A. Preliminary Remarks

1. The German Institute for Human Rights (Institute) submits this report to the UPR procedure regarding Germany in fulfillment of its duty as the German National Human Rights Institution (NHRI). The Institute cannot provide a comprehensive picture of the human rights situation in Germany here. Thus, it focuses on important areas in which it contributes to the protection and promotion of human rights in and by Germany according to the UN Paris Principles, and in light of its competences and expertise. It builds on recommendations of the first round of review.

2. Respect for human rights constitutes the foundation of the German constitutional system. In Article 1(2) of the Constitution, the German people acknowledge “inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.” The human rights architecture in Germany is sophisticated, including the Human Rights Committee of the Federal Parliament, the Human Rights Commissioners in the Ministries of Foreign Affairs and Justice, numerous government commissioners with human rights mandates, such as the Integration Commissioner and the Commissioner for Persons with Disabilities, as well as the Federal Anti-Discrimination Agency and the Institute. Additionally, there are parliamentary petitions committees at the federal and State (“Länder”) levels and numerous advice centers and complaints bodies. The judicial system is highly differentiated and effective. Germany pursues a policy of human rights promotion internationally and at the European level. It engages in international and European monitoring procedures and has issued a standing invitation to the Special Procedures of the HRC.

3. Germany’s human rights civil society is diverse and active. Many organizations have formed umbrella organizations or alliances for alternative reporting to the UN. Self-organizations, of migrants or persons with disabilities for example, increasingly regard themselves as human rights organizations. They participate in international monitoring procedures and in human rights debates nationally.

4. Germany’s human rights obligations are implemented on the federal level, in the 16 Länder, and in the municipalities. The EU also holds important powers. Hence, the EU Member States’ responsibility for the impact of their common EU policies on human rights should also be subject to the UPR.

B. Development of the Normative and Institutional Framework

5. The Institute welcomes that, since 2009, Germany has ratified:
   - CRPD and CRPD-OP;
   - OP-CRC-SC;
   - CPED with declarations according to Articles 31 and 32;
   - Council of Europe Convention on Action against Trafficking in Human Beings.
6. The Institute welcomes the signature and expects the speedy ratification of:
   • OP-CRC on a Communications Procedure; and
   • Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

7. It further welcomes the withdrawal of the reservations to the CRC.

8. The Institute regrets that Germany has still not ratified:
   • ICRMW;
   • ICESCR-OP; and
   • Protocol No. 12 to the ECHR.

9. The Institute recommends to the Government to clarify that the extraterritorial applicability of human rights obligations arises from the respective conventions. This is particularly important for the application of the ICCPR regarding the German involvement in international military operations and its contribution to forward displacement border control measures of the EU. The Government has so far merely unilaterally declared before the CCPR that it ensures these rights outside Germany’s borders. ²

10. The German Constitutional Court strengthened the UN human rights treaties by holding that they must be taken into account when interpreting constitutionally guaranteed human rights. ³ The Institute recommends that the courts implement this ruling and that the Federal and State Governments assess the constitutionality of legislative proposals by reference to UN human rights treaties and to the ECHR. Government reporting ⁴ should take a human rights approach.

11. The reports of the Federal Government under the state reporting procedure and the UPR, including the respective recommendations, are discussed in the Federal Parliament, although not in all of the parliamentary committees that are competent for the subject-matters addressed. The implementation of recommendations is not monitored regularly. ⁵ The State parliaments do not systematically consider human rights obligations and recommendations.

12. Germany has fulfilled its UN human rights duty to create independent national monitoring mechanisms to different degrees:
   • The implementation regarding the CRPD was commendable: the German Institute for Human Rights was appointed as independent monitoring body according to Article 33(2) CRPD and was equipped with additional resources.
   • The NPM for monitoring the implementation of CAT meets neither the Optional Protocol's requirements regarding resources nor on the procedure for selecting the management. ⁶
   • By establishing the German Institute for Human Rights following a unanimous resolution of the Federal Parliament (2001), Germany implemented the General Assembly’s recommendation to create an NHRI. The Sub-Committee on Accreditation of the ICC acknowledged the independent work of the Institute during the re-accreditation in 2008 and urged Germany to provide the Institute with a legal basis according to the Paris Principles. ⁷ Such legal basis has not yet been adopted.

13. The Institute welcomes Germany’s commitment to strengthening human rights in other international bodies, e.g. in the Security Council regarding the rights of children in armed
conflict or in the CFS regarding the adoption of Voluntary Guidelines on Governance of Land. It regrets the Government’s failure to contribute to the UN-Open-ended Working Group on Ageing and urges it to promote this process for the strengthening the rights of elderly people.

C. Implementation of International Human Rights Obligations

I. Equality and Non-Discrimination

14. Germany does not yet have a comprehensive strategy against racist discrimination. Racism is often reduced to right-wing ideology and violence. Federal, State and local authorities, in particular the police and courts, must base their actions on a broader understanding of racism that includes indirect, structural and institutional discrimination.

15. The country was shocked about a series of right-wing terrorist murders of migrants exposed in 2011. Several inquiry commissions are investigating the failures of security and investigation authorities. The premature elimination of a racist background of these crimes and the focus on the victims’ families and a migrant environment are among these failures. So far, the inquiries insufficiently address whether institutional racism in the investigating authorities contributed to this approach and impeded effective investigations. The inquiries should look into the selection of personnel, police training, official instructions, investigating routines, the recording of racist crimes, and complaints management.

16. It emerged in 2012 that German police resorts to ethnic profiling. A court of first-instance approved this practice despite the jurisprudence of the European Court for Human Rights and that of CCPR. The Institute calls for the legal ban of discriminatory ethnic profiling.

17. Despite widespread discrimination in all areas of life, the persons concerned rarely seek judicial aid. Germany must dismantle structural barriers, enhance discriminated persons’ knowledge of their rights, and improve enforcement. This includes introducing a class actions in the General Equal Treatment Act, provide for their funding, and establish and strengthen counseling structures. The Federal Anti-Discrimination Agency should be strengthened financially and in its independence. It should obtain investigating powers and supporting rights during lawsuits.

18. The Federal and some State Governments are trying to foster a “welcoming culture” for new immigrants as part of their integration policy. The Institute welcomes this development, so long as it is human-rights-based aiming at abolishing structural barriers to effective participation in the labor market and to full inclusion in society.

II. Right to Life, Liberty and Physical Integrity

19. Data on police violence have long shown a discrepancy between the number of complaints and of criminal proceedings initiated, as well as a discrepancy between these numbers and the number of convictions. Studies trace this to an increased reluctance of officers to incriminate their colleagues and the difficulty of proving such crimes. The Institute emphasizes the recommendation of the WGAD and the CPT that on-duty police officers should be individually identifiable, that recording of police violence be improved, and procedural measures be implemented for an independent, impartial and effective criminal prosecution in cases of alleged police violence.
20. **Liberty-restricting measures in care facilities for the elderly** are widespread. The Institute recommends that measures are taken to ensure the rights of residents of care facilities for the elderly in all cases and to reduce the extent of liberty-reducing measures.

21. With respect to **compulsory treatment**, the Federal Constitutional Court precluded the use of force as a last resort in forensic psychiatric hospitals. It held force exceptionally admissible under strict requirements for patients, who, through illness, are incapable of giving consent. The Institute believes that adequate protection of the rights of persons with psychosocial disabilities requires establishing a practice of psychiatric care that is based on voluntariness. Such reform of the psychiatric system can only succeed if the voices of the concerned persons are given more weight.

22. **Women with disabilities** often suffer disproportionately from all forms of violence. The Institute therefore suggests ensuring barrier-free access to protection and support facilities nationwide. Women living in specialized centers are subject to increased dependency and thus need access to effective protection and complaint mechanisms.

23. Upon the recommendation of several UN treaty bodies, the Federal Parliament began addressing the situation of **intersexual persons**. The Institute welcomes this overdue step and urges the lawmaker to expressly prohibit irreversible, non-life-saving surgeries on intersexual children as long as they cannot give consent. Conditions for qualified advice by medical personnel and self-help groups for parents and persons affected should be created.

### III. Freedom of Religion

24. The judgment of a lower court in the summer of 2012 has cast doubt on the legality of **male circumcisions based on religious grounds**. A parliamentary majority called for ensuring the legality of circumcisions carried out according to the state of the art and without unnecessary suffering. The Government is to present a draft bill in the autumn of 2012. The public debate shows increased awareness for the rights of the child, yet reveals a sometimes undifferentiated understanding of a child’s and its parent’s freedom of religion and the State’s role in this area. It partially shows tendencies of degrading religious minorities. From a human rights perspective, the Institute regards solving this conflict of rights by means of criminal law as problematic as it stigmatizes parents for a religiously motivated decision of conscience.

### IV. Economic, Social and Cultural Rights

25. **Legal practice and legislation** do not sufficiently mirror the justiciability of economic, social, and cultural human rights and their equivalence to civil and political rights. The Institute recommends to Germany to commit more strongly to the indivisibility, equality and universality of all human rights by aligning national reporting and law-making in the economic and social fields with economic and social rights and by promoting their justiciability by means of training judges and lawyers and by ratifying the Optional Protocol.

### V. Rights of Children

26. After the withdrawal of all reservations to the CRC, the Institute recommends the alignment of German law with the obligations arising under CRC. For example, in asylum
and residence law, 16- and 17-year-old unaccompanied minor refugees are still treated as adults concerning procedural issues and their care and accommodation.

27. The Institute further recommends a comprehensive and systematic review of the consistency of German law with the CRC. It recalls the recommendation of the UN Committee on the Rights of the Child to guarantee the monitoring of the CRC by an independent body.¹⁹

VI. Human Rights Education

28. The right to human rights education is a gateway right, and the State is obliged to ensure human rights training of professional groups with particular human rights relevance.²⁰ In light of far-reaching implementation gaps, the Institute recommends that the Federal and State Governments:

- broaden and intensity school education in human rights;
- ensure in-depth analysis of international human rights law within the legal education;
- intensify teaching on human rights and their implementation in the training of the police, security organs, and prison authorities; and
- train medical and care personnel, as well as other social professions on human rights.

For all these areas, the Institute recommends:

- creating obligatory curricula, practice-oriented learning contents, and standards of human rights education;
- educating teaching personnel; and
- creating corresponding competence centers at universities and teacher training centers.

VII. Persons with Disabilities

29. In 2011, the Federal Government summarized its implementation measures regarding the CRPD in a national action plan (NAP CRPD). The national Monitoring Body for CRPD considers the initiative generally positive, inter alia, because it contains measures promoting the understanding of disability as a cross-cutting issue in politics and society.²¹ The propositions in the NAP CRPD, however, are insufficiently aligned with the rights of persons with disabilities, particularly those that are highly vulnerable.²² The monitoring body recommends the further development of the NAP CRPD to a comprehensive rights-based and result-oriented instrument.

30. Approximately 85% of children with disabilities are educated in special schools.²³ Of the Länder, which have exclusive legislative powers on education, only some have started providing for more joint education in an appropriate framework and with due regard to the right of children to high-quality education.²⁴ Almost all Länder fail to comply with the obligation to a prompt creation of an inclusive education system. In some cases, the segregating structures are further reinforced. The Monitoring Body urges the Conference of the Ministers of Education and Cultural Affairs to take a leading role in the realization of the right to inclusive education.²⁵
31. Two groups of persons with disabilities are deprived of their active and passive electoral rights for federal, European and (some) Länder and municipal elections: persons who are subject to guardianship in all matters and persons living in forensic institutions following a criminal court decision. The legal exclusion of these persons contradicts Article 29 CRPD. The Monitoring Body recommends abolishing the pertinent provisions. It recalls that elections must be barrier-free, and that necessary individual support for persons with disabilities must be provided.

VIII. Asylum, Migration

32. According to EU law, the Member State responsible for examining the application for asylum is the one whose territory the asylum seeker enters first. Asylum seekers have no effective remedy against deportations to "safe third countries," especially to EU-States, despite European jurisprudence. The Institute demands legally restoring effective national judicial review.

33. Pre-deportation custody can be imposed for up to 18 months in Germany. This maximum length should be significantly decreased to meet the proportionality requirement under human rights. Pre-deportation custody against particularly vulnerable groups, such as unaccompanied minors, should generally be precluded. A legal and factual framework for guaranteeing that traumatized and mentally-ill persons are not detained but receive necessary treatment is necessary. Human rights violations during deportations should be prevented more strongly.

34. Since 2009, educational facilities have been made accessible for undocumented migrant children by abolishing the reporting obligation of these facilities. However, public healthcare services and courts remain under this duty. They must transmit personal data of "undocumented persons" to the aliens departments and law enforcement agencies. For fear of deportation, "undocumented persons" refrain from exercising their right to healthcare and to judicial protection against exploitative working conditions.

IX. Victims of Human Trafficking

35. Victims of human trafficking for sexual and labor exploitation receive a residence permit only if they are willing and able to testify as witnesses against the perpetrators. The length of the permit is limited to that of the criminal proceedings. Neither the best interests of the child, nor health conditions or the civil claims of the victims for damages and wages are taken into account when deciding on the residence. The Institute calls for granting victims limited residence permits irrespective of their witness testimony and on the basis of criteria consistent with human rights. The public compensation system for victims must take into account the offense of human trafficking.

X. Human Rights in Development Cooperation

36. Projects of bilateral development cooperation still lack a comprehensive Human Rights Impact Assessment. The Institute welcomes the Federal Ministry of Economic Cooperation and Development's (BMZ) commitment in May 2011 to Human Rights Risk and Impact Assessments in the bilateral development cooperation. The standards for the assessment must comply with human rights requirements, and the Ministry must control the executing agencies. The Institute recommends that the other Ministries carry...
out Human Rights Impact Assessments of ODA-eligible projects, in particular security sector support.  

37. Germany does not regularly publish **information on the content, process and results of development programs**, although it has signed the International Aid Transparency Initiative (IATI) in 2008. This impedes civil society monitoring of the development cooperation in Germany and the partner countries. The Institute urges Germany to promptly commence implementing its IATI commitments.

38. Persons affected by Germany’s bilateral development projects cannot directly bring complaints in Germany. The Institute welcomes the BMZ’s consideration of creating a **bilateral complaint mechanism**. This would strengthen the rights of the population in the partner country and contribute to the prevention and to the early solution of human rights issues.
References:


„Deutschland hat gegenüber dem Menschenrechtsausschuss der Vereinten Nationen bei Einsätzen seiner Polizei- oder Streitkräfte im Ausland, insbesondere im Rahmen von Friedensmissionen, allen Personen, soweit sie seiner Herrschaftsgewalt unterstehen, die Gewährung der im Internationalen Pakt über bürgerliche und politische Rechte anerkannten Rechte zugesichert, wobei die internationalen Aufgaben und Verpflichtungen Deutschlands, insbesondere zur Erfüllung der Verpflichtungen aus der Charta der Vereinten Nationen, unberührt bleiben.

5. For example, a midterm review of the UPR-recommendations did not take place.
9. Judgment of the Administrative Court of Koblenz of 28 February 2012, 5 K 1026/11.KO.
The measures include physical restraints (e.g. fixation to beds and sedation), which are scientifically proved to carry further risks (Meyer / Köpke / Haastert, ibid), rather than protecting the persons concerned against dangers such as falls, see Köpke, Sascha / Mühlhauser, Ingrid / Gerlach, Anja et al. (2012): Effect of a guideline-based multicomponent intervention on use of physical restraints in nursing homes. A randomized controlled trial, in: The Journal of the American Medical Association (JAMA) Vol. 307(20), pp. 2177-2184.

The number of persons affected by compulsory treatment is unknown. There is no data available about the practice of compulsory treatment after the decision of the Federal Constitutional Court of 2 March 2011, 2 BvR 882/09 (supra note 3). On the basis of the federal law on support (“Betreuungsrecht”) alone, 57,116 placements were allowed by judicial decisions in 2011. In addition and during the same year, 78,147 placements based on the so-called laws on mentally sick persons (“Psychisch-Kranken-Gesetze”) and the laws on placements (“Unterbringungsgesetze”) enacted by the Länder, see reply of the Federal Ministry of Justice to the parliamentary request of the parliamentary group of DIE LINKE (Antwort des Bundesministeriums der Justiz auf die kleine Anfrage der Fraktion DIE LINKE) of 13 September 2012, BT-Drs. (Document of the Federal Parliament) 17/10712, pp. 2 and 4.). In contrast, reliable data on the extent of compulsory treatment in psychiatric hospitals are lacking: It is estimated that compulsory measures (fixiation, isolation, administration of antipsychotic drugs) are applied to about 10% of the patients, see Ketelsen, Regina / Schulz, Michael / Zechert, Christian (2007): Seelische Krise und Aggressivität: der Umgang mit Deeskalation und Zwang. 2nd edition. Bonn: Psychiatrie-Verlag.


Hornberg, Claudia / Schröttle, Monika et al. (Universität Bielefeld commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend)) (2012): Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland Bielefeld. For example, 58-75% of the women with disabilities who participated in the study experienced violence during their adult lives, as compared to 35 % of the women on average of the population.


The national Monitoring Body for CRPD also welcomes that action plans came into effect in five Länder (Brandenburg, Hesse, North Rhine-Westphalia, Rhineland-Palatinate, Thuringia).


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The number of persons concerned is unknown, see Bundesministerium für Arbeit und Soziales (2011): Unser Weg in eine inklusive Gesellschaft. Der Nationale Aktionsplan der Bundesregierung zur Umsetzung der UN-Behindertenrechtskonvention, p. 187, http://www.einfach-teilhaben.de/SharedDocs/Downloads/DE/UN_BRK/NAP.pdf;jsessionid=8C66D16090EBCD3F3AD66539788DDFF9.1_cid250?_blob=publicationFile; see also: Reply of the Federal Government on the inquiry by MP Ingrid Hönlinger et al. (Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ingrid Hönlinger u.a.), BT-Drs. 17/5323 of 1 April 2011, replies on questions 14 and 15.


Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. (Dublin-II Regulation), OJ L 50/01.

European Court of Human Rights (Grand Chamber), judgment of 21 January 2011, M.S.S. vs. Belgium and Greece, communication no 3096/09; Court of Justice of the European Union, judgment of 21 December 2011, C-411/10 and C-493/10.

Residence Law (“Aufenthaltsgesetz”), Section 87 para. 1.

See the criticism of the CESCR, Concluding Observations on Germany 2011, UN-Doc. E/C.12/DEU/CO/5, paras. 9-11.


The Human Rights Concept only applies to projects carried out by the BMZ. There is no information that projects of the Federal Ministry of the Interior supporting security sectors abroad are assessed regarding their human rights impact.