.

Recommendation n°5: Consider a strategy to address inequalities for children at high risk of exiting the education system too early as highlighted in OHCHR summary (Recommended by Australia)

IRI: *not implemented*

FMR response:

Some deliberations but no concrete action.

Recommendation n°6: *Further intensify its efforts to overcome the high disparity in income between men and women* (Recommended by Azerbaijan)

IRI: *not implemented*

FMR response:

Deliberations but no decisive / legal action.

Recommendation n°8: *Be one of the countries contributing to best practices of the Human Rights Council by speeding up with the establishment of national preventive mechanisms, following the recent ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Recommended by Benin)

IRI: -

KOK response:

Germany signed OPCAT on the 20th of September 2006 and Ratified it on the 4th of December 2008.

FMR response:

No information.

Recommendation n°9: *Adopt a clear and comprehensive definition of racial discrimination, in full compliance with CERD recommendations* (Recommended by Brazil)

IRI: *not implemented*

FMR response:

No action.

Recommendation n°10: *Implement the United Nations target of allocations at least 0.7 per cent of the gross domestic product to official development assistance, in order to help achieving the Millennium Development Goals by 2015* (Recommended by Brazil)

IRI: *not implemented*

FMR response:

Deliberations but no concrete action.

Recommendation n°11: *Withdraw reservations and declarations to the Convention on the Rights of the Child and to ratify its optional protocol OP-CRC-SC* (Recommended by Brazil)

IRI: *fully implemented*

FMR response:

Done, but unfortunately without any legal impact in pertinent laws.

Children Rights (CR):

Germany has withdrawn reservations on 15 July 2010.

Recommendation n°12: *Ensure that measures to control irregular migration do not operate to impede access to primary health care, education and judicial authorities* (Recommended by Canada)

IRI: *partially implemented*

KOK response:

According to the German Law, all people in Germany have the right to medical treatment and access to jurisdiction; this is also the case for undocumented people. Undocumented persons at least have the right for medical treatment according to the Benefits for Asylum-Seekers Act. This holds the treatment of acute diseases, experiencing of pain, medical treatment during pregnancies and a few other basic services. Further, undocumented people have access to court, for example in the case where people have become victims of labour exploitation and want to claim their wages. A problem with the implementation of this Law however, is the “obligation to report”. This means that public authorities, including social services, who provide healthcare and also courts have to inform the immigration services if they have taken notice of people who are residing in Germany illegally. Experiences



of NGOs have shown that fear of being deported discourages undocumented people from turning to social services for help and medical treatment or to the court. It can be concluded that access to healthcare and Federal Justice is provided on paper, but is not guaranteed in practice. This obligation to report illegal residency, in this particular form, is unique to Germany. It is supposed to serve as an instrument to control irregular migration. In the opinion of NGOs, this migration controlling instrument keeps undocumented persons from claiming their rights. On a positive note, amendments have been made to the obligation to report with regard to schools and educational institutions, giving children and youngsters access to education. In all other situations, the obligation to report holds the rule and there is no intention of abolishing this law in the foreseeable future.

FMR response:

Some activities done but no common strategy on federal level.

Recommendation n°13: Pay special attention to ensure that children of migrant background are not denied academic opportunities based primarily on their acquired proficiency in the German language (Recommended by Canada)

IRI: *partially implemented*

FMR response:

Some activities developed.

Recommendation n°14: *Consider enabling children to move between streams at a later age, noting the Special Rapporteur's observation on the right to education and particularly the young age that children are selected for streaming into the academic and non-academic schools* (Recommended by Canada)

IRI: *not implemented*

FMR response:

No action.

Recommendation n°15: *Explore with the Ministries of Education at the state levels the incorporation of more content in school curricula on the longstanding historical contribution of the Roma and Sinti communities to German society and culture* (Recommended by Canada)

IRI: *not implemented*

FMR response:

No action.

Recommendation n°16: Adopt laws to punish racist acts (Recommended by Chad)

IRI: *fully implemented*

FMR response:

Existing.

Recommendation n°17: Take necessary measures to ensure the protection of the rights of all children, and specially to resolve the problem of the so-called street children ensuring that their basic needs are covered including education, health,

housing and food, and correspond to a society that is rich and developed (Recommended by Cuba)

IRI: *partially implemented*

FMR response:

Some activities started.

Recommendation n°18: *Take the necessary measures to avoid the stigmatization of migrants and ethnic or religious minorities living in the country and to ensure that they do not become the subject of racism, racial discrimination, xenophobia and other forms of related intolerance, including the prohibition of any organization and propaganda based on racist or xenophobic ideologies* (Recommended by Cuba)

IRI: *partially implemented*

FMR response:

Some activities developed.

Recommendation n°19: Respect its commitments and take necessary measures to combat incitement to discrimination and violence in the media (Recommended by Djibouti)

IRI: *fully implemented*

FMR response:

Existing.

Recommendation n°20: Put into place independent bodies responsible for investigating complaints of ill-treatment inflicted by the police and take all measures to ensure that criminal complaints filed against the authorities responsible for law enforcement are treated with attention and due diligence (Recommended by Djibouti)

IRI: *not implemented*

FMR response:

Not done.

Recommendation n°21: Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Recommended by Ecuador)

IRI: *not implemented*

FMR response:

Not done.

Recommendation n°23: Develop economic and social indicators for migrants and minority groups and that the government incorporate an economic cultural and social rights perspective as well as affirmative action in this regard (Recommended by Egypt)

IRI: *partially implemented*

FMR response:

Some deliberations but there is still a lot of room to enhance the situation.

Recommendation n°24: Take necessary steps to prevent any actions that may lead to the stigmatization of migrants, asylum-seekers and ethnic or religious groups living in Germany in the context of political discourse, and address its role as a country of

immigration by explicitly acknowledging the positive contribution of immigrants to German society (Recommended by Egypt)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°26: Give consideration to the establishment of a centralized database on qualitative and quantitative data provided by victims or witnesses of racist or xenophobic incidents that have been reported to counselling institutions (Recommended by Egypt)

IRI: *not implemented*

FMR response:

Not done.

Recommendation n°27: Ensure adequate cooperation between anti-discrimination organisations operating on the State level, and that adequate resources and independence of action be ensured for the Federal Anti-Discrimination Office for it to be able to effectively implement its mandate (Recommended by Finland)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°28: Conclude its procedure for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (Recommended by France)

IRI: *fully implemented*

FMR response:

Ratified.

Recommendation n°29: Take the necessary measures to ensure the respect of the Convention on the Rights of the Child to make sure minors are not imprisoned with adults (Recommended by France)

IRI: *fully implemented*

FMR response:

Normally, that is the case and legal state of the art.

CR response:

Nothing done (6.12.2011)

Recommendation n°30: Take concrete steps to implement the National Action Plan against racism and accelerate its efforts at combating all racially motivated crimes (Recommended by Ghana)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°31: Ensure that their laws and policies are consistent with CEDAW and ICERD by revising or revoking laws and regulations which prohibit

religious symbols or clothing for teachers and civil servants which are deemed contravene to freedom of religion and expression (Recommended by Indonesia)

IRI: *not implemented*

FMR response:

Still in discussion.

Recommendation n°32: Comply fully with its obligations under the ICCPR and the recommendation of HR Committee (Recommended by Iran)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°33: Increase its efforts to prevent racially motivated offences and adopt required legislation as well as ensure that relevant criminal law provisions are effectively implemented (Recommended by Iran)

IRI: *not implemented*

FMR response:

No legal activity.

Recommendation n°34: Take effective measures to counter the incitement to discrimination and violence in the media (Recommended by Iran)

IRI: *partially implemented*

FMR response:

In part existing.

Recommendation n°35: Take fully into account the relevant recommendations of CERD aimed at ensuring the integration of non-German children into the regular school system (Recommended by Italy)

IRI: *partially implemented*

FMR response:

Implemented, but not fully.

Recommendation n°36: Continue to improve its efforts regarding the integration of citizen of Muslim confession within the German society while at the same time ensuring enjoyment of their human rights including the right to freedom of religious practices (Recommended by Jordan)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°37: Respect and promote the human rights of female immigrants and minority women, including their freedom of religion and expression. (Recommended by Malaysia)

IRI: *not implemented*

KOK response:

Human rights for female immigrants is an important aspect for KOK, especially because these women risk facing double discrimination. Firstly, possible discrimination against women and secondly discrimination against migrants. One important point, specifically with regard to the rights of female migrants in Germany,

is a recent change in the residence act. Immigrant women were expected to stay with their husbands for two years in order to obtain a residence permit, but this period has now been prolonged to three years. This has been proven to be a problem, especially in cases of domestic violence. This new rule forces women, who are victimised by domestic violence, to stay in this violent marriage for a longer period of time. While it is the intention of the Federal Government to prevent fictitious marriages by means of this rule, NGOs and council centres criticise this approach. The argumentation of the Federal Government with regard to the available clauses for cases of hardship (In cases of hardship, under which domestic violence, exceptions apply and women will not be forced to stay married for three years) is considered irrelevant by NGOs. According to their experience, the clause for cases of hardship does simply not intervene in many cases, e.g. because of lack of evidence. NGO's therefore demand the right to a residence permit that is not related to marriage.

With regard to trafficking in women the following has to be mentioned: KOK as the nationwide coordination group of anti-trafficking NGOs in Germany, regrets that laws and measures against trafficking in Germany are still focused on promoting law enforcement instead of victim protection and human rights. The residence title and with it, access to support and counselling for non-EU nationals who are victims of trafficking for example, is dependant on their willingness to cooperate with law enforcement. Additionally their testimonial has to be of relevance for law enforcement authorities. The protection of human rights of trafficked persons is not the focus. KOK is of the opinion that a more human rights based approach would be beneficial in order to support trafficked persons. Additionally, it is very likely that a move in focus from a prosecution based approach to a more human rights based approach, would encourage victimised women to seek help and report their exploitative situation to the police.

FMR response:

Partially implemented.

Recommendation n°38: Consider taking more effective measures to eliminate discrimination against female immigrants and minority women in all areas, in particular in employment and education. (Recommended by Malaysia)

IRI: *partially implemented*

FMR response:

Barely implemented.

Recommendation n°39: Consider taking more resolute action to prevent and punish perpetrators of racially motivated acts of violence against members of the Roma-Sinti, Muslim, Jewish communities, as well as German nationals of foreign origin and asylum seekers (Recommended by Malaysia)

IRI: *fully implemented*

FMR response:

Considered.

Recommendation n°40: Continue efforts in achieving the United Nations official development aid target of 0.7 per cent of gross domestic product (Recommended by Malaysia)

*IRI: not implemented*

FMR response:

Not done.

Recommendation n°41: Encourage the visit of the Special Rapporteur on trafficking in persons, specially women and children, within the framework of the open and permanent invitation extended to special procedures (Recommended by Mexico)

*IRI: not implemented*

KOK response:

The current Special Rapporteur on trafficking in persons has not visited nor received an invitation from Germany. KOK and its partner organisations would welcome a visit from the Special Rapporteur as, to our opinion, it is important for the Rapporteur to be informed about the general situation, the specific measures that have been implemented thus far and the difficulties that have been encountered in the process of combatting Human Trafficking in Germany and protecting its victims. Further, KOK and partner organisations would be very interested in the Rapporteur's views and suggestions in order to improve future research and measures.

FMR response:

To be done.

Recommendation n°42: Consider the possibility of eliminating criminal sanctions to undocumented migrants as well as those sanctions against those who provide services for the protection of their rights (Recommended by Mexico)

*IRI: not implemented*

KOK response:

Please see [response to recommendation] nr 12.

Regarding trafficked persons it has to be mentioned that in April 2011 a new EU directive was adopted: 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Article 8 „ Non-Prosecution or non-application of penalties to the victim“ states the following: “Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2”. KOK welcomes the impunity of victims of human trafficking. It remains to be seen however, how Germany is going to implement the directive.

FMR response:

Not done.



Recommendation n°45: Show more understanding and flexibility during the expulsions of undocumented people and to take into account the social and humanitarian aspects of these families (Recommended by Morocco)

IRI: *not implemented*

FMR response:

Not done.

Recommendation n°46: Continue its efforts and take further initiatives to combat hate crimes based on sexual orientation (Recommended by Netherlands)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°47: Continue to guarantee non-discrimination for all and share further experiences with regard to the new integration policies with regard to guaranteeing human rights (Recommended by Netherlands)

IRI: *fully implemented*

FMR response:

Continued.

Recommendation n°48: Continue to strengthen efforts to prevent law enforcement officers of using excessive force (Recommended by Netherlands)

IRI: *partially implemented*

FMR response:

Some activities were developed.

Recommendation n°49: Modify promptly the law on transsexuality to facilitate registration of a change of gender on official documents, without requiring transsexuals to divorce, in line with the decision of the Constitutional Court (Recommended by New Zealand)

IRI: *not implemented*

Aktion Transsexualität und Menschenrecht (ATME) response:

### **Introduction**

Still transsexual people are defined as people who don't fit into "gender norms" instead of accepting their sexual variation as natural. There are many ways to ignore their existence nowadays. In Germany it is modern to define a transsexual woman as "man who wants to live as a woman" and a transsexual man is seen as a "woman who wants to live as a man". This is a transphobic paradox. If someone would really accept a person "as woman", this person wouldn't define this woman "as man". In Germany this paradox is called "Transsexuellengesetz" ("Law of Transsexuals").

[...]

Till today the Government in Germany ignores, that the only way to protect transsexual people against patient abuse, sexual abuse, political oppression, arbitrariness or misjudgement is to give them identity documents that reflect their gender as fast as possible. In due consideration of the vulnerability of transsexual people directly after coming out as transsexual, it is obvious that transsexual people

need their identity documents immediately and without stereotyped requirements and decisions from psychiatrists and judges who are still part of the so called Transsexuellengesetz [...] in Germany. Still the „Law of Transsexuals“ leads to medical malpractice and arbitrariness and refuses transsexual people their right to autonomy and self-determination regarding their gender status.

### **What happened, however, since 2008?**

Politicians and the medical professions promote transsexual women as „men who feel like women“ (and transsexual men as „women who feel like men“). This transphobia is the main reason for the discrimination against transsexual people. Likewise the medical like juridical treatment of transsexual people is based on this transphobic idea in Germany.

Already in 2008 the Federal Government was criticized for said circumstances. The CEDAW Committee joined this criticism and explained in February 2009 that it was a paradox to define transsexual women as psychically ill men, so that they could be recognized as women. At that time CEDAW Committee member Silvia Pimentel expressed in Geneva „This paradoxon must be stopped“.

In March 2009 the Human Rights Council wrote in its conclusions:

„modify promptly the law on transsexuality to facilitate registration of a change of gender on official documents, [...] (New Zealand)“ (Human Rights Council 2009). And Germany's answer was: „22. Germany accepts the recommendation. The Federal Government has already started preparations for making the necessary changes to the law on transsexuality.“

Till today, nothing happened, nothing changed.

In May, 2009 300 organisations from 75 countries and many individuals, including 3 Nobel Prize Laureates made an appeal to the United Nations and the states of the world not to define transsexual people as psychically ill any longer.

The government parties at that time in Germany, CDU (Christian Democratic Union of Germany) and SPD (Social Democratic Party of Germany) therefore have decided in May 2009: "The decision on further changes in the Law Of Transsexuals is left to the next legislative period" (printed matter 16/13157).

As the result of a judgment of the Federal Constitutional Court from 27th of May, 2008 (Federal Constitutional Court - 1 BvL 10/05-) the government before had to delete the requirement of the forced divorce of a marriage for the legal recognition of a transsexual person from the Law of Transsexuals. However the reform or abolition of the Law Of Transsexuals once more was adjourned.

In July 2009 the Commissioner of Human Rights of the Council of Europe, Thomas Hammarberg, expressed himself to transsexuality. Thus among other things he criticized forced sterilizations as a legal need of the juridical recognition of transsexual people which was still demanded at that time also in Germany as well as the classification of transsexuality as a psychic disorder. He asked the governments of Europe also to take account of transsexual people when talking about laws and juridical regulations (Strasbourg, 29 July in 2009, CommDH/IssuePaper (in 2009) 2). The Parliamentary Assembly of the Council of Europe (PACE) asked the governments of Europe in May 2010 to protect transsexual people and "(16.11) ... ensure in legislation and in practice their right to (16.11.2) official documents that

reflect an individual's preferred gender identity, without any prior obligation to undergo sterilization or other medical procedures such as sex reassignment surgery and hormonal therapy." (PACE, May, 2010, resolution 1728).

In 2010 the Aktion Transsexualität und Menschenrecht e.V. (ATME / Campaign Transsexuality and Human Rights) submitted their alternative human rights report about „Transsexual People in Germany“ to the UN-Committee on Economic, Social and Cultural Rights. In this report once more transsexual people repeated the demand for abolishing the terms „gender identity disorders“ or „gender dysphoria“, as well as the gender-stereotyped examination practice for the juridical recognition of transsexual people in their own gender as specified in the German Law Of Transsexuals.

In December 2010 the so-called Federal Anti-Discrimination Agency (ADS) published the brochure "Discrimination of Trans\*Persons, in particular in the working life". Facts and figures about Germany are not embodied in this brochure (!): It is only a collection of already known publications about Europe, the USA and Australia that has been downloadable from the internet for quite some time. Also the Federal Government had excluded the participation of a wide alliance of human rights organizations in the production of an informative study. Consequently a lot of critical voices were excluded. The report easily could be seen as a fig leaf for politicians in Germany who are not willing to reform the „Law of Transsexuals“.

Once more the Federal Constitutional Court judged in January 2011 on the subject of Transsexuality. The judges argued, that the juridical recognition of transsexual people may not be made conditional furthermore by genital surgeries (Federal Constitutional Court - 1 BvR 3295/07-). But because there still has been no reform of the Law of Transsexuals till today, some district courts who are responsible for the change of the gender markers in official documents, do not handle applications for changing the gender status anymore and refer to the missing reform of the Law of Transsexuals. For example the district court of Mannheim judged on the 4th of April 2011: „Pending lawsuits whose decisions would depend on the unconstitutional part must stay until a constitutional-juridically new right will be enacted“ (AG Mannheim decision of the 4/4/2011, Ke 2 UR III 4/11).

The UN-Committee on Economic, Social and Cultural Rights published in June 2011 the Concluding Observations concerning the State Report of Germany. The Committee asks Germany among other things not to define transsexual people by law furthermore as people with mental illness (E/C.12/DEU/CO./5, Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant).

### **What, however, did the German Government do?**

The Law of Transsexuals exists to this day. Transsexual women and men furthermore are defined in Germany as „people who want to live in the role of the opposite sex“ (in Germany politicians and society still distinguish between male and female gender roles) or „men/women with a gender identity disorder“. Even in the brochure of the Federal Anti-Discrimination Agency (as mentioned above) transsexual women are described as „sex-changed“ and on account of this as persons who had been men before genital surgery („Discrimination of Trans\*Persons, in particular in the working life“, pages 71, 75, 78) instead of simply recognizing that transsexual women are women and transsexual men are men.

Furthermore in Germany still exists a psychiatric examination procedure for the juridical recognition of transsexual people. F. e. Transsexual women must agree to be defined as „mentally ill men who want to become women“ from two psychiatrists to get the chance of correcting their gender marker - and still this is no guarantee that a judge says „yes“ to their applications.

This practice and paradox had been criticized already in 2008 by the United Nations as an offence against human rights but still exists till this day. Even though the Federal Constitutional Court in Germany criticized the forced sterilizations in January 2011 it otherwise supports these stereotyped and persondespising psychiatric procedures: "An adjustment of the external appearance and adaptation of the behaviour pattern to the felt gender is necessary if a person wants to live in the other gender. This is caused first only by suitable clothes, presentation and appearance manner to test in the everyday life whether a lasting change of the gender role can be mastered psychically generally." (Federal Constitutional Court - 1 BvR 3295/07-) Applications of the opposition parties (Bündnis 90 / Die Grünen and Die Linke) who demand a comprehensive reform of the Law of Transsexuals and an abolition of the psychiatric examination practice were passed on in June 2011 to the Innenausschuss (Federal Committee on Internal Affairs). The government parties CDU and FDP (Free Democratic Party), as well as the SPD (since 2009 the SPD is an opposition party) want to maintain the psychiatric examination practice contrary to human rights. Helmut Brandt from the CDU expressed in June that it would be enough „to adapt the Law of Transsexuals as defined in the contract of the governmental coalition [...] to the jurisdiction of the Federal Constitutional Court [...]“. Gabriele Fograscher from the SPD takes the view that still there had to be one psychiatric examination, instead of two as before (114th meeting of the German Bundestag on Thursday, 9th of June, 2011). And also the FDP rejected the applications of the parties Bündnis 90 / Die Grünen and Die Linke.

## **Conclusion**

The views of the parties CDU, FDP and SPD (CDU and FDP are governing now, the SPD was in a government coalition with the CDU until 2009) coincide with the ongoing unwillingness to institute far-reaching reforms of the Law of Transsexuals (Transsexuellengesetz, TSG) in Germany. Though there have been modifications of the Law of Transsexuals, these changes – like the abolishment of the forced divorce and forced sterilization – only took place because of the judgements of the Federal Constitutional Court and are not based on the Government's will to reform.

A few months ago ATME (Campaign Transsexuality and Human Rights) asked the parties about their plans in reforming the Law of Transsexuals and the answers led to the conclusion that politicians from the CDU, SPD and FDP still believe that transsexual women are „biologically men“. 3 out of 5 parties represented in the Bundestag therefore are not willing to accept transsexual women as women and consequently are not interested in giving them the right to correct their gender markers and civil status immediately and uncomplicatedly. So Germany still refuses the transsexual's right to self-determination regarding their gender and equality before the law.

[...]

FMR response:

Partially implemented.

Recommendation n°50: Strengthen measures to counter discriminatory attitudes, for example by including sexual orientation and gender identity in public education and equality programmes and initiatives (Recommended by New Zealand)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°51: Adopt time-bound measures to increase children with disabilities' access to inclusive education in mainstream schools, and that it ensure funding for the specific services necessary to help these students reach their full learning potential and participate along with other students (Recommended by New Zealand)

IRI: *partially implemented*

FMR response:

At the beginning, if at all.

Recommendation n°52: Continue to prioritize gender mainstreaming and to ensure that appropriate mechanisms are in place to implement, monitor and review the Government's strategy (Recommended by New Zealand)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°53: Acknowledge the full applicability of ICCPR to persons subject to its jurisdiction both at home and abroad (Recommended by Pakistan)

IRI: *fully implemented*

FMR response:

Existent.

Recommendation n°54: Ensure full access to primary health care, education and judicial recourse to all persons present on its territory irrespective of their legal status (Recommended by Pakistan)

IRI: *partially implemented*

KOK response:

Please see [response to recommendation] nr 12.

FMR response:

Partially implemented.

Recommendation n°55: Fully respect the provisions of international human rights instruments including ICCPR and CAT in the context of counter terrorism measures (Recommended by Pakistan)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°56: Pay special attention to the recommendations of the Special Rapporteur on racism who cautioned that xenophobia needs to be addressed squarely to avoid right wing extremism (Recommended by Pakistan)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°57: Take concrete actions to deal with the discriminatory practices on the grounds of religion in access to employment and social integration (Recommended by Pakistan)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°58: Repeal any legislation that infringe upon individuals' right to privacy such as the video surveillance of private homes (Recommended by Pakistan)

IRI: *partially implemented*

FMR response:

Partially implemented via the Constitutional Court.

Recommendation n°59: Establish a form of effective judicial control over administrative decisions of the Office for Youth called Jugendamt (Recommended by Poland)

IRI: *fully implemented*

FMR response:

Existent.

Recommendation n°60: Adopt necessary measures according to the international criteria to protect the freedom of Muslim women to belief (Recommended by Qatar)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°61: Continue with efforts in order to counter racism within the German society in particular racism against Roma-Sinti and Muslims. (Recommended by Qatar)

IRI: *partially implemented*

FMR response:

Partially implemented.

Recommendation n°62: Review some of the laws that have been promulgated that prohibited clothes that reflect a religious connotation (Recommended by Qatar)

IRI: *not implemented*

FMR response:

Not done.



Recommendation n°63: Undertake additional measures to support migrants and in particular to implement the corresponding recommendations of the treaty bodies, such as recommendations of the CRC on support for the families of migrants (Recommended by Russian Federation)

*IRI: not implemented*

FMR response:  
Barely any activity.

Recommendation n°64: Make additional efforts to combat corruption and to examine the possibility of ratifying the United Nations Convention against Corruption (Recommended by Russian Federation)

*IRI: not implemented*

FMR response:  
Not done.

Recommendation n°65: Continue to implement the national action plan to combat racism in order to eliminate xenophobia and Islamophobia (Recommended by Saudi Arabia)

*IRI: partially implemented*

FMR response:  
Partially implemented.

Recommendation n°66: Continue to implement the national integration plan to increase access to education for children of migrant workers (Recommended by Saudi Arabia)

*IRI: partially implemented*

FMR response:  
Partially implemented.

Recommendation n°67: Implement the recommendations of the CERD, including the adoption of a clear definition of racial discrimination in its domestic legislation, adoption of legislative measures and that would criminalize incitement to racial hatred, and effective sanctions for hate crimes (Recommended by South Africa)

*IRI: partially implemented*

FMR response:  
Partially implemented.

Recommendation n°68: Consider adopting measures that would ensure that any law-regulations aimed at controlling irregular migration should not deny nor prevent migrants from accessing fundamental human rights, including access to education, health, care and effective redress for human rights violations (Recommended by South Africa)

*IRI: partially implemented*

FMR response:  
Barely implemented.

Recommendation n°69: Consider the suggestions made by CERD in respect to the acquisition of dual citizenship (Recommended by Turkey)

*IRI: not implemented*

FMR response:

Not done.

Recommendation n°70: Set a clear timetable for the establishment or designation of national mechanisms and grant adequate resources for the effective functioning of these mechanisms, following the recent ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Recommended by United Kingdom)

IRI: *not implemented*

FMR response:

Not done.

Recommendation n°71: Take steps to ensure that women and girls with German residency who were forced to marry abroad have a right to return (Recommended by United Kingdom)

IRI: *fully implemented*

KOK response:

In July 2011 a new law to combat forced marriages and to protect victims of forced marriages came into force. With it, the right to return for persons who were forced to marry abroad has been amended. Now, the time frame for the right to return is 10 years. NGOs have strived for an extended right to return for victims of forced marriages. Because of certain requirements that limit the right to return, this law has been criticised. The persons concerned have to have lived in the Federal Republic for at least 8 years, and attended school for at least 6 years. If this is not the case, a positive integration prognosis is necessary. A Positive integration prognosis is given when, taken certain criteria into account, it is likely that the concerned person will adapt well to living conditions in Germany. The prognosis is provided by immigration services who take certain aspects into consideration, among which: language skills, length of stay and the possible risk of a long-term need for welfare benefits. The aim of this is to prevent return migration into the social system. NGOs and others argue that because of this, the human rights of the concerned are not prioritised and the return of victims of forced marriages is impeded. In many cases, because of the forced marriages, they might not have been able to finish school nor completed further education making it difficult to integrate into the labour market.

FMR response:

Existent.

Recommendation n°72: Continue civil society consultation in its follow up and implementation of the UPR outcome (Recommended by United Kingdom)

IRI: *partially implemented*

FMR response:

Barely done.

## Methodology

### A. First contact

Although the methodology has to consider the specificities of each country, we applied the same procedure for data collection about all States:

1. We contacted both the delegate who represented the State at the UPR and the Permanent Mission to the UN in Geneva or New York;
2. We contacted all NGOs which took part in the process. Whenever NGOs were part of coalitions, each NGO was individually contacted;
3. The National Institution for Human Rights was contacted whenever one existed.

We posted our requests to the States and NHRI, and sent emails to NGOs.

The purpose of the UPR is to discuss issues and share concrete suggestions to improve human rights on the ground. Therefore, stakeholders whose objective is not to improve the human rights situation were not contacted, and those stakeholders' submissions were not taken into account.

However, since the UPR is meant to be a process which aims at sharing best practices among States and stakeholders, we consider positive feedbacks from the latter.

### A. Processing the recommendations

The persons we contact are encouraged to use an Excel sheet we provide which includes all recommendations received by the State reviewed.

Each submission is processed, whether the stakeholder has or has not used the Excel sheet. In the latter case, communication is split up among recommendations we think it belongs to. Since such a task opens the way of misinterpretation, we strongly encourage using the Excel sheet.

If the stakeholder does not clearly mention neither the recommendation was “fully implemented” nor “not implemented”, UPR Info usually considers the recommendation as “partially implemented”, unless the implementation level is obvious.

While we do not mention recommendations which were not addressed, they can be accessed on the follow-up webpage.

### B. Implementation Recommendation Index (IRI)

*UPR Info* developed an index showing the implementation level achieved by the State for the recommendations received at the UPR.

The **Implementation Recommendation Index (IRI)** is an individual recommendation index. Its purpose is to show both disputed and agreed recommendations.

The *IRI* is meant to take into account stakeholders disputing the implementation of a recommendation. Whenever a stakeholder claims nothing has been implemented at all, the index score is noted as 0. At the opposite, whenever a stakeholder claims a recommendation has been fully implemented, the *IRI* score is 1.

An average is calculated to fully reflect the many sources of information. If the State under Review says the recommendation has been fully implemented and a stakeholder says it has been partially implemented, score is 0.75.

Then the score is transformed into an implementation level, according to the table hereafter:

Percentage:	Implementation level:
0 – 0.32	Not implemented
0.33 – 0.65	Partially implemented
0.66 – 1	Fully implemented

Example: On one side, a stakeholder comments on a recommendation requesting the establishment of a National Human Rights Institute (NHRI). On the other side, the State under review claims having partially set up the NHRI. As a result of this, the recommendation will be given an *IRI* score of 0.25, and thus the recommendation is considered as “not implemented”.

### Contact

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