

# GERMANY: DISCRIMINATION ON THE RISE

## AMNESTY INTERNATIONAL: SUBMISSION TO THE 44TH SESSION OF THE UPR WORKING GROUP, 9 NOVEMBER 2023 SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Germany on 9 November 2023. In it, Amnesty International evaluates the implementation of recommendations made to Germany in its previous UPR.

It also assesses the national human rights framework with regard to national legislation on privacy, police and assembly laws and on sexual and reproductive rights.

Further, Amnesty International raises concerns about racial discrimination and hate crimes and the lack of independent complaint mechanisms for victims of racially motivated violations by the police. Other concerns regard victims and survivors of gender-based violence, the right to freedom of peaceful assembly and breaches of the principle of non-refoulement.

It ends with a set of recommendations to Germany which, if implemented, would contribute to improving the human rights situation in law and in practice.

## FOLLOW UP TO THE PREVIOUS REVIEW

1. Some positive steps have been taken by Germany since its 2018 review, including the law passed in May 2021 to protect children born with variations of sex characteristics.<sup>1</sup>
2. The Corporate Due Diligence Obligations in Supply Chains Act<sup>2</sup>, in force since 2023, created binding obligations to respect human rights for enterprises. Regrettably, the law contains shortcomings and falls below international standards including the UN Guiding Principles on Business and Human Rights.<sup>3</sup>
3. In line with supported recommendations, the Parliament adopted Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in November 2022.<sup>4</sup> Convention Protocol of 2014 to the International Labour Organisation (ILO) Convention No. 29 of 28 June 1930 concerning Forced Labour was ratified in 2019<sup>5</sup> as well as ILO Convention 169 on Indigenous and tribal peoples in June 2021.<sup>6</sup>
4. Section 219a of the Criminal Code, which had resulted in doctors being criminalized for “advertising abortion”, was repealed in July 2021.<sup>7</sup>
5. Regrettably, Germany merely noted recommendations to ratify the International Convention of the Protection of the Rights of All Migrant Workers and Members of their Families in the previous review and has yet to do so.<sup>8</sup>

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

6. Germany did not renew its reservations to Art. 59 of the Istanbul Convention concerning residence status which protects from deportation to refugee and migrant women affected by gender-based violence.<sup>9</sup>
7. Despite a reform of the Federal Intelligence Service law in 2021 after the Constitutional Court declared the law in breach of the right to privacy and freedom of the press, unconstitutional provisions remained unresolved and, in some cases, surveillance powers were expanded.<sup>10</sup> In June 2021, the Act on the Adaptation of the Law on the Protection of the Constitution was passed, authorizing all intelligence agencies to use spyware for targeted surveillance of devices.<sup>11</sup> In 2022, the ECJ declared<sup>12</sup> the German Telecommunications Act<sup>13</sup> incompatible with the right to privacy. Provisions allowing for data mining by police in the federal states of Hamburg and Hesse were found unconstitutional and must be revised.<sup>14</sup>
8. Repressive police laws in several federal states are still in place, for example in Bavaria<sup>15</sup>, Lower Saxony<sup>16</sup> and North Rhine-Westphalia<sup>17</sup>, allowing extended surveillance powers, extensive preventive detention and a low threshold for certain policing powers due to the standard of the vaguely defined “impending threat”.
9. A law in the federal state of North Rhine-Westphalia<sup>18</sup>, in force since January 2022, disproportionately restricts the right to freedom of peaceful assembly by extending state control and police intervention powers.<sup>19</sup> In May 2022, the Federal Administrative Court confirmed in a landmark ruling that protest camps including necessary infrastructure were comprehensively protected under Article 8 of the Constitution on the right to freedom of assembly.<sup>20</sup>
10. The Federal Constitutional Court declared the Federal Climate Change Act<sup>21</sup> regulating national climate targets and permitted annual emission amounts incompatible with the rights of young people and future generations.<sup>22</sup> A 2021 recast of the law<sup>23</sup> set more ambitious climate targets but still falls short of Germany’s human rights obligations.<sup>24</sup>
11. In 2018, the right to family reunification was abolished for individuals enjoying subsidiary protection. The government instead established a quota allowing for the issuance of 1,000 family reunification visas per month.<sup>25</sup> A humanitarian admission programme for Afghan nationals at risk was launched in October 2022 but concerns exist over deficiencies in technical design and implementation.<sup>26</sup> The reasons justifying detention of individuals

obliged to leave the country were expanded in 2019 and the permitted duration of detention was extended up to 18 months.<sup>27</sup> Basic support payments for asylum seekers were extended from 15 to 18 months, perpetuating rates for asylum seekers which are significantly lower than regular social benefits.<sup>28</sup>

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### Discrimination

12. In addition to the Federal Anti-Discrimination Agency, the government appointed for the first time a commissioner against antisemitism in 2018<sup>29</sup>, a commissioner for queer-related matters<sup>30</sup> and commissioners for anti-racism<sup>31</sup> and Roma people<sup>32</sup> in 2022.
13. Germany supported several recommendations to combat hate crime.<sup>33</sup> However, Amnesty International is concerned about the significant increase in hate crimes.<sup>34</sup> Some of the most serious of these crimes included the killing of the then administrative president of the city Kassel, Walter Lübcke, in June 2019, who had spoken out in support of the admittance of refugees at a public meeting in 2015 and received numerous death threats for many years. In October 2019, two people were killed and two injured in the antisemitic and racist attack on the synagogue in Halle/Saale during the Yom Kippur prayer service.<sup>35</sup> In 2020, nine racialized people<sup>36</sup> were killed in a racist attack by a gunman in Hanau.<sup>37</sup> Groups operating to promote an anti-human rights agenda within and connected to the police and military became public: A series – starting in August 2018 – of more than 100 threatening letters including death threats, targeted mostly female politicians, lawyers and anti-racism activists, whose addresses were retrieved from official police data bases. While several individuals have been convicted related to the series dubbed NSU 2.0<sup>38</sup>, concerns over data breaches and infiltration of the security forces persist. In 2020, the military counterintelligence service investigated more than 500 soldiers suspected of using banned National Socialist symbols and of connections to “right wing extremist” networks that advocated violence focusing on Special Commando Forces.<sup>39</sup>
14. The authorities at both federal and state level failed to develop a comprehensive strategy against hate crimes which puts perspectives of affected persons and communities at the centre. No comprehensive, accessible, and independent system throughout Germany to provide victims of discrimination with effective support has been established.<sup>40</sup>
15. The implementation of the National Action Plan Against Racism of July 2017<sup>41</sup> has not been completed. The definition of racial discrimination as set out in the International Convention on the Elimination of All Forms of Racial Discrimination, explaining that not only the purpose, but also the effect of an action or omission is decisive, is not yet mainstreamed.
16. Although the first national discrimination and racism monitor confirmed that racism is part of everyday life in Germany,<sup>42</sup> state action often did not address racism as a systemic and institutional problem, such as in the final report of the Cabinet Committee on Combating Right-Wing Extremism and Racism of 2021.<sup>43</sup>
17. Measures to combat racial profiling by police were insufficient.<sup>44</sup> The standard of reasonable suspicion is still not established at the federal and state level.<sup>45</sup>
18. There are no independent complaint mechanisms for victims of racist attacks and other human rights violations by police officers that meet applicable human rights standards at the federal or state level.<sup>46</sup>

### Right to truth, justice and calls for reparations

19. In May 2021, the German government recognized the colonial atrocities in Namibia against the Herero and Nama peoples as genocide<sup>47</sup>, accepting the historic and moral responsibility for these human rights violations, but explicitly stating that legal claims for compensation cannot be derived from the acceptance of moral responsibility.

## Right to privacy

20. In 2021, journalists revealed that the German Federal Criminal Police Office had acquired and deployed the spyware “Pegasus” despite concerns over its compatibility with the right to privacy and the right to freedom of expression.<sup>48</sup> Its use by the Federal Intelligence Service was not made transparent to the Parliamentary Control Panel in charge of oversight, as is required under law.
21. The Federal Administrative Court found the practice of routinely searching mobile devices of people seeking asylum to be disproportionate.<sup>49</sup>

## Sexual and reproductive rights

22. Abortion remains criminalized under Section 218 of the German Criminal Code, punishable by up to five years in prison, with Section 218a providing for some exceptions.<sup>50</sup> A commission was instituted in March 2023 to discuss “reproductive self-determination and reproductive medicine” but no changes to the legislation to fully decriminalize abortion in line with international human rights law and standards, and the new WHO guidelines were made.<sup>51</sup>

## Gender-based violence

23. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) criticized the lack of a central strategic framework and a national coordinating body for the implementation of the Istanbul Convention in its October 2022 baseline report.<sup>52</sup> It also highlighted significant safety concerns for those seeking protection from gender-based violence.<sup>53</sup> Specific needs of marginalized groups<sup>54</sup> have not yet been sufficiently addressed.<sup>55</sup>

## LGBTI people's rights

24. So-called “conversion therapies” aimed at changing or suppressing a person's sexual orientation or gender identity under the age of 18 were banned in May 2020.<sup>56</sup>
25. Prompted by a decision of the Federal Constitutional Court the civil status of intersex people can remain open or be changed to “male”, “female” or “diverse” by a declaration before the registry office according to the person's gender identity since the end of 2018.<sup>57</sup> However, this process is not based on self-declaration of individuals, but only available to people who can prove a so-called “variation in sex development” through a medical certificate.<sup>58</sup>
26. The so-called Transsexual Act of 1980<sup>59</sup> still obliges transgender people to undergo discriminatory psychological assessments and a court procedure to obtain legal gender recognition.<sup>60</sup> Plans for a Self-Determination Act which would enable transgender, non-binary and intersex people to obtain legal gender recognition and change their name by making a simple declaration at the registry office have been announced but not implemented yet.<sup>61</sup>

## Freedom of peaceful assembly

27. Since October 2022, the Bavarian police have placed several dozen climate activists in preventive detention for up to 30 days<sup>62</sup> after activists had repeatedly blocked streets causing tailbacks.<sup>63</sup> The preventive detentions were ordered under section 17.2 of the Bavarian Police Tasks Act, which allows the police to request detention without concrete suspicion of a crime or initiating a criminal proceeding, to prevent “an administrative offence ‘of considerable importance to the general public’ or to prevent a crime”.<sup>64</sup> Such preventive deprivation of liberty on administrative grounds circumvents fair trial rights and is a serious human rights violation.<sup>65</sup> When targeting individuals to keep them from participating in protests, these measures could constitute arbitrary detention as they are incompatible with the rights to freedom of expression and freedom of peaceful assembly, and have a chilling effect on those who wish to exercise their legitimate human rights.

## Rights of refugees and asylum seekers

28. Between 2017 and 2021, authorities deported hundreds of Afghan men despite the risks they would face upon return, breaching the principle of non-refoulement. Authorities have not issued a formal deportation ban for Afghan nationals.<sup>66</sup>
29. For Syrian nationals, a formal deportation ban to Syria, expired by the end of 2020, has not been renewed despite Syrians remaining at risk of persecution and serious human rights violations if returned to the country.<sup>67</sup>
30. Crucial shortcomings in the procedure of family reunification were exposed, as several applicants had to wait for appointments at German embassies for more than one year,<sup>68</sup> raising concerns regarding the effective realization of the right to family life.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### Amnesty International calls on the government of Germany and the Federal States to:

#### Discrimination

31. Develop a comprehensive strategy against hate crimes which puts perspectives of affected persons and communities at the centre and includes obligatory anti-discrimination training for police, prosecutors and judges and adjustments to the statistical documentation of politically motivated violence.
32. Establish a comprehensive, accessible and independent counselling structure for victims/survivors of discrimination and racism throughout Germany.<sup>69</sup>
33. Develop concrete measures to address systemic and institutional racism including those already recommended by the NSU Committee of Enquiry in 2013 regarding policing and ECRI recommendations.<sup>70</sup>
34. Introduce the standard of reasonable suspicion for identity controls at the federal and state level to combat racial profiling.
35. Establish effective, independent investigation mechanisms for human rights violations by law enforcement officials at state and federal level which are independent from the authorities of the interior and equipped with effective investigative powers.
36. Introduce Identification badges at state and federal level to combat impunity.<sup>71</sup>

#### Right to truth, justice and calls for reparations

37. Meaningfully address the demands of Herero and Nama peoples for justice and reparations regarding the genocide.

#### Right to privacy

38. Ensure that all surveillance measures are proportionate, necessary and based on law. Refrain from all indiscriminate surveillance and revise intelligence and police law accordingly. Revise the Act on the Federal Intelligence Service in line with human rights standards, amending provisions which are overly broad and vague, such as §19.
39. Comply with human rights due diligence standards for public procurement of targeted surveillance technology.

## Sexual and reproductive rights

40. Fully decriminalize abortion and provide universal access to safe abortion, post-abortion care and evidence-based, non-biased abortion-related information, including by removing any barriers to access to abortions, such as mandatory counselling and waiting periods.

## Gender-based violence

41. Develop a central strategic framework for the implementation of the Istanbul Convention, per GREVIO recommendations.
42. Address the protection concerns highlighted by GREVIO, especially the lack of consideration for specific needs of marginalized groups, such as asylum-seeking, refugee and migrant women, Roma women, women with disabilities and LGBTI women.

## LGBTI people's rights

43. Establish a fast, accessible and transparent procedure for legal gender recognition based on a person's self-declaration.
44. Put an end to non-emergency, invasive and irreversible treatments on intersex children unless they are medically necessary, including by postponing decisions until individuals can meaningfully participate in determinations about what is being done to their bodies.

## Freedom of peaceful assembly

45. Repeal section 17.2 of the Bavarian police law due to concerns over its legality and incompatibility with fair trial rights.<sup>72</sup>
46. Repeal the law in the federal state of North Rhine-Westphalia which disproportionately restricts the right to freedom of peaceful assembly by extending state control and police intervention powers.

## Rights of refugees and asylum seekers

47. Adopt conclusive deportation bans to Afghanistan and Syria.
48. Recognize that all women and girls fleeing Afghanistan are at risk of persecution and should be granted international protection.
49. Amend the existing humanitarian admission programme for Afghan nationals at risk and their families to ensure a functioning and transparent programme that enables them to obtain admission to Germany quickly and safely.
50. Recognize the right to family reunification for all individuals enjoying international protection, and apply an expanded notion of family, which includes siblings and any dependents.
51. Ensure the effective realization of the right to family life by increasing resources of German embassies dealing with visa applications for family reunification.
52. Ensure that benefits for asylum seekers secure a "dignified minimum existence" in accordance with the German welfare system.<sup>73</sup>

## Business and Human Rights

53. Ensure adequate resources for the Federal Office for Economic Affairs and Export Control for implementation of the Supply Chain Due Diligence Act.
54. Work towards a comprehensive due diligence framework at EU level, compliant with the UN Guiding Principles on Business and Human Rights. It must apply to all enterprises along the whole value chain, with comprehensive due diligence obligations for human rights, the environment, and director's duties of care, guaranteeing effective participation of rights holders and civil liability including a fair burden of proof.

## Climate Change and Human Rights

55. Minimize the adverse impact of climate change by adopting emission reduction targets aligned with Germany's responsibility and resources, implementing sufficient sectorial policies, while ensuring human rights are protected in all climate policies and their implementation.
56. Rapidly phase out fossil fuel production and consumption and immediately end all fossil fuel subsidies. Shift to renewable energy produced in line with human rights.
57. Substantially increase funding for climate mitigation and adaptation in lower-income countries and allocate new, additional resources to address climate change-related loss and damage in the countries most affected, including by providing adequate funding to the new Loss and Damage Fund.
58. Support the Council of Europe's recognition of the right to a clean, healthy and sustainable environment, including by adopting a protocol to the European Convention on Human Rights.

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<sup>1</sup> Information on the parliamentary process can be found here:

<https://www.bundestag.de/dokumente/textarchiv/2021/kw12-de-geschlechterentwicklung-kinder-830122> The text of the law as published in the Federal Law Gazette can be accessed here [https://dejure.org/BGBl/2021/BGBl\\_I\\_S\\_1082](https://dejure.org/BGBl/2021/BGBl_I_S_1082) and here

[https://www.bgbl.de/xaver/bgbl/start.xav#\\_\\_bgbl\\_\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl121s1082.pdf%27%5D\\_\\_1676543314807](https://www.bgbl.de/xaver/bgbl/start.xav#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl121s1082.pdf%27%5D__1676543314807). Although the law tackled human rights violations against intersex people concerning unnecessary medical procedures, it failed to introduce further measures to end the pathologization of intersex people and to include reparations for people who underwent unnecessary and irreversible medical treatment. Similar criticism can be found in Amnesty International's statement regarding the draft law which can be found here:

<https://www.amnesty.de/informieren/positionspapiere/deutschland-stellungnahme-zum-referentinnen-entwurf-eines-gesetzes-zum>

<sup>2</sup> Lieferkettensorgfaltspflichtengesetz, see English translation at: [https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=4). 1

<sup>3</sup> While a welcome step, the law applies only to enterprises with 3000 or more employees, successively lowered to 1000 employees from 2024 onward. Moreover, the law creates no civil liability for violations. While a complaints mechanism with the relevant supervisory authority is welcomed, it cannot replace an adequate grievance mechanism or access to courts by those affected by human rights violations. Also, due diligence obligations for indirect suppliers and environmental protection are limited. Therefore, recommendations 155.17 by Brazil, 155.18 by the State of Palestine and 155.24 by Myanmar were partially implemented and recommendation 155.25 by South Africa was not implemented. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Germany, UN Doc. A/HRC/39/9 and its Addendum UN Doc. A/HRC/39/9/Add.1

<sup>4</sup> See <https://www.bundestag.de/dokumente/textarchiv/2022/kw45-de-fakultativprotokoll-917472>. Recommendations 155.4 by Bosnia and Herzegovina and Italy, 155.5 by Montenegro, Zambia and Spain and 155.6 by Finland were partially implemented. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Germany, UN Doc. A/HRC/39/9 and its Addendum UN Doc. A/HRC/39/9/Add.1



- <sup>5</sup> Text of the law can be found here <https://dejure.org/BGBI/2019/BGBI. II S. 437> as well as in the official gazette. [https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl219s0437.pdf%27%5D\\_1676545333715](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl219s0437.pdf%27%5D_1676545333715). The law came into force in 2020. Therefore, recommendation 155.9 by United Kingdom of Great Britain and Northern Ireland was implemented. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Germany, UN Doc. A/HRC/39/9 and its Addendum UN Doc. A/HRC/39/9/Add.1
- <sup>6</sup> Information on the parliamentary process can be found here: <https://www.bundestag.de/dokumente/textarchiv/2021/kw15-de-rechte-indigener-voelker-830908>, it came into force 12 months after ratification. Therefore, recommendation 155.8 by Denmark was implemented. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Germany, UN Doc. A/HRC/39/9 and its Addendum UN Doc. A/HRC/39/9/Add.1
- <sup>7</sup> Thus, recommendation 155.184 by Sweden is implemented and recommendation 155.182 by Canada is now partially implemented. Information regarding the parliamentary process: <https://www.bundestag.de/dokumente/textarchiv/2022/kw19-de-schwangerschaftsabbruch-219a-891910>. The text of the law to repealing section 219a can be accessed here: <https://dejure.org/BGBI/2022/BGBI. I S. 1082> The text itself can be found here: [https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl122s1082.pdf%27%5D\\_1676545936082](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl122s1082.pdf%27%5D_1676545936082). However, Section 218 – regulating abortion within the criminal law – remained in place and no commission began work to fully decriminalize abortion, contrary to such plans set out in the coalition agreement. The coalition agreement can be found here: <https://www.bundesregierung.de/breg-de/service/gesetzesvorhaben/koalitionsvertrag-2021-1990800>. On page 116 under the subtitle “reproductive self-determination” it reads: “We establish a Commission on Reproductive Self-Determination and Reproductive Medicine, which would regulate abortion outside of the penal code, and possibilities to legalize egg donation and altruistic surrogacy.” The minister for Justice announced in February 2023 that the commission will start its work before Easter 2023.
- <sup>8</sup> Therefore, recommendations 155.1 by Egypt, Honduras, Philippines, Senegal and Zambia, 155.2 by Azerbaijan, Chile and Uruguay and 155.3 by Indonesia were not implemented. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Germany, UN Doc. A/HRC/39/9 and its Addendum UN Doc. A/HRC/39/9/Add.1
- <sup>9</sup> See <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/bundesregierung-zieht-vorbehalte-gegen-istanbul-konvention-zurueck-202866>. The Convention applies in full in Germany since February 2023.
- <sup>10</sup> „Gesetz über den Bundesnachrichtendienst“, amended by the law „Gesetz zur Änderung des BND-Gesetzes zur Umsetzung der Vorgaben des Bundesverfassungsgerichts sowie des Bundesverwaltungsgerichts“, available in German at [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&start=/\\*\[@attr\\_id=%27bgbl121s0771.pdf%27\]#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s0771.pdf%27%5D\\_1676561017159](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=/*[@attr_id=%27bgbl121s0771.pdf%27]#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s0771.pdf%27%5D_1676561017159).
- <sup>11</sup> „Gesetz zur Anpassung des Verfassungsschutzrechts“, available in German at [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&start=/\\*%5B@attr\\_id=%27bgbl121s2274.pdf%27%5D#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s2274.pdf%27%5D\\_1676561790403](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=/*%5B@attr_id=%27bgbl121s2274.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s2274.pdf%27%5D_1676561790403)
- <sup>12</sup> Judgment of the Court in Joined Cases C-793/19, Court of Justice of the European Union, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/cp220156en.pdf>
- <sup>13</sup> „Telekommunikationsgesetz“, available in German at [https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s1858.pdf%27%5D\\_1676562076028](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s1858.pdf%27%5D_1676562076028)
- <sup>14</sup> See decision by the Federal Constitutional Court: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2023/02/rs20230216\\_1bvr154719.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2023/02/rs20230216_1bvr154719.html). The shortcomings of the legislation on the right privacy show that recommendation 155.164 by Spain has not been implemented.
- <sup>15</sup> Submission of Amnesty International Germany on the draft law: <https://www.amnesty.de/amnesty-material/amnesty-positionspapier-stellungnahme-zu-den-geplanten-aenderungen-des>.
- <sup>16</sup> Submission of Amnesty International Germany on the draft law: <https://www.amnesty.de/informieren/aktuell/deutschland-amnesty-kritisiert-geplante-neufassung-des-niedersaechsischen>.
- <sup>17</sup> Submission of Amnesty International Germany on the draft law: <https://www.amnesty.de/informieren/aktuell/deutschland-amnesty-kritisiert-geplante-aenderungen-des-polizeigesetzes>. Amnesty International also calls for identification badges be introduced in all federal states and at the federal level in order to combat impunity, see <https://www.amnesty.de/informieren/positionspapiere/deutschland-amnesty-positionspapier-zur-kennzeichnungspflicht-fuer>.
- <sup>18</sup> The full text of the law can be found here: [https://recht.nrw.de/lmi/owa/br\\_bes\\_text?anw\\_nr=2&bes\\_id=47651&aufgehoben=N](https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=2&bes_id=47651&aufgehoben=N).
- <sup>19</sup> See the statement of Amnesty International on this matter: <https://www.amnesty.de/sites/default/files/2021-10/Amnesty-Stellungnahme-Einfuehrung-Versammlungsgesetz-NRW-September-2021.pdf>. Changes made to the law following strong criticism were insufficient to address critical provisions, including for example criminal penalties for protest organizers who failed to submit prior notification. The German Society for Civil Rights e.V. and the association “Versammlungsgesetz NRW stoppen!” filed a constitutional complaint with the Constitutional Court of North-Rhine Westphalia in January 2023. More information on the complaint can be found here: <https://freiheitsrechte.org/themen/demokratie/vb-versammlungsrecht-nrw>



<sup>20</sup> The full text of the Federal Administrative Court's judgement from 24<sup>th</sup> of May 2022 can be found here:

<https://www.bverwg.de/240522U6C9.20.0>.

<sup>21</sup> See English translation of the Act at: <https://www.bmuv.de/en/law/federal-climate-change-act/>

<sup>22</sup> The judgment of the Federal Constitutional Court:

[https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324\\_1bvr265618en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html)

<sup>23</sup> The recast Federal Climate Change Act was passed in 2021: <https://www.bmuv.de/en/law/federal-climate-change-act-bundes-klimaschutzgesetz>

<sup>24</sup> Thus, recommendations 115.116 by Vietnam and 155.17 by Senegal have been partially implemented.

<sup>25</sup> Status report of the German Bundestag examining the legal situation of the right to family reunification of individuals enjoying subsidiary protection, 28/09/2021:

<https://www.bundestag.de/resource/blob/868122/048dedaf0ec24953ba542a55ce0a1cfb/WD-3-129-21-pdf-data.pdf>.

<sup>26</sup> Although the programme intends to grant admission to 1.000 individuals at risk and their family members each month, hardly any entries were allowed yet due to deficiencies in technical design and implementation. Joint press release by the Federal Foreign Office and the Federal Ministry of the Interior and Community on the federal admission programme: <https://www.auswaertiges-amt.de/en/newsroom/news/federal-admission-programme-afghanistan/2558756>.

<sup>27</sup> For the specific reasons justifying detention, and further details, see open letter of Amnesty International Germany and further organizations concerning the "Orderly Returns Law" addressed to the delegates of the German Bundestag:

<https://www.amnesty.de/sites/default/files/2019-05/Offener-Brief-an-deutschen-Bundestag-zum-Geordnete-Ru%CC%88ckkehr-Gesetz-Mai2019.pdf>. Thus recommendation 155.254 by Mexico was not implemented.

<sup>28</sup> In addition, they may – partially or fully – be paid in kind. Refugees with a protection status in another EU state who are obliged to leave the country can receive social benefits only via hardship regulations. See joint statement of Amnesty International Germany and 61 further organizations regarding the claim to abolish the Asylum Seekers Benefits Act:

<https://www.amnesty.de/sites/default/files/2023-01/Gemeinsamer-Appell-gegen-Asylbewerberleistungsgesetz-Januar-2023.pdf>.

<sup>29</sup> See <https://www.bmi.bund.de/DE/ministerium/beauftragte/beauftragter-antisemitismus/beauftragter-antisemitismus-artikel.html> Since 1 May 2018, depends on the Ministry of Interior.

<sup>30</sup> See <https://www.bmfsfj.de/bmfsfj/ministerium/behoerden-beauftragte-beiraete-gremien/queer-beauftragter-der-bundesregierung-194278> Since January 2022, depends on the on the Ministry for Family, Seniors, Women and Youth.

<sup>31</sup> See <https://www.integrationsbeauftragte.de/ib-de/staatsministerin/reem-alabali-radovan-spd--1864426> since February 2022, at the same time commissioner for integration, a post that has been existing longer and depends on the Chancellor's office.

<sup>32</sup> See <https://www.bmfsfj.de/bmfsfj/ministerium/behoerden-beauftragte-beiraete-gremien/antiziganismusbeauftragter-der-bundesregierung> Since 1 May 2022, depends on the Ministry for Family, Seniors, Women and Youth.

<sup>33</sup> See, for example, recommendations 155.124 made by Bahrain, 155.62 made by Turkey, 155.246 made by Afghanistan, 155.248 by Iceland, 155.250 by the Islamic Republic of Iran, 155.251 by Ghana.

<sup>34</sup> The increases concerns hate crimes related to antisemitism, race, disability, gender identity, and sexual orientation, although xenophobic hate crimes remain the highest in absolute terms. The sharp increase is present particularly when comparing 2021 to the previous years, see statistics from 2018

[https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2019/pmk-2018.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2019/pmk-2018.pdf?__blob=publicationFile&v=2), 2019

[https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/pmk-2019.pdf?\\_\\_blob=publicationFile&v=6](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/pmk-2019.pdf?__blob=publicationFile&v=6), 2020

[https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/05/pmk-2020-bundesweite-fallzahlen.pdf?\\_\\_blob=publicationFile&v=5](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/05/pmk-2020-bundesweite-fallzahlen.pdf?__blob=publicationFile&v=5), and 2021

[https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/nachrichten/2022/pmk2021-factsheets.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/nachrichten/2022/pmk2021-factsheets.pdf?__blob=publicationFile&v=2)

<sup>35</sup> See <https://www.amnesty.de/informieren/aktuell/deutschland-halle-dritter-jahrestag-des-anschlags-antisemitismus>.

<sup>36</sup> These were Gökhan Gültekin, Sedat Gürbüz, Said Nesar Hashemi, Mercedes Kierpacz, Hamza Kurtović, Vili Viorel Păun, Fatih Saraçoğlu, Ferhat Unvar, Kaloyan Velkov.

<sup>37</sup> See <https://www.amnesty.de/allgemein/pressemitteilung/deutschland-hanau-anschlag-jahrestag-rassismus-entgegenzutreten>.

<sup>38</sup> The threatening material was mostly signed "NSU 2.0", referring to the racist murders committed by the Nationalist Social Underground (NSU) between 2000 and 2007.

<sup>39</sup> See country entry on Germany, Amnesty International Report 2020/2021:

<https://www.amnesty.org/en/documents/pol10/3202/2021/en/>. The second company of the Special Commando Forces was

dissolved in August 2020 and a set of measures were recommended in order to reform these Special Forces, see

<https://www.bmvg.de/de/aktuelles/ksk-reform-weitere-massnahmen-273602>. The most recent example are raids of people

belonging to the *Reichsbürger* scene in December 2022. The federal prosecutor started investigations against one member of the Special Commando Forces and several reservists of the army. See

<https://www.amnesty.de/allgemein/pressemitteilung/deutsche-behoerden-muessen-gegen-menschenfeindliche-einstellungen-vorgehen>.

<sup>40</sup> See Observations of Amnesty International Germany to the European Commission on Racism and Intolerance on Germany's 6th Report Interim Follow-Up, <https://www.amnesty.de/informieren/positionspapiere/deutschland-amnesty-stellungnahme-empfehlungen-von-ecri-deutschland>

<sup>41</sup> <https://www.bmfsfj.de/resource/blob/116798/5fc38044a1dd8edec34de568ad59e2b9/nationaler-aktionsplan-rassismus-data.pdf>.

<sup>42</sup> See <https://www.rassismusmonitor.de/studie-rassistische-realitaeten/>

<sup>43</sup> <https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sicherheit/abschlussbericht-kabinettausschuss-rechtsextremismus.html>

<sup>44</sup> Thus, recommendations 155.80 by India, 155.82 by the Russian Federation, 155.78 by Azerbaijan, 155.83 by South Africa, and 155.84 by the Syrian Arab Republic were not implemented.

<sup>45</sup> See <https://www.amnesty.de/informieren/positionspapiere/amnesty-positionspapier-zu-racial-profiling-oktober-2021>. The interim follow-up recommendation of the European Commission against Racism and Intolerance from 2020 on independent studies to develop and implement measures that eliminate existing and prevent future racial profiling has not yet been implemented, see European Commission against Racism and Intolerance, Conclusions on the Implementation of the Recommendations in Respect of Germany Subject to Interim Follow-Up, <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680a807d2>.

<sup>46</sup> See <https://www.amnesty.de/informieren/positionspapiere/deutschland-amnesty-positionspapier-zu-unabhaengigen>. The need for these mechanisms is exemplified by the lack of independent investigations in cases such as Oury Jalloh's death in police custody in 2005, see <https://www.amnesty.de/allgemein/pressemitteilung/deutschland-fall-oury-jalloh-zeigt-deutschland-braucht-unabhaengige>. With the decision of the Federal Constitutional Court that the discontinuation of further investigations does not violate the Basic Law, the national appeal procedure has been exhausted and the case can be brought before the European Court of Human Rights, see <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2023/bvg23-023.html>.

<sup>47</sup> See speech of Foreign Minister: <https://www.auswaertiges-amt.de/de/newsroom/-/2463396> Non-official translation of relevant parts: "We will now also officially call these events what they were from today's perspective: a genocide. In light of Germany's historical and moral responsibility, we will ask Namibia and the descendants of the victims for forgiveness. As a gesture of recognition of the immeasurable suffering inflicted on the victims, we intend to support Namibia and the descendants of the victims with a substantial programme of 1.1 billion euros for reconstruction and development. The genocide-affected communities will play a crucial role in its design and implementation. Legal claims for compensation cannot be derived from this."

<sup>48</sup> See Florian Flade, Georg Mascolo, Frederik Obermaier und Reiko Pinkert, BKA verwendet Spionagesoftware "Pegasus", <https://www.sueddeutsche.de/politik/pegasus-spionage-bka-trojaner-1.5403678>

<sup>49</sup> See press release by the Federal Administrative Court, <https://www.bverwg.de/de/pm/2023/13>. Thus, recommendation 155.164 by Spain has not been implemented.

<sup>50</sup> The exceptions are as follows: abortion regardless of reasons up to 12 weeks of pregnancy with a requirement for mandatory counselling and a mandatory waiting period of at least three days; 12 weeks is also the limit for a pregnancy resulting from sexual violence although no counselling is required; thereafter abortion up to 22 weeks is exempt from criminal sanctions for the pregnant person if they had mandatory counselling but others involved might be sanctioned. Abortion that is medically necessary is not criminalized See German Criminal Code, Section 218 and 218a, which can be accessed here: <https://www.gesetze-im-internet.de/stgb/index.html#BJNR001270871BJNE039004307>. Therefore, recommendation 155.182 by Canada has only been implemented partially with regards to eliminating the barrier that represented paragraph 219a of the Criminal Code. Other barriers have not been removed, namely criminalization.

<sup>51</sup> World Health Organisation, Abortion Care guidelines, 8 March 2022, <https://www.who.int/publications/i/item/9789240039483>

<sup>52</sup> See <https://rm.coe.int/report-on-germany-for-publication/1680a86937>. In November 2022, at the German Institute for Human Rights an independent reporting agency on gender-based violence started its work. According to the Ministry for Family, Seniors, Women and Youth, the reporting office is intended to help create a broad and reliable data base in order to show developments and trends in relation to gender-based violence in Germany, and enable the authorities to prevent and combat gender-based violence more precisely. The agency is tasked with formulating recommendations for politics and administration in order to effectively design measures and programs against gender-based violence and to improve the human rights situation of those affected; it is also tasked with informing and sensitizing the public.

<sup>53</sup> Safety concerns exist in particular due to a shortage and uneven geographic distribution of women's shelters and low prosecution and conviction rates for gender-based violence cases It additionally stressed that the offences of rape and sexual assault conceptualized with a "no means no approach" do not fully comply with the standard of criminalization of all non-consensual sexual acts as required by Article 36 of the Convention.

<sup>54</sup> This includes, among others, asylum-seeking and migrant women, Roma women, women with disabilities and LGBTI women.

<sup>55</sup> In November 2022, the Federal Government entrusted the German Institute for Human Rights with continuous and independent domestic reporting on the implementation of the Convention, see <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/deutschland-setzt-verpflichtungen-aus-der-istanbul-konvention-um-205292>

<sup>56</sup> Information on the parliamentary process <https://www.bundestag.de/dokumente/textarchiv/2020/kw19-de-konversionsbehandlung-692676>; Text of the law <https://www.gesetze-im-internet.de/konvbehschg/BJNR128500020.html>

<sup>57</sup> Information on the parliamentary process: <https://www.bundestag.de/dokumente/textarchiv/2018/kw41-de-geburtenregister-570762>

<sup>58</sup> Therefore, recommendation 155.111 made by Australia has only be partially implemented and 155.113 made by Israel has not been implemented.

<sup>59</sup> See above: Recommendation 155.111 made by Australia has only be partially implemented and 155.113 made by Israel has not been implemented.

<sup>60</sup> This effectively excludes non-binary trans people from legal gender recognition of their identity.

<sup>61</sup> Amnesty International calls for changes regarding trans and intersex people:

<https://www.amnesty.de/informieren/artikel/deutschland-btw21-selbstbestimmung-ist-ein-menschenrecht>;  
<https://www.bundestag.de/resource/blob/921020/30145370bd59eafecbb0e6dc39705ce/WD-7-082-22-pdf-data.pdf>

<sup>62</sup> Various statements of the authorities and newspaper reports confirm the amount of preventive detentions ordered. Illustrative examples include: <https://www.lto.de/recht/nachrichten/n/ag-muenchen-polizeigewahrsam-praeventiv-gewahrsam-klimaaktivisten-klima-blockaden-bayern/>; <https://www.polizei.bayern.de/aktuelles/pressemitteilungen/039545/index.html>.

<sup>63</sup> See reports confirming the duration of the preventive detention of 30 days: <https://verfassungsblog.de/gewahrsam-als-letztes-mittel-gegen-die-letzte-generation/>; <https://www.sueddeutsche.de/bayern/demonstrationen-muenchen-klimaaktivisten-in-bayern-aus-praeventivgewahrsam-entlassen-dpa.urn-newsml-dpa-com-20090101-230105-99-116061>

<sup>64</sup> Bavarian Police Tasks Act, Article 17, <https://www.gesetze-bayern.de/Content/Document/BayPAG>.

<sup>65</sup> In addition, the possibility for such preventative detention, a measure which Amnesty International considers incompatible with human rights standards in itself, to last up to two months would also be disproportionate.

<sup>66</sup> See press release “Afghanistan: Abschiebungen stoppen!” of Amnesty International Germany, 10/08/2021:

<https://www.amnesty.de/allgemein/pressemitteilung/afghanistan-abschiebungen-stoppen>.

<sup>67</sup> See also press release “Syrien: Geheimdienste foltern zurückgekehrte Flüchtlinge“ of Amnesty International Germany, 07/09/2021: <https://www.amnesty.de/allgemein/pressemitteilung/syrien-geheimdienste-foltern-zurueckgekehrte-fluechtlinge>.

<sup>68</sup> See Bundestags-Drucksache 19/30793 on a response of the federal government to a minor inquiry regarding waiting periods at German embassies: <https://dserver.bundestag.de/btd/19/307/1930793.pdf>.

<sup>69</sup> See also European Commission against Racism and Intolerance (ECRI) report on Germany, sixth monitoring cycle, 17 March 2020, para 47, <https://rm.coe.int/ecri-report-on-germany-sixth-monitoring-cycle-/16809ce4be>

<sup>70</sup> <https://dserver.bundestag.de/btd/17/146/1714600.pdf>, p. 861; Council of Europe, ECRI report on Germany, sixth monitoring cycle, 17 March 2020, <https://rm.coe.int/ecri-report-on-germany-sixth-monitoring-cycle-/16809ce4be>

<sup>71</sup> See <https://www.amnesty.de/informieren/positionspapiere/deutschland-amnesty-positionspapier-zur-kennzeichnungspflicht-fuer>

<sup>72</sup> Please see further concerns about other provisions of the Bavarian police law outlined here:

<https://www.amnesty.de/informieren/aktuell/deutschland-bayern-erweitert-polizeibefugnisse>

<sup>73</sup> See BVerfG, Urteil des Ersten Senats vom 18. Juli 2012- 1 BvL 10/10 -, Rn. 1-114, which outlines that Art. 1 para. 1 of the Basic Law (GG) in connection with the welfare state principle of Art. 20 para. 1 GG guarantees a fundamental right to an adequate standard of living, with Art. 1 para. 1 GG establishing this claim as a human right. Differentiating between certain groups according to their residence level in a blanket way is prohibited, [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2012/07/l1s20120718\\_1bv1001010.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2012/07/l1s20120718_1bv1001010.html)