



GERMANY: HUMAN RIGHTS

GUARANTEES UNDERMINED

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 30TH SESSION OF THE UPR WORKING GROUP, MAY 2018

AMNESTY
INTERNATIONAL



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First published in 2016

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: EUR 23/7375/2017

October 2017

Original language: English

amnesty.org

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INTRODUCTION

This document was prepared as a submission for the Universal Periodic Review (UPR) of Germany in May 2018. In it, Amnesty International evaluates the implementation of recommendations made to Germany in its previous UPR in 2013, assesses the national human rights framework and the human rights situation on the ground, and makes a number of recommendations to the government of Germany to address the human rights challenges mentioned in this report.

Amnesty International is concerned about national legislation on privacy and on counter-terrorism breaching human rights standards, and the risk of *refoulement* of rejected asylum-seekers.

Amnesty International also raises concerns about racial discrimination and hate crime, lack of investigation into allegations of torture and ill-treatment by the police, and violations of the rights of children with variations of sex characteristics.

FOLLOW UP TO THE PREVIOUS REVIEW

Some positive steps have been taken by Germany following its 2013 UPR, including the amendment of the Asylum Seekers Benefit Act in response to the 2012 ruling by the Federal Constitutional Court¹ and an amendment to the Asylum Act granting effective remedy against deportations decisions within the Dublin system.²

On 30 June and 7 July 2017, respectively, the German Parliament and the Federal Council voted in favour of marriage equality, granting same-sex couples full rights, including to adoption.

With regard to the National Preventive Mechanism (NPM), established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the National Agency for the Prevention of Torture³ is still not adequately resourced to

¹ In general, benefits for asylum-seekers and for persons whose asylum-claim has been dismissed now secure a dignified minimum existence.

² Section 34a paragraph 2 of the Asylum Act.

³ The National Agency for the Prevention of Torture consists of two bodies: The Federal Agency has two members and is responsible for the Federal institutions and the Joint Commission has eight members and is responsible for the federal state level institutions.

carry out its functions effectively.⁴ Despite an increase in staff⁵ and financial resources,⁶ the National Agency continues to be unable to fulfil its obligations under the Optional Protocol. Only ten staff members are responsible for monitoring more than 13,000 institutions,⁷ and the Agency has a budget of only €540.000.⁸

Moreover, the current appointment procedure of NPM members lacks transparency and inclusion. The practice of members being selected and appointed by the Federal Ministry of Justice and the Federal State Ministries of Justice, respectively, does not reflect the UN Paris Principles⁹ which envisage an inclusive appointment procedure, involving Parliament and civil society, and with ministries having an advisory role only.¹⁰

THE NATIONAL HUMAN RIGHTS FRAMEWORK

RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES

Germany has yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

⁴ In the report of the Working Group of the 2013 Universal Periodic Review of Germany, the UK recommended that Germany ensure full implementation of its obligations under the OP-CAT by equipping its NPM with sufficient resources to fulfill its role, A/HRC/24/9, recommendation 124.43. Germany accepted this recommendation.

⁵ A deputy head has been appointed to the Federal Agency in 2013 and four new members have been appointed in 2015 to the Joint Commission of the States monitoring places of detention at the federal state level.

⁶ The budget of the National Agency has been increased from 300.000€ to 540.000€ with effect from 1 January 2015.

⁷ The Federal Agency is responsible for monitoring about 280 federal detention facilities, whereas the vast majority of places of detention falls within the remit of the Joint Commission of the States: They are responsible for monitoring 183 prisons, 1270 police stations, 550 psychiatric hospitals, 28 closed children and youth institutions and – because of potential fixation – more than 10.900 retirement homes. Annual Report 2016 of the National Agency for the Prevention of Torture, p. 12, http://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/Jahresbericht_2016_Nationale_Stelle.pdf.

⁸ The low level of budget and staff has also been criticized by the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) after their visit to Germany in 2015 see Report by the CPT to the German Government on the visit to Germany carried out in Nov/Dec 2015, p. 14, <https://rm.coe.int/168071803e>.

⁹ Principles relating to the status of national institutions for the promotion and protection of human rights, UN A/RES/48/134.

¹⁰ The appointment procedure was also criticized by the Sub-committee on Prevention of Torture, see Report to Germany by the Subcommittee on Prevention of Torture, 16 December 2013, CAT/OP/DEU/1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fDEU%2f1&Lang=en.

RIGHT TO PRIVACY

Amnesty International welcomes Germany's considerable efforts to improve the protection of the right to privacy at the international level, including co-sponsoring related UN resolutions.¹¹ However, there is a growing gap between its international commitment and the increasing number of surveillance laws at the domestic level some of which fail to satisfy the requirements of proportionality and necessity.¹² The examples below illustrate a worrying trend.

In December 2015, Germany reintroduced mandatory data retention.¹³ Telecommunication providers are obliged to indiscriminately collect and store mobile location data of everyone in Germany for four weeks and other communication metadata¹⁴ for ten weeks.¹⁵ Amnesty International is concerned that the indiscriminate collection of such data for all people in Germany is disproportionate and violates the rights to privacy and freedom of expression.

In October 2016, the Federal Parliament amended the Act on the Federal Intelligence Service¹⁶ granting the Service the power to intercept, collect and process the communications of non-EU citizens outside Germany when the interception point is in Germany and when deemed necessary to "identify and prevent threats against internal or external security", to maintain Germany's "capacity to act" or to "gain other insights of importance with regard to foreign affairs and security politics".¹⁷ Amnesty International is concerned that these provisions are overly broad and vague and fail to meet the requirements of proportionality and necessity,¹⁸ thereby violating the rights to privacy and freedom of expression. The Act also

¹¹ General Assembly resolutions 68/167 of 18 December 2013, 69/166 of 18 December 2014 and 71/199 of 19 December 2016, Human Rights Council resolutions 28/16 of 26 March 2015, all on the right to privacy in the digital age.

¹² See Art. 12 International Covenant on Civil and Political Rights for these cornerstone requirements which are also applicable to Art. 17 and Art. 19, see for example Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, A/HRC/13/37, 28 December 2009, para. 11, http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A_HRC_13_37_AEV.pdf; General Comment no. 34, CCPR/C/GC/34; and Human Rights Council Communications Communication No. 4 88/1992, *Toonan v Australia*, para.8.3; No. 903/1999, para 7.3, and No. 1482/2006, paras. 10.1 and 10.2.

¹³ Gesetz zur Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten, available in German at https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=/*%255B@attr_id=%27bgbl115s2218.pdf%27%255D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl115s2218.pdf%27%5D_1503666790307.

¹⁴ "Metadata" is information generated through the use of communications technology other than the actual content of the communication, e.g. time, location or identity of conversation partners.

¹⁵ The Act was due to enter into force on 1 July 2017, but the Federal Network Agency decided not to enforce it after the Higher Administrative Court of North Rine-Westfalia ruled that the provisions are incompatible with European law.

¹⁶ „Gesetz über den Bundesnachrichtendienst“, amended by the law „Gesetz zur Ausland-Ausland-Fernmeldeaufklärung des Bundesnachrichtendienstes“ available in German at https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F*%5B%40attr_id%3D%27bgbl116s3346.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl116s3346.pdf%27%5D_1503666727090.

¹⁷ Ibid, Sect. 6 (1).

¹⁸ See Art. 12 International Covenant on Civil and Political Rights for these cornerstone requirements which are also applicable to Art. 17 and Art. 19, see for example Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, A/HRC/13/37, 28 December 2009, para. 11, http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A_HRC_13_37_AEV.pdf; General Comment

discriminates on the basis of nationality, providing non-EU citizens with considerably weaker protection and lack of effective access to remedy.¹⁹ It also fails to provide for effective independent judicial oversight. Four UN Special Rapporteurs have expressed concerns in this regard.²⁰ In 2015, Germany amended the Act on Restrictions on the Secrecy of Mail, Post and Telecommunications which allows the Federal Intelligence Service to engage in “strategic” mass surveillance without the requirement of “reasonable suspicion”.²¹

Amnesty International is concerned that non-EU citizens are subject to surveillance by the Federal Intelligence Service which is completely unregulated by law in cases of extra-territorial foreigner-to-foreigner surveillance.²²

NATIONAL SECURITY LEGISLATION

Far-reaching counter-terrorism measures were passed by both the Federal Parliament and by Federal State Parliaments in response to the Christmas market attack in Berlin in December 2016.²³ Several complex new laws, often passed by the relevant Parliament in fast-track procedures, provide for measures some of which Amnesty International considers violate the rights to a fair trial, privacy, freedom of movement and liberty.

Amnesty International is also concerned by the overarching shift to so-called “pre-emptive justice”, which grants wide-reaching powers to the police without laying formal criminal charges. A worrying example of this shift is the new broad definition of “Gefährder” (“potential attacker”) which is used to justify human rights restrictions in various newly passed laws. The amended Act on the Federal Criminal Police,²⁴ passed by Parliament in April 2017, expands the control powers of the Federal Criminal Police to include electronic tagging and

no. 34, CCPR/C/GC/34; and Human Rights Council Communications Communication No. 4 88/1992, *Toonan v Australia*, para. 8.3; No. 903/1999, para 7.3, and No. 1482/2006, paras. 10.1 and 10.2.

¹⁹ Act on Federal Intelligence Service, Sect. 6 (3), (4), Sect. 7 (2).

²⁰ See Letter to Ambassador Hans Joachim-Daerr, Permanent Mission of the Federal Republic of Germany to the United Nations (Geneva), from the UN Special Rapporteur on the right to promotion and protection of the right to freedom of opinion and expression; UN Special Rapporteur on the situation of human rights defenders; and UN Special Rapporteur on the independence of judges and lawyers, 29 August 2016, https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Presse/Downloads/Berichte_und_Dokumente/2016/20160902_Kritik_UN_a_m_BND-Gesetzesentwurf.pdf. See also UN Special Rapporteur on the right to privacy, “The fundamental right to privacy does not depend on the passport in your pocket,” 24 October 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20747&LangID=E>

²¹ Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses (Artikel 10-Gesetz - G 10), amending law available at: https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F*%5B%40attr_id%3D%27bgbl115s1938.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl115s1938.pdf%27%5D_1503667100128

²² Representatives of the German Government have taken the view that non-EU citizens are not protected by Art. 10 German basic law (right to privacy of communication). According to this position, not shared by Amnesty International, non-EU citizens are hence outside the scope of the “G10-law” which regulates restrictions of Art. 10. Surveillance of non-EU citizens is therefore regulated only in the aforementioned Act on the Federal Intelligence Service. This act provides regulations only for surveillance measures conducted on German territory, leaving data collection abroad unregulated.

²³ On 19 December 2016, a man drove a truck through a Christmas market in Berlin, killing 12 people and injuring more than 50 people.

²⁴ Gesetz zur Neustrukturierung des Bundeskriminalamtgesetzes, adopted by Parliament on 27 April 2017, available in German at https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F*%5B%40attr_id%3D%27bgbl117s1354.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl117s1354.pdf%27%5D_1503648974741.

surveillance of “potential attackers”.²⁵ Administrative control measures, such as ankle tags and assigned residency, severely interfere with a person’s freedom and private and professional life, and Amnesty International is concerned that the broad definition of “potential attacker”, and the related administrative measures, could undermine the right to a fair trial, the presumption of innocence and the principle of legality.

The simplified detention pending deportation process for persons “representing a significant security threat”²⁶ contained in the Law for the Better Enforcement of Expulsion Orders,²⁷ passed by the Federal Parliament in May 2017, could infringe the right to liberty and the strict criteria for preventive detention set out in Article 5 of the European Convention on Human Rights. The Law also obliges asylum-seekers without identity papers to hand over their electronic devices, such as mobile phones, to the Federal Office for Migration and Refugees.²⁸ These devices often hold highly personal information and Amnesty International is concerned that this measure constitutes a disproportionate interference with the right to privacy.²⁹

RIGHTS OF REFUGEES AND ASYLUM-SEEKERS

Asylum-seekers from Serbia, Macedonia, Bosnia and Herzegovina, Kosovo, Albania and Montenegro are at increased risk of *refoulement* because these countries have been legally classified as “safe countries of origin” under section 29a of the Asylum Act,³⁰ which means that their asylum claims are processed in accelerated procedures.³¹ Asylum-seekers from these countries are required to reside in special centres during their asylum procedure with limited access to legal aid.

The government has suspended the right to family reunification for individuals with subsidiary protection status³² until 16 March 2018³³ in breach of regional and international human

²⁵ *ibid*, Section 51 and 56.

²⁶ Section 62, para 3 Law for the better enforcement of expulsion orders.

²⁷ Gesetz zur besseren Durchsetzung der Ausreisepflicht, adopted by Parliament on 19 May 2017, available in German at https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl117s2780.pdf#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl117s2780.pdf%27%5D_1503650949383.

²⁸ The group of affected persons is estimated to be around 150.000 persons. http://www.bundesrat.de/SharedDocs/drucksachen/2017/0101-0200/179-17.pdf?__blob=publicationFile&v=1, p. 3/4.

²⁹ Concerns were also expressed by the Federal Data Protection Commissioner, available in German at: <https://www.bundestag.de/blob/500024/bf72784c6e0f00bc5d801ccd5aee690b/18-4-831-data.pdf>

See also statement by Deutscher Anwaltverein, available in German at: <https://anwaltverein.de/de/newsroom/sn-39-17-gesetz-zur-besseren-durchsetzung-der-ausreisepflicht-60305>

³⁰ On the 13th of May 2016, the Federal Parliament has passed a law (BT-Drs. 18/8039) classifying Algeria, Morocco and Tunisia equally as “safe countries of origin”. The law has not come into force after being rejected by the Federal Council of Germany in March 2017.

³¹ In the accelerated procedure, the Federal Office for Migration and Refugees decides within a week after the asylum claim has been filed.

³² After the legal amendment in March 2016, the Federal Office for Migration and Refugees changed its decision policy, granting Syrian asylum-seekers the status of subsidiary protection rather than recognizing them as refugees.

³³ Article 104 paragraph 13 Residence Act

rights conventions, including Article 8 of the European Convention on Human Rights and Article 10 of the Convention on the Rights of the Child, in case of unaccompanied minors.³⁴

HUMAN RIGHTS SITUATION ON THE GROUND

RACIAL DISCRIMINATION

Amnesty International is concerned that the authorities do not adequately address racist hate crimes, which are a form of racial discrimination.³⁵ Amnesty International has documented numerous failures by law enforcement agencies in the context of investigation of racist crimes committed by the far-right group National Socialist Underground (NSU) between 2000 and 2007. After a series of 10 murder cases, and despite clear indications, the racist motive was only identified when the group revealed itself in 2011. The fact that the authorities ignored evidence suggesting a racist motive behind the perpetration of these crimes may point to institutional racism. To date, the authorities have failed to launch an official enquiry into the potential role of institutional racism in the investigation of crimes perpetrated by the NSU.³⁶

Amnesty International has also documented several shortcomings within the federal system used by the police to record data on hate crimes. In particular, the system does not take into account the victim's perspective regarding a potential discriminatory motive associated with a crime. This may result in the authorities overlooking a possible discriminatory motive, including in cases where there is no clear evidence pointing to it, such as racist verbal abuse. There is also no independent complaint mechanism for victims of racist violence.

Amnesty International is also concerned about the failure by the authorities to address the sharp increase in violent attacks against asylum shelters and against asylum-seekers and refugees. In 2015, according to official statistics, 1,031 criminal offences were perpetrated against asylum shelters; a five-fold increase on the previous year.³⁷ In 2016, the authorities registered more than 988 attacks on asylum-seekers and asylum shelters³⁸ and the data for the first half of 2017

³⁴ See also "Realizing the right to family reunification of refugees in Europe", Issue paper published by the Council of Europe, Commissioner for Human Rights, May 2017, published 19 June 2017: <http://www.coe.int/en/web/commissioner/family-reunification>

³⁵ See also Amnesty International 2016 report "Living in Insecurity – How Germany is failing victims of racist violence".

³⁶ Both the UN Committee on the Elimination of racial discrimination (CERD) and the Council of Europe Commissioner criticized the authorities' failure to investigate institutional racism, see UN CERD concluding observations on the combined 19th to 22nd periodic report of Germany, CERD/C/DEU/CO/19-22, 30. June 2015, para. 10; Report on Germany by Nils Muižnieks, Council of Europe Commissioner for Human Rights following his visit on the 24th April and from 4 to 8 May 2015, para. 184.

³⁷ Response of the federal government to a parliamentary inquiry by the party "Die Linke", <http://dip21.bundestag.de/dip21/btd/18/074/1807465.pdf>.

³⁸ Ibid.

suggests that number remains high.³⁹ Federal and federal state authorities have failed to implement a comprehensive assessment strategy to identify the risk of attacks against asylum shelters in certain area or cities, in order to provide adequate police protection, wherever possible.

POLICE ACCOUNTABILITY

Amnesty International is concerned that many barriers persist to impartial, independent and effective investigation into allegations of torture and other ill-treatment by the police. To date, both federal and federal state authorities have failed to establish independent investigation mechanisms or oversight bodies.⁴⁰ Amnesty International is concerned, for example, that complaints about excessive use of force by the police in the context of the protests against the G20 summit in Hamburg in July 2017 will not be subject to an independent, thorough and effective investigation.⁴¹

Victims continue to face barriers in reporting allegations of torture and other ill-treatment and obtaining justice. In at least seven federal states obstacles persist to identifying the perpetrators as law enforcement officials remain under no obligation to wear identification badges.⁴² The federal authorities have yet to impose any identification requirement on the federal police.

Civil society organizations continue to report ethnic and racial profiling by police, in particular in the context of identity checks that target individuals mainly on the basis of their race or ethnicity.⁴³ German law lacks sufficient safeguards against racial profiling and confers wide powers on law enforcement officials to carry out identity checks. An overly narrow understanding of racism within the police and relevant ministries, which includes only intentionally racist action and not racist effects, remains a barrier.

REFUGEES AND ASYLUM-SEEKERS

Despite the amendment to the Asylum Seekers Benefit Act (see above), recent legislation has defined a number of categories of persons for whom the monthly benefit can be set below a dignified minimum existence,⁴⁴ including asylum-seekers from “safe” countries of origin.

Amnesty International is concerned about the deteriorating quality of the refugee status determination process which leads to flawed decisions by the Federal Office for Migration and

³⁹ The Ministry of Interior listed 787 attacks on refugees and asylum-seekers and 153 attacks on asylum-seekers' accommodations in the first six months of 2017, <http://www.martinarenner.de/uploads/media/1813242.pdf>.

⁴⁰ Three states (Bavaria, Bremen, Hamburg) have established centralized units to investigate those allegations. However, those units are part of the Ministry of Interior of each respective state and thus lack full independence.

⁴¹ See for example the report published by the “Basic Rights Committee”: http://www.grundrechtkomitee.de/sites/default/files/G20_Protest.pdf.

⁴² The authorities in Berlin, Brandenburg, Bremen, Hessen, North Rhine-Westfalia, Rhineland-Palitanate, Saxony-Anhalt, Schleswig Holstein and Thuringia have imposed the identification requirement on law enforcement officials.

⁴³ Amnesty International 2016 report “Living in Insecurity – How Germany is failing victims of racist violence”, p. 51.

⁴⁴ Article 1a Asylum Seekers Benefit Act.

Refugees.⁴⁵ Despite an increase in staffing,⁴⁶ staff often lacks adequate training to assess asylum applications. Often the interviewers and the decision-makers are not the same and the interpreters are frequently poorly qualified and lacking impartiality.⁴⁷ Deportation due to the wrongful rejection of asylum claims can lead to a violation of the principle of *non-refoulement*. An internal review of 2,000 cases focused only on positive asylum decisions by the Federal Office.⁴⁸ However, only a review of negative decisions could prevent rejected asylum-seekers from being forcibly returned despite their need for protection.

Amnesty International is concerned about the forced return of rejected asylum-seekers to countries where they are at risk of human rights violations, in breach of the principle of *non-refoulement*. The government has begun forced repatriation to Afghanistan of people convicted of crimes, persons considered “potential attackers” and rejected asylum-seekers who have persistently refused to identify themselves.⁴⁹

RIGHT TO PRIVACY

The report of a parliamentary inquiry into surveillance was published in June 2016,⁵⁰ noting that the Federal Intelligence Service had resorted to an overly broad interpretation of various laws and that there was no legal basis for the Service’s surveillance of foreign-to-foreign communications.⁵¹ The Federal Data Protection Commissioner criticized the Intelligence Service for having “illegally, multiple times and massively” obstructed oversight mechanisms and collecting personal data without a legal basis.⁵² The Parliamentary Control Panel, an oversight body, found that the Service had illegally targeted some civil society organizations.⁵³

⁴⁵ See the debate of the case of *Franco A.*, a German citizen who was granted protection in 2016: <http://www.dw.com/en/germany-promises-quick-answer-to-soldier-refugee-mystery/a-38642266>

<https://www.thelocal.de/20170505/german-refugee-soldier-case-lays-bare-asylum-chaos>

⁴⁶ The Federal Office’s human resources were increased, see press statement by the Minister of Interior, 30.09.2016: <http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/EN/2016/announcement-latest-refugee-figures.html> and tripled to a number of 7.300 employees.

⁴⁷ In 2016 Amnesty International Germany, Pro Asyl and other associations published a study examining cases from 2014 until 2016 calling for more quality in refugee status determination: <https://www.proasyl.de/wp-content/uploads/2016/11/PRO-ASYL-Memorandum-BAMF-Broschuere-Web-Nov16.pdf>

⁴⁸ See press release of the Federal Office for Migration and Refugees, 5th of May 2017: <http://www.bamf.de/SharedDocs/Pressemitteilungen/DE/2017/20170505-014-pm-untersuchungsgruppe.html?nn=3799586>

⁴⁹ Joint press release (1.6.2017) of the Federal Foreign Office and the Federal Ministry of Interior <http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2017/170601-Afghanistan.html>

⁵⁰ Report of the 1st Parliamentary Inquiry Committee, 23.06.2017: <http://dip21.bundestag.de/dip21/btd/18/128/1812850.pdf>

⁵¹ See report of the 1st Parliamentary Inquiry Committee, 23.06.2017: <http://dip21.bundestag.de/dip21/btd/18/128/1812850.pdf>, p.704-710 and 710-715. The aforementioned amendment of the Act on the Federal Intelligence Service intends to provide the missing legal basis. However, surveillance measures conducted extraterritorially remain unregulated, see chapter on human rights framework.

⁵² See inspection report of the Federal Data Protection Commissioner on <https://netzpolitik.org/2016/geheimer-pruefbericht-der-bnd-bricht-dutzendfach-gesetz-und-verfassung-allein-in-bad-aibling/>

⁵³ See website of the Federal Parliament, 17.12.2015: <http://www.bundestag.de/dokumente/textarchiv/2015/parlamentarisches-kontrollgremium/399586>

VIOLATIONS OF THE RIGHTS OF CHILDREN WITH VARIATIONS OF SEX CHARACTERISTICS

Amnesty International has documented human rights violations suffered by children and adults with variations of sex characteristics.⁵⁴ Some medical practices, including surgery and hormone treatment of children with variations of sex characteristics, can have lasting negative impacts on their health, sexual lives, and psychological well-being.

The children are often too young to consent at the time of the intervention and their parents are often not given adequate information and support to make an informed decision about what is best for their children. Non-emergency, invasive and irreversible medical treatment may violate the principle of the best interest of the child and the rights to a private life, the highest attainable standard of health, bodily integrity, self-determination and recognition before the law.

A number of UN treaty bodies⁵⁵ and the UN Special Rapporteur on torture have repeatedly classified non-emergency, invasive and irreversible surgical and hormonal interventions in intersex children without consent as harmful and a violation of the rights of the child.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF GERMANY AND FEDERAL STATES TO:

NATIONAL PREVENTIVE MECHANISM

- Ensure that the National Preventive Mechanism is adequately staffed and resourced to carry out its functions effectively and in line with its obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ensure that the appointment procedure for members of the National Preventive Mechanism is restructured to comply with the SPT guidelines on National Preventive Mechanisms, including in relation to transparency and inclusion of civil society.

RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES

- Ratify the International Convention on the Rights of Migrant Workers and Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

⁵⁴ First, do no harm: ensuring the rights of children with variations of sex characteristics in Denmark and Germany, 9 May 2017: <https://www.amnesty.org/en/documents/eur01/6086/2017/en/>

⁵⁵ Committee against Torture, Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights.

PROTECTION OF ASYLUM-SEEKERS AND REFUGEES

- Refrain from using the concept of “safe countries of origin” and ensure fair asylum procedures to all categories of asylum-seekers;
- Repeal Article 104, paragraph 13, of the Residence Act and grant the right to family reunification to individuals with subsidiary protection;
- Ensure that benefits for asylum-seekers secure a dignified minimum existence in accordance with the 2012 ruling of the Federal Constitutional Court;
- Ensure that the Federal Office for Migration and Refugees is adequately resourced and improve the quality of asylum procedures by ensuring that decisions on applications are taken by interviewers, that interviewers and interpreters are sufficiently trained, and that the specific needs of vulnerable asylum-seekers are addressed throughout the asylum process;
- Refrain from forcibly returning individuals to Afghanistan in the current security situation in that country.

RIGHT TO PRIVACY

- Revise the Act on Restrictions on the Secrecy of Mail, Post and Telecommunications and the Act on the Federal Intelligence Service in line with human rights standards, including amending provisions which are overly broad and vague, such as Section 6 (1) of the Act on the Federal Intelligence Agency, and ensure that all provisions are sufficiently clear and precise to be “foreseeable”;
- Ensure that all surveillance measures are proportionate and necessary to achieve a legitimate aim and based on law, and refrain from indiscriminate surveillance;
- Repeal the reintroduction of indiscriminate data retention;
- Establish the legal basis for extra-territorially conducted surveillance of foreign-to-foreign communications which complies with human rights standards, and in the meantime refrain from taking such measures;
- Improve the effectiveness of the oversight regime for German intelligence agencies.

RACIAL DISCRIMINATION

- Carry out an independent investigation into institutional racism within all law enforcement agencies and relevant ministries taking into account the findings of the parliamentary inquiry committees on the National Socialist Underground (NSU);
- Review the federal system used by the police to register hate crimes, make the guidelines available to the public, and ensure that the victim’s perception of any alleged discriminatory motive is duly taken into account in the investigation;
- Instruct federal state police, in consultation with federal authorities, to undertake a thorough risk assessment to identify asylum shelters at particular risk of violent attacks, and set out appropriate police protection measures;
- Amend laws governing police at the state and federal levels to make the criteria for carrying out identity checks more stringent and explicitly prohibit racial profiling;
- Ensure all police officers receive in-service training on the role of police in combating and protecting against racism and discrimination.

POLICE ACCOUNTABILITY

- Ensure prompt, impartial, independent and effective investigations, including by establishing independent police complaint mechanisms, at federal and state levels, to hear allegations of torture and other ill-treatment and excessive use of force by the police;

- Introduce an obligation for all federal and state police officers, including riot police, to wear individual identification badges.

NATIONAL SECURITY LAWS

- Repeal the overly broad concept of “Gefährder” (“potential attacker”) and in the meantime ensure the concept is interpreted consistently in all federal states and applied in a way that upholds human rights;
- Repeal the provisions allowing for preventive detention pending deportation on the grounds of being a “potential attacker”;
- Repeal the provisions on preventive detention for countering “potential danger” without formal charges in the Federal State of Bavaria’s Law regulating police activities;
- Introduce restrictions on accessing immigrants’ electronic devices, including a reasonable suspicion that false identity or nationality information has been given, and allow access to relevant data categories only;
- Introduce mandatory evaluation of counter-terror and surveillance provisions which substantially interfere with human rights with a view to avoiding disproportionate impact.

RIGHTS OF CHILDREN WITH VARIATIONS OF SEX CHARACTERISTICS

- Ensure that all medical professionals implement the July 2016 guidelines on the treatment of individuals with variations of sex characteristics, and develop and implement a rights-based healthcare protocol;
- Ensure that no child is subjected to non-emergency, invasive and irreversible surgery or treatment with harmful effects;
- Postpone non-emergency, invasive and irreversible genital surgery or hormone treatment on infants and children with variations in sex characteristics until they are able to meaningfully participate in decision-making and give their informed consent.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁵⁶

- *Europe: First, do no harm: Ensuring the rights of children with variations of sex characteristics in Denmark and Germany*, 9 May 2017 (Index: EUR 01/6086/2017)
- *Europe: Dangerously Disproportionate: The ever-expanding national security state in Europe*, 17 January 2017 (Index: EUR 01/5342/2017)
- *Germany: Living in Insecurity – How Germany is failing victims of racist violence*, 9 June 2016 (Index: EUR 23/4112/2016)

⁵⁶ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/europe-and-central-asia/germany/>

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