



German Institute
for Human Rights

Executive Summary

Development of the human rights situation in Germany January 2015 – June 2016

Report to the German Federal Parliament in accordance with sec. 2 para 5 of the Act regarding the Legal Status and Mandate of the German Institute for Human Rights

About the report

The German Institute for Human Rights annually submits a report on the development of the human rights situation in Germany to the German Federal Parliament (in accordance with sec. 2 para 5 of the Act regarding the Legal Status and Mandate of the German Institute for Human Rights of 16 July 2015; short: DIMRG). The report is presented on the occasion of the International Human Rights Day on 10 December. The DIMRG provides that the German Federal Parliament officially responds to the report.

The first report 2015/2016 covers the period 1 January 2015 to 30 June 2016. Future reports will cover the period 1 July to 30 June of each subsequent year.

With regard to the requirement of an annual report on the human rights situation in Germany, the Federal Parliament and the Federal Council emphasised: It is a permanent and continuing task of public authorities to respect and realise human rights of all people in Germany. For that reason, the German Constitution demands a regular review of the effects laws can have on human rights and, if necessary, readjust by means of law-making or by changing administrative measures.

In addition, new challenges to human rights can emerge – including through political and societal change, international or domestic developments or scientific and technological progress. Such challenges need to be recognised, and solutions in accordance with human rights need to be developed. This report and its future editions intend to contribute to both, human rights impact assessments of laws as well as the identification of new human rights challenges.

All documents and further information about the report are available at:
www.institut-fuer-menschenrechte.de/menschenrechtsbericht/

The Institute

The German Institute for Human Rights is the independent National Human Rights Institution in Germany (§ 1 GIHR law). It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is supported by the German Bundestag. The Institute was mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established Monitoring Bodies for these purposes.

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Introduction

The present report on the development of the human rights situation in Germany is submitted for the first time to the German Federal Parliament by the German Institute for Human Rights in accordance with sec. 2 para 5 of the Act regarding the Legal Status and Mandate of the German Institute for Human Rights of 16 July 2015. The report covers the period between 1 January 2015 and 30 June 2016.

The report relates to an extraordinary period of time: in 2015 more than 890,000 people fled to Germany to escape war, persecution or distress. In an enormous joint effort, hundreds of thousands of people in this country on all levels of politics, administration, civil society and business joined forces to help provide decent conditions to welcome the refugees. Beyond immediate emergency relief Germany is faced with the challenge of maintaining and protecting the human rights of those seeking shelter. Consequently, the report focuses on the situation of refugees in Germany. Its contents are based on various data sources. The German Institute for Human Rights conducted its own qualitative studies for certain parts of the report. In addition, publicly available data, statistics, documents and studies including, but not limited to, printed records of the Bundestag and all 16 parliaments of Germany's federal states were analysed. Moreover, using a questionnaire, the institute has collected data from the governments of Germany's federal states.

The report focuses on two further issues. The first concerns the exclusion of certain groups of persons with disabilities from exercising their right to vote. According to a June 2016 study commissioned by the German Ministry for Labour and Social Affairs, approximately 85,000 persons with disabilities have been excluded from the right to vote, thus being deprived of an essential democratic right. Secondly, the report takes up the issue of business and human rights. This potential area of conflict has first been systematically analysed and jointly discussed by the Federal Government, civil society and German businesses in 2015 und 2016. This concerns the matter of how German companies, while pursuing their business affairs in Germany and abroad, can and must fulfil their human rights responsibility.

1 Germany within the System of Human Rights Protection

In Germany, inviolable and inalienable human rights are set out in the **Basic Law of the Federal Republic of Germany** (Art. 1 para 2). Moreover, Germany is **firmly integrated into the international and European systems of human rights protection**. It has subscribed to international treaties of the United Nations and to European human rights agreements and their control mechanisms. The latter, by means of their recommendations, provide both valuable insight into the development of the human rights situation and impetus to promote human rights protection in Germany.

Germany as seen by Human Rights Bodies and Institutions

International **monitoring procedures** observe whether and to what extent progress has been made by states in implementing their human rights obligations. Committees of independent experts (treaty bodies and commissions) at the United Nations and the Council of Europe regularly evaluate member states and provide recommendations. These are based on the respective state report as well as on parallel reports prepared by non-governmental organisations and national human rights institutions.

In its first review of Germany, the **UN Committee on the Rights of Persons with Disabilities** remarked positively that the national action plan to implement the UN Convention on the Rights of Persons with Disabilities had been adopted, a Federal Commissioner for Matters relating to Disabled Persons appointed, the Passenger Transportation Act amended and German sign language officially recognised. However, the committee voiced concern over migrants and refugees with disabilities not having adequate access to assistance. It was particularly critical of psychosocially disabled persons in institutions and elderly people in care homes being subjected to inhumane treatment. The committee recommended prohibiting the application of physical and chemical measures to restrict the freedom of individuals in institutions.

The **UN Committee on the Elimination of Racial Discrimination** voiced concern over the political climate in Germany: racist views were increasingly advocated in public, and the state was not taking sufficient action against the propagation of racist ideas by some political parties and movements. The committee called upon Germany to speak out more resolutely against racist statements by politicians and public authorities and take additional measures to protect asylum seekers from racist violence.

The **European Committee for Social Rights (ECSR)** monitors the implementation of the European Social Charter. In 2015 the ECSR criticised Germany, among other aspects, for not showing enough commitment to protect migrants from discrimination in the labour market.

In April and May 2015 **Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe**, visited Germany. He called for binding minimum standards throughout Germany for the reception of asylum seekers and advised the Federal Government to provide stronger support to both federal states and municipalities in terms of costs and accommodation. Regarding the fight against racism and intolerance, the Commissioner for Human Rights urged that any kind of hate speech and hate crimes be opposed and racial profiling in police work, i.e. police checks in which persons are singled out based on their physical appearance, be eliminated.

Furthermore, in 2015 a first review was carried out as to the extent to which Germany had implemented the **Council of Europe Convention on Action against Trafficking in Human Beings**. The group of experts commended the building of network structures both nationally and at the federal state level. Deficits continued to exist, however, in the areas of detection of victims, enforcement of the rights of persons affected, as well as data collection and research.

Compliance with the **Framework Convention for the Protection of National Minorities** was also monitored during the reporting period. The body of experts confirmed that the rights of the Danish and Frisian minorities as well as those of Sinti and Roma in the federal state of Schleswig-Holstein as

well as the rights of Sorbs in the state of Brandenburg had been reinforced at state constitutional level, yet the division of competencies between national government and federal states was leading to difficulties. Germany would have to see to it that children of Sinti and Roma families had access to regular schools in practice.

Germany in the United Nations and Intergovernmental Organisations

Between 2013 and 2015, Germany was a **member of the UN Human Rights Council** and held its presidency in 2015. The German commitment to enhanced efficiency and effectiveness of the Council and a greater involvement of civil society met with a highly positive response from civil society actors both in Germany and internationally. Germany has been re-elected to the Council for the 2016–2018 period. In the UN General Assembly, Germany was advocating, amongst other things, participation rights of national human rights institutions and the right to privacy in the digital sphere.

In September 2015 a special summit of the United Nations adopted **the 2030 Agenda for Sustainable Development**. It contains 17 goals referred to as Sustainable Development Goals (SDGs). To complement these goals, a series of implementing, monitoring and follow-up measures have likewise been adopted. The agreement was preceded by an almost two-year-long negotiation process during which the Federal Government systematically advocated human rights positions, such as corporate responsibility in accordance with the UN Guiding Principles on Business and Human Rights as well as sexual and reproductive rights. As a consequence, the German Sustainable Development Strategy for the implementation of the SDGs should systematically embrace the recommendations made by international human rights bodies and broaden them to include all fields of action captured by SDGs. Issues such as poverty and the rule of law have hardly been addressed thus far. By way of its decision to voluntarily report to the global review mechanism (High-Level Political Forum, or HLPF for short) as one of the first 22 countries in July 2016, the Federal Government stressed the importance of accountability. Accordingly, the involvement of German civil society in

the implementation of SDGs in Germany is to be enhanced.

Germany is the fourth largest shareholder of the **World Bank** behind the United States, Japan and China. By providing loans at favourable conditions, the bank's aim is to improve the living conditions of people who, for the greater part, inhabit the world's poorest countries. A key human rights development during the reporting period was the revision of environmental and social standards (safeguards) for investment set by the World Bank in order to avoid or mitigate any negative impact on humans or the environment in project areas zones. Following the first draft in 2015, Germany, in a statement of opinion, had spoken out in favour of more closely aligning the standards with human rights. No public comment was made by Germany regarding the second draft. The safeguards adopted in mid-2016 fail to satisfy the points of criticism above: they do not take international human rights standards, the human rights responsibility of creditors and the World Bank's own due diligence in the field of human rights sufficiently into account. As a result, the obligation arises for Germany to make its vote on funding decisions conditional upon having the World Bank assess the human rights impact of projects or carrying out its own impact assessment and rendering an account to the general public.

2 Thematic Focus on Refugees

It is incumbent upon states to respect and protect the human rights of refugees. Consequently, Germany must guarantee the rights of persons seeking protection upon their arrival, for their accommodation and during their period of residence.

In 2015 the large number of persons seeking refuge and asylum in Germany posed a major challenge to the country as a whole as well as to federal states and municipalities, which had to be met at extremely short notice in most instances. Across all regions of Germany, hundreds of thousands of people contributed to welcoming refugees warmly and above all to providing decent lodging facilities. This can be said of private individuals showing their commitment within existing structures or founding new initiatives, and of the Federal Government, the federal states and municipalities, which often had to provide shelter and care for large numbers of refugees and mastered this task with tremendous commitment and creativity.

In September 2015, the Federal Government decided not to send back – as envisaged by the Dublin System – Syrian refugees to other EU countries, but rather to process applications made by those refugees directly by referring to the sovereignty clause (Art. 17 para 1 of the Dublin III Regulation). In so doing, Germany honoured its human rights obligations where the European asylum system had failed.

Reactions by the German legislature to the large number of persons seeking protection convey a rather mixed message: on the one hand, access was improved and administrative barriers removed, for instance regarding access to the labour market or, at least in part, by introducing the electronic health card for refugees; on the other hand, numerous restrictive measures were taken, such as the extension of residence requirements, restrictions on family reunification, the classification of further countries as “safe countries of origin”, cuts on assistance and benefits, prohibitions on employment and reducing the protection against deportation for health reasons. Some of these

restrictive measures lead to additional administrative procedures – such as replacing “pocket money” for personal needs by the benefits-in-kind principle or introducing residence restrictions for those with recognised refugee status.

Further changes and amendments both in law and in practice, for instance speeding up and shortening asylum procedures either on a legal basis as in the “safe countries of origin” scenario and in accelerated proceedings in accordance with sec. 30 of the Asylum Act or on an organisational basis as in registration procedures conducted in fast processing lanes (“Bearbeitungsstraßen”), raise questions as to the rule of law and the fairness of proceedings.

Welcoming Culture

Since autumn 2015, Germany has come to be marked by an **overwhelming helpfulness and welcoming culture**. At the end of the year 2015 ten percent of the population volunteered to help refugees. As the number of incoming refugees is currently falling, voluntary work is likely to shift increasingly towards assistance in integration (education, labour market, housing). The Federal Government, the federal states and municipalities should strive for sustainable support and good cooperation with volunteers on a permanent basis. This, of course, does not exonerate the state from its responsibility to maintain the human rights of those seeking protection. However, it is an essential factor in helping to integrate and accept refugees.

Racism

Yet the response to the growing numbers of refugees is not only one of compassion for and commitment to the human rights of those seeking refuge. In 2015 the Federal Criminal Police Office recorded 1,027 politically motivated criminal acts against refugee accommodation – four times as many as in the previous year. The high level of violence seems to have consolidated; in the first half of 2016 no less than 530 such crimes occurred. Additional cause for concern stems from the fact that violent crimes and hate speech have their origins not only in right-wing circles, but seem to have gained currency in society at large.

International human rights agreements require Germany to take action against **racism in the political sphere and in public life** and prosecute hate crimes and hate speech. This is why decision makers and politicians in Germany must speak up explicitly against racist statements and racist acts time and again.

Focus on Education

Since racist attitudes are being increasingly assumed in public discourse, awareness-raising and **education** should become a stronger political focus. Owing to their right to education (Art. 13 of the International Covenant on Economic, Social and Cultural Rights, ICESCR), children are entitled to be given an understanding of socially relevant topics based on human rights. Flight, displacement and human rights should thus be integrated into the curricula of all school types and classes. At the same time teaching staff must be offered specific training courses in which in-depth knowledge about flight and refugees as well as social skills are conveyed so as to be able to address this often emotionally charged topic.

Against this backdrop, the German Institute for Human Rights has analysed the **education programmes of all federal states for all school types**. Findings revealed that the topic of flight/asylum is covered very rarely and if so, at a very late stage: only in four of the federal states does this happen any earlier than year 7. The concepts of refugees and migrants are frequently mixed up while there is generally little precision regarding terminology. The discrimination which refugees face in Germany, such as when trying to gain access to the housing and labour markets, is hardly ever addressed in class. Often the focus is placed on aspects bearing negative connotations, such as “cultural differences”, “problems” or “conflicts”. The human rights context of this topic is frequently omitted.

Respect for fellow human beings can only be instilled if human rights and human rights violations are explicitly mentioned. The following passage from the education programme for Berlin and Brandenburg is exemplary in this regard: “In the context of universal human rights and the right to asylum, students discuss the objectives and

strategies of German integration and immigration policies as well as opportunities and problems in a society characterised by increasing diversity”. Similarly, educational materials show much room for improvement: while textbook contents reflect social discourses, they often tend to reproduce stereotypes.

Accommodation and Care in Initial Reception Centres

In 2015 the **Federal Government, federal states and municipalities** had to undertake strenuous efforts to accommodate refugees. Following their arrival, persons seeking refuge were first assigned to emergency shelters and **initial reception centres**, many of which were in a state of disrepair or had to be furnished provisionally. Hence fundamental rights of people having fled to Germany, such as the right to adequate housing (Art. 11 para 1 of the ICESCR) were ignored. Residents at emergency shelters and initial reception centres were forced to live in cramped conditions, suffering noise exposure and being deprived of their privacy, in some cases for months on end. To date, the quality of initial reception centres in the federal states varies greatly – **binding nationwide standards do not exist**. A **survey** carried out by the German Institute for Human Rights revealed that in half of the federal states, state governments had set standards for room dimensions and staffing in initial registration centres, yet such standards were publicly available only in a handful of states. Moreover, compliance with any given standards would have to be monitored. **The state is under obligation to make sure that human rights are not merely guaranteed on paper but actually implemented**. Positive examples of note in this regard are the so-called mobile monitoring groups in the state of North Rhine-Westphalia or the inspection procedure for shelters introduced by the State Commissioner for Foreign Residents in Saxony.

The **provision of health care** for refugees also presented major challenges to municipalities. Because of legal restrictions on health care services for asylum seekers, medical care is insufficient, resulting in delayed treatments and deteriorating medical conditions. Another problem is posed by the **shortage of language staff**. It is regrettable

that the planned assumption of costs for interpreting services during medical treatment of refugees did not make it into the final version of the Integration Act of July 2016. Persons particularly in need of protection, for example those suffering from **post-traumatic disorders**, often receive insufficient medical care. Following the introduction of the electronic health card, exercising one's right to health has been made easier in some of the federal states, yet a nationwide legal regulation has not been envisaged.

Education is the key to integration, but most children living in initial reception centres have not got the option of attending school. Immediate **compulsory school attendance** for refugee children exists solely in the states of Berlin, Bremen, Hamburg, Saarland and Schleswig-Holstein. As refugee children remain in initial reception centres for months in certain cases, the lack of access to schools is highly problematic for their development and conflicts with the children's right to education.

In 2016, many initial reception centres still remain makeshift structures which, in some cases, provide little more than a roof over one's head. If violations of fundamental rights occur there or in similar facilities, for example in cases of maltreatment by staff or unacceptable sanitary conditions, mechanisms to lodge **complaints** must have been put in place. However, only some of the federal states require operators to introduce complaints management procedures (these being Baden-Wuerttemberg, Bavaria, Brandenburg, Hesse, Mecklenburg-Western Pomerania, Rhineland-Palatinate).

The Situation of Children in Communal Accommodation Facilities

Following accommodation in an initial registration centre, refugees are usually transferred to **communal accommodation facilities**, which lie within the remit of municipalities. According to Article 31 of the UN Convention on the Rights of the Child, every child has a right to rest and leisure and to engage in play, which also includes providing adequate places of retreat. Pursuant to the Convention on the Rights of the Child, children are to be treated as subjects in their own right,

they must be listened to and their opinion is to be taken seriously. To that effect, the **Monitoring Mechanism for the UN Convention on the Rights of the Child of the German Institute for Human Rights** has examined how **refugee children** perceive their **situation in communal accommodation**.

So far double standards persist in Germany: for children living in children's homes, detailed requirements are set out in the Child and Youth Welfare Act to safeguard the welfare of the child. For the time being these provisions do not apply to refugee children living in communal accommodation. By way of what is referred to as the Asylum Package II, at least one of the many aspects of child welfare has been taken into account: individuals working in institutions in which minors have been granted accommodation now have to submit an extended police clearance certificate.

As part of a larger study, the Institute interviewed twelve children aged between 10 and 15, of which seven were girls, for the purposes of the present report. All of them live in a relatively well-equipped communal accommodation facility. The interviews made it clear that biographical **experiences of war, flight and displacement** strongly impact the children's well-being and are closely entwined with their **need for safety** inside the communal accommodation facility. The children confirmed that they felt safe in the company of their parents, and that siblings were important attachment figures; meanwhile, the children were oppressed by uncertain future prospects.

Recurrent themes in the statements made by the young interviewees are the various dimensions of the **right to education** and their **yearning for swift integration** in Germany: the children would prefer to be integrated as soon as possible into regular schools over first attending welcome classes, and wish to speak German preferably also in the afternoon. The interviewees were disappointed about non-existent leisure and playing opportunities in their accommodation. Some claimed that, for this reason, they were sleeping a lot even during the day. In the survey, the children made it clear they would like to become actively involved and assume responsibility.

Vulnerable Refugees Need Special Care

Children and unaccompanied minors are considered to be **vulnerable persons**, yet there are other groups such as persons with disabilities, pregnant women, the elderly, victims of torture, sexualised violence and human trafficking as well as traumatised persons. Neither Asylum Packages I and II nor the Integration Act include binding requirements for the identification of vulnerable persons, their accommodation or care. Pregnant women and children are easily recognisable because of their physical appearance, traumatised persons are not. The number of persons in Germany who may actually have a legal claim to particular protection and support is still unclear. According to the federal states, no systematic survey at registration points or reception centres to that effect had been made as of mid-2016; the only group to be registered was that of unaccompanied under-age refugees: 22,255 of them applied for asylum in 2015. However, systematic identification in the course of asylum procedures is a mandatory condition for needs-based accommodation, care and the administration of fair proceedings. German authorities are under obligation, pursuant to EU laws and UN human rights conventions, to identify vulnerable persons and assess their needs. As early as 2007 the EU Commission observed that no such procedures had been put in place in Germany, voicing serious doubts as to whether particularly vulnerable persons would be identifiable under such circumstances.

The actual implementation of human rights obligations regarding vulnerable persons rests with the federal states and municipalities, which are responsible for providing accommodation and care for refugees. An **enquiry** with the various **ministries of federal states** made by the German Institute for Human Rights has shown that **no mechanisms to identify all groups of particularly vulnerable refugees** exist in initial reception centres. As few as five federal states had, according to their own statements, put in place a mechanism by mid-2016; three further states are planning to do so. However, not all vulnerable groups are being registered by such mechanisms; above all unaccompanied minors are being accounted for.

Non-governmental organisations interviewed in parallel pointed moreover to considerable deficits such as lack of expertise regarding victims of torture and violence. A large share of incoming refugees arrived with pre-existing mental illnesses, NGOs said, adding that there were not enough staff, including language-proficient staff to facilitate treatment. Social welfare organisations report that wheelchairs were missing for refugees with disabilities. Part of the problem is that, ultimately, case officers working in social security offices or health authorities decide whether to dispense medical treatment or not.

Lack of Standards for Protection against Violence in accommodation centers

During the reporting period, **violence in refugee accommodation facilities** increasingly became the subject of public debate, yet reliable figures on victims and perpetrators do not exist. Reports have been published on gender-specific violence against women perpetrated by occupants, staff and security guards, violence against gays, lesbians, transsexual and intersex persons as well as religion-based violence. Until mid-2016, protection against violence was scarcely regulated by legal provisions or standards. In six federal states, there is an obligation to provide lockable single-sex sanitary facilities for refugee shelter residents. In Saxony-Anhalt and North Rhine-Westphalia regulations provide for women to be allocated to other accommodation in cases of violence or to be exempted from living in communal accommodation facilities. The federal states of Berlin, Brandenburg, Bremen, Hamburg, North Rhine-Westphalia and Rhineland-Palatinate said they were currently drafting concepts for protection against violence, guidelines or recommendations and offering staff training courses.

Access to Housing and Labour Markets and German Language Classes

Regulations and practises differ widely across German states as to the accommodation of asylum seekers, persons with exceptional leave to remain and recognised refugees. Many of them are forced to live in communal accommodation facilities for years. This practice is disproportionate and vio-

lates the **right to non-discriminatory access to the housing market** which is an essential component of the right to housing as safeguarded by human rights. Similarly, the right of **access to the labour market** is restricted by numerous legal and factual barriers. Yet some improvements have been made: in most German regions, the so-called priority review (“Vorrangprüfung”) for the access to employment has been suspended. For those with exceptional leave to remain, the age limit of 21 to start an apprenticeship has been waived. In addition, access to the labour market for persons with leave to remain has been facilitated.

Although a command of the **German language** is a key prerequisite for access to the labour market, the integration courses offered by the Federal Government have hitherto been refused to refugees arriving in Germany either entirely or for lengthy periods of time during asylum procedures.

Data Privacy for Refugees

To a greater extent than for most other people in Germany, **personal data** of refugees are collected and matched in **central state-run data registers** at the federal, federal state and European level. Data collection and processing is legitimate since it serves to protect public order and security, supports preventive health care and helps deliver social security benefits, i.e. the guarantee of social human rights by the state. Yet it is arguable whether this **extensive manner of data collection and processing** is necessary and proportionate. It has long been criticised by commissioners for data protection and privacy officers that all asylum seekers, even if they are able to present valid personal documents, are subject to police investigation measures in Germany so as to collect their biometric data.

The validity of data collected and processed is by far more decisive for refugees’ future existence than it is for the rest of the population. For instance, individuals who, on account of a data match, are considered to be a security risk, might be refused a residence permit. Persons registered have only partly been informed of the purpose of this data processing and of their rights – accordingly, more awareness-raising should be done

among refugees. Moreover, legal supervision in the field of data privacy should be improved.

Accelerated Asylum Procedures, Assisted Repatriation and Suspended Family Reunification

In the years 2015 and 2016, in view of the large number of refugees, Germany was not only faced with the challenge of finding appropriate accommodation for those seeking refuge, it was also expected that refugees, following their registration, were to **pass asylum procedures** as fast as possible. Many authorities and state agencies were unable to cope, which produced a considerable backlog. In addition to taking on additional staff, both the Federal Government and the federal states reorganised their administrative and operational structures in order to shorten processing times. Legal amendments were also made with the intention of speeding up procedures, with further countries of origin being declared “safe” and **accelerated asylum procedures in special initial reception centres** being introduced.

The German Institute for Human Rights looked into the **organisation and practice of so-called arrival centres (“Ankunftszentren”)** in Baden-Wuerttemberg, North Rhine-Westphalia and Rhineland-Palatinate while also interviewing representatives of organisations providing counselling in asylum procedures, refugee councils and ministries of the interior. Counsellors working for social welfare organisations complained that the speed of some procedures resulted in a lack of transparency for asylum seekers. In some cases, refugees entered their hearing without any counselling whatsoever. Particularly vulnerable persons, for example those suffering from mental stress, required more time and assistance to be able to present the causes of their flight in a coherent fashion during their hearing. When asylum seekers are served a negative decision in accelerated procedures, they have no more than a week to lodge an appeal and provide supporting evidence. This frequently posed organisational problems, counsellors said, not least because of a lack of legal representatives and interpreters with expertise in asylum law. Generally speaking, accelerated asylum procedures raise doubts as to the rule of law and fairness of proceedings.

Persons not having a claim to protection in Germany are to leave the country as soon as possible. The Federal Government and the federal states repeatedly made this clear in public statements in 2015 and 2016 and declared **so-called voluntary or, more aptly, assisted repatriation** an important means to induce foreigners under obligation to leave Germany to return to their country of origin and avoid being deported. According to the human rights principle of proportionality, assisted repatriation should, as a general rule, be given priority over deportation. An assisted repatriation also entails a lower risk of human rights violations and personal hardship. The Federal Government and the federal states aim to create harmonised standards for repatriation counselling, though these standards contradict the tightened rules for deportation.

From a human rights perspective, successful repatriation cannot be measured by the number of persons repatriated. What matters is whether the repatriation is sustainable, meaning that it can be perceived as a successful economic and social reintegration into the country of origin. Among the factors for success are not only the personal situation of the repatriated individual, but also whether his or her human rights are respected and what qualifications he or she obtained in Germany.

By means of the Asylum Package II, **family reunification for people granted subsidiary protection status**, i.e. persons not recognised as refugees according to the Geneva Convention relating to the Status of Refugees, **has been suspended for two years**. In so doing, however, the right to family life as guaranteed by human rights and Basic Law is restricted considerably, although the persons affected are comparable to recognised refugees owing to their vulnerable status and the unforeseeable duration of their stay in Germany.

3 No Right to Vote: Persons with Disabilities Barred from Casting their Vote

Next year a new German parliament will be elected, yet some people with disabilities in Germany are still not allowed to cast their vote. Currently almost **85,000 persons with disabilities are excluded by German law from exercising their active and passive electoral rights**. This concerns the exclusion of persons with disabilities for whom a guardian has been appointed for all areas of life, and criminals unfit to plead who, because of their dangerous nature, were put into psychiatric wards (sec. 13 nos. 2 and 3 of the Federal Electoral Act).

In May 2015 the UN Committee on the Rights of Persons with Disabilities explicitly called on the Federal Government and the federal states to abolish any and all statutory provisions for exclusion serving to deny the vote to persons with disabilities. The states of North Rhine-Westphalia and Schleswig-Holstein have already followed the recommendations made by the UN expert committee insofar as the exclusion of persons subject to guardianship in all affairs has been repealed with reference being made to the UN Convention on the Rights of Persons with Disabilities. An appeal against a ruling in the electoral dispute regarding the national provisions is currently pending with the Federal Constitutional Court.

In the opinion of the National Monitoring Mechanism for the UN Convention on the Rights of Persons with Disabilities of the German Institute for Human Rights, **exclusions from electoral rights constitute a discriminatory and disproportionate infringement** of the right to vote and the right to be elected as guaranteed by human rights (Art. 29 of the UN Convention on the Rights of People with Disabilities, Art. 25 of the International Covenant on Civil and Political Rights). This should lead to a reassessment of human rights positions in German constitutional law. No compelling reasons can be discerned to justify the exclusion of adult citizens from their active and passive electoral rights on the grounds of disability under constitutional law.

No such reasons of constitutional scope have been proven to exist in the study commissioned by the German Ministry for Labour and Social Affairs on active and passive electoral rights, nor has a convincing argument been made. That there is a potential risk of manipulation and abuse by third parties when practical assistance is provided during the casting of the vote, which may be necessary under human rights principles, must not be used as justification to put persons with disabilities in a worse position. Otherwise, on the pretext of protecting their rights, they would be deprived of these very rights. Existing sanctions in criminal law ensure that there is adequate protection for this particular group of voters – and for the inherently personal right to vote and to be elected.

4 The Implementation of the UN Guiding Principles on Business and Human Rights in Germany

In its coalition agreement, the Federal Government announced it would implement the UN Guiding Principles on Business and Human Rights as adopted in 2011 by the UN Human Rights Council. Their objective is the human rights responsibility of businesses. They apply both nationally and internationally and encompass global value and delivery chains. Since 2014 the Federal Government has been working on a National Action Plan (NAP). This plan is likely to be adopted by the cabinet in early December.

The NAP was prepared in a **two-year multi-stakeholder process**; on the one hand, it sets out how Germany intends to comply with its human rights obligations; on the other hand, it states the government's expectations on how businesses should fulfil their human rights responsibilities. The Federal Foreign Office has instructed the German Institute for Human Rights and the econsense company network to give advice and support during the action plan drafting process.

The National Action Plan in Germany

All relevant social groups were involved in the work process. Trade associations and civil society organisations debated above all whether a binding legal implementation of the UN Guiding Principles would have to be the outcome of this process. However, this idea failed to gain acceptance. Yet the NAP, in its June 2016 version, includes binding elements as well as the threat of further regulations in the future “up to and including statutory measures” if voluntary measures failed. The target set by the Federal Government is to have 50 percent of all companies with more than 500 employees (approx. 3,000 businesses to date) to have integrated a human rights due diligence process (such as policy statements on the observation of human rights, introducing procedures to detect their own negative impact on human rights, overview of all measures taken) into their internal business processes by 2020. As of 2018, this is to

be reviewed on a regular basis. The expectation is that these principles be implemented by all businesses.

No other European action plan envisages such target and review structures – particularly in view of the multitude of companies addressed – which may be deemed rather ambitious, while other parts of the plan do not merit this qualification.

The Draft National Action Plan

The UN Guiding Principles on Business and Human Rights rest on three pillars: the obligation of states to protect human rights; the responsibility of businesses to respect these rights; and access to legal remedies in and out of court against human rights violations. Regarding the state's responsibility to protect (**first pillar**) the draft NAP addresses the issue of human trafficking and other topics while the protection of whistleblowers is to be further enhanced. In terms of development policy, the Federal Government is looking into reviewing existing developmental policy instruments for compliance with the requirements of the UN Guiding Principles. By and large, the draft NAP appears to be rather weak in its treatment of the first pillar. There is no clear acknowledgment of all national risks and problematic areas being identified and actual checks being carried out. It would have been desirable, for instance, to see state-owned enterprises being held into greater account.

With a view to the responsibility of businesses in global delivery and value chains (**second pillar**) the draft NAP envisages identifying particularly relevant high-risk industries and value chains by conducting a study. On this basis, industry-specific guidelines and corresponding initiatives (similar to the Partnership for Sustainable Textiles) shall be put into effect. Yet when transposing the EU CSR Directive into German law, stakeholders failed to put listed companies with a headcount of 500 plus under obligation to report on their NAP implementation.

Regarding the option for victims of human rights violations to seek judicial relief in Germany (**third pillar**), the NAP again produces meagre results. The Federal Government does not see any major need for action and thus seeks to improve the sit-

uation by publishing multilingual information leaflets. By re-enforcing the National Contact Point for the OECD Guidelines for Multinational Enterprises, an out-of-court complaints mechanism for the UN Guiding Principles is to be established.

Evaluation and Future Prospects

The drafting of the NAP in Germany received much attention both in Europe and internationally. The action plans so far presented by most other European countries can only be considered as being limited in ambition.

The German draft NAP has its strengths and weaknesses: Setting out the expectation vis-à-vis all German businesses that they incorporate their human rights due diligence into their business processes and review them regularly in the years to come is convincing. Equally commendable is the intention to identify relevant industries and sectors in order to make headway in implementing the UN Guiding Principles.

Weaknesses, however, become apparent on those points where domestic issues are concerned. No effective controls have been put in place, nor is counselling provided for individuals at risk or disadvantaged groups such as, for example, persons without valid documents. Moreover, it is regrettable that no changes have been made in favour of victims of human rights violations coming from abroad as regards their access to the German legal system. In this respect, the German draft NAP falls short of action plans adopted in other countries such as, for example, Finland or Sweden.

Taken as a whole, the draft NAP is a document lacking the political intent to push forward with a comprehensive implementation of the UN Guiding Principles and impose legal requirements to support businesses willing to implement the NAP. At the same time the NAP shows ambition in some of the key areas and partly exceeds other European action plans.

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