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resolution 16/21**

Germany

The present report is a compilation of the information contained in the reports of treaty bodies and special procedures, including observations and comments by the State concerned, and of the Office of the High Commissioner for Human Rights (OHCHR), and in other relevant official United Nations documents. It is presented in a summarized manner due to word-limit constraints. For the full text, please refer to the document referenced. This report does not contain any opinions, views or suggestions on the part of OHCHR other than those contained in public reports and statements issued by the Office. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

I. Background and framework

A. Scope of international obligations¹

International human rights treaties²

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified/not accepted</i>
<i>Ratification, accession or succession</i>	ICERD (1969)	OP-CAT (2008)	ICRMW
	ICESCR (1973)	OP-CRC-SC (2009)	
	ICCPR (1973)	CRPD (2009)	
	ICCPR-OP 2 (1992)	CPED (2009)	
	CEDAW (1985)		
	CAT (1990)		
	CRC (1992)		
	OP-CRC-AC (2004)		
<i>Reservations, declarations and/or understandings</i>	ICCPR (Declaration, arts. 2, para. 1; 14, paras. 3 (d) and 5; 15, para. 1; 19; 21; 22, 1973)	OP-CAT (General declaration, 2008)	
	ICCPR-OP 1 (Reservation, art. 5, para. 2 (a), 1993)	CRC (Withdrawal of declarations and reservations, arts. 3, para. 2; 9; 10; 18; 22; 38, para. 2; and 40, para. 2 (b)(ii) and (v), 2010)	
	CEDAW (General declaration, 1985)	CPED (Declarations, arts. 16; 17, paras. 2 (f) and 3; 18; and 24, para. 4, 2009)	
	CAT (Declaration, art. 3, 1990)		
<i>Complaint procedures, inquiry and urgent action³</i>	ICERD, art. 14 (2001)	CPED, arts. 31 and 32 (2009)	OP-ICESCR
	ICCPR, art. 41 (2001)		ICRMW
	ICCPR-OP 1 (1993)	OP-CRPD, art. 6 (2009)	
	OP-CEDAW, art. 8 (2002)	OP-CRC-IC (signature only, 2012)	
	CAT, arts. 20, 21 and 22 (1990/2001)		

1. The Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT) and the Committee on Social, Economic and Cultural Rights (CESCR) encouraged Germany to ratify ICRMW. CAT and CESCR also encouraged Germany to ratify OP-ICESCR.⁴

2. In 2011, CAT recommended that Germany withdraw its declaration to article 3 of the Convention.⁵

3. In 2012, the Human Rights Committee (HR Committee) urged Germany to withdraw its reservations to article 15, paragraph 1, of ICCPR and to article 5, paragraph 2 (a) of ICCPR-OP 1.⁶

Other main relevant international instruments

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified</i>
<i>Ratification, accession or succession</i>	Convention on the Prevention and Punishment of the Crime of Genocide		ILO Conventions No. 169 and No. 189 ¹¹
	Rome Statute of the International Criminal Court		Additional Protocol III to the Geneva Conventions ¹²
	Palermo Protocol ⁷		
	Conventions on refugees and stateless persons ⁸		
	Geneva Conventions of 12 August 1949 and Additional Protocols I and II ⁹		
	ILO fundamental conventions ¹⁰		
	UNESCO Convention against Discrimination in Education		

4. The United Nations Educational, Scientific and Cultural Organization (UNESCO) noted that in 2011 Germany had announced its intention to ratify the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, and invited Germany to ratify the Convention at its earliest convenience.¹³

5. UNESCO encouraged Germany to submit a report for the eighth consultation on the measures taken to implement the Convention against Discrimination in Education.¹⁴

B. Constitutional and legislative framework

6. In 2010, the Committee on the Elimination of Racial Discrimination (CERD) encouraged Germany to pass a law with an explicit provision that racist motivation should be taken into account as a specific aggravating circumstance for the purpose of sentencing in relevant crimes.¹⁵ A recommendation in this regard was also made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, following his mission in 2009.¹⁶

7. CAT expressed concerns at the absence of provisions adequately criminalizing acts of torture in criminal law, and regretted the absence of clarity regarding which of those acts by public officials would amount to torture or cruel, inhuman or degrading treatment or punishment.¹⁷

8. CAT expressed concern over the lenient penalties in the Military Penal Code for ill-treatment and degrading treatment by military superiors.¹⁸

C. Institutional and human rights infrastructure and policy measures

9. CAT commended the establishment of the National Agency for the Prevention of Torture. It recommended that the Agency be provided with resources and granted access to all places of detention at the federal and Länder levels.¹⁹

10. In 2011, CESCR expressed concern that the competence of the German Institute for Human Rights was not extended to consider complaints.²⁰

11. While welcoming the General Equal Treatment Act, 2006, the HR Committee urged Germany to extend the mandate of the Federal Anti-Discrimination Agency.²¹ Similarly, CEDAW called for this Agency to be given a broader mandate and be granted additional investigative and sanction powers.²²

12. CEDAW requested Germany to enter into dialogue with non-governmental organizations of intersex and transsexual people in order to better understand their claims and to take effective action to protect their human rights.²³

Status of national human rights institutions²⁴

<i>National human rights institution</i>	<i>Status during previous cycle</i>	<i>Status during present cycle²⁵</i>
Deutsches Institut für Menschenrechte	A (2003)	A (November 2008)

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies²⁶

1. Reporting status

<i>Treaty body</i>	<i>Concluding observations included in previous review</i>	<i>Latest report submitted since previous review</i>	<i>Latest concluding observations</i>	<i>Reporting status</i>
CERD	August 2008	–	–	Nineteenth to twenty-second reports overdue since 2012
CESCR	August 2001	2008	May 2011	Sixth report due in 2016
HR Committee	March 2004	2011	Oct. 2012	Seventh report due in 2018
CEDAW	January 2004	2007	Feb. 2009	Seventh to eighth report due in 2014
CAT	May 2004	2009	Nov. 2011	Sixth report due in 2015
CRC	January 2004	2010	–	Third and fourth reports pending consideration. Initial OP-CRC-SC report overdue since 2011

<i>Treaty body</i>	<i>Concluding observations included in previous review</i>	<i>Latest report submitted since previous review</i>	<i>Latest concluding observations</i>	<i>Reporting status</i>
CRPD	–	2011	–	Initial report pending consideration
CED	–	–	–	Initial report due in 2013

2. Responses to specific follow-up requests by treaty bodies

Concluding observations

<i>Treaty body</i>	<i>Due in</i>	<i>Subject matter</i>	<i>Submitted in</i>
CERD	2009	Hate speech on the Internet; adequate housing; children of asylum seekers and education; and inclusion of racist motivation as aggravating circumstance. ²⁷	2009; ²⁸ dialogue ongoing ²⁹
HR Committee	2013	Asylum seekers; detention conditions for detainees; and physical restraint measures in residential homes. ³⁰	-
CEDAW	2011	Pay gap, and cooperation with NGOs. ³¹	2011; ³² dialogue ongoing ³³
CAT	2005	Criminal complaints; nationwide statistical data; extradition; and law enforcement authorities. ³⁴	2005 and 2007; ³⁵ dialogue ongoing ³⁶
	2012	Physical restraints; detention pending deportation; exercise of jurisdiction; and identification of police officers. ³⁷	2012 ³⁸

Views

<i>Treaty body</i>	<i>Number of views</i>	<i>Status</i>
HR Committee	1 ³⁹	Dialogue ongoing ⁴⁰

B. Cooperation with special procedures⁴¹

	<i>Status during previous cycle</i>	<i>Current status</i>
<i>Standing invitation</i>	Yes	Yes
<i>Visits undertaken</i>	Education (February 2006)	Racism (2009) Arbitrary Detention (2011)
<i>Visits agreed to in principle</i>	-	-
<i>Visits requested</i>	-	-
<i>Responses to letters of allegations and urgent appeals</i>	During the period under review, three communications were sent, all of which were responded to by Germany.	
<i>Follow-up reports and missions</i>	-	

C. Cooperation with the Office of the High Commissioner for Human Rights

13. Germany made annual financial contributions to OHCHR.⁴²

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law**A. Equality and non-discrimination**

14. CEDAW urged Germany to establish concrete goals to accelerate the achievement of substantive equality between women and men under relevant areas of the Convention.⁴³

15. CEDAW commended Germany for the adoption of the General Equal Treatment Act of 2006,⁴⁴ but expressed concern that the Act did not fully cover discrimination in all fields of the labour market.⁴⁵ It also noted the broad scope of the Act and called on Germany to monitor its implementation and to ensure effective elimination of discrimination against women.⁴⁶

16. CEDAW called on Germany to eliminate stereotypical attitudes about the roles and responsibilities of women and men and the stereotypical images of migrant women. It also called on Germany to encourage the mass media to promote cultural changes with regard to the roles and tasks considered suitable for women and men.⁴⁷

17. CEDAW expressed concern that immigrant, refugee and minority women may be subjected to multiple forms of discrimination with regard to education, health, employment and social and political participation. It urged Germany to eliminate such discrimination within respective communities and in society at large.⁴⁸

18. The HR Committee was concerned at racially motivated incidents against members of the Jewish, Sinti and Roma communities, Germans of foreign origin and asylum seekers.

It urged investigation of racially motivated acts and the prosecution and punishment of those responsible.⁴⁹

19. The HR Committee was concerned at discrimination against the Sinti and Roma communities regarding access to housing, education, employment and health care. It urged Germany to integrate the Sinti and Roma communities, by promoting their access to education, housing, employment and health care.⁵⁰

20. The HR Committee was concerned at hate speech and racist propaganda on the Internet, including from right-wing extremism. The Committee urged Germany to prohibit and prevent hate speech and racist propaganda and increase its awareness at the federal and Länder levels with regard to racist propaganda and speech, in particular from extreme right-wing associations or groups.⁵¹

21. CESCR expressed concern that persons with a migration background faced obstacles in the enjoyment of their rights to employment. It recommended that Germany monitor the enforcement of laws against racial discrimination in the labour market.⁵²

22. The HR Committee was concerned that section 19, subsection 3, of the General Equal Treatment Act of 2006 may be interpreted as permitting discrimination in housing by private landlords. It urged Germany to ensure that the provision is not used by landlords to discriminate against people with immigrant backgrounds on the basis of their ethnic origin.⁵³

23. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended an expansion of the concept of racism towards a comprehensive understanding of racism, racial discrimination, xenophobia and related intolerance, in line with ICERD.⁵⁴

24. CESCR urged Germany to step up measures on the identity and the health of transsexual and intersex persons, with a view to ensuring that they are no longer discriminated against and that their personal integrity and sexual and reproductive health rights are respected.⁵⁵

B. Right to life, liberty and security of the person

25. The HR Committee urged Germany to ensure that no individuals are exposed to the danger of torture or cruel, inhuman or degrading treatment or punishment when extradited or deported.⁵⁶

26. The Office of the United Nations High Commissioner for Refugees (UNHCR) recommended that Germany ensure that asylum seekers are not transferred to countries where there is a real risk of them being subjected to inhuman or degrading treatment.⁵⁷

27. UNHCR stated that the diplomatic assurances sometimes accepted by Germany when extraditing persons could not effectively avert the risk of ill-treatment or torture.⁵⁸ It recommended, inter alia, that Germany refrain from accepting those assurances.⁵⁹ CAT recommended that Germany refrain from seeking and accepting diplomatic assurances from the State where there are substantial grounds for believing that a person would be at risk of torture or ill-treatment upon return to the State concerned.⁶⁰

28. CAT urged Germany to prevent, promptly prosecute and punish trafficking in persons and related practices; to provide means of redress to victims; to prevent the return of trafficked persons to their countries of origin if there are substantial grounds for believing that they would be in danger of torture; and to provide regular training to the police, prosecutors and judges.⁶¹

29. The HR Committee also urged Germany to investigate allegations of trafficking in persons, and to prosecute and punish those responsible. It further urged Germany to strengthen support and protection measures at the Federal and Länder levels for victims and witnesses, and to facilitate access to justice for victims.⁶²
30. The HR Committee was concerned about the use of physical restraints, particularly on dementia sufferers in residential homes.⁶³
31. CAT urged Germany to strictly regulate the use of physical restraints in prisons, psychiatric hospitals, juvenile prisons and detention centres for foreigners, and to ensure adequate training for law enforcement and other personnel on the use of physical restraints.⁶⁴
32. CESCR urged Germany to criminalize domestic violence as a distinct criminal offence.⁶⁵ CEDAW remained concerned about the inadequate impact of the Protection against Violence Act of 2002. It called on Germany to ensure the effective implementation of the 2007 action plan on violence and to implement legislation requiring that convictions for acts of domestic violence be taken into account in child custody or visitation decisions.⁶⁶ The HR Committee expressed similar concerns and recommendations.⁶⁷
33. CEDAW expressed concern at the lack of sustained funding of shelters for women and non-residential counselling centres.⁶⁸
34. CEDAW encouraged Germany to continue to formulate strategies to prevent women from entering prostitution and to establish programmes of rehabilitation and support for women and girls who wish to leave prostitution.⁶⁹

C. Administration of justice, including impunity, and the rule of law

35. In 2009 the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended that Germany develop additional training for police officers, prosecutors and judges on the identification and characterization of racist hate crimes, extending the existing training programmes provided by the German Judicial Academy.⁷⁰
36. During its 2011 mission, the Working Group on Arbitrary Detention raised concerns with regard to the system of preventive detention whereby persons who have already served their sentences were deprived of their liberty because they were deemed to be a continued danger to society. In some cases, the reasons for prisoners being a danger to society were unknown at the time of their sentencing.⁷¹
37. The HR Committee expressed concern at the number of persons detained in post-conviction preventive detention and urged Germany to use such detention as a measure of last resort.⁷²
38. CAT noted that the Federal Constitutional Court had considered that all provisions of the Criminal Code and the Youth Courts Act on the imposition and duration of preventive detention were unconstitutional. It urged Germany to amend those provisions.⁷³
39. The Working Group on Arbitrary Detention noted the disproportionate number of foreigners and Germans of foreign origin in detention. Remand detention seemed to be too easily ordered for foreigners under the rationale of a lack of local connections.⁷⁴ The Working Group recommended that the use of alternatives to detention for foreigners who are not in possession of a valid visa or whose visa is expired always be considered.⁷⁵
40. The Working Group on Arbitrary Detention recommended that Germany give full effect to the mechanism set out by the Federal Constitutional Court in its May 2011

Judgment⁷⁶ “for the compliance with the decision of the European Court of Human Rights”.⁷⁷

41. The Working Group on Arbitrary Detention recommended that the use of restraints, such as handcuffs and shackling, in remand hearings should be monitored, and suggested that guidelines would provide assistance in the application of the relevant proportionality test.⁷⁸

42. CEDAW expressed concern at the lack of penal institutions for girls and at their detention in high-security women’s prisons. It recommended that Germany ensure that persons, including girls, below 18 years of age are deprived of their liberty only as a last resort and, when in custody, are separated from adults. It also called on Germany to ensure that girls in prison are provided with a full programme of educational activities.⁷⁹

43. CEDAW expressed concern that there had been no charges or sanctions for those German soldiers serving in the North Atlantic Treaty Organization Kosovo Force who took part in forced prostitution. It recommended that Germany ensure that complaints lodged against its troops abroad are investigated expeditiously, and that Germany launch a national action plan to implement Security Council resolution 1325 (2000).⁸⁰

44. The HR Committee was concerned about allegations of ill-treatment by police and prison officers. It urged Germany to ensure that all allegations of ill-treatment by those persons are impartially investigated, and to encourage the Länder to facilitate the identification of police officers when they are carrying out their functions.⁸¹

45. CAT expressed concern that victims of alleged ill-treatment by the police were not aware of the complaint procedures beyond reporting their complaints. It also expressed concern about reported cases of ill-treatment of persons in vulnerable situations who had declined to file a complaint against the police out of fear of counter-complaints by the police or other forms of reprisals. It urged Germany to make available and widely publicize information about the procedure for filing complaints against the police and to investigate all allegations of misconduct by the police.⁸²

46. CAT expressed concern that allegations of torture, ill-treatment and unlawful use of force by the police at the federal level continued to be investigated by the Public Prosecution Offices and the police acting under the supervision of those Offices. It recommended that independent bodies promptly and thoroughly investigate all allegations of torture and ill-treatment by the police, with no institutional or hierarchical connection between the investigators and the alleged perpetrators.⁸³

47. UNHCR stated that where asylum seekers appealed their respective cases, only those asylum seekers whose cases were likely to succeed, according to the court’s summary assessment, were granted legal aid.⁸⁴ It recommended guaranteeing access to legal aid for all needy asylum seekers whose cases go on appeal.⁸⁵

D. Right to marriage and family life

48. CEDAW encouraged Germany to assist women and men in striking a balance between family and employment responsibilities. It urged the State to improve the availability, affordability and quality of care places for school-age children in order to facilitate the re-entry of women into the labour market; and to assess the current legal provisions on the taxation of married couples and their impact on the perpetuation of stereotypical expectations for married women.⁸⁶

49. CEDAW was concerned that Germany’s legislation on the distribution of property upon divorce and on maintenance did not adequately address gender-based economic disparities between spouses. It recommended that Germany review its current legislation

and amend the new maintenance legislation to take into account the difficult situation of divorced women with children.⁸⁷

E. Freedom of movement

50. UNHCR stated that while competent authorities in the 16 Bundesländer and municipalities could extend the asylum seekers' assigned area by including adjacent districts, that practice was not consistent and asylum seekers were still subjected to significant restrictions to their freedom of movement. Violations of those restrictions were punishable with a fine.⁸⁸

F. Freedom of religion or belief, expression, and right to participate in public and political life

51. In 2009, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance reiterated that restrictions to the wearing of religious symbols should not lead to either overt discrimination or camouflaged differentiation depending on the religion or belief involved, and exceptions to the prohibition of wearing religious symbols should not be tailored to the predominant or incumbent religion or belief. The Special Rapporteur recommended a review of the existing legislation in several Länder that prohibited the wearing of religious symbols by public schoolteachers and might have a discriminatory effect on Muslim women.⁸⁹

52. UNESCO stated that defamation was a criminal offence under the German Criminal Code. It encouraged Germany to decriminalize defamation and to make it part of the civil code in accordance with international standards.⁹⁰

53. CEDAW was concerned at the low percentage of women in high-ranking posts in the diplomatic service, the justice system and academia. It recommended that Germany adopt proactive measures to encourage more women to apply for high-ranking posts, and ensure that the representation of women in political and public bodies reflects the full diversity of the population.⁹¹

G. Right to work and to just and favourable conditions of work

54. CESCR expressed concern that insufficient childcare facilities, women's and men's career choices and stereotypical gender roles impeded women's equal enjoyment of their right to work. It recommended that Germany continue efforts to educate girls and boys about equal career opportunities and to significantly increase the supply of care services for children.⁹²

55. CEDAW was concerned that the growth in women's participation in employment had resulted in an increase in part-time employment and that women were concentrated in part-time, fixed-term and low-paid jobs.⁹³

56. CEDAW noted with concern the long-standing pay gap between women and men, and urged Germany to close that gap by implementing non-discriminatory job evaluations and job assignment systems, and by enacting an equality act for the private sector, with the establishment of a gender-based definition of pay in wage agreements and company pay structures, or by amending the General Equal Treatment Act to that effect.⁹⁴ CESCR had similar concerns.⁹⁵ The HR Committee urged Germany to promote the enhancement of women's careers.⁹⁶

57. CESCR remained concerned about the low representation of women in decision-making positions, both in the public and private sectors. It urged Germany to promote equal representation of men and women in decision-making positions, through quotas in the public sector and mechanisms to monitor the compliance by private actors with the State's equal treatment and anti-discrimination laws.⁹⁷

58. The HR Committee shared those concerns and urged Germany to promote women in leading positions in the private sector, by monitoring the implementation of the German Corporate Governance Code of 2010.⁹⁸

59. CESCR expressed concern that the unemployment rate in the eastern Länder was double that of the western Länder, and urged Germany to address regional disparities in employment, including by implementing technical and vocational education plans to meet the demands of the labour market.⁹⁹

60. CESCR noted with concern the obligation for recipients of unemployment benefits to take up "any acceptable job", and the assignment of long-term unemployed persons to unpaid community service work. It urged Germany to ensure that its unemployment benefits schemes take account of an individual's right to freely accept employment of his or her choosing and the right to fair remuneration.¹⁰⁰

61. CESCR was concerned about the prohibition by Germany of strikes by public servants. It urged Germany to ensure that public officials who do not provide essential services are entitled to their right to strike.¹⁰¹

H. Right to social security and to an adequate standard of living

62. CESCR was concerned about the discrimination in the enjoyment of social security rights between eastern and western Länder.¹⁰²

63. CESCR remained concerned that the method for the calculation of the subsistence level did not ensure an adequate standard of living for beneficiaries. It urged Germany to ensure that the level of benefits affords beneficiaries an adequate standard of living. The Committee also urged Germany to review the impact of its various social security schemes, including the 2011 child package, on child poverty, and reconsider its decision to increase the taxable portion of the pension.¹⁰³

64. CESCR noted with concern that 13 per cent of the population lived below the poverty line, while 1.3 million persons who were economically active required income support. It called on Germany to adopt an anti-poverty programme.¹⁰⁴

I. Right to health

65. CEDAW welcomed the plan of action to combat HIV/AIDS, but expressed concern at the increase in the number of new infections since 2004. It called on Germany to ensure effective implementation of that plan of action.¹⁰⁵

66. CESCR urged Germany to improve the situation of older persons in nursing homes by allocating resources to train nursing care personnel and conducting more frequent and thorough inspections of nursing homes.¹⁰⁶

67. CAT noted that the Ethical Council had undertaken to review the reported practices of routine surgical alterations in children born with sexual organs that were not readily categorized as male or female, referred to as intersex persons. It recommended that Germany apply legal and medical standards following the best practices of granting informed consent to medical and surgical treatment of intersex people; and to investigate

incidents of treatment without effective consent and provide redress to the victims of such treatment.¹⁰⁷

J. Right to education

68. UNESCO stated that the Constitution of Germany of 1949 did not explicitly recognize the right to education, as Germany was a federal State and the Länder had the power to legislate on education and schools.¹⁰⁸ It encouraged Germany to enshrine the right to education in the Constitution.¹⁰⁹

69. CESCR called on Germany to introduce a reduction in tuition fees into the national framework legislation on higher education, and to vest more responsibilities in the Federal Government as regards education policies, which had been devolved to the Länder.¹¹⁰

70. CEDAW expressed concern about stereotyping in the choice of academic and vocational fields. It urged Germany to diversify academic and vocational choices for girls and boys; to encourage girls to choose non-traditional fields of education; and to closely monitor the situation of refugee and asylum-seeking girls.¹¹¹

71. In 2010, within the framework of follow-up to concluding observations, CERD encouraged Germany to ensure that all children of asylum seekers do not face obstacles in school enrolment.¹¹²

72. CESCR expressed concern that 25 per cent of pupils went to school without breakfast and that lunch was not provided in all schools. It urged Germany to ensure that children are provided with proper meals; and that these measures do not further stigmatize children from disadvantaged social backgrounds.¹¹³

73. CESCR was concerned about the high number of pupils who left school without a diploma, particularly among the socially disadvantaged. It urged Germany to provide support to those enrolled in vocational training programmes to acquire the secondary school diploma.¹¹⁴

74. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended that Germany continue its efforts to implement the recommendations presented by the Special Rapporteur on the right to education following his visit to Germany in 2006. In particular, the Special Rapporteur recommended that the Government engage in a profound reflection on how to address the underperformance of children with a migration background.¹¹⁵

K. Cultural rights

75. CESCR recommended that Germany enable ethnic and religious groups and minorities to identify themselves as such, with a view to guaranteeing their cultural rights, on the basis of self-identification, particularly the right to preserve, promote and develop their own culture.¹¹⁶

L. Persons with disabilities

76. CESCR expressed concern about high unemployment among persons with disabilities. It urged Germany to ensure that the Federal Employment Agency enable persons with disabilities to secure and retain appropriate employment and to progress in their occupational field.¹¹⁷

M. Migrants, refugees and asylum seekers

77. The HR Committee was concerned about the high level of violence against women with immigrant backgrounds, particularly those of Turkish and Russian origin. It urged Germany to increase measures to protect those women; to facilitate access to counselling and support services; and to investigate the alleged violence.¹¹⁸

78. UNHCR stated that the well-established and generally functioning asylum system of Germany required constant monitoring, review and adjustment, both as regards the quality of the procedures as well as the substantive criteria for granting protection.¹¹⁹

79. The HR Committee urged Germany to adopt clear and transparent procedures allowing review by adequate judicial mechanisms before individuals are deported or extradited, and effective means to monitor the fate of affected individuals.¹²⁰

80. UNHCR stated that while Germany had suspended transfers to one European State in accordance with the Dublin II Regulation, it did not, as a rule, review cases before they were transferred to other European States to ensure that asylum seekers were not being put in situations where there were no adequate reception conditions, fair procedures for determining protection needs, or humane conditions for detainees.¹²¹

81. CAT expressed concern that while asylum applications under the Dublin II Regulation were subject to appeal, under the German Law on Asylum Procedure the lodging of such appeals did not result in a suspension of the impugned decisions.¹²²

82. UNHCR stated that there was no proper access to effective legal remedy, as section 34a (2) of the Asylum Procedures Act explicitly prohibited the suspension of transfer orders to another State participating in the Dublin II Regulation while the appeal was pending.¹²³ UNHCR recommended, inter alia, revising the law to allow for suspension of transfer orders of asylum seekers while their appeals are pending finalization.¹²⁴

83. CAT urged Germany to guarantee access to independent, qualified and free-of-charge procedural counselling for asylum seekers before a hearing by asylum authorities.¹²⁵

84. UNHCR stated that such pre-hearing counselling contributed to fairness and transparency, and increased the quality of the first instance procedure.¹²⁶

85. UNHCR stated that the Asylum Procedures Act recognized asylum seekers from the age of 16 years as having the legal capacity to conduct an asylum procedure on their own. It recommended a raise in that age to 18 years.¹²⁷

86. CAT remained concerned by the exposure of unaccompanied minors to the “Airport Procedure” under article 18 of the Law on Asylum Procedure. It recommended that Germany exclude unaccompanied minors from that procedure.¹²⁸ UNHCR stated that unaccompanied children seeking asylum were in a situation of particular vulnerability. In view of the specific protection needs of child asylum seekers and considering the specific safeguards required to assess the best interest of the child, child asylum claims should not be processed through accelerated procedures.¹²⁹

87. UNHCR referred to the admission of foreigners for humanitarian reasons, pursuant to section 23 (2) of the Residence Act, and stated that those refugees who were resettled in Germany did not receive the same legal status as those who travelled to Germany on their own and received refugee protection after successful completion of the regular asylum procedures.¹³⁰

88. UNHCR stated that because of its decentralized authorities, Germany had different mechanisms that identified stateless persons. As a consequence, there was no uniform application of the criteria stipulated in the 1954 Convention relating to the Status of Stateless Persons, which could lead to stateless persons remaining unidentified.¹³¹

89. CESCR expressed concern about the situation of asylum seekers who did not receive adequate social benefits, lived in inadequate and overcrowded housing, had restricted access to the labour market and had access only to emergency health care.¹³²

90. CAT was concerned that several thousand asylum seekers continued to be accommodated in Länder detention facilities immediately upon arrival, sometimes for protracted periods of time. It urged Germany to limit the number of detained asylum seekers, and the duration of their detention pending return; ensure mandatory medical checks and systematic examination of mental illnesses or traumatization of all asylum seekers; provide a medical and psychological examination; and provide adequate accommodation for detained asylum seekers separate from remand prisoners in all detention facilities.¹³³

91. In a 2010 report on the situation of Kosovan Roma, Ashkali and Egyptian children, UNICEF stated that German regulations referring to the status of “long-term tolerated individuals” ignored the principle of “the best interests of child” to the detriment of children born or raised in Germany.¹³⁴ It called for the best interest of the child to be given greater weight in decisions on resident permits for long-term tolerated individuals.¹³⁵ In her statement to the Human Rights Council at its sixteenth session, the High Commissioner for Human Rights referred to harsh return policies, such as the return of Roma from Germany.¹³⁶ Subsequently, several Länder stopped the return of Kosovan Roma, Ashkali and Egyptian children.¹³⁷

N. Human rights and counter-terrorism

92. While welcoming the adoption of a new law on the parliamentary control of intelligence services subsequent to the 2009 Parliamentary Inquiry into alleged involvement of Germany in extraordinary renditions and secret detention of terrorist suspects, CAT noted with concern that no Federal Government investigation had been undertaken in response to the June 2009 ruling by the Constitutional Court.¹³⁸ It urged Germany to make the outcomes of the investigations public; prevent future such incidents; and implement the recommendations of the United Nations joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42).¹³⁹

93. CAT expressed concern at the reported reluctance of Germany to exercise jurisdiction over allegations of torture and ill-treatment of persons rendered abroad. The Committee urged Germany to observe article 5 of the Convention, which requires that the criteria for exercise of jurisdiction not be limited to nationals of the State party.¹⁴⁰

94. CAT was concerned about the lack of clarity as to whether the commitment to discontinue investigations abroad extended to private security companies. It recommended that Germany apply the ban on investigation abroad to all authorities and entities engaged in law enforcement, including private security companies, when there is a suspicion of coercion being used; clarify the procedural standards, including the burden of proof applied by German courts for the assessment of evidence that may have been extracted by torture or ill-treatment; and refrain from “automatic reliance” on the information from intelligence services of other countries, with the aim of preventing torture or ill-treatment in the context of forced confessions.¹⁴¹

Notes

¹ Unless indicated otherwise, the status of ratifications of instruments listed in the table may be found on the official website of the United Nations Treaty Collection database, Office of Legal Affairs of

the United Nations Secretariat, <http://treaties.un.org/>. Please also refer to the United Nations compilation on Germany from the previous cycle (A/HRC/WG.6/4/DEU/2).

² The following abbreviations have been used for this document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
OP-ICESCR	Optional Protocol to ICESCR
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
OP-CRC-IC	Optional Protocol to CRC on a communications procedure
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRPD	Convention on the Rights of Persons with Disabilities
OP-CRPD	Optional Protocol to CRPD
CPED	International Convention for the Protection of All Persons from Enforced Disappearance

³ Individual complaints: ICCPR-OP 1, art. 1; OP-CEDAW, art. 1; OP-CRPD, art. 1; OP-ICESCR, art. 1; OP-CRC-IC, art. 5; ICERD, art. 14; CAT, art. 22; ICRMW, art. 77; and CPED, art. 31. Inquiry procedure: OP-CEDAW, art. 8; CAT, art. 20; CPED, art. 33; OP-CRPD, art. 6; OP-ICESCR, art. 11; and OP-CRC-IC, art. 13. Inter-State complaints: ICCPR, art. 41; ICRMW, art. 76; CPED, art. 32; CAT, art. 21; OP-ICESCR, art. 10; and OP-CRC-IC, art. 12. Urgent action: CPED, art. 30.

⁴ CEDAW/C/DEU/CO/6, para. 65; CAT/C/DEU/CO/5, para. 35, and E/C.12/DEU/CO/5, paras. 36 and 37.

⁵ CAT/C/DEU/CO/5, para. 36.

⁶ CCPR/C/DEU/CO/6, para. 5.

⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁸ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

⁹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html.

¹⁰ International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour; Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise; Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention No.

- 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- ¹¹ International Labour Organization Conventions No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and No. 189 concerning Decent Work for Domestic Workers.
- ¹² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html.
- ¹³ UNESCO submission to the UPR on Germany, para. 66.
- ¹⁴ *Ibid.*, para. 63.
- ¹⁵ Letter dated 12 March 2010 from CERD to the Permanent Mission of Germany in Geneva, available from http://www2.ohchr.org/english/bodies/cerd/docs/followup/Germany_12032010.pdf.
- ¹⁶ A/HRC/14/43/Add.2, para. 78.
- ¹⁷ CAT/C/DEU/CO/5 para. 9.
- ¹⁸ *Ibid.*, para. 11.
- ¹⁹ *Ibid.*, paras. 6 and 13.
- ²⁰ E/C.12/DEU/CO/5 para. 8.
- ²¹ CCPR/C/DEU/CO/6, para. 6. See also CCPR/C/DEU/CO/6, para. 3.
- ²² CEDAW/C/DEU/CO/6, paras. 19-20.
- ²³ *Ibid.*, paras. 61-62.
- ²⁴ According to article 5 of the rules of procedure for the International Coordination Committee (ICC) Sub-Committee on Accreditation, the different classifications for accreditation used by the Sub-Committee are: A: Voting Member (fully in compliance with each of the Paris Principles), B: Non-Voting Member (not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination); C: No Status (not in compliance with the Paris Principles).
- ²⁵ For the list of national human rights institutions with accreditation status granted by the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/20/10, annex.
- ²⁶ The following abbreviations have been used for this document:
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| CERD | Committee on the Elimination of Racial Discrimination |
| CESCR | Committee on Economic, Social and Cultural Rights |
| HR Committee | Human Rights Committee |
| CEDAW | Committee on the Elimination of Discrimination against Women |
| CAT | Committee against Torture |
| CRC | Committee on the Rights of the Child |
| CRPD | Committee on the Rights of Persons with Disabilities |
| CED | Committee on Enforced Disappearance |
- ²⁷ CERD/C/DEU/CO/18, para. 33.
- ²⁸ CERD/C/DEU/CO/18/Add.1.
- ²⁹ Letter dated 12 March 2010 from CERD to the Permanent Mission of Germany in Geneva.
- ³⁰ CCPR/C/DEU/CO/6, para. 20.
- ³¹ CEDAW/C/DEU/CO/6, para. 67.
- ³² CEDAW/C/DEU/CO/6/Add.1.
- ³³ Letter dated 4 November 2011 from CEDAW to the Permanent Mission of Germany in Geneva, available from <http://www2.ohchr.org/english/bodies/cedaw/docs/Germany4Nov2011.pdf>.
- ³⁴ CAT/C/CR/32/7, para. 6.
- ³⁵ CAT/C/CR/32/7/RESP/1; and CAT/C/DEU/CO/3/Add.1.
- ³⁶ Letter dated 3 May 2011 from CAT to the Permanent Mission of Germany in Geneva, available from http://www2.ohchr.org/english/bodies/cat/docs/followup/Follow-upGermany_03052011.pdf.
- ³⁷ CAT/C/DEU/CO/5, para. 39.
- ³⁸ CAT/C/DEU/CO/5/Add.2 and annex.
- ³⁹ CCPR/C/93/D/1482/2006.
- ⁴⁰ CCPR/C/95/4.

- 41 For the titles of special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx and www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.
- 42 OHCHR, *Report 2011*, pp. 125 and 130; OHCHR, *Report 2010*, pp. 79 and 84; OHCHR, *Report 2009*, pp. 190 and 196; and OHCHR, *2008 Report: Activities and Results*, pp. 174 and 180.
- 43 CEDAW/C/DEU/CO/6, paras. 25-26.
- 44 *Ibid.*, para. 5.
- 45 *Ibid.*, para. 35.
- 46 *Ibid.*, paras. 17-18.
- 47 *Ibid.*, para. 28; see also E/C.12/DEU/CO/5, para. 16.
- 48 CEDAW/C/DEU/CO/6, paras. 59 and 60.
- 49 CCPR/C/DEU/CO/6, para. 17.
- 50 *Ibid.*, para. 17.
- 51 *Ibid.*, para. 18.
- 52 E/C.12/DEU/CO/5, para. 12.
- 53 CCPR/C/DEU/CO/6, para. 7.
- 54 A/HRC/14/43/Add.2, para. 77.
- 55 E/C.12/DEU/CO/5, para. 26.
- 56 CCPR/C/DEU/CO/6, para. 12.
- 57 UNHCR submission to the UPR on Germany, p. 4.
- 58 *Ibid.*, p. 6.
- 59 *Ibid.*
- 60 CAT/C/DEU/CO/5, para. 25.
- 61 *Ibid.*, para. 15; see also CEDAW/C/DEU/CO/6, paras. 47 and 48.
- 62 CCPR/C/DEU/CO/6, para. 13.
- 63 *Ibid.*, para. 15.
- 64 CAT/C/DEU/CO/5, para. 16. See also CCPR/C/DEU/CO/6, para. 15.
- 65 E/C.12/DEU/CO/5, para. 23.
- 66 CEDAW/C/DEU/CO/6, paras. 41 and 42.
- 67 CCPR/C/DEU/CO/6, para. 9.
- 68 CEDAW/C/DEU/CO/6, paras. 43 and 44; see also CCPR/C/DEU/CO/6, para. 9.
- 69 CEDAW/C/DEU/CO/6, paras. 49-50.
- 70 A/HRC/14/43/Add.2, para. 78.
- 71 A/HRC/19/57/Add.3, para. 59.
- 72 CCPR/C/DEU/CO/6, para. 14.
- 73 CAT/C/DEU/CO/5, para. 17.
- 74 A/HRC/19/57/Add.3, para. 63.
- 75 *Ibid.*, para. 68 (e).
- 76 *Ibid.*, para. 68 (c). See also 2 BvR 2365/09, 2 BvR 740/10, 2 BvR 2333/08, 2 BvR 1152/10, 2 BvR 571/10; and www.bundesverfassungsgericht.de/pressemitteilungen/bvg11-031en.html.
- 77 A/HRC/19/57/Add.3, para. 68 (c), referring to the judgement of the European Court of Human Rights of 17 December 2009 in the case of *M. v. Germany*, application No. 19359/04.
- 78 A/HRC/19/57/Add.3, para. 68 (d).
- 79 CEDAW/C/DEU/CO/6, paras. 57-58.
- 80 *Ibid.*, paras. 51-52.
- 81 CCPR/C/DEU/CO/6, para. 10.
- 82 CAT/C/DEU/CO/5, para. 18.
- 83 *Ibid.*, para. 19.
- 84 UNHCR submission, p. 5.
- 85 *Ibid.*, p. 6.
- 86 CEDAW/C/DEU/CO/6, paras. 29-30.
- 87 *Ibid.*, paras. 55-56.
- 88 UNHCR submission, pp. 4-5.
- 89 A/HRC/14/43/Add.2, para. 81.
- 90 UNESCO submission to the UPR on Germany, paras. 57 and 67.
- 91 CEDAW/C/DEU/CO/6, paras. 31-32.
- 92 E/C.12/DEU/CO/5, para. 16.

- 93 CEDAW/C/DEU/CO/6, paras. 37-38.
94 Ibid., paras. 39-40.
95 E/C.12/DEU/CO/5, para. 15.
96 CCPR/C/DEU/CO/6, para. 8.
97 E/C.12/DEU/CO/5, para. 15.
98 CCPR/C/DEU/CO/6, para. 8.
99 E/C.12/DEU/CO/5, para. 14.
100 Ibid., para. 19.
101 Ibid., para. 20.
102 Ibid., para. 22.
103 Ibid., para. 21.
104 Ibid., para. 24.
105 CEDAW/C/DEU/CO/6, paras. 53-54.
106 E/C.12/DEU/CO/5, para. 27.
107 CAT/C/DEU/CO/5, para. 20.
108 UNESCO submission, para. 2, citing the state report submitted by Germany for the fourth consultation on the implementation of the UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms (covering the period 2005-2008) (2009), p. 1.
109 UNESCO submission, para. 64.
110 E/C.12/DEU/CO/5, para. 30.
111 CEDAW/C/DEU/CO/6, paras. 33-34.
112 Letter dated 12 March 2010 from CERD to the Permanent Mission of Germany in Geneva.
113 E/C.12/DEU/CO/5, para. 28.
114 Ibid., para. 29.
115 A/HRC/14/43/Add.2, para. 80.
116 E/C.12/DEU/CO/5, para. 32.
117 Ibid., para. 17.
118 CCPR/C/DEU/CO/6, para. 9.
119 UNHCR submission, p. 2, para. 1.
120 CCPR/C/DEU/CO/6, para. 12.
121 UNHCR submission, p. 3.
122 CAT/C/DEU/CO/5, para. 22; See also CCPR/C/DEU/CO/6, para. 11.
123 UNHCR submission, p. 3.
124 Ibid., p. 4.
125 CAT/C/DEU/CO/5, para. 23.
126 UNHCR submission to the UPR, p. 5.
127 Ibid., pp. 6-7.
128 CAT/C/DEU/CO/5, para. 27.
129 UNHCR submission to the UPR, p. 7.
130 Ibid., p. 7.
131 Ibid.
132 E/C.12/DEU/CO/5, para. 13.
133 CAT/C/DEU/CO/5, para. 24.
134 UNICEF, *Integration Subject to Conditions: A Report on the Situation of Kosovan Roma, Ashkali and Egyptian Children in Germany and After Their Repatriation to Kosovo* (2010), p. 11.
135 UNICEF submission to the UPR on Germany, p. 81.
136 See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10794&LangID=E.
137 UNICEF, *No Place to Call Home: Repatriation from Germany to Kosovo as Seen and Experienced by Roma, Ashkali and Egyptian Children* (2011), p. 7.
138 CAT/C/DEU/CO/5, para. 26. See also 2 BvE 3/07, Order of 17 June 2009.
139 CAT/C/DEU/CO/5, para. 26.
140 Ibid., para. 28.
141 Ibid., para. 31.