

Submission to the OHCHR on the occasion of Germany's review under the 44th Universal Periodic Review mechanism

**A submission by IOM Germany to the Office of the United
Nations High Commissioner for Human Rights**

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About IOM

IOM, as the UN migration agency, is the leading inter-governmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners.

IOM works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.

Cooperation with other international mechanisms and institutions

1. From the outset, Germany has strongly supported the development and subsequent adoption of the Global Compact on Migration for Safe, Orderly and Regular Migration (A/RES/73/195; the GCM). Germany has since also greatly contributed to the implementation of the GCM. A detailed voluntary state report was submitted to the Regional Review in 2020¹ and the IMRF in 2022² as well as 21 commitments within the framework of the Pledging Initiative. The German delegation to the IMRF included representatives of three ministries: The Federal Foreign Office (GFFO), Federal Ministry for Economic Cooperation and Development (BMZ), Federal Ministry of Labor and Social Affairs (BMAS) as well as a representative of German civil society, which also submitted a report.³ This underscores Germany's exemplary whole of government and whole of society approach to the topic of migration. Germany has also continuously contributed to the Multi-Partner Trust Fund, which is dedicated to the implementation of the GCM, via three ministries, the Federal Ministry of Interior and Community (BMI), GFFO and BMZ.

Recommendations:

- a. Continue to promote the GCM and participate actively its review mechanisms, including also all relevant government entities and civil society partners.
- b. Continue to fund the MPTF.

¹ The Federal Government (2020): Global Compact for Orderly, Save and Regular Migration. Regional Review. Contribution by the Federal Republic of Germany. <https://migrationnetwork.un.org/resources/germany-gcm-voluntary-national-report-regional-review-europe-and-north-america> (accessed 25. March 2023)

²The Federal Government (2022): Global Compact for Orderly, Save and Regular Migration. IMRF. Contribution by the Federal Republic of Germany. <https://migrationnetwork.un.org/system/files/docs/Germany%20-%20Voluntary%20GCM%20Review.pdf> (Accessed 15. March 2023)

³ Report of German Civil Society Organisations for the IMRF. Implementations of the Global Compact for orderly, save and regular migration. Priority recommendations. https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/KOK_informiert/2022_02_Report_German_CS_OIMRF_final_Priority_Recommendations_Discussion_Paper.pdf (Accessed 25. March 2023)

Prohibition of Slavery, Trafficking

2. In the previous cycle, it was recommended among other points that Germany establishes **a human rights-based approach to combating human trafficking with the rights of victims being the centre of all relevant measures**, for instance by providing nationwide support systems - especially for the under-aged - by taking measures, which include establishing a national identification and referral mechanism, to enable victims to obtain residence permits and to access rights attached thereto.
3. Furthermore, Germany received the recommendation to **sensitize authorities at all levels — federal, regional and municipal — with a view to recognizing and identifying cases of trafficking and exploitation of children, and to enhance ways and means to guarantee adequate protection for, and comprehensive assistance to, the victims.**
4. Germany has taken significant steps to strengthen its engagement in counter-trafficking and the protection of victims of trafficking (VoTs), following through on commitments laid down in the Coalition Agreement of the current government.⁴ Since November 2022, the German Institute for Human Rights has been entrusted by the German government with independent reporting on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS). To this end, a dedicated Human Trafficking Reporting Unit has taken up its work with funding from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ).⁵ In 2023 the German government, in cooperation with all relevant ministries and authorities as well as civil society, is embarking on the development of a National Referral Mechanism as well as a National Action Plan against all forms of Human Trafficking. In both cases, the lead is with the BMFSFJ. The Coalition Agreement also commits to introduce a residence permit for VoTs independent of their will to testify.⁶
5. It should be noted that civil society plays a central role in the identification and protection of VoTs, particularly the Specialized Counselling Centers (Fachberatungsstellen), which have the mandate to counsel and support victims of

⁴ SPD, Grüne, FDP (2021): Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit. Koalitionsvertrag 2021-2025 zwischen der Sozialdemokratischen Partei Deutschlands (SPD), Bündnis 90/Die Grünen und den Freien Demokraten (FDP): p.85, p.91, p.110, p.116

⁵ For details please see the official Website of the Human Trafficking Reporting Unit <https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/berichterstattungsstelle-zu-menschenhandel> (accessed 27. March 2023)

⁶ SPD, Grüne, FDP (2021): Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit. Koalitionsvertrag 2021-2025 zwischen der Sozialdemokratischen Partei Deutschlands (SPD), Bündnis 90/Die Grünen und den Freien Demokraten (FDP): p.110

trafficking.

6. The centers rely on a mix of funding sources from federal level, with the BMFSFJ funding centers that focus on sexual exploitation as well as female victims, and the BMAS supporting centers that tackle labor exploitation. Additionally, the Federal States and in some cases also municipalities provide funding to centers in their territory. It is of utmost importance that the Specialized Counselling Centers continue to receive the financial means they need to fulfil their tasks. In addition to providing aid to trafficked and exploited persons, the Specialized Counselling Centres also engage in capacity building of governmental and non-governmental actors on the identification and protection of trafficked persons, such as judges, immigration authorities, employers, social workers, asylum counsellors and others. Since trafficking in human beings is a complex phenomenon and requires the cooperation of many governmental and non-governmental actors in order to identify and correctly refer victims and help them obtain protection and justice, the Counselling Centres need well-developed local networks. To this end, the continuous exchange, sensitization and capacity building with relevant cooperation partners is essential. Consequently, sufficient resources for the Counselling Centers must also cover these activities.
7. Another notable point is that, depending on the location, finding places in adequate shelters for identified VoTs is often challenging, especially as there are severely limited shelter facilities for certain groups of victims. This is the case of male victims of labor exploitation, couples/families and LGBTIQ+ persons. The lack of appropriate shelter facilities can impede adequate support and protection of VoTs after their identification.
8. Germany is however still lacking guidelines for identification and referral of (national and foreigner) victims, for all forms of trafficking. This can impede victims' identification, particularly of refugees and asylum-seekers. Since 2012, the Federal Office for Migration and Refugees (BAMF) has nominated "special representatives on trafficking in human beings" in all its branch offices. These specifically trained officers are mandated with the identification and protection of VoTs during the asylum process. BAMF has also issued instructions for asylum decision-makers on identification of VoTs during hearings⁷. However, reports from civil society suggest that the BAMF officers require additional training and resources to fully accomplish their mandate. In order to maintain and enhance the level of vigilance and care that is necessary to ensure identification and adequate further protection of VoTs undergoing the asylum procedure, regular exchange between BAMF personnel and Specialized Counselling Centers as well as regular trainings of asylum decision

⁷ BAMF (2021): The Stages of the German Asylum Procedure. An overview of the individual procedural steps and the legal basis. P. 39 https://www.bamf.de/SharedDocs/Anlagen/EN/AsylFluechtlingsschutz/Asylverfahren/das-deutsche-asylverfahren.pdf?__blob=publicationFile&v=18 (accessed 27. March 2023)

makers on this topic need to be continued and expanded.

Recommendations:

- a. Maintain adequate funding and resources for Specialized Counselling Centers who offer counselling, shelter and essential referral to VoTs.
- b. Continue to support Specialized Counselling Centers in their efforts to sensitize and train authorities and other relevant actors that potentially interact with VoTs in order to equip them with the knowledge to identify and refer potential VoTs.
- c. Invest in shelters to ensure that all victims can receive adequate protection after identification, including male victims of labor exploitation, couples or families and LGBTIQ+ persons.
- d. Strengthen the existing structures of BAMF that are in place to ensure identification and protection of VoTs during the asylum process by ensuring regular trainings and exchange for relevant BAMF staff, with relevant civil society actors.

Children

9. During the last cycle, it was recommended that Germany continues to **implement policies designed to protect the rights of young people and ensure access to welfare for them and for children, without exception.**
10. The youth welfare system is primarily responsible for unaccompanied and separated migrant children (UASC) that come to Germany, often to seek refuge . Additionally, as UASC are considered a group of persons in particular need of protection with special guarantees for their asylum procedure, their asylum hearings are supervised by BAMF officers who have been trained in child sensitive approaches and are tasked with ensuring that child-specific matters and further procedural safeguards are taken into account⁸. The primacy of the youth welfare system regarding the responsibility for UASC and the provisions in the asylum procedure to ensure child-friendly proceedings are commendable. Germany should however continue to address challenges that arise from funding and staffing shortages within the youth welfare⁹ system to avoid that this leads to a lack of quality in the protection and care that UASC are entitled to. This includes for

⁸ For details please see BAMF: Unaccompanied Minors <https://www.bamf.de/EN/Themen/AsylFluechtlingsschutz/UnbegleiteteMinderjaehrige/unbegleiteteminderjaehri-ge-node.html> (Accessed 1. April 2023)

⁹ Johanna Karpenstein, Daniela Rohleder (2022): Die Situation geflüchteter junger Menschen in Deutschland pp. 16-17; pp.62-64; p.73; p.111 <https://b-umf.de/src/wp-content/uploads/2022/07/online-umfrage-komplett-final-11-07-22.pdf> (Accessed 29 March 2023)

example gaps in identifying UASC, lack of qualified legal guardians, lack of resources for psychosocial support and placement of UASC in asylum seekers reception centers instead of facilities under the auspices of the Youth Welfare Offices. Even in times of great pressure on the system due to a high number of UASC, as is currently the case due to the Russian attack on Ukraine, minimum standards of protection and care that guarantee the preservation of the best interest principle, must be upheld.

11. In the last five years, over 15,000¹⁰ children returned from Germany with the official return program REAG/GARP. The overwhelming majority travelled with their families or caregivers¹¹. When children are involved in return procedures, the prerequisite - regardless of whether an UASC or a child living with the family are concerned - is always that the best interest of the child constitutes a primary consideration in the decision-making process. To this end, an individual assessment and determination of the best interest, which must also be documented, is necessary in all decision-making processes that could lead to the return of a child, in line with international standards and guidance from the Committee on the Rights of the Child. Currently, children travelling with their families are often overlooked during return proceedings and treated as a mere appendage of their parent(s). Germany should therefore continue to improve the protection of children that are returning, e.g. by defining binding minimal standards for return counselling of families and children which should include a mandatory best interest assessment for all children returning, establishing obligatory training on children's rights and child protection for state and non-state actors involved in return procedures, fostering close cooperation with the Youth Welfare Offices when protection concerns arise, and ensuring child sensitive programming in return and reintegration.¹² It should be noted that the BMI, the BAMF and the 16 Federal States recently published guidelines for standardized return counselling¹³, which recommends several measures when dealing with returning families, including ensuring that "needs of the child should - as far as possible - be taken into account when planning and preparing the return in the best interests of the child".¹⁴ The

¹⁰ Internal IOM Germany statistics. IOM Germany administers the REAG/GARP program.

¹¹ UASC are protected from forced return but can choose to make use of AVRR support if they wish and after a BID-procedure has ascertained that return is in their best interest. 144 UASC made use of the REAG/GARP programme in the last five years (Internal IOM Germany statistics).

¹² For details please consult IOM, UNICEF, Raphaelswerk, Save the Children (2021): Rückkehr von Kindern im Familienverbund. Kinderrechte im Verfahren zur freiwilligen Rückkehr und Grundlagen für eine nachhaltige Reintegration). <https://germany.iom.int/sites/g/files/tmzbd1806/files/documents/rueckkehr-von-kindern-im-familienverbund.pdf> (Accessed 27. March 2023)

¹³ BMI, BAMF (2023): Handlungsleitfaden für Bundeseinheitliche Standards in der Rückkehrberatung. https://www.bamf.de/SharedDocs/Anlagen/DE/Rueckkehr/handlungsleitfaden-rueckkehrberatung.pdf?__blob=publicationFile&v=5 (Accessed 29. March 2023)

¹⁴ Ibid. p.19

paper also defines minimum safeguards for the return of UASC.¹⁵ The guidelines are an important step towards ensuring child protection in return procedures. However, they are not mandatory and therefore subject to the interpretation of the Federal States, who are responsible for return counselling and are to be assessed against international standards and requirements in terms of Best Interest Determination process.

12. The German government committed in the Coalition Agreement to end immigration detention for children (i.e. anyone under 18 years). While legally possible, immigration detention of children is already extremely rare. A special case is the airport procedure, where asylum seekers, who arrive at a German airport without valid papers or who have entered from a "safe country of origin" are taken into closed accommodation centers in the transit zone to prevent these persons from entering German territory. They are kept at the airport, until their right to enter Germany to follow through with their application for asylum is granted by the BAMF, or, if their initial application is rejected as manifestly unfounded, until they are returned. While legally possible, UASC are usually not subjected to the airport procedure and instead referred promptly to the responsible Youth Welfare Office. No such exemption exists for families with children.¹⁶ The legal time-limit for the airport procedure is 19 days. It is doubtful that this procedure is in accordance with the best interest of the child, as the housing of these families is in closed areas of the transit zone and amount to a situation similar to detention.

Recommendations:

- a. Commit adequate resources to the youth welfare system which is primarily responsible for UASC. Youth Welfare Offices, guardianships and other organizations and structures working with UASC need to be adequately funded and staffed. Standards in the reception, accommodation and care for UASC need to be upheld at all times.
- b. Ensure that the best interest of the child is the primary consideration when children are involved in return processes and that individual determination of the best interest of the child (BID), which must be documented, are conducted on a mandatory basis for unaccompanied and accompanied children. To this end also support adequate capacity building on child protection and children's rights for all actors active in return and reintegration counselling and processing.

¹⁵ Ibid. p.23

¹⁶ For more details see ECRE, Country Report Germany, Asylum Procedure. Guarantees for Vulnerable Groups, Special Procedural Guarantees. <https://asylumineurope.org/reports/country/germany/asylum-procedure/guarantees-vulnerable-groups/special-procedural-guarantees/> (accessed 27. March 2023)

- c. Exclude families with children from the airport procedure.

Migrants rights

13. One of the recommendations from the previous cycle was that Germany should take **all necessary steps to combat all forms of violence against asylum seekers and migrants.**
14. Asylum seekers often live for prolonged periods in reception and accommodation centers. In order to improve the standards of such centers with the aim of enhancing the protection of women, children, LGBTIQ+ and persons with disabilities, the BMFSFJ, in cooperation with UNICEF and a large coalition of civil society partners, launched joint initiatives in 2019 to develop minimum standards for the protection of the mentioned groups. This resulted in the publication “Minimum Standards for the Protection of Children, Adolescents and Women in Refugee Accommodation Centres”.¹⁷ Two annexes on the implementation of the Minimum Standards for LGBTIQ+ refugees and migrants, and the other on their implementation for refugees and migrants with disabilities were added in 2019. A regular review mechanism, involving a broad range of stakeholders as well as the residents of refugee accommodation centres, is in place. The development of the minimum standards is exemplary for a whole of society approach, also including the affected beneficiaries for their input. However, as the minimum standards are not mandatory, the challenge remains to ensure their implementation in all reception and accommodation centers, which fall under the responsibility of the Federal States.

Recommendations:

- a. The minimal standards recommended by the BMFSFJ and published through the guide on minimal standards should be made mandatory for all reception facilities in Germany.

Reception of Displaced Persons from Ukraine

15. Since February 2022, Germany has received over of 1 Mio Ukrainian nationals, second only to Poland. A majority of 70% are female and many have children.

¹⁷ BMFSFJ (2021): Mindeststandards zum Schutz von geflüchteten Menschen in Unterkünften. Berlin. <https://www.bmfsfj.de/resource/blob/117472/bc24218511eaa3327fda2f2e8890bb79/mindeststandards-zum-schutz-von-gefluechteten-menschen-in-fluechtlingsunterkuenften-data.pdf> (accessed 25. March 2023)

Under the activation of the Temporary Protection Directive (TPD¹⁸) by the European Council in March 2022, displaced from Ukraine, including Third Country Nationals (TCNs) that had a permanent residence permit in Ukraine, were granted temporary protection and visa-free entry into Germany. Notably, Section 24 of the Residence Act (AufenthG), grants immediate access to the labour market and the social welfare system for persons who have fled Ukraine.¹⁹ Germany's swift and efficient implementation of the TPD, despite the high numbers, is commendable. For example, 300,000 Ukrainians are currently enrolled in state sponsored language courses all over the country.

16. It should be noted that the exclusion of persons who did not have permanent residency in Ukraine before the war from the TPD created hardships for a significant number of Third Country Nationals (TCNs) who fled to Germany, many of them former international students from African and Middle Eastern countries. An estimated 38,000 TCNs have fled to Germany, of which less than half, 14,400, have received temporary protection.²⁰
17. While two decrees from the BMI have legalized the entry and stay of TCNs in the first months after the war, these have since expired. Therefore, many TCNs that do not fall under the TPD are without a legal permit since September 2022 and in principle obliged to leave the country, provided they can return in a safe and durable manner. Exchange with African diaspora organisations, counselling sessions with TCNs and an explorative study²¹ conducted by IOM Germany have shown that some TCNs, especially of African descent, have faced discrimination on their way to Germany as well as after their arrival, as they were not perceived as Ukrainians. The exclusion from the TPD added to these difficulties. Local authorities and support structures were sometimes unclear about how to deal with this group. This led to difficulties when accessing basic services like accommodation and medical care, as well as incorrect information on residence matters by overwhelmed Counselling Centers. Another group that reportedly struggled with discriminatory experiences are members of the Roma community, who often lack official documentation which prevents them from proving that they

¹⁸ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.071.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A071%3ATOC

¹⁹ BAMF (2023) FAQ about entry from Ukraine and residence in Germany <https://www.bamf.de/DE/Themen/AsylFluechtlingsschutz/ResettlementRelocation/InformationenEinreiseUkraine/InformationenEinreiseUkraineEN/documents/ukraine-faq-en.html?nn=1159474> (Accessed 3 April 2023)

²⁰ The cited numbers are from Mediendienst Integration, <https://mediendienst-integration.de/migration/flucht-asyl/ukrainische-fluechtlinge.html> (Accessed 4 April 2023)

²¹ IOM Germany (2022): TCNs arriving from Ukraine in Germany https://germany.iom.int/sites/g/files/tmzbd1806/files/documents/iom-germany_third-country-nationals-arriving-from-ukraine-in-germany.pdf (Accessed 4 April 2023)

fled the war in Ukraine.

18. It should be noted that several Federal States, among them Berlin, Bremen, Hamburg, Niedersachsen and Nordrhein-Westfalen, have since created legal alternatives to facilitate residence permits for TNCs that do not fall under the TPD.

Recommendation:

- a. Consider the protection and other mechanisms ensuring (temporary) regular status that could apply to all persons who fled Ukraine, irrespective of their status in Ukraine before the war. In this regard, examine whether the scope of the implementation of the TPD (*Umsetzung der Massenzustromsrichtlinie im § 24 AufenthG.*) could be expanded, to include persons who have fled Ukraine.
