

Joint NGO Submission – UPR on FEDERAL REPUBLIC OF GERMANY – February 2009

Submitted by: FORUM MENSCHENRECHTE, Berlin

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In cooperation with: ATD Fourth World Germany, Aktion Courage, Bundesverband unbegleiteter minderjähriger Flüchtlinge (BUMF), Bundesweite AG der Psychosozialen Zentren für Flüchtlinge und Folteropfer (BAFF), Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess (kok), Deutscher Frauenrat, Diakonisches Werk der Evangelischen Kirche in Deutschland (Stuttgart), Germanwatch, Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde (GBM), Gustav-Heinemann-Initiative (GHI), Human Rights Watch Germany, International Physicians for the Prevention of Nuclear War (IPPNW) German Section / refugio Munich, Lesben und Schwulenverband in Deutschland (LSVD), Kindernothilfe, MISEREOR, Peace Brigades International (PBI) Germany, Physicians in Social Responsibility German Sektion, Pro Asyl, TERRE DES FEMMES, terre des hommes, Vereinte Evangelische Mission (VEM), Women's International League for Peace and Freedom German Section (WILPF).

Amnesty International Germany associates itself with the issues we focus on the submission; however, is making its own submission.

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1. FORUM MENSCHENRECHTE – a coalition of 51 German human rights NGOs, founded 1994 in the aftermath of the Vienna Conference – submits the joint report to the Office of the High Commissioner for Human Rights on the situation of human rights in the FEDERAL REPUBLIC of GERMANY for being considered to the UPR in February 2009.

I. Promotion and Protection of Human Rights on the ground

I.1. General remarks

2. Germany is state party to the following UN human rights conventions: ICCPR (1976 [date of ratification]) plus OP-1 (1993) and OP-2 (1992), ICESCR (1976), ICERD (1969), CEDAW (1985) plus OP-CEDAW (2002), CAT (1990) plus OP-CAT (signed 2006), CRC (1992) plus OP-CRC-AC (2005) and OP-CRC-SC (signed 2000), Convention on the Rights of Persons with Disabilities (signed 2007), International Convention for the Protection of All Persons from Enforced Disappearance (signed 2007) as well as to the Convention Relating to the Status of Refugees (1951) plus OP (1967). Germany has been member of the UN Human Rights Council since its inception and is subject to the highest human rights standards.

3. We acknowledge that the German government continuously improves its institutional sector and articulates its willingness to properly address human rights issues; e.g. the human rights commissioners or counterparts in the ministries of the Federal government, the parliamentary committee dealing with human rights and humanitarian aid, the independent German Institute on Human Rights (Deutsches Institut für Menschenrechte). However, a main part of the governmental institutions exclusively focus on human rights outside Germany.

4. We further recognise that Germany has initiated the ratification of the International Convention for the Protection of All Persons from Enforced or Involuntary Disappearance. We are concerned, however, that the government may make a reservation to this Convention in order to restrict the right to obtain information about persons in custody. It is also important to codify enforced disappearance as an offence under the national criminal code.

5. The Human Rights Committee in its concluding observations on the fifth periodic report of Germany (CCPR/CO/80/DEU) encouraged the government to clarify the application of the Covenant to persons subject to its jurisdiction where its troops or police operate abroad. Unfortunately, the government's circumventing response to the Committee did not provide a clear position as requested by the Committee and did not acknowledge the full applicability of the CCPR in the above mentioned situations.

I.2. Implementation of international human rights obligations

I.2.1. Non-equality, discrimination, racism

6. The equality policy of the German government has yielded only partial results. Stereotyped gender roles persist as assigning women the primary responsibility for care of the family, and men the task of financial support. Essential demands listed in the Concluding Observations by the CEDAW Committee on the Fifth Periodic Report remain unmet; such as consulting with independent women's organisations in preparing the National Report. In some major areas of life, the situation of women has even worsened. Equality policy seems to be reduced to family policy. The equality strategy of gender mainstreaming has been abandoned. The UN zero-tolerance policy on Sexual Exploitation and Abuse (SEA) and the UN Security Council Resolution 1325 are not being implemented on a sustainable basis. Germany has also introduced the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*; AGG) and established the Anti-Discrimination Office (*Antidiskriminierungsstelle*; ADS) at the federal level. However, the effectiveness of ADS is questionable, as it remains unclear how ADS will strengthen the cooperation with anti-discrimination organisations at State level.

7. Women in Germany continue to face considerable disadvantages in relation to employment. They earn an average of 22% less than men. Recent reforms of policies on labour market, social security, health, welfare, and taxation have increased the level of structural discrimination against women considerably increasing their risk of impoverishment. For example, so-called "mini-jobs" paying around 400 Euro a month or "1-Euro jobs" paying one Euro an hour (plus transfer payments) do not pay an adequate living wage. Migrant women are disproportionately affected. Women hold nearly 70% of jobs in the low-wage sector which do not provide for a proper livelihood. The target rate for active employment promotional measures for women has not been met (for further details see attached references / Alliance of German Women's Organizations: 2008).

8. Measures taken by the government against forced marriages have not been sufficient. Fundamental changes to immigration law are needed to ensure secure living conditions, such as residence permits should be made independent of marital status, and women and girls with German residency who are forced to marry abroad should have a right to return. In addition, despite the introduction of the Act to Revise the Registered Partnership Act (*Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts*) in 2004, same-sex partnerships still face discrimination in many essential respects compared to heterosexual partnerships.

9. In relation to violence against women, the German government has launched welcome measures and plans. However, meaningful data on the extent of domestic and sexual violence is not available; such as homicide, forced marriage, and violence in institutions (as psychiatric institutes). Relevant professional sectors in the fight against domestic violence (judiciary and law enforcement) against domestic violence do not receive sufficient training. Residence permits for individuals from non-EU countries depend on their willingness to cooperate with law enforcement. There is concern that measures to reduce migration have been legitimised with the pretence of protecting victims of forced marriages; who are generally women.

10. In relation to ICERD and the Concluding Observations of CERD (August 15, 2008), a number of obligations have not been adequately addressed by the German government. CERD has recommended defining racial discrimination in domestic legislation. The national criminal code currently does not acknowledge racist motivation. The government also failed over the last seven years to present a national action plan against racism in accordance with the Durban World Conference. The current final draft of the national action plan does not really deserve to be identified as such as it mainly addresses right wing extremism while we note with concern the dramatically increasing racist violence against minorities and the poor strategy of the government to counter this. The European Commission against Racism and Intolerance (ECRI) stated in its third report on Germany that “Members of visible, and notably black, minority groups are especially vulnerable to certain particularly serious manifestations of racism, such as racially motivated violence and harassment, and racial discrimination.”

I.2.2. Children

11. Germany ratified the CRC in November 1991 making a reservation in relation to minor children. As a result of this reservation, refugee children whose visa were not extended have been deported. Frequently, testimonies of children are considered as unreliable, genuine causes for fleeing are not accepted, and many children are treated as adults (over the age of 16) without the necessary legal support, i.e. by a lawyer. Former child soldiers who fled to Germany face inadequate treatment. Compared to German children, refugee children also experience discrimination in the education and medical systems¹.

12. Initiatives have been taken in order to withdraw this reservation, including efforts by the German Parliament (e.g. in 1999 and 2004). The German government, however, seems to be paralysed as the subject is constantly played back and forth between the national and the federal level. The Federal government argues that it is legally bound by the agreement of Lindau (*Lindauer Abkommen*) to acquiesce to the States (*Länder*) on issues affecting state legislation (including asylum issues). An expert opinion published in 2002, however, shows that the Federal government may have the legal power to decide (Erich Peter: 2006). Despite several statements by Federal government institutions, that the reservation is no longer really necessary, the ruling Christian Democratic Party and the States led by this party upheld the reservation in statements of June 2008 (Bundesrat, Document 405/08) arguing that Germany would be swamped with children demanding asylum if the reservation was withdrawn.

13. The Committee on CRC has voiced its concern in its Concluding Observations (February 26, 2004, renewed in February 1, 2008 CRC/C/OPAC/DEU/CO/1) and recommended that Germany expedite the process for the withdrawal of the reservations and

¹ For details see www.crin.org, www.forum-Menschenrechte.de, Kindernothilfe / terre des hommes / Hendrik Cremer (2007); terre des hommes / Bjoern Harmening (2005); terre des hommes / Michaela Ludwig (2003).

declarations to CRC. The Committee also recommended that minors seeking asylum should be treated with appropriate attention and that priority be given to the best interest of the child and testimony, and that discrimination should be prevented. The German National Coalition for the Implementation of the UN-Convention on the Rights of the Child, comprised of about 100 organisations, is involved in actively monitoring the implementation process.

I.2.3. Refugees and migrants

14. Section 73 (I) of the German Asylum Procedure Act requires the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) to revoke the refugee status, when the circumstances have ceased to exist with which he or she has been recognised as a refugee. This is known as the “ceased circumstances” clause. This principle is stipulated in art. 11 (1) e of Council Directive 2004/83/EC of 29 April 2004 (Qualification Directive), which is based on art. 1 C (5) of the Refugee Convention. While Section 73 (I) is consistent with international law, its implementation is not. Whether authorities in the countries of origin can provide effective protection upon return is not taken into account. Issues of safety and livelihood are also ignored, with claims that those were a general danger, threatening the entire population, and, thus, could not be considered persecution. In February 2008, the German Federal Administrative Court requested a preliminary ruling from the Court of Justice of the European Communities concerning the interpretation of the “ceased circumstances” clause. In its latest Statement on the “Ceased Circumstances” Clause of the EC Qualification Directive, the UNHCR explicitly criticises this practice.

15. Within this context, the implementation of the German asylum and migration legislation tends to prevent legal access at all. Neighbouring countries are encouraged – such as those in North Africa – to stop refugees and migrants before they leave the countries. Refugees (individuals applying for asylum) reported, that the hearing before BAMF seems to be unbalanced focussing on identifying the country of origin and revealing the escape route instead of on the reasons for requesting asylum. BAMF regularly concludes by its own authority that there is no health related hindrance to return the refugee. BAMF also undermines by its practice the proper treatment of vulnerable people (i.e. people who suffered torture, rape or other severe forms of violence; EU Guideline 2003/9, January 2003). The testimony of traumatised refugees is frequently treated as unreliable.

16. Refugees and their children are forced to live in difficult conditions in refugee centres for years, particularly in deportation camps. The environment is more like a ghetto with unsafe social and sanitary conditions and related negative implications: discrimination outside, violence inside the camps, depression, mental degradation, use of violence as a mean for conflict resolution – altogether far from being appropriate particularly for children’s growth. These factors blatantly violate international conventions such as the CRC, the CDESCR, the Universal Declaration on Human Rights and the EU Guideline of 2003.

17. Under Section 4 (2) of the German Asylum Procedure Act, receiving refugee status does not prevent the German authorities from extraditing a person, in contravention of international law (Otto Lagodny: 2008). Art. 33 (I) of the Refugee Convention provides that no one should be forcibly returned when there is a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group in his or her country of origin. Once a person has received refugee status, diplomatic assurances do not safeguard against human rights violations that he or she might be subjected to upon forcible return to his or her country of origin. Though extradition of refugees is rare, the number of refugees held in detention for the purpose of extradition has increased. In the

context of FRONTEX operations, the German Federal Ministry of the Interior denies that the principle of non-refoulement is applicable to persons claiming persecution beyond the 12 mile zone. Despite the Office of the UN High Commissioner for Refugees issuing guidelines calling on all governments to "refrain from all forced returns of rejected asylum-seekers to Eritrea", the German authorities forcibly returned two Eritreans in May 2008.

18. In Germany, it is estimated that between 100.000 and 1 million aliens are living without a legal status (predominantly migrants). These migrants are frequently working under precarious, unhealthy, unsafe and abusive working conditions (e.g. in the construction sector, as domestic workers, or in the sex industry). In practice, undocumented migrants do not have the option to seek redress against their employers before the courts, as they risk deportation. The law is ambiguous as to whether the court has to inform the aliens' authority about the identity of the claimant. Risking deportation, they have in practice no access to the public health system either. By law, all public institutions are required to report the identity of the undocumented migrants to the aliens' authority. This practice is not in accordance with Art. 12 of the ICESCR and General Comment No. 14, paras. 12, 43.

19. Children without legal status do not always have access to primary and secondary education. The competency for regulating all matters of schooling lies with the 16 States. In some States there is legal uncertainty as to whether children living without a resident-permit have the right to primary education. Some States interpret section 87 para. 2 of the Residence Act as requiring headmasters of schools to report the identity of an undocumented child to the aliens' authority. This usually commences the deportation procedure. Currently, medical treatment of undocumented migrants is offered by non-state institutions, such as churches or NGOs. This situation leads to major gaps particularly in relation to children, pregnancies and child birth. The Federal Government has still not responded to the suggestions made by the National Human Rights Institute and human rights experts regarding how access to health treatment, as a minimum, could be ensured. We concur also with the UN Special Rapporteur on Education in his conclusion (Report on Germany A/HRC/4/29/Add.3) that there must be legal and factual provisions to affording undocumented migrants the protection of the human rights system. Although we acknowledge the government's entitlement to regulate immigration, we do not agree with the focus on a mere law and order policy.

1.2.4. Excessive use of force by police officers

20. There are credible complaints that persons have been victims of excessive use of force and ill treatment by law-enforcement officials. To date there is no nation-wide statistical data available on such allegations. There are cases in which claims against police-officials are countered by the police with charges against the person who made the initial claim. Numerous complaints were raised in the context of the demonstrations against the G-8 summit that took place in Heiligendamm in July 2007. Eighty-two criminal investigations against police officers were initiated. However, in 70 cases the investigations were terminated. In addition, complaints by non-German citizens indicate that aliens are treated in a discriminatory and humiliating way by the Federal Police at the German borders to the Czech Republic and to Poland. In May 2008, for example, ten Ukrainian seasonal-workers, travelling from Spain to the Ukraine by bus, were stopped by the Federal Police. Allegedly, they did not have the correct visa to travel through Germany. They were reportedly forced to leave the bus and then strip-searched. They were then held in custody and then deported to the Ukraine. The Ukrainian embassy was not informed.

1.2.5. Human rights violations in the context of counter-terrorism

21. Germany stated in its comments to the conclusions and recommendations of the Committee against Torture (CAT/C/CR/32/7/RESP/1; August 17, 2005) that, with one exception, there have not been any case of deportation in which diplomatic assurances were required since 11 September 2001. We have reports, however, that so-called ‘diplomatic assurances’ are increasingly used to return terrorist suspects to states where they face a real risk of grave human rights violations, including torture and other ill-treatment. The Federal Ministry of the Interior reportedly sought diplomatic assurances from Algeria in February 2007. In July 2007, an Under Secretary of State travelled to Tunisia to request similar assurances from the Tunisian Minister of Interior over two Tunisian nationals. During the visit, Germany received oral assurance that treatment of returnees conforms with human rights standards. Germany subsequently issued deportation orders for both men, despite an earlier BAMF decision that at least one of the applicants should not be deported because of a real risk of torture or other ill-treatment. Judicial review of his deportation order is pending.

22. German intelligence and law enforcement agents have questioned – directly or by proxy – victims of US renditions while the detainee was being subject to torture or other ill-treatment, or unlawfully held at Guantánamo Bay. The case of the life-long German resident Murat Kurnaz is an example. German intelligence agents provided to Syrian authorities information about, and questions to be posed to, Muhammad Zammar after his unlawful transfer from Morocco to Syria. German intelligence and law enforcement agents interrogated him (November 2002) in Far’ Falastin in Syria. This prison is run by Syria’s Military Intelligence and is notorious for torture of security detainees. Indeed, in the course of a subsequent parliamentary inquiry in Germany (since April 2006), senior officials of the German intelligence agencies as well as government officials conceded that they were either vaguely aware or knew that torture takes place in Syria.

23. No direct German involvement into renditions has been revealed to date. However, individuals were rendered through German airspace by the CIA, using an airbase on German territory. German authorities have failed to introduce preventive measures since reports about the rendition programme and its scale were received in 2005. It is likely that individuals could still be unlawfully transferred to illegal detention through German airspace and with the use of German airports. In relation to CAT and the General Comment 31 of the UN HRC, Germany may be breaching its international obligations not to expose anyone to the risk of torture or other ill-treatment, arbitrary detention, or enforced disappearance, simply by failing to put in place effective measures to prevent.

I.2.6. Human trafficking

24. Germany recognises human trafficking as a violation of human rights in concurrence with international conventions CEDAW, Article 6, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol) as well as to OP-CRC. Improvements have recently been made in combating human trafficking in terms of law enforcement. The so-called Cooperation Concept is considered a Best Practice Model describing in detail the separate specific assignments of the Police and specialist counselling centres. Another positive development is the amendment of the criminal code in 2005, completing the legal definition of trafficking in human beings and including trafficking as a form of of labour exploitation.

25. However, numerous flaws and shortcomings still exist. Particularly when it comes to the Residence Law, victims of human trafficking still do not receive adequate treatment. For

example, they are not granted an unconditional Residence Permit being a Non-EU-National. After a so called 'reflection period' of a maximum of four weeks, the victims have to decide if they want to cooperate with law enforcement or leave the country. There are no alternatives. A lack of effective measures to protect and support the victims of trafficking related to labour exploitation persist. Although the Law on Benefits for Asylum Seekers (*Asylbewerberleistungsgesetz*) cover the basic needs, this remains far below the margin of subsistence and is insufficient for this target group. In addition, victims of trafficking in women rarely receive adequate medical care under this law. Similar to what has been said on people without legal status, actions taken by the German government should not exclusively focus on law enforcement but concentrate on the protection of the victims. To effectively combat human trafficking, a human rights based approach is urgently needed.

I.2.7. Economic, Social and Cultural Rights

I.2.7.1. Poverty

26. Poverty is not a political priority of the German government. None of its three reports on poverty names any human rights. Irrespective whether poverty might be considered a violation of human rights per se, it substantially increases the risks. It is estimated that approximately 13% of the German population (including foreign nationals) suffer from poverty. The government in its latest report identifies about 1.3 million people economically active who need additional subsidies from the government, because their wage does not sustain them. Independent sources suggest this figure is closer to 5 million (FRANKFURTER RUNDSCHAU, February 27, 2007, article of Professor Rudolf Hickel). Out of 14.5 million children and adults (under 18), 3 million are at risk of falling below the existence minimum. This implies less access to education, vocational training (15% remain without any training), health service (and thus lower life expectancy) but also social stigmatisation and exclusion as well as lower chances of making their voice heard.

27. Human rights require the prioritisation of policies on social issues focussing on human dignity and empowerment. Despite this commonplace, the German government persistently ignores the human rights analysis and recommendations as e.g. those included in the report of the European Commissioner on Human Rights of July 2007 (§§ 109-121, recommendations 27-29). Consequently, there is no national strategy for complying with the duties of CESCR even in relation to vulnerable groups. Frequently used terms in public discussions such as poverty among children (*Kinderarmut*) or low level payment (*Niedriglohnsektor*) indicate the deficiencies of the government's policy and the social assurance system in the context of reforms like *Hartz IV*.

I.2.7.2. Social security

28. The low level payment issue discussed above plays a specific role within the integration of East and West Germany. The Committee of ICESCR stated in its Concluding Observations to the 3rd state report of Germany in 1998, that the integration of East and West still needed to be completed and recommended acceleration of the government's efforts (Document E/C.12/1/Add. 29, December 4, 1998, Chapter D, §§ 12, 14, 16, 26, 30 and 36). The Research Centre on Social Science (Sozialwissenschaftliches Forschungszentrum) Berlin-Brandenburg stated in its report (2007) that 9 years later these two areas continue to differ significantly in terms of economical dynamics, education and vocational training, labour market, rule of collective bargaining, legal platforms for pensions and access to social empowerment. Wages in East Germany are still far below (72% in 2006) the level in West Germany. The rate of unemployment in East Germany at 12.7% in June 2008 is twice that of

West Germany (6,2%) and pensions also show significant variations (87,87% East to 100% West). Within ten years, the difference has been reduced by only 2.1%. This integration gap implies that inequalities in social and cultural issues persist.

I.2.8. Non-state actors and international politics

29. Germany is the world's 4th biggest exporter of arms. The law stipulates that arms export shall not violate international law. However, there are some arms exports that raise concern. In 2006, German companies have sold arms to states with a negative human rights situation and to areas of conflict. Small and light weapons have been delivered to Malaysia, the Philippines, Saudi-Arabia and Thailand, among others.

30. The government supports German companies in their international activities through a variety of mechanisms such as export credits and investment guarantees. The human rights impact of this support is, however, rarely assessed. This practice led to export credits being granted for projects that have led to human rights violations; especially infrastructure projects.

31. The German government has accepted the OECD Guidelines for Multinational Companies and established a National Contact Point (NCP) for supervising these Guidelines. The NCP is located at the Federal Ministry of Economics and Technology, Department for Foreign Investment. The housing of the NCP within the department tasked with promoting business, trade and investment, can lead to conflicts of interest. To date, eleven complaints have been submitted to the German NCP. Seven were rejected, most of them on the grounds that the investment nexus was missing. This reflects a particularly narrow definition of investment nexus. For example, the NCP invoked the missing investment nexus as a main argument to reject a complaint brought forward by Transparency International on the issue of corruption of 57 German companies in the context of the "Oil for Food Programme" in Iraq.

II. Challenges and recommendations

32. As stated in this report, the institutional capacity of the German government needs to be further improved in order to establish an independent body on internal affairs; such as a human rights council or an ombudsman for human rights to assist with the implementation of recommendations of human rights treaty bodies. This body should be available for all citizens to address and deal with human rights on national as well as on State level.

33. The German government should clarify its position regarding the application of the Covenant to persons subject to its jurisdiction in situations where its troops or police forces operate abroad as requested by the Human Rights Committee. It should formally acknowledge the full applicability of the CCPR in the above mentioned situations and, accordingly, adjust training provided for members of its security forces deployed internationally.

34. The German government should ratify the Convention for the Protection of All Persons from Enforced or Involuntary Disappearance without reservation. The national criminal code should be adapted to ensure that enforced disappearance constitutes an offence under criminal law, according to Article 4 of the Convention. The ratification of the Convention should be promoted within its policy on development cooperation, particularly in relation to countries or conflict areas where enforced disappearance is an issue. Germany should also encourage the members of the European Union to follow suit.

35. The German government should take more targeted action against gender role stereotypes and launch a widespread public discussion about non-discriminatory, egalitarian

and partnership-based role models. This includes ensuring the rights of registered partnerships and rainbow families (LGBT). The Anti-Discrimination Office (ADS) should work comprehensively on both federal and State levels. Gender-differentiated research and gender-sensitive evaluation of studies should be encouraged and access to better data facilitated; on matters such as gender equality, levels of full and part time employment, income levels by sector and gender, racist discrimination, ethnic origin, age, religion and beliefs, disabilities, and sexual orientation. Gender mainstreaming should be re-implemented and the UN zero-tolerance policy (SEA) as well as UN S/Res/1325 executed.

36. The government should seek better protection and relief for the victims of domestic and sexual violence under the civil and criminal law. Adequate training for relevant professionals (law enforcement, judiciary, medical and care personnel) should be ensured, paying special attention to cultural issues, disabilities, and victims of trafficking. Better provisions are needed (e.g. in Immigration and Residence Law) to protect and counsel victims of forced marriages and victims of human trafficking.

37. The German government should implement in full the recommendations made by CERD in August 2008. These recommendations should form part of the national action plan against racism. Recommendations from earlier CERD conclusions should be incorporated into legislation and administrative rules, and the implementation monitored by an independent commission which reports back to the German parliament. Additional and effective measures are required to end discrimination against migrants particularly in relation to the educational systems of the States, as pointed out by CERD.

38. The German government should withdraw its reservation to CRC, even if the States (Länder) do not agree. It has the legal power to do so. Furthermore, the CRC and its OPs should have priority in relation to asylum and immigration obligations. Refugee children need a secure status for a long term stay. They should not stay in detention or deportation camps and should not be subject to forced deportation. Unaccompanied minors up to the age of 18 should be allowed to stay in separate and protected accommodation. Children in refugee families and unaccompanied minors should be supported immediately after entry into the country. Traumatized children must be identified in a clearing process and receive immediate treatment in psycho-social counselling centres. A special protection status should be introduced for all unaccompanied children who cannot return but have also no chance for asylum, guaranteeing them the right to education, access to the youth welfare system and to legal guardianship. Minors, even without legal status, should have the right to compulsory school attendance and vocational training as well as to adequate medical treatment without fear to being deported. Refugee families with children should not be forced to stay in cramped housing conditions for longer than 6 months.

39. More legal opportunities in terms of asylum and migration need to be provided in order to improve the access to EU territory. The lack of identity documents should not automatically work against the asylum seeker. The protection of the family unit should have priority if the question of deportation of a family member arises. Freedom of movement should be permitted after being accepted as refugee. Traumatized and ill refugees should be treated by professionals as other European countries are doing. Best-practice should be used as a standard clearing procedure.

40. Germany should repeal Section 4 (2) of the Asylum Procedure Act. In the context of FRONTEX operations, Germany should acknowledge the full applicability of the principle of non-refoulement. The government should abide by UNHCR guidelines and recommendations and not return any asylum seekers to countries where they are at risk of incommunicado detention, torture and other ill-treatment. Criteria such as effective protection, safety and livelihood should be incorporated in Section 73 (I) of the German Asylum Procedure Act. Reliance on diplomatic assurances undermines international protection against non-

refoulement principles. Germany should refrain from seeking diplomatic assurances as safeguards from human rights violations in case of deportation.

41. German intelligence agents and law enforcement services should refuse to participate in any way in the questioning of suspects held unlawfully. Measures which are appropriate to prevent renditions must be established without delay.

42. Germany should ratify the UN Convention on Migrant Workers and base its migration policy on human rights. All relevant professionals and institutions dealing with undocumented migrants should be exempted from criminal prosecution (as is the case for physicians), including teachers, nurses, hospitals, schools, pre-schools, kindergarten, youth welfare offices. All public offices that provide social services should be exempted from the duty to report the identity of an undocumented migrant to the aliens' office. All children should have access to basic health and primary and secondary education, irrespective of the legal status. The rules for naturalisation should be revised and extended, particularly allowing double nationality; as CERD has recommended.

43. Regarding alleged cases of ill-treatment by law-enforcement-officials, national statistical data should be made available. The recommendations of CAT issued in 2004 are still relevant. Charges against police on excessive use of force should not be countered with charges by the police against the person that has alleged ill-treatment by the police.

44. Victims of human trafficking should be entitled to the right to residency, irrespective of whether they collaborate with law enforcement. They should also be entitled to a work permit. Vocational training should be provided for as long as they reside in Germany. The victims should receive financial support for subsistence according to his / her specific needs; such as language courses and therapy. The 'reflection period' should last at least six months.

45. The German government should ratify the revised European Social Charter in relation to poverty and social security, and the OP on the collective complaint procedure. The government should further elaborate a next national action plan in order to combat poverty based on recent research and statistical data, as well as adapt its third report. The elaboration of the national action plan should involve poverty affected people and the organisations working with poverty and social security. In relation to the East-West-integration, a revised policy of equalising social standards is needed.

46. The German government should ensure that human rights impact assessments are carried out in all cases in which export credits or investment guarantees are granted. The government should also ensure that clients of export credit agencies are required to perform adequate due diligence on their potential human rights impacts. In relation to the OECD Guidelines, Germany should ensure the independence of the NCP and structure NDP as an inter-ministerial institution. The NCP should be entitled to carry out its own inquiries in specific cases. In relation to arms export, military aid and police aid, Germany should prohibit such export and aid if these contribute to human rights violations or violations of international humanitarian law. The German government should also ensure that private military and security firms do not violate human rights or become complicit in human rights violations.

Attachment

References

On the Convention for the Protection of All Persons from Enforced Disappearance

Heinz, Wolfgang S. (2008): *Das neue internationale Übereinkommen zum Schutz aller Personen vor dem Verschwindenlassen*. Deutsches Institut für Menschenrechte, Essay No. 8, Berlin April 2008; http://files.institut-fuer-menschenrechte.de/488/d77_v1_file_48185df687399_Das_neue_int_Uebereink_z_Verschwl_ES.pdf

On non-equality, discrimination, racism

Alliance of German Women's Organizations (ed.) (2008): *Shadow Report on the Sixth Periodic Report by the German Government on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Berlin, June 2008; www.frauenrat.de

European Commission against Racism and Intolerance / ECRI (2004: Third report on Germany. Adopted on 5 December 2003, Strasbourg, June 8, 2004; http://www.coe.int/t/e/human_rights/ecri/1%2Decri/2%2Dcountry%2Dby%2Dcountry_approach/germany/third_report_Germany.pdf

Forum Menschenrechte (ed.) / Jan Klostermann (2008); *Eliminating Racist Discrimination in Germany. Parallel report addressed to the Committee on the Elimination of All Forms of Racist Discrimination of the United Nations complementing the 16th – 18th state report of the Federal Republic of Germany according to Article 9 of the Convention on the Elimination of All Forms of Racial Discrimination*. Berlin; www.forum-menschenrechte.de

Frauenhauskoordination e.V. / Zentrale Informationsstelle der Autonomen Frauenhäuser (2008): *Schutz von Frauen und Kindern vor Gewalt darf nicht an den Kosten scheitern!* Positionspapier vom 25.04.08

On children

Committee on CRC (2008): *Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Concluding observations: Germany*. Document No. CRC/C/OPAC/DEU/CO/1, 47th session, 1 February 2008

Kindernothilfe / terre des hommes / Cremer, Hendrik (2007): *Shadow Report »Child Soldiers«*. Shadow report in the context of the States Report Procedure pursuant to Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts. Duisburg-Osnabrück, October 2007; <http://en.kindernothilfe.org/en/Rubrik/Topics/Child+Soldiers-p-195/Shadow+Report+Child+soldiers+published-p-194.html>

Kindernothilfe / Peter, Erich (2006): *Die deutsche Ratifikationserklärung zur UN-Kinderrechtskonvention im Diskurs*. Dokumentation der rechtspolitischen Kontroverse um eine Rücknahme der deutschen Ratifikationserklärung. Bremen

terre des hommes International Federation / Andreas Meissner / Martine Lachat / Mirela Shuteriqi / Salvatore Parata (2008): *EU Asylum Policy. Demands of Terre des Hommes International Federation to the European Union in order to improve the situation of children entering the European Union*. Osnabrück-Lausanne-Brussels, May 2008; www.terredeshommes.org

terre des hommes / Kindernothilfe / Cremer, Hendrik (2007): *Shadow Report Child Soldiers*. Shadow report in the context of the States Report Procedure pursuant to Article 8 of the

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts. Osnabrück-Duisburg, July 2007; www.terredeshommes.org
terre des hommes / German Association for Unaccompanied Minor Refugees (BUMF) /
Michaela Ludwig (2003): *Former child soldiers as refugees in Germany*. Osnabrück,
October 2003; www.terredeshommes.org

On refugees and migrants

- Alt, Jörg (2003): *Leben in der Schattenwelt, Problemkomplex „illegale“ Migration*.
Karlsruhe
- Federal Ministry on Internal Affairs (2007): *Illegal aufhältige Migranten in Deutschland. Datenlage, Rechtslage, Handlungsoptionen*. Bericht des Bundesministerium des Innern zum Prüfauftrag „Illegalität“ aus den Koalitionsvereinbarungen vom 11. November 2005, Chapter VIII 1.2, Berlin; http://www.emhosting.de/kunden/fluechtlingsrat-nrw.de/system/upload/download_1232.pdf
- Fischer-Lescano, Andreas / Löhr, Tillmann (2008): *Menschenrecht auf Bildung – Mitteilungsverbote von Bildungseinrichtungen in aufenthaltsrechtlichen Angelegenheiten*. In: Informationsbrief Ausländerrecht 1/2008, p. 54
- Forum Menschenrechte / Pelzer, Marei / Pflaumer, Gerd / Spieß, Katharina (2008): *Menschenrechte für Menschen ohne Papiere realisieren*. Positionspapier und Forderungen des Forums Menschenrechte. Berlin, Mai 2008; http://forum-menschenrechte.de/cms/upload/PDF/ab_05-2008/FMR_menschenrechte_fuer_menschen-ohne-papiere.pdf
- German Institute on Human Rights (Deutsches Institut für Menschenrechte) [ed.] (2007): *Frauen, Männer und Kinder ohne Papiere in Deutschland – Ihr Recht auf Gesundheit*. Bericht der Bundesarbeitsgruppe Gesundheit/Illegalität. Berlin, November 2007
- German Institute on Human Rights (2007): *Die faktische Gewährleistung des Rechts auf Gesundheit für irreguläre Migrant/innen und Migranten*. Stellungnahme zur Anhörung im Ausschuss für Menschenrechte und humanitäre Hilfe des Deutschen Bundestages, TOP 1 Fallsammlung „Kranksein in der Illegalität“. Berlin, March 7, 2007
- Keßler, Stefan (2008): *Rechtlos in der Schattenwelt? Umgang mit „Statuslosen“ in Deutschland*. In: Informationsbrief Ausländerrecht, 1/2008, p. 12
- Kok - Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess / Sahrah Schwarze (2008): *Studie zum Thema Gewalt an Migrantinnen*. Berlin, www.kok-buero.de
- Lagodny, Otto (2008): *Auslieferung trotz Flüchtlings- oder Asylenerkennung? Gutachten zur Vereinbarkeit von § 4 Satz 2 AsylVfG mit Völker-, Europa- und Verfassungsrecht*. Berlin, www.amnesty.de
- Pelzer, Marei (2008): *Prüfbericht Illegalität: Weder Gnade noch Recht für Menschen ohne Papiere. Bundesregierung verweigert Papierlosen elementare Rechte*. In: Müller-Heidelberg et al. (ed.): *Grundrechte-Report 2008*, pp. 24-28
- Pflaumer, Gerd (2006): *Leben in der Schattenwelt, Migranten ohne Papiere haben rechtliche Ansprüche, können sie aber nicht realisieren*. In: *Vorgänge* Heft 4/2006, pp. 15-22.
- Spieß, Katharina (2007): *Die Wanderarbeitnehmerkonvention der Vereinten Nationen*. Deutsches Institut für Menschenrechte, Berlin; http://files.institut-fuer-menschenrechte.de/488/d61_v1_file_45ec16026c07a_Studie%20Wanderarbeiterkonvention%202007.pdf
- Süssmuth, Rita / Unabhängige Kommission 'Zuwanderung' et al. (2001): *Zuwanderung gestalten - Integration fördern*. Bericht der Unabhängigen Kommission Zuwanderung. Berlin; http://www.bmi.bund.de/nn_122688/Internet/Content/Common/Anlagen/Themen/Zuwand

[erungIntegration/DatenundFakten/Zuwanderungsbericht_pdf,templateId=raw,property=publicationFile.pdf/Zuwanderungsbericht_pdf.pdf](#)

terre des hommes (2008): *Demands of Terre des Hommes International Federation to the European Union in order to improve the situation of children entering the European Union*. Osnabrück, May 2008; www.terredeshommes.org

terre des hommes / Bjoern Harmening (2005): *Wir bleiben draußen - Schulpflicht und Schulrecht von Flüchtlingskindern in Deutschland*. Osnabrück, February 2005; www.terredeshommes.org

On human rights violations in the context of counter-terrorism

Amnesty International (2008): *State of Denial: Europe's role in rendition and secret detention*. June 2008, EUR 01/003/2008; www.amnesty.org

Amnesty International (2008): *Forderungskatalog, Keine Flüge in die Folter – CIA-Verschleppungsflüge und unrechtmäßige Haft verhindern*. June 2008, www.amnesty.de

On human trafficking

Kok - Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess / Kirsten Koopmann-Aleksin (2007): *Internationale und Europäische Rechtsinstrumente zur Bekämpfung des Menschenhandels*. Berlin; www.kok-buero.de

On Economic, Social and Cultural Rights

European Commissioner for Human Rights / Hammarberg, Thomas (2007): *Report on his visit to Germany (9-11 and 15-20 October 2006)*. Council of Europe (COE). Office of the Commissioner for Human Rights, Doc.No. CommDH(2007)14, Strasbourg, July 11, 2007; <http://wcd.coe.int>

Sozialwissenschaftliches Forschungszentrum Berlin-Brandenburg (2007): *Sozialreport 50⁺ 2007. Daten und Fakten zur sozialen Lage von Bürgern ab 50 Jahre in den neuen Bundesländern*. Berlin, Oktober 2007; www.sfz-ev.de

On non-state actors and international politics

Bielefeldt, Heiner (2004): *Nichtstaatliche Akteure im internationalen Recht*. 5. außenpolitische Jahrestagung 2004 der Heinrich-Böll-Stiftung "Die Rolle des Völkerrechts und der Vereinten Nationen in einer globalisierten Welt". Berlin, 24./25. JUNI 2004

Forum Menschenrechte (2004): *Menschenrechte über Wirtschaftsinteressen stellen. Für ein wirksames Konzept zur Stärkung der sozialen Verantwortung von Unternehmen*. Ein Diskussionspapier des Forums Menschenrechte. Berlin April 2004

Germanwatch (2008): *UN-Beauftragter kritisiert Anwendung der OECD-Leitsätze. Optimierung und Neustrukturierung der deutschen Nationalen Kontaktstelle für die OECD-Leitsätze erforderlich*. Berlin, Juni 2008, www.nord-sued-netz.de/dokumente/bericht_germanwatch.pdf

Strohscheidt, Elisabeth / Martens, Jens (2008): *Problematic Pragmatism. The Ruggie Report 2008: Background, Analysis and Perspectives*. Aachen-Berlin, June 2008; http://www.weltwirtschaft-und-entwicklung.org/cms_en/downloads/martensstrohscheidt.pdf