

# UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

## UNIVERSAL PERIODIC REVIEW, 4<sup>TH</sup> SESSION GERMANY REVIEWED ON 2 FEBRUARY 2009, MORNING

### Overview

The 4<sup>th</sup> session of the UPR started with the review of Germany. Before opening the session as such, the President of the Human Rights Council (the Council) Uhomoibhi flagged the difficult financial situation the UPR is currently in, and called on all members to make the necessary financial efforts to ensure the smooth functioning of the process. The fairly high-level German delegation was headed by Mr Gernot Erler, the Deputy Minister for Foreign Affairs and Mr Peter Altmaier, the Deputy Minister of the Interior. Five other ministries, those for family, education, labour and social services, economic cooperation, and for cultural affairs were also present on the delegation, but did not participate directly in the interactive dialogue. The delegation appeared to be well prepared, and answered most questions.

There was a lot of interest in the review, with a total of 48 States taking the floor. Despite the shortening of the speaking time to two minutes, roughly ten States were unable to speak.<sup>1</sup> States from all regional groups took the floor. However, it was noteworthy that only European States submitted written questions prior to the review. Most of the interventions were positive, and Germany was particularly praised for its constructive attitude in the UPR process and its openness towards the questions. However, on a substantive level, some critical comments were made, particularly in relation to migration, racism and xenophobia, and various forms of discrimination. The majority of recommendations remained relatively vague, calling on Germany to 'take further steps' to combat discrimination. Only few States went the additional mile of attaching more specific, time-bound requests to their recommendations.

The attitude of the Government seemed very constructive. Most questions were answered adequately, although some recommendations were resolutely rejected, and the veracity of some answers was later disputed at an NGO debriefing on the review. Germany acknowledged shortcomings in some areas, and pledged to critically review and respond to all questions and recommendations made. Given that there were representatives of the specialised ministries present in the room, it was regrettable that they were not given an opportunity to directly contribute to the dialogue.

### General information on Germany

- Germany is a member of the Human Rights Council. Its first term will expire on 18 June 2009, and it will be eligible to run for a second term.

---

<sup>1</sup> Their statements will be posted on the OHCHR extranet, available at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill out the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password.

- The members of the troika for the examination of Germany were Cameroon, the Republic of Korea, and France.<sup>2</sup>
- According to the State report, Germany held national consultations in two stages. The first step was to submit the draft report to some NGOs for comments, and in a second step actual consultations were held in October 2008 in Berlin. According to an NGO debriefing, the consultations had not been as transparent as depicted by the delegation in its initial presentation.<sup>3</sup>

#### Information submitted to the Working Group<sup>4</sup>

The **national report** of Germany appears very comprehensive. The range of topics addressed is reflective of the issues contained in the OHCHR compilation and the summary of stakeholder information. While it does tackle the major issues in a detailed way, it tends to focus heavily on the positive efforts by the Government. Only rarely does it acknowledge the challenges faced. This is particularly evident in the section on Germany's efforts to promote human rights internationally, which neglects areas in which the German role was criticised in the other reports.

The OHCHR **compilation of UN information** focuses on: the institutional framework and in particular the tension between federal and state level; gender discrimination in political involvement and on the labour market; racial discrimination and right wing ideology, including discrimination against Sinti and Roma minorities; religious discrimination particularly against Muslims in relation to employment; trafficking of persons; juvenile justice; ill-treatment of foreigners, refugees, the elderly, and children; the lack of appropriate childcare institutions'; questions of citizenship and the effect of Germany's counter-terrorism legislation.

Ten other stakeholders, including eight non-governmental organisations (NGOs), submitted information for the OHCHR **summary of stakeholders' information**. Of the eight NGO submissions, four were joint submissions on behalf of a large number of organisations. It was noteworthy that the German Institute for Human Rights (GIHR), the national institution, and the Council of Europe as a regional intergovernmental organisation each submitted roughly one quarter of the summary.<sup>5</sup>

The most prominent issue raised in the stakeholder summary was the issue of migration. It was discussed from a range of different angles, including discrimination with regards to housing, health, access to social services, and education.<sup>6</sup> An acute concern of NGOs in this regard was the duty for teachers and health personnel to report undocumented migrants to the authorities.<sup>7</sup> The specific treatment of applicants for German citizenship for nationals of member States of the Organisation of the Islamic Conference (OIC) was criticised.<sup>8</sup> Racism and xenophobia was highlighted as a separate issue, particularly in relation to the treatment of non-German citizens by the police,<sup>9</sup> and racist violence against minorities.<sup>10</sup> NGOs also expressed concern at the harsh policies for asylum, particularly the possibility of extraditing persons despite

---

<sup>2</sup> Germany did not request that a member of its regional group be among its troika. There were no objections by Germany or by the members of the troika to the selection. For a full summary of the selection of troikas, see ISHR's *Daily Update* of 8 September 2008, available at [www.ishr.ch](http://www.ishr.ch).

<sup>3</sup> The NGO briefing was held immediately following the review by the Working Group and was organised by the German Forum for Human Rights, the World Council of Churches and Migrants Rights International.

<sup>4</sup> All three basic documents are available at <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CDESession4.aspx>.

<sup>5</sup> This is not a qualitative analysis of the contribution, but a rough quantitative count of the information reflected in the stakeholder summary.

<sup>6</sup> Forum Menschenrechte (joint submission), Amnesty International.

<sup>7</sup> Forum Menschenrechte (joint submission), Amnesty International.

<sup>8</sup> Islamic Human Rights Commission (IHRC).

<sup>9</sup> Forum Menschenrechte (joint submission), Amnesty International.

<sup>10</sup> Forum Menschenrechte (joint submission).

their refugee status,<sup>11</sup> and the use of a status of ‘toleration’ (*Duldung*) whereby unsuccessful, often minor, asylum seekers are tolerated for a certain period of time but live in constant fear of deportation.<sup>12</sup>

Discrimination against women, particularly in regard to employment and wage-disparities was also raised. An interesting point in this context was the request to introduce the possibility of collective claims to challenge wage discrimination across sectors.<sup>13</sup> Stakeholders especially deplored the closing of the department for gender mainstreaming within the ministry of family affairs.

Other issues raised included widespread stereotypes against lesbian, gay, bisexual and transgender people, and discrimination against homosexual partnerships,<sup>14</sup> poverty, and religious discrimination particularly against Muslim women. In relation to German counter-terrorism efforts and policies, several stakeholders raised the issue of diplomatic assurances and Germany’s role in secret renditions by the former U.S. administration.<sup>15</sup> The situation of children, particularly those in need of social services, was also raised. In this regard, the work of the dedicated youth authority (*Jugendamt*) was questioned.

In relation to institutional aspects, stakeholders raised the role Germany plays in determining human rights relevant policies at the EU level, and the difficulty to reconcile human rights policies at the federal and State (*Länder*) level.<sup>16</sup>

While the issues covered in the three basic documents were largely identical, unsurprisingly the tone of the stakeholders’ submissions and the OHCHR compilation was decidedly more critical on all aspects.

## Interactive dialogue<sup>17</sup>

### Presentation by the State

Germany’s initial presentation was very comprehensive, and the delegation also provided detailed answers to questions submitted in writing.<sup>18</sup> The State used around 26 minutes for its opening remarks, which left limited time for responding to the interactive dialogue. However, since most of the presentation was used for the open and frank response to written advance questions, the presentation raised a good impression, and States valued this in the following dialogue. Germany also provided some updated information, including the ratification of the Optional Protocol to the Convention against Torture, which had entered into force on 3 January 2009 and the recent adoption of a national action plan to follow-up to the Durban Conference against Racism.

### Themes and issues

The issue of migration, and the associated discrimination of migrants in various aspects of life, including access to the health system, education and employment, largely dominated the interactive dialogue. In this context, the most frequent recommendation was for Germany to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW). Unsurprisingly,

---

<sup>11</sup> Amnesty International.

<sup>12</sup> GIHR.

<sup>13</sup> Council of Europe.

<sup>14</sup> Campaign Transsexuality and Human Rights, GIHR.

<sup>15</sup> Forum Menschenrechte (joint submission), Amnesty International.

<sup>16</sup> GIHR.

<sup>17</sup> Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password. Audiovisual archives of the meetings of the Working Group ‘webcast’ are available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

<sup>18</sup> The presentation was held in German, with translation into English provided by the State under review.

many ‘sending’ States made this recommendation.<sup>19</sup> In its oral answers, this recommendation was categorically rejected by the delegation, on the grounds that the definition of ‘migrant workers’ in the Convention was unacceptable. However, the delegation claimed that while it could not formally accede to the Convention, most of the actual rights contained therein are already guaranteed for migrants in Germany.

Egypt suggested the development of economic and social indicators to measure the integration of migrants. Particular focus was put on the education of children of migrants, with Canada recommending that children of migrants should not be denied access to education for fear of denouncement, and Argentina recommending the full integration of migrant children in normal schools instead of ‘special schools’. In his responses, Mr Erler said that all children have the right to attend school. He claimed that school performance within the migrant community was very diverse, and that only some groups of migrants had difficulties attending normal schools. Spain requested more information on so-called ‘tolerated’ migrants – those who do not have legal residency status, but cannot be deported. There was no direct answer to this question. Mexico recommended that criminal sanctions for undocumented migrants be eliminated.

Some of the more delicate aspects of German migration policy that were raised in the NGO summary, like its role in defining EU wide migration policies were not discussed in detail. On a similar note, the question of asylum received little attention. Ghana simply encouraged Germany to enhance global mechanisms to deal with refugees.

Another cluster of questions and recommendations dealt with racial discrimination and xenophobia. This was raised both in connection with migration, but also in relation to national minorities such as Roma and Sinti. States also questioned whether Germany intends to establish a definition of racial discrimination in its domestic legislation, as recommended by the Committee on the Elimination of Racial Discrimination (CERD).<sup>20</sup> Other States recommended racist motivation to be treated as an aggravating circumstance in the criminal code.<sup>21</sup> In its responses, the delegation pointed out that it has put a system in place to collect additional data on racially motivated crimes. It admitted that there is right wing extremism in Germany, but disputed that it was on the increase. It also pointed out its efforts in preventing racist ideology, and the contribution of its civil society in preventing racism. In this regard, Colombia asked for more information on how Germany has encouraged the active participation of civil society in these efforts.

Religious discrimination, particularly in relation to the prohibition for teachers to wear headscarves, was also discussed.<sup>22</sup> Despite the delegation’s assurance that this ban applied to all religions, States insisted that this practice could be discriminatory. A crosscutting concern of religious discrimination and migration was the development of a specific questionnaire for migrants coming from member states of the Organisation of the Islamic Conference (OIC).<sup>23</sup> Several States expressed interest in the German Islam Conference (DIK) launched in 2006, which is an institutionalised dialog between representatives of the State and representatives of Muslims.<sup>24</sup> The national action plan to follow-up to the Durban Declaration and Programme of Action (DDPA) was not mentioned often,<sup>25</sup> which was not surprising since such a plan had been recently adopted. Its absence had been criticised in the summary of NGO information, and the recent adoption might also be in connection to the UPR.

---

<sup>19</sup> Egypt, Azerbaijan, Algeria, Mexico, Ghana, South Africa, Morocco, Senegal, Ecuador,

<sup>20</sup> Qatar, Italy,

<sup>21</sup> Chad, Italy.

<sup>22</sup> Iran, Qatar, Indonesia.

<sup>23</sup> Egypt.

<sup>24</sup> Jordan, Morocco, Malaysia.

<sup>25</sup> Azerbaijan, Morocco.

Trafficking in persons, especially trafficking for sexual exploitation was touched upon by a number of States.<sup>26</sup> Japan commented positively on the inclusion of trafficking for labour in the offence, but requested more information on the time-frame for the ratification of the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC SC)*.

As usual, many recommendations dealt with the ratification and implementation of additional human rights instruments. While Germany announced that it had recently ratified the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, it was asked to also ratify the *ICRMW, the International Convention for the Protection of All Persons from Enforced Disappearance*,<sup>27</sup> the *OP-CRC SC*<sup>28</sup> and the *Optional Protocol of the Covenant on Economic, Social and Cultural Rights*.<sup>29</sup> The United Kingdom asked that Germany ‘set a time-table’ for the establishment of such a national preventative mechanism under the *OPCAT*.<sup>30</sup>

Several States recommended that Germany take further steps to eliminate discrimination against and to protect lesbian, gay, bisexual and transgender people.<sup>31</sup> France asked what steps were done to remove discrimination between married couples and same-sex partnerships, and New Zealand recommended that transsexuals should be allowed to have their identity documents changed without having to divorce.

Malaysia and Brazil recommended that Germany increase its development assistance to 0.7 % of the GDP, as required by the Millennium Development Goals. In its answers, the delegation admitted that it was still behind the target, and assured the Working Group that there is a consensus in German society that more needs to be done.

The United Kingdom encouraged Germany to consult with civil society in the follow-up to the review.

Other issues included discrimination against women, particularly in relation to the labour market,<sup>32</sup> the excessive use of force by security forces,<sup>33</sup> the effect of anti-terrorism legislation,<sup>34</sup> fighting corruption,<sup>35</sup> inclusion of children with disabilities in normal schools,<sup>36</sup> the protection of street-children,<sup>37</sup> the exact role of the German Institute for Human Rights (the German national institution),<sup>38</sup> asylum for ex-Guantanamo inmates,<sup>39</sup> and the institutional relationships between federal and State-level mechanisms for the protection of human rights.<sup>40</sup>

---

<sup>26</sup> Japan, Hungary, UK, South Africa.

<sup>27</sup> France.

<sup>28</sup> Japan.

<sup>29</sup> Ecuador.

<sup>30</sup> Argentina.

<sup>31</sup> France, Netherlands, New Zealand.

<sup>32</sup> Iran, France, Azerbaijan. The German delegation acknowledged that gender discrimination was still a problem, but pledged to continue its efforts to close the wage gap.

<sup>33</sup> Netherlands.

<sup>34</sup> Belgium.

<sup>35</sup> Russian Federation.

<sup>36</sup> New Zealand.

<sup>37</sup> Cuba.

<sup>38</sup> Bosnia and Herzegovina, France.

<sup>39</sup> Hungary.

<sup>40</sup> Finland.

Overall, the interactive dialogue was quite constructive. Although there were many positive comments, States also raised difficult issues. However, since issues of migration and racism heavily dominated the dialogue, other issues were not developed in detail.

### Adoption of the report

The report on the review of Germany was adopted on 4 February 2009. France, on behalf of the troika, thanked the German delegation for the particularly rich interactive dialogue and introduced a number of amendments. The report was adopted *ad referendum*, meaning that all delegations can submit ‘editorial changes’ to their own statements as recorded in the report within two weeks.

Germany thanked all members for their comments and recommendations, and declared that Germany ‘accepts the draft outcome report’. However, it said it would react to the recommendations made at the time of the adoption of the Working Group report in the Human Rights Council plenary in June 2009.

## **COUNCIL MONITOR STAFF**

**Eléonore Dziurzynski**, Communications Officer

**Chantal Mutamuriza**, Human Rights Officer

**Michael Ineichen**, Human Rights Officer

**Gareth Sweeney**, Deputy Manager

**Katrine Thomasen**, Manager

## **ABOUT THE PUBLICATION**

The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at [www.ishr.ch](http://www.ishr.ch)

## **SUBSCRIPTION**

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail [information@ishr.ch](mailto:information@ishr.ch) with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

## **COPYRIGHT, DISTRIBUTION AND USE**

Copyright © 2008 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

## **DISCLAIMER**

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify [information@ishr.ch](mailto:information@ishr.ch).