



**Draft Report to the Universal Periodic Review (UPR)**

**A joint submission by the International Rehabilitation Council for Torture Victims (IRCT) and its German member center MFH Bochum**

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### **About MFH Bochum**

MFH is a socio-medical human rights organization running a therapy center for survivors from severe human rights violations. Since 2008, MFH is one of three German member centers of the International Rehabilitation Council for Torture Victims (IRCT) and since 2013 approved as a psychosocial center by the Federal State of North Rhine-Westphalia. MFH is a non-religious, politically independent human rights organization. Our work is based on a holistic interdisciplinary approach integrating psychological, social, medical and legal support as well as human rights and advocacy work for torture survivors within its “Justice Heals” program.

### **Introduction**

In the past two years, Germany received more than a million refugees. In 2015, the federal government first enrolled a policy of welcoming refugees. This has been a response to the predictable humanitarian catastrophe arising from the high amount of refugees stranded in the Balkans. Later, in 2016, the German reception policy changed drastically by establishing legal restrictions for refugees and accelerating the process of deportation with the objective to reduce the number of refugees as much as possible. This was a political answer to the growing extreme right populist movement. But the legal changes, undermining the right to asylum, only led to a growing discriminatory practice among state authorities and further fueled the growing racist attitude in large sections of the population. Cases of violence against migrants and refugees are rising significantly: in 2016, more than 3.500 violent attacks against refugees, shelter homes, staff and volunteers of refugee aid organizations were documented.

### **Germany’s international obligations concerning torture survivors arriving from third countries:**

Under international human rights law, Germany has a number of concrete obligations towards torture survivors arriving from third countries to seek international protection. These are clearly articulated in the UN Convention against Torture Articles 3, 14 and 16 and further detailed in the UN Committee against Torture’s General Comments No 1 and 3. In addition, Germany has obligations outlined in the European Convention on Human Rights and in EU law, notably in the protection and reception conditions directives.

These obligations primarily consist of an obligation to not deport persons to a country where they would be at risk of torture, the obligation to ensure an effective remedy when protection claims are made, the obligation to ensure that torture survivors have access to holistic rehabilitation services in Germany and the obligation to refrain from practices that may expose torture survivors to further trauma or re-traumatization.

During the past UPR cycle, Germany received and accepted 10 recommendations pertaining to the protection and support to migrants, refugees and asylum seekers.

## **Germany's compliance with its international obligations:**

### Problems related to new asylum legislations:

Germany adopted a new legislation on refugees in 2016 which completely undermines the Geneva Convention. § 3e (1) in combination with § 3d (3) AsylG opens the opportunity to send everybody back to any kind of conflict region, if there is only one part of the territory considered to be "safe". This "safety" can be provided also by international troops operations in these parts of the territory. Since in each and every conflict there are at least some more or less "safe" places (even in Syria), these paragraphs theoretically allow to be applied on each and every applicant. Of course, in most of the cases authorities did not refer to this paragraph yet. But there is a significant increase of rejections of applications from Afghanistan since then and deportation flights are carried out regularly including the potential for a violation of the non-refoulement principle and the special protection of survivors of human rights violations such as torture.

In 2016, Germany also changed its law on family unification procedures for refugees. First a subsidiary protection status was linked to an only delayed right for unification. Consecutively, the percentage of Syrian refugees granted subsidiary protection instead of a full protection status of the Geneva Convention increased drastically in comparison to prior decisions. Since the situation in Syria had not changed to any better, the swift in the decisions can only be interpreted as a strategy to impede family unification for the high amount of Syrian refugees that had arrived one year before.

There is also a very difficult situation for refugees from Turkey applying for asylum in Germany. Many refugees arriving in Germany have to wait for the decision for asylum. Due to the political negotiations between Germany and Turkey the status of being refugee is rarely granted, the authorities take no decision, therefore there are a lot of pending applications for failure to act. Nevertheless there are clear reports of torture from Turkey after the failed coup attempt in 2016.

### Problems related to the identification of torture survivors:

International human rights law and the EU reception directive (2013/33/EU) obliges all members to identify torture survivors among refugees to ensure that they get prompt access to rehabilitation services and that their procedural needs for an effective remedy are met. Even though Germany had ratified the EU directive by July 2015, it is not fully implemented as in practice there is still no early identification system for torture survivors and special vulnerable persons. Furthermore, there is no existing standard mechanism for granting access to rehabilitation. MFH Bochum is in contact with many torture survivors that have stayed unidentified and when they finally have been, they only receive inadequate treatment unless they find their way to one the few specialized psychosocial centers for torture survivors in Germany. Psychosocial centers like MFH Bochum are still the place for torture survivors to be treated and counseled about their rights as special vulnerable persons. Torture survivors need to be referred to places that provide specialized treatment if they are to have an effective possibility to rebuild their lives after torture.

**Recommendation:** Germany should implement a nationwide system of early identification of torture survivors according to EU reception directive and General Comment No. 3 CAT in close cooperation with specialized psychosocial centers and guarantee sustainable funding for the latter

### Implementation of torture victims' right to rehabilitation

Under UNCAT Article 14, torture survivors have a right to rehabilitation and thus, once identified, they should be referred to rehabilitation services that are capable of assisting them to address the physical and psychological trauma they have suffered. Furthermore, the authorities should make sure that asylum and other procedures do not result in further traumatization for the individual. Unfortunately,

the authorities often ignore the situation of torture survivors and have so far failed to ensure that there are appropriate rehabilitation services accessible and available to torture survivors in the country.

In the regular health care system, torture survivors and other psychologically traumatized refugees cannot rely on finding adequate help to their special needs and problems. The regular health service is prepared neither for the specific needs of traumatized refugees nor for the demands of survivors of severe human rights violations. As a result, MFH Bochum is receiving an increasing number of traumatized refugees who are survivors of severe human rights violations and torture. However, limitations in the law, creates significant restrictions on the funding available to MFH Bochum to provide these services, to which torture survivors are entitled. This causes enormous deceleration of necessary medical and psychosocial treatments of torture survivors and in many cases means denial of treatment. Furthermore, in many regions of the country no specialized services are available. Germany recently implemented residence requirement also for refugees that have already been granted protection status forcing them to live for two more years in the very community where they have been initially sent by the German refugee distribution system (Wohnsitzauflage). Due to large distances to adequate treatment facilities, torture survivors in rural areas are de facto forced to stay without any treatment.

**Recommendation:** Ensure that all torture victims in Germany have access to appropriate and specialized torture rehabilitation services and that these services are adequately funded to meet the existing demand. Furthermore, torture victims receive adequate support psychosocial support in asylum proceedings.

#### Problems with decision making on protection claims:

Because of the new refugee laws, deportations can only be prevented in cases of life threatening diseases and in cases of concrete danger for life and health in the country of origin. The new law allows for expulsion of persons suffering from PTSD to places where no adequate treatment is available. . The diagnosis of PTSD is no longer acknowledged as severe disease and cannot prevent deportation. Deportations can be realized if there is only one single option for treatment in the country of origin. For torture victims who require long-term specialized care to make their physical and psychological suffering end, this means that they can be expelled to places where the means to end the suffering are not available.

Refugees often do not know how the complex German asylum system works. Therefore, many refugees underestimate the importance of the interview. Since they do not know about their legal right to demand specifically skilled staff for traumatized people and decision makers or translators of the same gender, they follow only the default rules set by the asylum authority. This includes that many of them do not demand to have the protocol retranslated word by word and corrected in case of errors or misunderstandings. They do not even know the importance of the protocol for the whole decision process. In the end, they sign things they never said or major facts have been left out of the protocol, although they are allowed not to sign it. Specifically for torture survivors and other traumatized refugees the interview is a burden anyway. Many of them try to keep it short, to avoid conflicts with the interviewer, to circumvent certain topics, or only touch them superficially, although this reduces their chances of being granted refugee status. If they would be adequately prepared, know the important aspects of the interview and know their legal rights, many survivors of severe human rights violations could for sure perform much better.

The newly created special reception centers conduct accelerated asylum procedures that shall be decided within one week for refugees from secure countries of origin. Fast track processes applied in relation to so called 'safe countries' do not leave enough time for traumatized torture victims to be

able to disclose the violations that have happened to them. As such, the process prevents the presentation of often very strong indications of the right to protection and in general does not allow for a consideration of individual reasons for protection.

Finally, in cases where a person's status as torture survivor is in dispute, the German government is obliged to examine the claim through a medico-legal report conducted on the basis of the Istanbul Protocol. Such reports are usually offered by centers such as MFH but contrary to its obligations, the German government does not provide sufficient funding for these examinations to be conducted. This denies torture survivors an essential element of proof in relation to their protection claim and thus jeopardizes the effectiveness of the remedy provided.

**Recommendation:** Ensure that refugees go through a torture screening. There should be no accelerated asylum procedures but legal guarantees according to the rule of law instead. This includes responsible and detailed individual examination of applications. Access to special staff for special vulnerable persons like survivors of torture or sexual violence should be facilitated. All applicants should have a legal right for consultation by a lawyer or a qualified NGO before the interview takes place. Guarantee an effective remedy for torture survivors in asylum proceedings by offering adapted interview processes and access to a medico-legal report free of charge whenever their claims of past torture are disputed by asylum authorities. End all expulsions of torture survivors to countries where specialized torture rehabilitation services are not available.

#### Fast track procedures and resettlement agreements

Since the aggravation of both asylum and residential laws in 2016, the access to treatment for torture survivors in Germany has come under further pressure for a large group of refugees, depending on the individual legal status and the perspective to stay. For instance the federal government introduced fast track procedures within 48 hours for new arriving refugees from what the government considers as safe states of origin, impeding the early identification of torture survivors and making it nearly impossible to defend their rights before they shall be deported. This leads to the severe contradiction of obstructive legal conditions for refugees and the theoretical right of torture survivors to get special assistance according to their individual needs.

The new asylum legislation adopted in 2016 contradicts international human right standards. In new established reception centers there are fast track procedures for refugees from so called secure countries of origin that shall be decided within one week. Germany has decided to add all Balkan states to its list of 'secure countries of origin' in order to be able to reject more asylum applications from these countries. This list now contains countries like Kosovo and Albania in ignorance of the systematic prosecution and discrimination of Roma there, as well as of the wide spread sexual violence against women. Also LGBT people are systematically discriminated in the societies of the Balkan region. In certain cases, participation in public demonstrations such as Christopher Street Day can lead to individual persecution.

In order to reduce the amount of refugees living in Germany, the government started negotiations with countries for the resettlement of refugees in analogy to the deal made with Turkey before. Mainly African countries are encouraged to take over refugees from Germany. The countries Germany and the EU are negotiating with are mostly countries with a poor human rights record. Systematic human rights violations are regularly documented like in the Maghreb or Sub-Saharan region. There are specifically alarming reports by Human Rights Watch and amnesty international on detention camps in Libya, where refugees have to suffer from miserable living conditions and arbitrary detention. Also many cases of torture and ill-treatment have been documented proving that refugees are not protected but face another situation of violence and repression. Germanys Foreign Ministry called

these detention camps “concentration camps”. Nevertheless, the government further negotiates with Libya a deal in analogy to the return deal with Turkey.

In several cases these deals may practically lead to a contradiction to the non refoulement principle, since cases of torture and ill treatment are regularly reported by human rights organizations from these countries.

Germany even deported refugees to Afghanistan in 2017 despite widespread violence in this country that cannot be defined as secure because of the presence of German and international troops that are regularly attacked by Taliban.

**Recommendation:** Adopt safeguards to ensure that asylum seekers are not returned to countries where they will face torture and persecution

#### Political discourse and racially motivated attacks towards refugees and asylum seekers

The political discourse about refugees was fueled especially by parts of the German government by statements stigmatizing certain groups of refugees as being rapists or potential terrorists and demanding more and more restrictions in the asylum legislation. What was intended as a strategy to weaken far right wing movements and their party Alternative for Germany (AfD) subsequently led to a significant increase of their political influence in Germany. Racist stigmatization of refugees became therefore common in public and political discourse. At the same time, the social acceptance for the situation of refugees decreased among German society leaving space to more racist views on refugees. Nearly daily right wing activists via social networks and webpages spread certain fake news to systematically criminalize refugees and fuel racism. Although German racism already led to many violent attacks against reception centers and individuals (see above), the German government does not undertake adequate steps against the racist discourse. In reaction to the high number of attacks against refugee accommodations, there have been only few trials against the perpetrators and public condemnation by politicians in relation to crimes against migrants and refugees but the aggression towards refugees was partly fueled by government politicians and their decisions.

**Recommendations:** Consider taking more resolute action to prevent and punish perpetrators of racially motivated attacks against asylum seekers and not to tolerate any kind of racism.

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