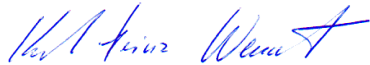


uprsubmissions@ohchr.org  
UPR-GBM-Submission

Dear Ladies and Gentleman,  
attached, please, find the submission of the Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde (Society for the Protection of Civil Rights and Human Dignity) in relation to the UPR on Germany scheduled for the UPR 16th session in April/May 2013.  
Please, confirm upon the reception

Kind regards



Karl Heinz Wendt  
Chairman

**NGO Submission**  
**UPR on the Federal Republic of Germany**  
**Berlin, 01 October 2012**

Submitted by: Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde, GBM,  
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1. The GBM has already participated in the first cycle of the UPR process by contributing to the report on “The Civil Society Stakeholders” (see: UN Document A/HRC/WG.6/4/DEU/3/of November 14th 2008, p.12, note 3). For the second cycle the GBM submits herewith its independent report on the situation of human rights in the Federal Republic of Germany to the Office of the High Commissioner for Human Rights for consideration by the UPR in May 2013.

2. The information given hereafter follows the guidelines of the Annex to Resolution 16/21 of the Human Rights Council of April 12<sup>th</sup> 2011 (A/HRC/RES/16/21/I/C/1.6) and, (I) weigh in on the implementation of the recommendations of the Working Group on the Universal Periodic Review accepted by the FRG - Germany (A / HRC / 11/15/II/81) and (II) the development of human rights in the Federal Republic of Germany since 2009, the year in which the last examination of our country took place.

I.

Recommendations Which Were Accepted or not Rejected by the Federal Republic of  
Germany

3. Recommendation 81.13: Increase its efforts to prevent racially motivated offenses and adopt required legislation as well as ensure that relevant criminal law provisions are effectively implemented [...]

The Federal Government's expressed openness towards, and general acceptance of recommendation 81.13 are particularly welcome. The stated intention to increase efforts to prevent racist and xenophobic criminal offenses conforms to the fundamental intentions/aspirations of a civil society and is strongly supported by the GBM. The implementation of these intentions has become all the more urgent as since the examination of the FRG in 2009 in the context of the first cycle of the UPR process, considerable deficits in the fight against racism, xenophobia and the increasing activities of the neo-Nazi scene have become evident.

The recently increased state repression against the emergence of violent manifestations of racism, xenophobia and neo-Nazi organizations and groups in some federal states (i.e. only at the regional level) are to be welcomed. Nevertheless, for Germany as a whole it is still imperative that all levels of the legislative and law enforcement bodies consistently and resolutely oppose any racist, xenophobic and neo-Nazi ideologies and violent activities.

The fact that a terrorist cell under the name of "National Socialist Underground (NSU)" was active in the Federal Republic of Germany from 2000 to 2006 and could assassinate Turkish and Greek businessmen for racist and xenophobic reasons, while the national investigative bodies completely ignored this angle of the crimes, speaks for itself. Despite multiple clues indicating racist and xenophobic motives behind the murders, they were excluded as unlikely by the investigating bodies. Instead, the law enforcement authorities spent years unsuccessfully searching for the killers in the migratory background of the victims, suspecting them of being associated with criminal organizations, thus adding insult to injury for the grieving relatives.

This episode clearly indicates that racist and xenophobic attitudes still reach deep inside the investigation and law enforcement authorities.

Only in 2011, and by accident, the background of the murders became blatantly clear. The investigations that followed and which are still continuing have already led to resignations of senior officials of the internal secret service the "Office for the Protection of the Constitution" and of other investigative bodies. They revealed scandalous conduct not in any way commensurate with a serious fight against racism, xenophobia and neo-Nazism in the respective government agencies. Although the failure of the security agencies during the investigation of the NSU murder series is the subject of lively debate, and personnel consequences have followed, the discussions focus mainly on the "craft errors" of the investigators rather than on the prejudices within the administrative structures that prevented the police, the secret services, the judiciary, etc. from looking into the right direction and recognizing the racist and xenophobic background of the terrorist murders.

Against the above described background of prejudice, it is clear that in the daily work of the police it has become common place that incidents motivated by racism and xenophobia are not rated and registered as such, but instead more often than not they are depoliticized and recorded in the statistics (e.g. as simple drunken brawls). A detailed presentation on this issue can be found in a recently published documentation by the Amadeu Antonio Foundation (Germany) with the title "Das Kartell der Verharmloser" (The Cartel That Plays Incidents Down). [link: <http://www.amadeu-antonio-stiftung.de/w/files/pdfs/kartell-internet.pdf>].

4. Recommendation 81.18: [...] prohibition of any organization and propaganda based on racist or xenophobic ideologies.

Germany "accepted" recommendation 81.18 only in a severely limited form ("Germany accepts the recommendation and will continue its holistic approach to fighting racism and xenophobia with the goal of reaching all levels of society.") The core of recommendation 81.18, namely "including the prohibition of any organization and propaganda based on racist or xenophobic ideologies" is ignored and not implemented in Germany. At national and regional levels, various parties and diverse groups are pushing their racist and xenophobic agendas in blatant contradiction of the constitution, at times openly striking terror in people's hearts. While large segments of the civil society have been calling for a long-time for a ban of the NPD, a party which fully corresponds to the above mentioned recommendation in 81.18, the constitutional organs of the Federal Republic of Germany have in no way complied.

5. Recommendation 81.5: Sign and Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

In its statement on this recommendation (A/HRC/11/15/Add.1/5.) of May 20<sup>th</sup> 2009, the Federal Republic of Germany confirmed that the possibility of signature and ratification would be examined thus suggesting that the Recommendation might finally be accepted. The process of the examination of this possibility has not yet been completed. An early positive decision is urgently needed, particularly in view of the fact that during the consultations of the Fifth Periodic Report of the Federal Republic of Germany the UN Committee on Economic, Social and Cultural Rights in May 2011 found considerable shortcomings in the implementation of the Covenant on Economic, Social and Cultural Rights (ICESCR). The ratification of the Optional Protocol would mean that those citizens whose rights under the Covenant have been violated could use the international procedures contained in the Optional Protocol, i.e. submit complaints in order to enforce their rights in this way.

## II

Developments in the human rights situation in the Federal Republic of Germany since 2009, the year of the last examination of our country.

6. Apart from the recommendation to sign and ratify the Optional Protocol to the ICESCR, the whole complex of economic, social and cultural rights did not play any role in the first examination of the FRG. Given that in May 2011 the Concluding Observations (E./C.12/DEU/CO/5) adopted by the UN Committee on Economic, Social and Cultural Rights identified substantial deficiencies in the implementation of the Covenant on Economic, Social and Cultural Rights in Germany, urgent action is required.

7. In the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights to the 5th Report of the German Government on the implementation of the ICESCR (E./C.12./DEU/CO.5), the FRG was the subject of at times harsh criticism on more than 30 points. Due to the completely inadequate handling of this critique by the constitutional organs of the FRG, the GBM also feels prompted, to refer in this context to the lack of implementation of previous recommendations by the FRG. The urgently recommended popularisation and dissemination of the recommendations in accordance with section 38 of the Concluding Observations in the Federal Republic of Germany has not been implemented by the government of Germany.

Given the serious concern expressed by the UN Committee on Economic, Social and Cultural Rights in its Concluding Observations, the GBM saw fit to convey the urgent request to the President of the German Parliament to let the German Bundestag debate the critical positions and respective conclusions. This request was turned down. To this day the parliament of the Federal Republic of Germany has not addressed the serious concerns of the UN Committee on Economic, Social and Cultural Rights of May 2011. Moreover, it should be noted with concern that until today the federal government has not yet reacted to a “Major Request for Information” (Große Anfrage) about the implementation of the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (Bundestag printed paper 17/8966) presented on March 8<sup>th</sup> 2012 in the German Bundestag by one of the opposition parties.

8. Given this situation, GBM feels responsible for doing everything possible to arouse the German public interest in the above mentioned concluding remarks and their implementation. In accordance with the GBM’s objectives the focus lies on the following questions:

9. The GBM strongly supports the UN Committee on Economic, Social and Cultural Rights which in several instances has stressed a very alarming human rights trend in Germany in view of the policy of hollowing out the system of social security. This is particularly true of the entire complex of the so-called Hartz IV legislation. While on the one hand the committee has noted the reduction in the number of unemployed as positive, it has voiced stark criticism concerning the manner in which the standard rates of benefits are determined. The latter are in clear contradiction to the demands of the social pact to ensure an adequate standard of living.

In this context, it should be noted that German civil society organizations have agreed on minimum requirements for a redefinition of the social subsistence level. These in particular call for a methodologically clean and transparent determination of the standard rates of benefits and a rejection of arbitrary, not objectively justifiable reductions. These demands are strongly supported by the GBM. The UN Committee on Economic, Social and Cultural Rights has noted also that the current arrangement whereby the unemployed have to accept "any reasonable employment" may lead to violations of Articles 6 and 7 of the ICESCR. In its comments on the Fifth Periodic Report on the Federal Republic of Germany to the UN Committee on Economic, Social and Cultural Rights on the implementation of the ICESCR, the GBM drew attention to this problem, in its reference to relevant findings of the former director of the German Institute for Human Rights, Prof. Heiner Bielefeld. Moreover, the GBM emphasizes strongly the call of the Committee on Economic, Social and Cultural Rights, to ensure the right of free choice of employment and fair remuneration.

10. The GBM shares the Committee on Economic, Social and Cultural Rights’ view, which it expressed several times in its concluding observations, that regardless of earlier but not yet implemented recommendations, substantial deficiencies in the establishment of equal living conditions in eastern and western Germany continue to exist. In addition to the critical reference to the significantly different rates of unemployment in the eastern and western provinces, the Committee called again upon the Federal Republic not only to take immediate effective measures to counteract any further discrimination in the level of social security between the eastern and western provinces but ultimately to eliminate them altogether. In this context, attention should be drawn to the continuing different levels of current pension values for East and West, which are a crucial component in the calculation of pensions. The current pension value in the East since July 1<sup>st</sup> 2012 was € 24.92, in the West it was € 28.06, i.e. € 3.14 higher than in the East. Compared with the previous year the difference has even increased by 4 cents. We were informed by the Chancellor's office

that an affordable and responsible change in the alignment of the pension values in East and West was currently not possible. This suggests that the necessary harmonization of the pension values by increasing the value of pensions in the East will be further delayed. Both from a human rights perspective and from the legal perspective of the constitution we think this is unacceptable and therefore call for a gradual convergence of the current pension values within a reasonable time frame.

The Committee on Economic, Social and Cultural Rights has backed the efforts to overcome existing discrimination, i.a. with respect to the introduction of political criteria in the decisions for granting pensions thus breaching vested rights. We share this position, especially as in our response to the fifth National Report of the Federal Republic of Germany we substantiated that the obligations of the Social Pact take immediate effect, i.e. they are State obligations which need to be implemented immediately. This includes the state's obligation to guarantee the rights contained in the Social Covenant (social security rights) without discrimination on the basis of political opinion and the political function or social or other status of the citizens concerned.

11. The Committee on Economic, Social and Cultural Rights, expressed on several occasions in its Concluding Observations its concern that the rich FRG has a serious poverty problem. In view of the fact that 13% of the population live below the poverty line, that 1.3 million people in full-time employment do not earn enough and need additional social security benefits, that a large number of pupils come to school without breakfast and the lack of provision of midday meals exposes them to a serious risk of malnutrition, requires the Federal Republic to urgently adopt an anti-poverty program which satisfies the rights contained in the ICESCR. The GBM shares this demand for a comprehensive anti-poverty program.

It is imperative that the necessary anti-poverty program, should include decisive measures to prevent poverty in old age. The latter threatens to be acutely exacerbated by the continuation of the current situation on the labor market. For more than 10 years now the respective federal governments have carried out various "reforms" of the labor, social security, pension and tax laws which are rightly characterized by the overwhelming majority of the civil society (especially labor unions and numerous NGO's) as a progressive dismantling of the constitutional precept of the welfare state in Germany. In addition to the current deterioration of the living conditions of pensioners and of a growing part of the gainfully employed population these "reforms" are leading to a severe reduction in future old age pensions. According to the report on income distribution of the DGB of 2011, ([http://www.sozialpolitik-aktuell.de/tl\\_files/sozialpolitik-aktuell/Politikfelder/Einkommen-Armut/Dokumente/DGB-Verteilungsbericht-2011.pdf](http://www.sozialpolitik-aktuell.de/tl_files/sozialpolitik-aktuell/Politikfelder/Einkommen-Armut/Dokumente/DGB-Verteilungsbericht-2011.pdf)) page 14, the share of precarious jobs in Germany has already reached 30%. (Precarious working conditions are i.a. defined by wages which are in flagrant violation of article 7 of the International Covenant on Economic, Social and Cultural Rights and they are insufficient "to ensure, in particular, a remuneration which provides all workers, as a minimum, with ... a decent living for themselves and their families in accordance with the provisions of the present Covenant.) For many years now, precarious working conditions have shown a rising trend in Germany with the east being more affected than the west. Since the contributions to social security and into pension schemes of employees in precarious work are noticeably lower and the significant and growing number of people receiving unemployment benefits under the so called Arbeitslosengeld II regime, where no payments into the pension scheme are made, it can easily be anticipated that future pension levels of a significant part of the German population will be well below the poverty line. Therefore, resolute countermeasures of legislators and the government are urgently required. The Union's demand for the introduction of generally binding wage floors

(minimum wage) are supported by more than 70% of the population. They would be without serious consequences for the labour market but a much-needed contribution to combat future old age poverty. So far these demands have been stubbornly rejected by the federal government. (See ver.di. Economic Policy Information No. 4, August 2012).