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Germany

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I. Description of the methodology and consultation process for the preparation of the report

1. This report is the result of close consultation and cooperation within the Federal Government under the coordinating leadership of the Federal Foreign Office. The report was discussed in draft form with representatives of the German Institute for Human Rights. A public hearing on the draft report was also held in Berlin on 5 December 2012, conducted by the Federal Government Commissioner for Human Rights Policy and Humanitarian Aid at the Federal Foreign Office, Markus Löning. The hearing offered civil society at large, in particular the NGOs assembled in the German Human Rights Forum, the opportunity to comment on the draft and identify issues that may have been overlooked. The hearing was broadcast live on the internet. Likewise in December 2012 Germany's preparation for the Universal Periodic Review (UPR) in 2013 was discussed at the Committee for Human Rights and Humanitarian Aid of the German Bundestag.

II. Developments since the first review of Germany, especially with regard to the normative and institutional framework for the protection of human rights

2. The normative and institutional framework for the protection of human rights stands unchanged upon a solid foundation. Detailed information on this is included in the first national report of Germany within the framework of the Universal Periodic Review (A/HRC/WG.6/4/DEU/1).

3. Since the first review of Germany under the UPR a number of **new legislation** has entered into force or been set in motion, in addition to other steps that have led to improvements of the human rights situation. These include:

- the introduction on 1 July 2011 of a stand-alone criminal offence of forced marriage and a stand-alone right to re-immigration for persons who remained in Germany as minors and were prevented from returning to Germany after the forced marriage,
- the law that entered into force on 3 December 2011 on legal protection in cases of excessively delayed legal proceedings and criminal investigation proceedings, which inter alia provides for a right to compensation,
- a regulation on the right of residence which entered into force in July 2011 providing for well integrated adolescents and young adults whose deportation has been temporarily suspended – and, if applicable, for their parents and siblings,
- the adoption on 15 June 2011 of a National Action Plan to implement the UN Convention on the Rights of Persons with Disabilities,
- the establishment of an Advisory Council on Inclusion, consisting predominantly of persons with disabilities, and of the specialised committees reporting to it, in support of the Coordination Mechanism in accordance with Article 33 of the UN Convention on the Rights of Persons with Disabilities (hosted by the Federal Government Commissioner for Matters relating to Disabled Persons),
- a law introduced into the Bundestag on 23 March 2011 on the strengthening of the rights of victims of sexual abuse,
- the submission of the first comprehensive concept on Human rights in German Development Policy”, which is binding on all institutions of State Development

Cooperation, and the introduction of a “Human Rights MOT” for all new bilateral governmental cooperation projects,

- a law passed by the Bundestag on 12 December 2012 on the extent of care for the person of the child with respect to circumcision of male children.

4. In implementing its obligations under international law, Germany has established **new independent human rights institutions** during the reporting period.

5. In implementing the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) a national prevention mechanism consisting of two institutions has been set up. The Federal Office for the Prevention of Torture started its work in spring 2009 covering the sphere of responsibility of the Federal Government (detention facilities of the Federal Armed Forces, the Federal Police and Customs). The Federal States Commission for the Prevention of Torture, acting on behalf of the Länder (federal states) in their field of responsibility (penal system, police custody, detention facilities in psychiatric clinics, deportation custody facilities, and custodial facilities for child and youth services, together with retirement and nursing homes) was established by an interstate agreement covering all Länder and took up its work on 24 September 2010.

6. In addition the German Institute for Human Rights has been tasked to act as an independent monitoring office in accordance with Art. 33 para. 2 of the United Nations Convention on the Rights of Persons with Disabilities; for this the Institute has been provided with additional funds. The monitoring office started its work in mid-2009.

7. Since the first review Germany has ratified or signed **the following international conventions:**

- the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto were ratified on 24 February 2009; the Convention and the Optional Protocol entered into force on 26 March 2009,
- the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography entered into force in the Federal Republic of Germany on 15 August 2009,
- Germany signed the third Optional Protocol to the Convention on the Rights of the Child on a communications procedure on 28 February 2012, the law ratifying the Optional Protocol was adopted on 8 November 2012; Germany intends to issue a statement in accordance with Art. 12 para. 1 of the Optional Protocol when depositing the instrument of ratification,
- the International Convention for the Protection of all Persons against Enforced Disappearance was ratified on 24 September 2009 and entered into force for Germany on 23 December 2010; in June 2012 Germany submitted the declarations regarding individual or inter-state communications in accordance with Art. 31 and 32 of the convention,
- the Council of Europe Convention on Cybercrime and the related Additional Protocol, intended to help fight acts of a racist and xenophobic nature, were ratified during the reporting period,
- the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005 was ratified on 19 December 2012,
- the Council of Europe Convention on preventing and combating violence against women and domestic violence of 11 May 2011 was signed on the date of enactment.

8. Germany has also, with effect from 15 July 2010, withdrawn its reservations to the Convention on the Rights of the Child which it had submitted when depositing its instrument of ratification.

III. Developments since the first review of Germany, especially with regard to the promotion and protection of human rights

9. In implementing its obligations arising from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to create greater transparency on rule of law, Germany has **improved the availability of data on criminal acts committed by police and law enforcement officials**. Since January 2009 the number of investigations, dismissals of cases and arraignments in connection with the following acts committed by police officers in the exercise of their duties have to be recorded separately: intentional homicide, use of force and abandonment, coercion and abuse of office.

10. During the reporting period, the national human rights institutions have made a valuable contribution towards a better realisation of human rights. The Parliamentary Commissioner for the Armed Forces responsible for the members of the Armed Forces, the commission established in accordance with Article 10 of the Basic Law (the German constitution) and responsible for reviewing intelligence monitoring measures, the Federal Commissioner for Data Protection and Freedom of Information, the Federal Government Commissioner for Migration, Refugees and Integration and the Federal Anti-Discrimination Agency have accepted and processed a large number of complaints from individuals during this period.

11. The **National Office for the Prevention of Torture**, set up under the Optional Protocol to the Convention against Torture regularly undertakes – in part unannounced – visits to various custody facilities of the Federal Government and federal states and issues recommendations. To date no indications of torture have been found in any instance. The annual reports of the National Office for the Prevention of Torture are publicly accessible. The Federal Government is committed to ensuring that funding of the National Office is improved, and first steps to address this issue have already been taken.

12. The **German Institute for Human Rights**, the national human rights institution of Germany has, by virtue of its activities during the reporting period, made a major contribution to the protection and promotion of human rights in Germany and worldwide. It is working systematically to see that the recommendations of the UN treaty bodies are implemented in Germany. The Institute promotes dialogue between the State and civil society, participates in international review procedures and is engaged in the international association of National Human Rights Institutions (the International Coordinating Committee, ICC) to improve the protection of human rights worldwide, including through the work of the Human Rights Council and the 3rd Committee of the General Assembly of the United Nations. Since May 2009 the institute has also been acting as the monitoring mechanism for the UN Convention on the Rights of Persons with Disabilities (see also B above).

13. All federal states of the Federal Republic of Germany regard **the strengthening of public awareness for human rights** as a substantial task and an important objective in school education. Human rights education is firmly enshrined in the syllabuses of the relevant subjects in every type and level of school, also forming part of numerous extracurricular projects and initiatives.

14. Germany **works closely with international human rights mechanisms**:

- the fifth state report on the implementation of the International Covenant on Economic, Social and Cultural Rights (UN Social Pact) was presented in Geneva on 6 and 9 May 2011. The conclusions were evaluated within the Federal Government and discussed with civil society on 18 January 2012,
- the fifth report on the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was presented in Geneva on 4 and 8 November 2011. A discussion on the recommendations of the committee took place at the German Institute for Human Rights on 23 May 2012 with the participation of more than 40 representatives from the federal and state ministries, the Bundestag, politicians, academia, civil society, the National Office for the Prevention of Torture and the United Nations High Commissioner for Refugees (UNHCR). The reports on Germany prepared by the European Committee for the Prevention of Torture (CPT) and the UN Working Group on Arbitrary Detention, referred to below, were also considered,
- the sixth state report on the International Covenant on Civil and Political Rights (ICCPR) was presented in Geneva on 18 and 19 October 2012,
- the combined third and fourth state report on implementation of the Convention on the Rights of the Child (CRC) was submitted to the relevant treaty body on 20 October 2010; for the first time children and adolescents were involved in drafting the report,
- the first report on the implementation of the United Nations Convention on the Rights of Persons with Disabilities (ICRPD) was submitted to the treaty body in September 2011,
- from 25 November to 7 December 2010, a Delegation of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) made its fifth periodic visit to the Federal Republic of Germany; the CPT's report was published together with the Federal Government's statement,
- - the United Nations Human Rights Council Working Group on Arbitrary Detention was in Germany from 26 September to 5 October 2011, with its final report being discussed at the Human Rights Council in March 2012.

IV. Developments since the first review of Germany – The implementation of recommendations accepted by Germany

15. Over the past four years, Germany has dedicated itself to the implementation of the recommendations accepted in the 1st UPR session. The steps taken are presented below.

New international obligations, implementation of existing obligations, collaboration with international human rights instruments

16. The ratification of the Convention for the Protection of All Persons from Enforced Disappearance (**Recommendation 3**) took place on 24 September 2009.

17. The signing/ratification of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (**Recommendation 5**) is being examined with the objective of acceding to it. In view of the far-reaching implications of the Optional Protocol to the ICESCR, examination of whether it can be ratified is proving to be complex and time-consuming.

18. Through the Federal Government's declaration to the Human Rights Committee of 5 January 2005, Germany has met the recommendation of full application of the International Covenant on Civil and Political Rights to all persons subject to its jurisdiction both within its territory and abroad (**Recommendation 6**). It states: "Germany guarantees in accordance with Article 2 para. 1 of the ICCPR the rights acknowledged therein to all persons in its territory and subject to its jurisdiction. Germany assures that for engagements of its police or armed forces abroad, particularly within the scope of peace missions, it will grant to all persons subject to its jurisdiction the rights acknowledged in the covenant. The international tasks and obligations of Germany, in particular arising from the United Nations Charter, remain unaffected. In the training of its security forces in international deployments Germany envisages the provision of special instruction over and above the relevant rights enshrined in the convention." The Human Rights Committee explicitly welcomed this declaration at the presentation of the sixth state party report on the ICCPR.

19. The application of the ICCPR and Convention against Torture in the context of anti-terrorism measures (**Recommendation 7**) is likewise assured. Measures to combat terrorism which encroach upon human rights are authorized only on a statutory basis and where compatible with higher law.

20. The national preventive mechanism under the Additional Protocol to the Convention against Torture (**Recommendation 8**) was established at Federal and Länder levels, with the Federal Agency for the Prevention of Torture, in spring 2009, and the Joint Commission of the States (Länder) for the Prevention of Torture, in autumn 2010.

21. The appropriate collaboration of anti-discrimination institutions at Federal level (**Recommendation 9**) is governed by the General Equal Treatment Act, which came into force in 2006. The Federal Anti-Discrimination Agency (German abbreviation: ADS) and its tasks are laid down in the General Equal Treatment Act and meet the terms of reference of the EU Directives on Equal Treatment. The ADS is constituted in such a way that it can work independently. It collaborates closely with the Federal Government Commissioner for Migration, Refugees and Integration and with the Federal Government Commissioner for Matters relating to Disabled Persons. Every four years they jointly present reports regarding discrimination to the German Bundestag and submit recommendations for the elimination and prevention of such discrimination.

22. No particular invitation to the Special Rapporteur of the Human Rights Council on Trafficking in Persons (**Recommendation 10**) is required, as Germany has issued a standing invitation to all Special Rapporteurs. Germany would very much welcome the visit of the Special Rapporteur.

23. Germany places great weight on combating corruption. The Federal Government is seeking to ratify the UN Convention against Corruption (**Recommendation 26**) and intends to do so directly after necessary amendments to the German Criminal Code on combating corruption.

Integration policy

24. Germany conducts a regular exchange of experience in the area of integration policy within the framework of various bodies, such as in the European network of National Contact Points on Integration (**Recommendation 11**).

Fighting discrimination

25. A series of concrete measures are being taken against religion-based discriminatory practices in terms of access to the labour market and social integration (**Recommendation 12**).

- As part of the National Action Plan on Integration the programme "XENOS – Integration and Diversity" is promoting projects against social exclusion and discrimination. For instance, this helps migrants with regard to access to the labour market and integration into society.
- Likewise under the action plan the path is being smoothed for migrants to enter the civil service, such as through targeted recruitment drives, the reduction of obstacles in the selection and appointment of applicants with a migration background, and by improving the intercultural skills of employees.
- The German Islam Conference attends to the better integration of in particular Muslims of both sexes into the labour market, and held a one-day special conference on this topic in April 2012, supplemented by a brochure with background information and recommendations for those affected.
- In November 2010 the Federal Anti-Discrimination Agency launched a pilot project across Germany in which various companies and authorities tested anonymised application procedures over a 12 month period. A provisional study in April 2012 showed that this had improved the equal opportunities for applicants with a migration background, as well as those of women. The Anti-Discrimination Agency is now offering training for interested employers; items available on their website include guidelines for employers.

26. During the review period Germany has undertaken a series of endeavours to prevent racially motivated criminal offences and to enhance criminal detection, including the creation of an adequate statutory basis (**Recommendation 13**); further areas of emphasis were the prevention and investigation of racially motivated criminal offences against Roma and Sinti, Muslims, members of the Jewish community, and Germans of foreign origin (**Recommendation 14**):

- As Germany has ratified the anti-racism convention (International Convention on the Elimination of All Forms of Racial Discrimination - ICERD), the definition contained in Article 1 is immediately applicable in law.
- The discovery of the series of murders by the *Nationalsozialistischer Untergrund* (National Socialist Underground) in autumn 2011 shocked German society. Prompt investigation of the crimes and measures to prevent such an occurrence being repeated were announced. On 26 January 2012, at the request of the members of all five parliamentary groups, the Bundestag set up a committee of inquiry to look at the neo-Nazi serial murders. The committee is to contribute to the thorough and prompt investigation of the actions of the "National Socialist Underground". To remedy the obvious shortcomings in collaboration by the security bodies, a catalogue of measures was immediately implemented by the Federal Minister of the Interior, resulting in the setting-up in 2011 of the *Gemeinsame Abwehrzentrum Rechtsextremismus* (GAR) (Joint Defence Centre against Right-Wing Extremism). The *Koordinierte Internetauswertung Rechts* (KIAR) (Coordinated Internet evaluation of right-wing extremism) was also set up under which the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution research and evaluate right-wing Internet activities and initiate criminal proceedings where appropriate. Where criminal subject matter exists on foreign servers, efforts are made to have it deleted or prosecuted through mutual judicial assistance.
- Since 22 March 2011 any person (subject to other conditions) stirring up hatred against a national, racial, ethnic or religious group, or against parts of the population or against an individual because of his or her membership of one of the groups indicated above or of a portion of the population, including by the public exhibition, posting, demonstration or other means of providing access to documents which stir

up hostility is liable to prosecution for incitement to hatred. It should be emphasised that a racist mind-set on the part of the perpetrator may in general be regarded as an aggravating circumstance when sentencing in accordance with Section 46 of the Penal Code.

- The Federal Government assigns key importance to combating politically-motivated criminal offences against Sinti and Roma, Muslims, members of the Jewish community and Germans of foreign origin. These criminal acts are recorded under the term "hate crimes". With the support of the Federal Government, online consultancy and *jugendschutz.net* take action against impermissible web content aimed at Roma and Sinti, Muslims, members of the Jewish community or Germans of foreign origin.

27. The National Action Plan against racism provides the basis of action for numerous measures against racism (**Recommendation 15**), which are regularly evaluated. An important player is the Federal Agency for Civic Education, which acts preventively by sharing knowledge and by offering concrete assistance to argue against extremist, racist and xenophobic attitudes and slogans. This is done by providing literature and online information packages for interested parties (such as for children and adolescents) together with educational materials.

28. The topics of "human rights, basic freedoms and non-discrimination" are cross-cutting issues in the basic and advanced training of the Federal Police and are comprehensively addressed in the relevant contexts. As well as teaching the basic theoretical knowledge, vocational and practical training, in the form of role play and situational training, is used. Teaching intercultural skills also forms part of basic and advanced training. This reinforces the awareness of Federal Police officers in the recognition of less obvious discrimination and prejudices.

29. German law already contains civil and criminal arrangements to counter calls to discrimination and violence (**Recommendation 17**). These include the protection of honour, the General Equal Treatment Law and criminal law special measures applicable to calls to violence, such as publicly calling for criminal activity. Of particular relevance to the media is the supplementing of these measures by the press code of the German Press Council, which sets out the principles for journalists. These principles include inter alia the guidelines for reporting on (threatened) acts of violence, and rules against the discriminatory reporting on criminal acts. According to these, in the reporting on crimes the fact of the suspects' belonging to religious, ethnic or other minorities may only be mentioned if this is of justifiable relevance to understanding the reported event.

30. Fighting anti-Semitism forms an important part of efforts to combat discrimination and intolerance. The Federal Government has set up an independent group of experts, which after two years' work submitted a comprehensive report with recommendations at the end of 2011, providing important impetus to further discussion and approaches (**Recommendation 18**).

31. The German Islam Conference, founded in 2006, is an important player in the improvement of institutional (religio-legal) and social integration, in particular for the approximately 4 million Muslims in Germany, and thus works to reinforce social cohesion between the various religions. The Federal Government also supports initiatives for a better understanding between the representatives of differing religions. This concerns not only Christian-Jewish cooperation but also the improvement of Christian-Muslim dialogue. Another important player that deals with questions of politics and religion, with the different facets of Islam and with gender roles in the context of different religions and world views, is the Federal Agency for Civic Education, which provides literature, online

documents and education materials for teachers and educators in extra-curricular civic education.

32. In its fight against xenophobia (**Recommendation 19**) the Federal Government is encouraging a multiplicity of approaches in civil society, educating people about the dangers of extremist and racist ideology, working to prevent radicalisation or individuals drifting towards extremist groups, or turning to those who wish to opt out and offering appropriate support to them or their families. The Federal Agency for Civic Education provides numerous programmes for sections of society that are not interested in politics and have a lower level of education.

33. Within the framework of the Durban Review Process (**Recommendation 20**) to review the implementation of the final Durban Declaration and Plan of Action of the World Racism Conference of 2001, Germany actively collaborated in the formulation of the final document (the so-called “Outcome Document”) and endorsed it at the end of the review conference.

34. The life of the Roma and Sinti in Europe and in Germany is still relatively rarely included in German teaching materials and curricula (**Recommendation 36**), in spite of the subject being part of many framework curricula in the federal states. Individual Länder offer special events via their regional institutes for training teachers, and have developed schoolwork hand-outs and materials to combat anti-gypsyism.

Discrimination based on sexual orientation

35. Germany has, in line with the decision of the Federal Constitutional Court, amended the Transsexuals Law of 27 May 2008 by Article 1 of the Transsexual Amendment Law of 17 July 2009, with the effect that married transsexuals are no longer compelled to divorce before a sex change (**Recommendation 22**).

36. In the battle against hate crime based on sexual orientation (**Recommendation 22**) Germany is aiming at rigorous criminal prosecution and prevention. In 2011 there were 148 relevant hate offences recorded by the police due to sexual orientation, of which 38 were violent acts.

Freedom of religion

37. Freedom of religion (**Recommendation 30**) is guaranteed in the constitution as a fundamental right. The Federal Government supports respect for people of different cultural and religious backgrounds in Germany. With the German Islam Conference a national framework was established for the first time for a dialogue between government representatives and Muslims in Germany. The German Islam Conference and the National Action Plan for Integration focus on mutual respect, understanding and diversity and are contributing to greater objectivity in the debate on religious diversity in Germany. Anyone can have restrictions to his or her religious freedom examined by the courts. This includes a review of laws by the Federal Constitutional Court and the opportunity to appeal to the European Court of Justice for Human Rights.

Women's rights

38. Article 3 of the German constitution expressly obliges the Federal Government to implement equal rights for women and men. This obligation finds expression in Section 2 of the Joint Rules of Procedure of the Federal Ministries as a universal guiding principle for all political, normative and administrative measures (**Recommendation 21**).

39. Ending pay differentials between men and women (**Recommendation 31**) is an important concern for the Federal Government. Starting points are the creation of fair

income prospects in the course of women's careers and reinforcing the gainful employment of women both quantitatively and qualitatively over their entire working life, including support for returning to work and promoting employment to safeguard their livelihood. The principle of equal pay for women and men is enshrined in law at both European and national level.

40. The Federal Government has supported the "Equal Pay Day" since 2008. Equal pay will however remain a topic in Germany in the future, over and above the day of action activities. Combating the causes must be even better aligned between government and private sector players. With the action programme "Perspectives for Returning to Work", support is given to women who have been away from the world of work for family reasons for several years and wish to re-enter employment. The "Logib-D" programme is aimed at companies which analyse their occupational wage gap and want to remove its causes in order to reduce differences in earnings at company level. Moreover, an additional project focuses on the social partners and on exploring ways of overcoming the wage gap in the course of collective bargaining.

41. The causative factors behind pay inequality are interlinked in a complex way, and subject only to slow processes of change. Following the conclusion of the measures described above it is envisaged that evaluations will be conducted to identify the impact achieved by these measures and whether they need to be modified.

Children's rights

42. In Germany, teenagers aged between 14 and 17 years are subject to juvenile criminal law (**Recommendation 24**). It applies also to young adults (18 to 20-years old, and already of age under civil law) if they are similar to minors in terms of their development or if the act is a typical juvenile offence. In the criminal system a distinction is drawn between prisoners serving an adult sentence and those serving a juvenile sentence. A juvenile court sentence that should be reformatory is essentially served in a stand-alone prison for juvenile offenders, or in sections for juveniles and young adults separate from adult prison. Accommodating young adults with juveniles avoids damaging influences from adult prison. The juveniles are as far as possible removed from potentially negative influences from the young adults through specific measures.

43. The tasks of child and youth welfare in Germany are in principle exercised by administrative districts as part of local self-government. Oversight of the decisions of youth welfare offices is therefore limited (so-called supervisory control). This notwithstanding it is however possible to subject the decisions of a youth welfare office to review (**Recommendation 24**) by appeal to the Administrative Court.

44. In Germany there are estimated to be between 5,000 and 7,000 street children. Every year between 2,500 and 3,500 children and juveniles end up on the street. For their protection (**Recommendation 25**) they receive basic care including food, clothing and health care including psychosocial counselling. Where possible they are integrated into supervised residential groups, offering them an alternative to life on the street. In 2010 1,378 street children were accepted into a home or supervised living arrangement.

45. With regard to the better realisation of the right to education of children from a migration background (**Recommendation 32**), a positive trend has been emerging over the review period. The proportion of foreign school leavers without a leaving certificate fell by 39% in the years from 2004 to 2010. The proportion of foreign pupils leaving school with a higher education certificate rose by 36% between 2005 and 2010. However, in comparison with young people without a migration background it is significantly rarer for young migrants to complete professional training after leaving school; yet here too a positive trend is emerging. Further improvements are to be expected from numerous federal and regional

programmes to promote transitions and permeability in the educational, training and further education system, programmes to reinforce support for individuals, and programmes to continue quality assurance and development measures in the education system.

46. In the National Action Plan for Integration of December 2011 the area of "Education, training and further education" occupies an important position and includes self-imposed governmental and civil society commitments. The Länder have, in their own contribution to the National Action Plan for Integration, strengthened their own commitments to improving and extending integration in schools for children and young people from a migration background.

47. In general education the Länder are facilitating greater permeability between educational pathways through wide-ranging measures (**Recommendation 33**). The tying of school leaving certificates to particular types of school has been relaxed substantially in recent years. In addition to this a tendency has emerged to streamline school structures by combining Hauptschulen and Realschulen (lower secondary level schools), and partially integrating Gesamtschulen (comprehensive schools) as well. In some Länder only one other type of school exists alongside the Gymnasium (grammar school), with several educational pathways. As a result participation in education has risen and the proportion of better qualified school leaving certificates has steadily increased. Meanwhile half of a year group reaches a higher education entrance qualification.

48. To raise the inclusion rate of children with disabilities in general educational institutions (**Recommendation 34**) in implementing the Convention on the Rights of Persons with Disabilities, the fundamental recommendation passed by the Länder on 20 October 2011 under the title "Inclusive education of children and young people with disabilities in schools", with its changes to the interpretation of disability and an orientation towards the principles of participation and barrier-free access, creates a good starting point. This recommendation is currently being implemented. The Federal Government had already passed the first action plan "Our path towards an inclusive society", which is to be systematically extended over the next 10 years.

49. To more effectively and efficiently counter school dropout rates (**Recommendation 35**) the Standing Conference of Ministers of Education and Cultural Affairs of the Länder agreed on a joint promotion strategy in March 2010. This is intended to reinforce and extend existing support programmes. The "Qualification Initiative for Germany" agreed between the Federal Government and Länder in 2008 is showing initial positive trends.

Migrants' rights

50. The development of economic and social indicators for migrants and minority groups (**Recommendation 37**) has been largely implemented. In 2012, the second indicator report was submitted by the Federal Government Commissioner for Migration, Refugees and Integration. Indicators in 11 fields of action were investigated and compared with the findings from the first indicator report (2009). Improvements were shown to have been achieved in almost all sectors.

51. The protection of human rights of migrants is guaranteed in Germany (**Recommendation 38**). The German legal system grants, even in cases of undocumented migration, the right to education, basic health care and statutory legal protection. Should a hospital charge for treatment, the authorities responsible for payment are bound to confidentiality, and the welfare office does not pass on any data to the foreigners authority. The option of eliminating criminal sanctions against undocumented migrants was considered, but was dismissed due to the need to effectively manage migration.

52. In recent years the situation of the children of migrants (**Recommendation 39**) has fundamentally improved. School attendance has become obligatory in almost all federal

states, including for children whose deportation has been temporarily suspended and for children involved in asylum procedures. In addition, national legislation has been amended to the effect that schools as well as training and educational facilities are exempt from the obligation to inform the foreigners authorities on such instances.

53. During asylum proceedings, the Federal Office for Migration and Refugees takes the age of children into special consideration; in particular specially trained decision-makers are engaged for 16 and 17-year-olds and the hearings are held in a child-friendly manner. In practice unaccompanied minors are generally permitted to enter the country even when the airport asylum procedure is applied; in 2011 there was only one single case of a minor whose asylum application was rejected in the airport asylum procedure.

54. In order to prevent the stigmatisation of migrants (**Recommendation 40**), women and girls with right of residency in Germany are given a right to return following a forced marriage abroad according to the Act to combat forced marriages and to better protect the victims of forced marriages, and to amend further provisions governing residence and asylum law of 23 June 2011. The new regulation grants in particular an independent right of return for the victims of forced marriage which can be applied even if the person concerned is unable to provide for herself in Germany. Victims of forced marriage, who beforehand have been legally residing in Germany for at least eight years and have attended school for at least six years, are entitled to a further improvement in their legal position as their valid residence permit will in future expire not after six months but only after ten years of absence from Germany.

Development cooperation

55. The Federal Government will continue to strive to achieve a level of expenditure of 0.7% of the gross national income on development aid by 2015 (**Recommendation 43**). Whereas in 2009 German official development aid (ODA) still stood at €8.7 billion (0.35 % of gross national income), it rose in 2010 to €9.8 billion. In 2011 Germany for the first time invested over €10 billion net in public development cooperation, corresponding to an increase of 20% between 2009 and 2011. As a result Germany raised its ODA quota to 0.39% of gross national income.

Cooperation with civil society

56. The Federal Government maintains an open exchange with German and international civil society organisations. As part of the preparation of the national report for the second cycle of the Universal Periodic Review, civil society was consulted on the implementation of the recommendations from the first review under the UPR, as well as on the current challenges to human rights, in a Public Hearing which could be followed via live streaming. An on-going consultation process with civil society specifically on the implementation of the UPR recommendations (**Recommendation 44**) has not yet been established. Nevertheless, an appropriate format is being sought for the future.

V. Description of achievements, of "best practice" as well as of challenges in implementing the recommendations accepted by Germany

57. The best way to implement human rights obligations is regularly discussed in Germany - in public debate, triggered by judicial proceedings, Federal Government studies and at the initiative of civil society.

58. As a result of administrative court proceedings in 2012, the subject of "**racial profiling**" was publicly discussed, although the press has partly reflected the legal situation inaccurately. Neither under national nor international law is there a binding uniform definition of the ban on "racial profiling". Generally and in line with the definition of the UN Committee on the Elimination of Racial Discrimination, it is understood to encompass the introduction of state measures based solely on the external appearance of persons and independent of any concrete reasons for suspicion. Such "racial profiling" is incompatible with applicable German law; there is thus no need for any statutory action.

59. In August 2012 the Federal Government published the "**Report of the Federal Government on the situation of women's refuges, special consultation services and other support packages for women affected by violence and their children**". With this report the Federal Government presents for the first time a comprehensive inventory of the overall nationwide support system for women affected by violence.

60. According to this report Germany has a tightly-knit and differentiated network of support facilities for women affected by violence and their children. Germany has over 350 women's refuges and more than 40 shelters with over 6,000 places, providing protection and advice for some 15,000 to 17,000 women and their children (i.e. around 30,000 – 34,000 persons). To this can be added more than 750 special advice services, providing qualified advice and support to women affected by violence. Gaps however remain in the provision of support with respect to women suffering from mental illness or disabilities. In spite of isolated gaps in the provision, and difficulties in terms of access for individual target groups, it can be assumed that women affected by violence can as a rule find protection from violence, together with advice and support, in facilities that have been professionally designed for this purpose. There is no evidence of a structural or wholesale shortage of provision. The report establishes a valid basis for the next few years for assessing the need for action at federal, Land and local level.

61. The shortcomings spelt out in the Federal Government report can be addressed through effective developments in federal and Land legislation, as well as for example through better use of agreements between the various implementing authorities and support organisations.

62. All levels of government – federal, Land and local – as well as the funders of support facilities and specialised agencies, are called upon to overcome the core challenges identified by the report.

63. The national "Violence against women" helpline, which goes live in spring 2013, will for the first time create an around-the-clock support package for women affected by violence. Germany already possesses a tightly-knit network of support facilities. Nonetheless, these packages are still failing to reach many women affected by violence. To date no help package exists that is accessible all the time free of charge, anonymously, and confidentially, with no obstacles or barriers, and if necessary is multilingual. The "Violence against women" telephone helpline will close this gap. It is directed at women affected by violence and persons from their social environment, as well as those who advise and support such women professionally or on a voluntary basis. Qualified female advisers will offer competent initial advice and refer those affected in order that they can receive further attention at local support facilities.

64. The representative study "Life situation of and impact on women with disabilities and impairments in Germany" of 2012 commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth shows the high level of all forms of violence against women with impairments in Germany. As a consequence, the Federal Government introduced measures for better protection against violence which are included in the National Action Plan to implement the UN Convention on the Rights of Persons with

Disabilities (CRPD). These measures include supporting a project called "Political lobbying for disabled women" of Weibernetz e.V., the only organisation at the national level run by women with disabilities for women with disabilities. A key focus of their work is the protection of these women from violence.

65. In 2012, the Federal Government Commissioner for Matters relating to Disabled Persons, the German Institute for Human Rights and the Alliance of German Non-governmental Organisations on the UN Convention on the Rights of Persons with Disabilities, have focused greater attention on the existing **exclusion from suffrage of people made a ward of court**, pointing out that is not compatible with Article 5 of the CRPD.

66. The circumstances of an exclusion from suffrage applicable under national law are also enshrined in the European Elections Act and there are corresponding regulations in Länder and local electoral legislation. The Federal Government considers these regulations to be in conformity with Art. 29 of the CRPD, which guarantees the right to vote and to be elected as enshrined in Art. 25 of the International Covenant on Civil and Political Rights (ICCPR). According to this, state parties may legally provide for an exclusion from suffrage on objective and appropriate grounds, including mental or psychological disorders.

67. The exclusion from the right to vote as provided for under national law is appropriate, as only those persons who are capable of making a conscious voting decisions on their own should enjoy the right to vote. These exclusions only apply in cases where there has been a corresponding court decision and where the legal assumption that the person is not capable of exercising their right to vote is justified. In the National Action Plan to implement the UN Convention on the Rights of Persons with Disabilities the Federal Government has nevertheless commissioned a study to examine the actual situation of persons with disabilities when exercising their full suffrage and to develop recommendations for improving the participation of people with disabilities in political life. Based on the findings of this study it will then be decided whether changes need to be made.

68. In the second half of 2012 there were many discussions on the **circumcision of young boys**. On 12 December 2012 the German Bundestag passed a regulation stating that the care for the person of the child includes the right of parents to determine that a male child who is unable to decide for himself be circumcised without there being any medical need, provided that certain requirements are met. The regulation dispels any legal uncertainty created by a ruling of the Cologne regional court on 7 May 2012. This court had expressed the view that the circumcision of a four-year-old boy constituted "bodily harm", in spite of the parents having given consent. Before this ruling it was undisputed in legal practice in Germany that parents could consent to a non-medically indicated circumcision, for example on religious grounds.

69. Another issue of discussion was **the respect of human rights when shifting border controls further upstream to countries of transit and origin and Germany's role in these EU measures**. Since the foundation of Frontex, the European agency for border management, there has always been a special focus on protecting human rights, especially during operational activities. Increasingly complex tasks and challenges in border management on the external borders of the EU led to the need for additional specific rules, guidelines and instruments in order to continue to meet the challenges of protecting human rights. For this reason in 2010 the Council of the European Union adopted guidelines for monitoring external maritime borders in Frontex activities. In the same year the agency developed a fundamental rights strategy, an action plan to implement it and a binding code of conduct for personnel in operations coordinated by Frontex. In addition, Frontex has adopted working arrangements with the European Union Agency for Fundamental Rights, the United Nations High Commissioner for Refugees and the International Organisation for

Migration. At the end of 2011, the amended Frontex Regulation entered into force, creating new instruments to ensure human rights are respected in all agency activities. As a result, the post of an independent “Fundamental Rights Officer” (FRO) and the Consultative Forum on Fundamental Rights, which includes civil society organisations, were created. In addition, the amended Regulation instructs the Executive Director of the agency to suspend or terminate any activity that violates fundamental freedoms and human rights. A newly established monitoring and evaluation mechanism supports the agency in determining such violations.

70. The German Institute for Human Rights and the civil society both favour **ensuring that police officers be identifiable**, that police violence be better documented and that procedural provisions allow for an independent and effective prosecution.

71. It is ensured that police officers are identifiable by requiring them to provide their name, title and unit upon request, provided that the objective of the police mission is not endangered by this. Should the latter be the case, the officers may restrict this information to their service identification number, which will allow a subsequent identification. Finally, identification is possible through the identification markers of operational forces, video analysis and the internal questioning of witnesses. The Federal Police is not aware of any case in which prosecution of alleged police violence failed for reasons of identifiability.

72. The Federal Government considers the possibilities for independent internal and external complaint adequate. Every person can have police action assessed by way of independent legal proceedings, and if necessary report an offence and/or submit a petition for administrative review. The Federal Police has an independent complaint management system, which is open to every citizen; complaints can also be filed via the Federal Police's website.

73. The German Institute for Human Rights and German civil society also advocate for better **protection of victims of human trafficking who do not cooperate with investigations**, including the granting of a time-limited residence permit.

74. The victims of human trafficking or other forms of criminal exploitation of labour can be issued a residence permit for a temporary stay if they are prepared to testify in criminal proceedings. The issuance of such a permit is contingent upon a willingness to testify, in order to give the victims of human trafficking an incentive to cooperate with the authorities and thus facilitate criminal proceedings to combat human trafficking. In addition, victims of human trafficking may be eligible for a general longer-term humanitarian residence permit. The General Administrative Regulations relating to the Residence Act give advise to foreigners authorities on this residence permit and contain information on the specific dangers faced by victims of human trafficking, which facilitates the processing of the residence permit in question. Even in the absence of a dangerous situation in the country of origin, a residence permit may be considered on urgent humanitarian or personal grounds or based on substantial public interests. At the level of the Länder it has been ensured by decree in some of the Länder that foreigners authorities properly apply the range of legal options available.

VI. Projects to further improve the human rights situation in Germany

75. Since 2006 as part of its biennial report on its human rights policy the Federal Government has been publishing a "Human Rights Action Plan", which outlines the human rights priorities of the Federal Government in its domestic, foreign and development policy for the coming two years based on selected policy focuses.

76. Some central elements from the current action plan, passed on 24 October 2012, are listed below by way of examples:

- the application throughout the EU of minimum procedural rights to strengthen the rights of suspects and defendants in criminal proceedings,
- the commitment – in Germany and worldwide – to the protection of the right to freedom of religion and belief for the individual and against religious intolerance and discrimination based on religion or belief,
- the intensification of our own efforts to prevent and combat human trafficking and to protect its victims,
- the struggle against violence against women under the Federal Government's Action Plan II jointly with Land and local authorities and specialised agencies, which amongst other things focus on the challenges to the further development of the help and support system for victims of violence described in the Federal Government report on the situation in women's refuges, special consultation services and other support packages for women affected by violence and their children.
- the creation and guarantee of fair income prospects for women and men in the course of their lives in the context of different working lives of women and men and with the objective in particular of reinforcing the gainful employment of women both quantitatively and qualitatively over their entire working life; here "quantitative" means raising the gainful employment quota of women and the volume of work (full-time or near full-time employment, longer working lifetimes as a result of shorter family-related "dropouts" and the greater integration of older women) and "qualitative" means cause-respecting promotion of equal pay, the safeguarding of development and career opportunities, strengthening the (simultaneous) compatibility of family and job, the promotion of jobs requiring social insurance contributions, offer an adequate income and the improvement of autonomy in terms of working hours (for mothers),
- the consistent ongoing implementation of the National Action Plan to protect children against sexual violence and exploitation, including a national initiative to prevent sexual abuse of children aimed at 8 to 12 year olds by means of a play, online portal and telephone helpline to provide information and clarification regarding children's rights and sexual abuse,
- the committed continuation of the fight against racism, discrimination, xenophobia and anti-Semitism through targeted measures which strengthen social cohesion, democratic participation and a democratic community culture, and appeal in particular to young people as a target group in national action programmes,
- the commitment to economic, social and cultural rights, especially by way of the interdepartmental commitment to implementing the human right to adequate food, e.g. in the form of activities to implement the "Voluntary guidelines to the Right to Food" of the FAO and the "Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests" of the UN Committee on World Food Security; in this UN committee the Federal Government also supports the drawing up of voluntary "Principles for responsible agricultural investment, improving food security and food" and supports that consideration is being given to human rights standards.
- support for the dialogue on the responsibility of companies for human rights and their observance on the basis of the Guiding Principles of the United Nations for business and human rights as a global framework, including within the scope of internationally agreed guidelines, such as the OECD Guidelines for Multinational

Enterprises, the Tripartite Declaration Of Principles Concerning Multinational Enterprises And Social Policy, the OECD Environmental Guidelines for Testing Environmental, Human Rights and Social Aspects of Publicly Supported Export Credits and the Global Compact of the United Nations, adhering to the principle of refusing arms exports should there be sufficient suspicion that the armaments in question (weapons, munitions, specially designed vehicles, but also for example software) is being misused for internal repression or for other ongoing and systematic human rights violations.

- the updating of the Federal Government's National Action Plan for the implementation of the UN Convention on the Rights of Persons with Disabilities,
- the promotion of and commitment to equal opportunities for, and participation of, people with a migration background in social, economic and cultural life in the Federal Republic of Germany,
- the consistent implementation of the concept "Human rights in development policy", including via systematic testing of risks to human rights and the effects of projects and engagements for greater orientation towards human rights in international financial institutions; in addition, the introduction of an independent complaints mechanism for German governmental bilateral development cooperation is being examined.

VII. Closing sentence

77. The Federal Republic of Germany assigns the very highest priority to the protection of human rights. Achieving this and putting it into practice represents an on-going challenge for us all. Only through mutual and vigilant collaboration, at every level and by every player, can we ensure comprehensive protection of human rights to the very highest level. The Federal Government is committed to maintaining the standard we have reached, and to rectifying the problems we currently face in Germany.

78. To this end Germany considers the UPR process to be an excellent opportunity to acquire knowledge, via best practices dialogue and the critical analysis of our own viewpoint, for the further protection and advancement of human rights.
